CANADA / JUDGMENT

R. v. Jury

2023 BCSC 1949

COURT
Supreme Court of British Columbia

DECIDED
16 October 2023

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2023 BCSC 1949 R. v. Jury

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Jury,

2023 BCSC 1949

Date: 20231016

Docket: 35258W

Registry: Vancouver

Rex

v.

Travis John Jury

Before: The Honourable Mr. Justice Basran

On judicial review from: Provincial Court of British Columbia, June 11, 2023

(R. v. Jury, Duncan Docket No. 45108-1)

Oral Reasons for Judgment

at s. 525 Detention Review Hearing

Counsel for the Crown:

J.L. Cameron

Counsel for the Accused:

S.J. Runyon

Place and Date of Hearing:

Victoria, B.C.

October 16, 2023

Place and Date of Judgment:

Victoria, B.C.

October 16, 2023

[1] THE COURT: Mr. Jury appears before me on a 90-day detention review hearing being conducted pursuant to s. 525 of the Criminal Code, R.S.C. 1985, c. C-44 [Code].

[2] The events that are the subject of the indictment took place on May 15, 2023. Mr. Jury is alleged to have assaulted Mr. Vieira by punching him and assaulting him with a broomstick. Mr. Vieira reported that Mr. Jury also took his wallet and phone and then fled the scene.

[3] This is not the first interaction between Mr. Jury and Mr. Vieira. Approximately three-and-a-half years ago, Mr. Jury assaulted Mr. Vieira in a motel in Duncan, B.C. Mr. Jury was sentenced to a three-year global sentence in respect of that incident. Mr. Vieira asserts that Mr. Jury is angry with him because of this previous conviction and that he believes that this was the reason why Mr. Jury attacked him on May 15, 2023.

[4] Another witness, Ms. Tomlinson, is expected to be a witness at trial, scheduled to commence on November 20, 2023. On May 15, 2023, she heard yelling and saw Mr. Jury and Mr. Vieira in the aftermath of their altercation.

[5] Mr. Jury was arrested on June 10, 2023, and his judicial interim release hearing was heard on June 11, 2023 by Judicial Justice Roberts, who ordered his detention, in brief reasons, on the secondary and tertiary grounds. At that time, Mr. Jury was charged with the following offences:

a) Count 1: Robbery of Mr. Vieira on May 15, 2023, contrary to s. 344(1)(b) of the Code, and

b) Count 2: Assault causing bodily harm to Mr. Vieira on May 15, 2023, contrary to s. 267(b) of the Code.

[6] On June 22, 2023, Mr. Jury was charged with an additional offence in respect of the same factual circumstances that form the basis of the aforementioned counts. Mr. Jury is now facing the additional charge:

c) Count 3: Intimidation of a justice system participant, Mr. Vieira, on May 15, 2023, contrary to s. 432.1(3) of the Code.

[7] As noted, the trial of this matter is scheduled to commence on November 20, 2023. This is five weeks from today's date. All Crown witnesses are confirmed for those dates.

Position of the Parties

Mr. Jury

[8] Mr. Jury is seeking a judicial interim release on the basis that he has been accepted into the VisionQuest program near Logan Lake, B.C. This residential treatment program has been recognized by this court and the Provincial Court of British Columbia: R. v. Alphonse, 2018 BCSC 2045 and R. v. Hilbach, 2019 BCPC 227. The first phase of this program involves three months during which Mr. Jury will be unable to leave his residence. His counsel characterizes this as akin to house arrest. The minimum requirement for attendance at VisionQuest is six months. By virtue of VisionQuest's acceptance of Mr. Jury, his counsel submits that Mr. Jury's long-term interests are best served by obtaining this treatment, which is available to him at this time.

[9] Mr. Jury also notes that at the time Judicial Justice Roberts declined to release him, he had no confirmed release plan; suffered from substance use disorder; there were safety of complainant concerns; and the Judicial Justice assessed the Crown case as strong.

[10] VisionQuest constitutes a confirmed and effective release plan, according to Mr. Jury. This program will address his substance use. It is located in a remote location, approximately a five-hour drive from Duncan, so the potential risk to Mr. Vieira and others is mitigated. Finally, Mr. Jury intends to offer a different version of events that is based on him using proportional force in response to Mr. Vieira fighting him. Accordingly, he asserts that it is possible that the Crown's case is not as strong as it believes.

The Crown

[11] The Crown is seeking continued detention pursuant to the secondary and tertiary grounds.

[12] The Crown asserts that Mr. Jury is subject to serious, violent allegations and notes that Count 3 was added after his initial detention--the allegation that Mr. Jury interfered with a justice system participant.

[13] The Crown submits that Mr. Jury was previously convicted of a home invasion at a motel in Duncan with Mr. Vieira as the victim, and the subject offences are alleged to be retaliatory, committed by Mr. Jury against the same victim, Mr. Vieira. This is, therefore, several violent offences that are alleged to have been committed against the same victim.

