
CANADA / JUDGMENT

R. v. Howard

2014 BCSC 1521

COURT

Supreme Court of British Columbia

DECIDED

16 July 2014

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2014 BCSC 1521 R. v. Howard

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Howard,

2014 BCSC 1521

Date: 20140716

Docket: X077463-1

Registry: New Westminster

Regina

v.

Anthony Alan Howard

Before: The Honourable Mr. Justice Crawford

On appeal from: An order of the Provincial Court, dated March 17, 2014 (R. v. Howard, New Westminster Registry #77463-3-A and 77463-4-C).

Oral Reasons for Judgment

Counsel for the Crown:

N. Reithmeier

Counsel for the Accused:

K. Neurauter

Place and Date of Hearing:

New Westminster, B.C.

July 16, 2014

Place and Date of Judgment:

New Westminster, B.C.

July 16, 2014

[1] THE COURT: This is a s. 522 review under the Criminal Code of Canada, R.S.C. 1985, c. C-46 where Mr. Howard seeks to set aside the detention order made by Provincial Court Judge Steinberg on March 17, 2014.

[2] It appears to be one of those situations which is relatively narrow in scope these days where the Court has not - at least when faced with what Judge Steinberg had - the requirement to give reasons in spite of the general thesis that has been espoused by the Chief Justice of Canada that the Court give reasons, always of course at trial, but in any situation where a decision is being made in particular that might affect the liberty of an accused. This is one of those situations apparently and when one looks at s. 515(5) and compares it to s. 515(6) which creates the reverse onus that faces an accused. In s. 515(6.1) it says that:

(6.1) If the justice orders that an accused to whom subsection (6) applies be released, the justice shall include in the record a statement of the justice's reasons for making the order.

[3] Judge Steinberg did not release Mr. Howard; he said he should be detained and he did it in a very summary way. He made an inquiry to see what the terms of bail were for Mr. Howard. Those were terms of bail that had been set on his release on the 14th of January, 2014 and then he goes on say:

Mr. Howard, the very first condition, report in person to a bail supervisor, that is condition 1. Condition 3, you are to have no contact with your co-accused except in court or in the presence of counsel. You couldn't have legally asked them to appear for you. Condition 6, curfew. You are detained on both the primary and secondary grounds.

[4] Now, without the context of the hearing, that makes little sense.

[5] The context was this: Mr. Howard in the company of a Mr. Weeks and a Mr. Pigeau had been found in the utility floor underneath a large building. They were found with tools; they were found with sizeable amounts of large copper pipe. The manager had apparently seen these individuals in the boiler room and called the police and the phrase "caught red-handed" appears in one counsel's summary of the matter.

[6] So the arrest is made and I am not sure whether it is that same day, the 14th of January, or the day before, but in any event Mr. Howard was released, and as the judge said, on these terms:

1. He was to report in person to a bail supervisor by 4:00 p.m. on January 15th, 2014, and the address given on 6th Street, and then as directed by the bail supervisor;

2. To provide his address and reside where directed and not change without the prior written consent of the bail supervisor;
 3. To have no contact with Mr. Pigeau or Mr. Weeks except for scheduled court appearances or while in the presence of counsel;
 4. Prohibited from possessing any tools or equipment suitable for breaking into homes or cars outside his residence except while at work or travelling to and from work;
 5. Not to be found in any underground parkade or underground garage;
 6. To be in his residence between the hours of 11:00 p.m. and 5:30 a.m. every day unless with written permission of the bail supervisor; and
 7. To present himself to a police officer checking on the curfew.
- [7] Counsel advises that Mr. Howard failed to see the bail supervisor on the 15th of January, 2014. Eventually an arrest warrant was issued on the 5th of March and on the 14th of March, Mr. Howard was arrested and then on the 17th of March he appeared before Judge Steinberg.
- [8] There is another outstanding breaking and entry charge in rather similar circumstances arising from an incident occurring in July of 2013.
- [9] Unhappily, Mr. Howard has a rather lengthy criminal record starting in 1986. He has what I would call a busy record for a few years and then it peters out. Unfortunately, more recently it reflects continuous contact with the constabulary: possession of a weapon for a dangerous purpose in July of 2008; breach of an undertaking in May of 2010; possession of a controlled substance in May of 2010; breach of probation order in April 2012; driving while prohibited in August 2011; theft under \$5,000 in December 2011; breaking and entry and to commit an indictable offence April 2012. The last were disposed of 25th of June, 2012 and the two months that had been spent in custody went against sentence.
- [10] Through counsel Judge Steinberg was advised that Mr. Howard following his release on 14 January 2014 heard his mother in Alberta had taken ill and he went to Alberta to be with his mother. He asked for a co-accused to appear as his agent on his first appearance on the 29th of January, 2014 and another appearance on the 12th of February, 2014, and that appears to explain why nothing happened until early March.
- [11] For whatever reason, he did not come back and check-in with his bail supervisor or do something to remedy the situation and that leads to his arrest. He does appear to have a supportive partner. He says he has work with a roofing company. He apparently had not secured any work after he came back from Calgary.

- [12] An affidavit has been filed in these proceedings which I thought might have explained with some clarity exactly what happened, but it does not. It simply says that he was raised in Calgary, Alberta by his mother and she passed away in February 2014. It does not even say whether he went there or not.
- [13] Mr. Justice Halfyard, in a case that both counsel have referred me to, *R. v. Abdel-Rahman*, 2010 BCSC 189 noted:
- [18] this court cannot intervene to decide whether a detention order made by a Provincial Court Judge was justified, unless it is shown: (a) that the hearing judge made an error of fact or law which affected his or her reasoning to the conclusion that the accused's detention was necessary .
- [14] I stop there to say of course the position taken by counsel for Mr. Howard was that there was no reasoning that could be attacked here. The answer to that in part is that it does not appear that there is a Criminal Code requirement to give reasons when a person is retained in detention under s. 515(6). But even then if I look to the context and the very terse comments of Judge Steinberg, it is apparent that the breach of the release conditions in the context of the record that was put before him must have been contributing factors.
- [15] Secondly, Judge Halfyard goes on to say that there has been no material change in circumstance since the order was made which would make it unjust not to order the accused's release. That might well have been an opportunity for a substantive affidavit to explain the circumstances, and secondly show some guarantee of employment. I do not find that kind of particularity in the affidavit. Judge Halfyard goes on to say:
- [18] This court cannot exercise an independent discretion on the issue of whether the accused's detention is necessary, unless the reviewing judge is satisfied that one of these grounds has been made out.
- [16] I am not satisfied that there is error or that there has been a material change. I dismiss the application.

"Crawford J."

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