

CANADA / JUDGMENT

R. v. Hayer

2022 BCSC 1557

COURT

Supreme Court of British Columbia

DECIDED

1 September 2022

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2022 BCSC 1557 R. v. Hayer IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Hayer, 2022 BCSC 1557 Date: 20220901 Docket: X083239 Registry: New Westminster Regina v. Munroop Singh Hayer Restriction on publication: A publication ban has been mandatorily imposed under s. 517(1) of the Criminal Code restricting the publication, broadcasting or transmission in any way of the evidence taken, the information given, the representations made and the reasons, if any, given in respect of the application for judicial interim release. Before: The Honourable Madam Justice Devlin Oral Reasons for Judgment - Ruling on Application of s. 770 Counsel for Crown: C. McPherson, Q.C. Counsel for the Accused Hayer: T.C. Paisana R. Wood Place and Date of Hearing: New Westminster, B.C. August 30, 2022 Place and Date of Judgment: New Westminster, B.C. September 1, 2022 THE COURT: This decision was delivered in the form of Oral Reasons. The Reasons have since been edited for publication.

Introduction

- [1] On August 23, 2022 in reasons indexed as R. v. Hayer, 2022 BCSC 1500, I cancelled Mr. Hayer's release order pursuant to s. 524 of the Criminal Code, R.S.C., 1985, c. C-46 [Code]. Pursuant to s. 770 of the Code the Crown applies to mark the bail and issue a certificate of default. Counsel for Mr. Hayer opposes the application arguing that s. 770 is not engaged in circumstances where the bail is cancelled pursuant to s. 524(3)(b). They submit a condition precedent to the application of s. 770 is a finding of non-compliance with a release order under pursuant to s. 524(3)(a). Relevant Statutory Provision - s. 770 of the Code
- [2] Part XXV of the Code sets out the relevant statutory provisions dealing with the effect and enforcement of bail orders. Section 770 states: 770 (1) If, in proceedings to which this Act applies, a person who is subject to an undertaking, release order or recognizance does not comply with any of its conditions, a court, provincial court judge or justice having knowledge of the facts shall endorse or cause to be endorsed on the undertaking, release order or recognizance a certificate in Form 33 setting out
- a) the nature of the default;
 - b) the reason for the default, if it is known;

- c) whether the ends of justice have been defeated or delayed by reason of the default; and
 - d) the names and addresses of the principal and sureties. [Emphasis added.]
- Background Facts
- [3] Mr. Hayer is charged with the first-degree murder of Andrew Baldwin, pursuant to s. 235(1) of the Code. The charge arises out of a fatal stabbing of Mr. Baldwin on November 11, 2019 at a residence in Surrey, B.C. Mr. Hayer is charged together with Mr. Hothi and Mr. Bottomley with the murder. A fourth accused, Mr. Basran, is charged as an accessory to the murder.
- [4] On November 30, 2020, Mr. Hayer was arrested and charged in relation to the murder. A bail hearing took place over two days, and on April 9, 2021, Justice Crerar granted Mr. Hayer judicial interim release, subject to numerous conditions, including a 24-hour curfew and a condition that he keep the peace and be of good behaviour (R. v. Hayer, 2021 BCSC 654). Both of Mr. Hayer's parents became sureties, pledging \$750,000 from the equity in their family home. Since his release, Mr. Hayer has obtained five bail variations, including a change from house arrest to a curfew requiring him to be inside his family home between 8 p.m. and 6 a.m. The Crown did not oppose any of these variations. Of interest on this application is the fact that despite the repeated request to vary Mr. Hayer's bail, the condition that he keep the peace and be of good behaviour was never addressed. I will discuss this further below. The Cancellation of Mr. Hayer's Release Order
- [5] As a result of a driving incident that occurred on July 18, 2022, a warrant was issued pursuant to s. 512.3 of the Code on August 11, 2022 for the arrest of Mr. Hayer for allegations of breach of his bail and dangerous driving. Mr. Hayer surrendered to the police without incident and has been in custody since that date.
- [6] On August 23, 2022 after hearing submissions from both parties, I cancelled Mr. Hayer's bail pursuant to s. 524(3)(b) of the Code, on the basis that there were reasonable grounds to believe he had driven dangerously contrary to s. 320.13 of the Code.
- [7] The focus of my decision to cancel Mr. Hayer's bail was the evidence presented regarding his driving on the evening of July 18, 2022, which satisfied me that there were reasonable grounds to believe that Mr. Hayer had committed the indictable offence of dangerous operation of a conveyance contrary to s. 320.13 of the Code (or, "dangerous driving"). Clearly, an allegation of dangerous driving, particularly in the circumstances established at the hearing, would also support a finding that Mr. Hayer failed to adhere to the requirement that he keep the peace and be of good behaviour.
- [8] At para. 28 of the Bail Cancellation Ruling, I acknowledged that the inclusion of the condition that Mr. Hayer keep the peace and be of good behaviour did not align with the guidance from the Supreme Court of Canada in R. v. Zora, 2020 SCC 14 [Zora]. However, it was not argued, nor did I find, that Mr. Hayer was not bound by that condition in his release order. In Zora at para. 94, the Court discusses the utility of a condition to "keep the peace and be of good behaviour" and recommends that this condition be "rigorously reviewed when proposed as a condition of bail". I have reviewed the transcripts from the two-day bail

hearing, filed as an exhibit on this application. It is apparent that terms of release were rigorously reviewed by counsel and the court at that hearing. Given the length of the bail hearing and the discussions regarding terms of the release order with counsel for Mr. Hayer, there is nothing to suggest that counsel and the Court had not turned their minds to the consequences of the proposed term.

- [9] Unfortunately, my earlier ruling regarding the cancellation of Mr. Hayer's release order has unintentionally caused some confusion. In my earlier ruling, it was not necessary for me to make a finding with respect to whether Mr. Hayer's dangerous driving constituted a breach of the bail condition that he keep the peace and be of good behaviour (pursuant to s. 524(3)(a)), as I found the alternative section, s. 524(3)(b), was satisfied; however, the same facts that supported my finding of reasonable grounds under s. 524(3)(b) also support a finding that Mr. Hayer contravened the "keep the peace and be of good behaviour" term in his release order, pursuant to s. 524(3)(a). Now that the confusion has been brought to my attention, I will take this opportunity to clarify my earlier findings: To be clear, in addition to finding there were grounds to believe that Mr. Hayer committed an indictable offence (dangerous driving) while subject to a release order (s. 524(3)(b)), I also find that as a consequence of the dangerous driving, Mr. Hayer contravened a condition of his release order pursuant to s. 524(3)(a). Specifically, I find the facts establish that Mr. Hayer failed to keep the peace and be of good behaviour as required in his release order. Accordingly, both sections of s. 524(3) are satisfied and support the cancellation of his bail.
- [10] Given the clarification of my findings regarding Mr. Hayer's non-compliance with a condition of his release order, the requirement in s. 770 is satisfied. Accordingly, I need not consider Mr. Hayer's argument that a finding under s. 524(3)(b) alone is not sufficient to engage s. 770.

Conclusion

- [11] Accordingly, having knowledge of the facts related to Mr. Hayer's non-compliance with a condition of his release order, I order pursuant to s. 770 that the release order be endorsed in the form contemplated by that section. "Devlin J."

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