[14] The Crown submits that Mr. Jury has a history of breaching court orders, including firearms conditions and committing offences with weapons while subject to these conditions. Specifically, he twice breached house arrests while subject to a surety in July 2020 within seven days of his release, and on a second occasion within two days of his release. Mr. Jury, therefore, has a history of breaching court orders.

[15] The Crown further submits that the trial is in five weeks and Mr. Jury's release will pose a threat to Mr. Vieira and potentially to other witnesses. Although VisionQuest is in a remote location, it is only a five-hour drive from there to Duncan, where these offences are alleged to have occurred.

[16] The Crown notes that Mr. Jury previously completed similar treatment and is alleged to have committed the subject offences after completing this program.

Relevant Legal Principles

[17] The key principles governing a s. 525 review are described in R. v. Leppington, 2020 BCSC 546 at paras. 18 to 23:

[18] The purpose of the 90 day bail review provision in s. 525 of the Criminal Code is to prevent accused persons from languishing in custody pending trial and to ensure matters are tried promptly: [R. v. Myers, 2019 SCC 18] at para. 24.

[19] The reviewing judge is expected to show deference to any findings of fact made by the first instance decision maker unless there is some demonstrated basis for reconsidering them: Myers at para. 47.

[20] The overarching question for the reviewing judge under s. 525 of the Criminal Code is whether the continued detention of the accused is justified having regard to the grounds set out in s. 515(10): Myers at para. 46. Section 515(10) sets out three different grounds for detention, which I would briefly summarize as: (1) to ensure attendance at trial per s. 515(10)(a), (2) to protect safety of the public as contemplated in s. 515(10)(b), and (3) to maintain confidence in the justice system per s. 515(10)(c).

[21] In considering the question of judicial interim release, the court must bear in mind that throughout the process the accused is presumed innocent unless and until there has been a trial leading to a finding of guilt based on proof beyond a reasonable doubt, or a guilty plea: [R. v. Antic, 2017 SCC 27] at para. 1, 66, 67(a); Myers at para. 1, 59.

[22] The default position is that the accused should be released at the earliest opportunity and on the least onerous terms available in the circumstances: Myers at para. 1; Antic at para. 29, 67(d). Detention in custody is the exception and should be regarded as the option of last resort: Myers at para. 67.

[23] In deciding the overarching question of whether continued detention is justified under the grounds set out in s. 515(10), the reviewing judge should consider (a) any new evidence or change in circumstance, (b) impact of the passage of time and any unreasonable delay on the proportionality of detention, and (c) the rationale offered for the initial detention: Myers at para. 63.

[18] I must give careful consideration to release plans that involve supervised treatment for individuals with substance abuse issues, because release and treatment with appropriate conditions may adequately address concerns with respect to the risks addressed under s. 515(10) of the Code and are a less onerous alternative to continued detention.

[19] Section 515(10) of the Code sets out the justification for detention in custody:

(10) For the purposes of this section, the detention of an accused in custody is justified only on one or more of the following grounds:

(a) where the detention is necessary to ensure his or her attendance in court in order to be dealt with according to law;

(b) where the detention is necessary for the protection or safety of the public, including any victim of or witness to the offence, or any person under the age of 18 years, having regard to all the circumstances including any substantial likelihood that the accused will, if released from custody, commit a criminal offence or interfere with the administration of justice; and

(c) if the detention is necessary to maintain confidence in the administration of justice, having regard to all the circumstances, including

(i) the apparent strength of the prosecution's case,

(ii) the gravity of the offence,

(iii) the circumstances surrounding the commission of the offence, including whether a firearm was used, and

(iv) the fact that the accused is liable, on conviction, for a potentially lengthy term of imprisonment or, in the case of an offence that involves, or whose subject-matter is, a firearm, a minimum punishment of imprisonment for a term of three years or more.

[20] The primary ground is where the detention is necessary to ensure the accused's attendance in court; the secondary ground is where the detention is necessary for the protection or safety of the public; and the third ground is if the detention is necessary to maintain confidence in the administration of justice.

[21] The issue I must determine is whether the continued detention of Mr. Jury in custody is justified within the meaning of s. 515(10) of the Code.

Discussion and Decision

Convictions history

[22] Mr. Jury is 34 years old. He has seven convictions on his criminal record dating back to October 2019. Five of these convictions are for offences of violence and one is for breach of a release order. The final four convictions on Mr. Jury's conviction list are significant. Based on an offence date of June 28, 2020, they are:

· assault causing bodily harm;

· break and enter a dwelling house;

· use of an imitation firearm in committing an indictable offence; and

· discharge of an airgun with intent to wound.

[23] These convictions relate to a home invasion at a motel in Duncan. The victim was Mr. Vieira, who testified at the trial of that matter in September 2021. This is the same victim on the current matter before the court, and this conviction and sentence is believed to be a motivation behind the May 15, 2023 attack.

[24] At the time of this event, Mr. Jury was at large on an undertaking that included a condition that he not possess weapons and that he not attend the motel in Duncan. He was subject to a March 12, 2020 release order with reporting and protective conditions, and was also at large on an undertaking in relation to offences that included a no-weapons condition.

