

CANADA / JUDGMENT

R. v. Haq

2024 BCCA 85

COURT

British Columbia Court of Appeal

DECIDED

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2024 BCCA 85 R. v. Haq COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Haq, 2024 BCCA 85 Date: 20240228 Docket: CA49196 Between: Rex Respondent And Muhammad Zain Ul Haq Appellant Before: The Honourable Justice MacKenzie The Honourable Mr. Justice Willcock The Honourable Madam Justice Fenlon On appeal from: An order of the Provincial Court of British Columbia, dated July 5, 2023 (sentence) (R. v. Haq, 2023 BCPC 159, Vancouver Dockets 33598-1; 261864-2; 261864-3-A; 263902-1; 264176-1 and Richmond Docket 66275-1). Oral Reasons for Judgment Counsel for the Appellant: B. Isitt Counsel for the Respondent: S.E. Elliott, K.C. Place and Date of Hearing: Vancouver, British Columbia February 28, 2024 Place and Date of Judgment: Vancouver, British Columbia February 28, 2024 Summary: This is a sentence appeal. The appellant contends the sentencing judge erred in law in crediting time served in pre-trial custody to a sentence imposed in relation to mischief offences rather than in relation to the sentence imposed for the offence which directly resulted in that pre-trial custody (breach of a release order). Held: Appeal dismissed. It was open to the sentencing judge to credit the time served against the sentence imposed on the mischief offences. There was a logical and sufficient connection between the mischief offences and the time spent in predisposition custody.

- [1] WILLCOCK J.A.: Muhammad Zain Ul Haq, the appellant, plead guilty to five counts of mischief and one count of breaching a condition of a release order. On July 5, 2023, for reasons indexed at 2023 BCPC 159, he was sentenced to a conditional sentence order of 75 days for the mischief offences, reduced by 14 days after giving him credit for nine days in pre-trial custody, leaving an actual conditional sentence order of 61 days followed by probation for 12 months.
- [2] A custodial sentence of seven days was imposed for the breach of his release order.
- [3] With leave granted on July 7, 2023, he appeals the seven-day sentence imposed for the breach of his release order. He seeks to have that sentence set aside and "a net new sentence of 0 days jail" imposed.
- [4] He says the sentencing judge erred by failing to apply credit for time served in pre-trial custody to the custodial sentence imposed for the breach offence. Doing so would have allowed him to avoid returning to jail.

- [5] Although he initially advanced other grounds of appeal from the sentence imposed, and addressed those grounds in his statement on sentence, he now resiles from those grounds, and advances only the argument with respect to credit for time spent in pre-trial custody.
- [6] The mischief offences consisted of acts of civil disobedience--principally obstruction of traffic to bring attention to environmental causes on March 27, 2021; May 2, 2021; July 24, 2021; October 16, 2021; and October 25, 2021.
- [7] Mr. Haq was arrested for the first offence on the Cambie Street Bridge. He was released on an undertaking dated March 27, 2021, a condition of which was that he "not enter the Cambie Street Bridge including all on and off ramps". On August 15, 2022, he again participated in a demonstration that obstructed traffic on the Cambie Street Bridge. As a consequence, he was charged with breach of a release order and was arrested on September 1, 2022. He was released from custody on a new order nine days later on September 9, 2022.
- [8] The Criminal Code, R.S.C. 1985, c. C-46, provides: 719
- (3) In determining the sentence to be imposed on a person convicted of an offence, a court may take into account any time spent in custody by the person as a result of the offence but the court shall limit any credit for that time to a maximum of one day for each day spent in custody.
- [9] The appellant says his time in pre-trial custody was a result of a breach of an undertaking, and not as a result of the mischief allegations. He says it was an error of law, and contrary to the provision of s. 719(3), to credit time served in pre-trial custody to the sentence imposed in relation to an offence other than the offence that resulted in him being taken into custody.
- [10] In support of that proposition, he relies on *R. v. Wilson*, 2010 BCCA 65. That judgment is authority for the proposition that care must be taken to ensure that credit is given in accordance with s. 719(3).
- [11] A clear description of what is meant by time spent in custody "as a result of" an offence appears in *R. v. Barnett*, 2017 ONCA 897, described by the appellant's counsel, Mr. Isitt, as an accurate statement of the law. In *Barnett, Doherty and Rouleau JJ.A.*, for the court, make it clear that it is a mistake to equate the offence that triggers the accused being taken into custody with the offence or offences that result in the accused spending time in pre-trial custody. In that case, the accused was taken into custody after being charged with the second of two offences. The court rejected the proposition that the accused's pre-sentence custody was not served "as a result of" the first offence because his detention followed his arrest for the second offence. The court held:
- [27] We do not read s. 719(3) and (3.1) as limiting consideration of pre-sentence custody only with respect to the offence that was the immediate trigger of the detention. Rather, the court is to assess whether a sufficient link exists between the pre-sentence detention for which credit is sought and the offence or offences for which the offender is being sentenced so as to meet the "as a result" requirement of s. 719(3). Even where, as here, the detention

followed a later charge, the circumstances may be such that this later detention can nonetheless be considered to be "as a result" of both the earlier and the triggering offences.

- [28] It would be artificial to restrict a sentencing judge's ability to apply pre-sentence custody to only those charges that are the immediate trigger of the detention. Judges are regularly called upon to sentence offenders who are facing different sets of charges and who obtained bail on the initial set of charges, but were remanded in custody on the later charges. In such cases, legitimate questions will arise as to whether the pre-sentence custody can be said to be "as a result of" each of the various charges the offender is facing. In many cases, common sense will dictate that the offender did not apply for, or was denied, bail on the second set of charges at least in part because of the totality of the charges outstanding, or because he had been on bail on the prior charges. In those circumstances, it does not stretch the language of s. 719(3) to describe the pre-sentence custody as being "a result of" both sets of charges. [Emphasis added].
- [12] This is the case here, in my view. Breach of a release order was the charge that triggered the arrest and pre-trial detention, but the earlier offences contributed to the rationale for the issuance of the warrant and the arrest for the breach. The appellant says that is not a sufficient connection. I disagree. In Barnett, the court observed as follows:
- [31] There is no strict rule dictating what constitutes a sufficient link or relationship between the given charge and the pre-sentence custody so as to meet the "as a result of" standard. The sentencing judge will take into account relevant factors that might include the reasons for bail having been granted on the first set of offences and denied for the second set of offences; whether bail was sought on the later offences; whether there has been revocation of the bail on the first set of offences; the impact if any of the reverse onus provisions of ss. 515(6) or 522(2) of the Criminal Code; whether subsequent charges remain outstanding, have been withdrawn or stayed; the amount of pre-sentence custody accumulated; the nature and seriousness of the various charges; and the relationship, if any, that charges have to one another. In sum, the sentencing judge must be satisfied that the offences upon which he is sentencing the accused have some meaningful causative connection to the accused's pre-sentence custody. [Emphasis added.]
- [13] In my view, it was open to the sentencing judge to credit the time served against the underlying mischief charges. The appellant's counsel acknowledges that here, to use the words of Martin J.A. (as she then was) in R. v. Hoelscher, 2017 ABCA 406 at para. 27, there was "a logical connection between the offence for which the offender is being sentenced and the time spent in predisposition custody".
- [14] I would not accede to the appellant's argument, and I would dismiss the appeal.
- [15] MACKENZIE J.A.: I agree.
- [16] FENLON J.A.: I agree.

[17] MACKENZIE J.A.: The appeal is dismissed. "The Honourable Mr. Justice Willcock"

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