[25] Mr. Jury was ultimately sentenced on the home invasion to a global sentence of three years less credit for time served. This resulted in a total new jail sentence of one year and ten months.

Release history

[26] The release history of the above matters is, of course, also relevant to this s. 525 bail review.

[27] On July 24, 2020, Mr. Jury came into custody in the first instance in respect of the home invasion against Mr. Vieira. At that time, the bail orders on the aforementioned outstanding files were revoked, and Mr. Jury was granted the surety bail on all files. He perfected on August 11, 2020 and a condition of that release order was a house arrest condition.

[28] The circumstances of the conviction on the breach of release order dated August 18, 2020 are a breach of that house arrest condition. Police attended the campsite in late afternoon on August 18, 2020 (which was only seven days after his release) and the morning of August 19, 2020, and on both occasions, Mr. Jury was not at the campsite that he was to be residing at.

[29] Furthermore, Mr. Jury's surety rendered him on October 21, 2020 and a warrant issued.

[30] Mr. Jury came back into custody on January 5, 2021 and was ultimately released again on January 18, 2021 on a surety bail with a new surety with a $2,500 cash deposit. This time, only two days after his release, he left the residence and a warrant issued on February 1, 2021.

[31] I also note that prior to the July 24, 2020 release order, between November 1, 2019 and July 8, 2020, six bench warrants issued for Mr. Jury's failure to attend court in relation to his outstanding files.

[32] While I have no doubts about the VisionQuest program, I note that the trial is expected to commence shortly and there is no application to adjourn that trial. I understand that the Crown will oppose any adjournment application if it is made in the interest of proceeding with the trial as scheduled.

[33] Mr. Jury's demonstrated lack of compliance, on multiple occasions, with stringent bail orders, such as surety with house arrest, indicates that his detention is necessary for the protection of the public because he has flagrantly disregarded these conditions on two previous occasions.

[34] Mr. Jury was housed in recovery while on parole from August to December 2022 and then is alleged to have committed the subject offences in May 2023, only a few months thereafter. This suggests that recovery and treatment do not mitigate the risk he poses to society.

[35] Furthermore, Mr. Jury's previous convictions for violence all occurred while he was at large on one or more release orders.

[36] I am satisfied that there are no conditions that could protect the public against the risk Mr. Jury poses to the community because he simply will not abide by them. His history demonstrates that he does not shy away from committing violent offences when he is subject to court orders.

[37] In my view, the circumstances of the matter before the court are very concerning. This is because in mid-December 2022, Mr. Jury completed his sentence for his previous attack on Mr. Vieira after serving a fairly lengthy prison sentence. However, only five months after completing this sentence, Mr. Jury is alleged to have attacked, seriously injured, and robbed the same victim, Mr. Vieira. This suggests that the May 15, 2023 attack may have been retaliatory. If this was the case, as alleged by the Crown, the previous three years' jail sentence for the home invasion had no apparent deterrent effect on Mr. Jury.

[38] With the trial date set for five weeks from today, I am concerned that Mr. Vieira will be at greater risk of further attack than ever before as he prepares to testify in this matter. The same applies to Ms. Tomlinson, who apparently has expressed concern over testifying in this matter. I am concerned that if Mr. Jury is released, there is a substantial risk that he will interfere with the administration of justice in this matter. On that basis, I am satisfied that the release of Mr. Jury into the community poses a substantial risk of interference with the administration of justice and, in particular, the risk of intimidation to prevent Ms. Tomlinson and Mr. Vieira from testifying. Therefore, on the second ground, I am satisfied that Mr. Jury's continued detention is justified.

[39] Turning next to the tertiary grounds, I appreciate that Mr. Jury will advance a different narrative regarding the events of May 15, 2023. Nevertheless, the allegations of robbery, intimidation of a witness, and assault causing bodily harm are very serious allegations. This is particularly so because the allegation is that the attack was intended to intimidate and get revenge on Mr. Vieira for his previous testimony against Mr. Jury in 2021.

[40] In my view, public confidence in the administration of justice will be severely undermined should Mr. Jury be released on allegations of attacking his victim a second time within months after completing his sentence for the first attack.

[41] If Mr. Jury is found guilty of the three counts in the indictment, he may face a lengthy jail sentence. Given that the trial date for this matter is only five weeks away, and all the Crown witnesses are confirmed, there is no risk that Mr. Jury will be languishing in custody until this matter is heard. For this reason, there is no delay in respect of the pending trial date and no risk that he will overserve his sentence if he is detained until trial. I am therefore satisfied that Mr. Jury's continued detention on the tertiary grounds is justified.

[42] In conclusion, I am satisfied that Mr. Jury's continued detention is justified under ss. 515(10)(b) and (c).

[43] That concludes my ruling. Anything further at this time, Ms. Cameron?

[44] CNSL S. RUNYON: No, thank you, Justice.

[45] CNSL J. CAMERON: No, thank you, Justice.

[46] THE COURT: Thank you, counsel. That concludes this matter.

"Basran J."

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