

CANADA / JUDGMENT

R. v. Kleiman

2024 BCSC 1375

COURT

Supreme Court of British Columbia

DECIDED

3 May 2024

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2024 BCSC 1375 R. v. Kleiman IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Kleiman, 2024 BCSC 1375 Date: 20240503 Docket: 35731-1 Registry: Vancouver Rex v. Bram Sun-Lee Kleiman Publication Restriction: Pursuant to s. 486.5 of the Criminal Code, any information that could identify a complainant, witness or justice system participant shall not be published in any document or broadcast or transmitted in any way. This publication restriction applies indefinitely unless otherwise ordered. Before: The Honourable Mr. Justice Baird Oral Reasons for Judgment re: Application to Extend Time to Appeal Counsel for the Crown: B. Israel The accused, appearing in person: B. Kleiman Place and Date of Hearing: Vancouver, B.C. May 3, 2024 Place and Date of Judgment: Vancouver, B.C. May 3, 2024

- [1] THE COURT: This is an application to extend time to appeal.
- [2] On March 3, 2022, the applicant pleaded guilty to criminal harassment of Ms. S. The allegations dated between July 26 and September 6, 2021, almost four years ago. The applicant, as I understand it, also pleaded guilty to breach of a bail order by attending the workplace of Ms. S and by attempting to contact her.
- [3] I am reliably informed that on this guilty plea the applicant was represented by an experienced criminal defence lawyer, and that the presiding judge conducted a careful and complete inquiry mandated by s. 606(1) of the Criminal Code, R.S.C. 1985, c. C-46. The judge was satisfied by directly engaging with the applicant that the guilty plea was voluntary; that the applicant understood the plea was an admission of the essential elements of the offence; that the applicant understood the nature and consequences of the plea; that the court was not bound by any agreement made between the applicant and the prosecutor; and that the facts supported the charge.
- [4] A guilty plea in open court is presumed to be voluntary and its voluntariness is not negated by stress, anxiety, fear of incarceration or a desire to get out of jail: R. v. Carty, 2010 ONCA 237. A guilty plea is voluntary if the individual had the cognitive capacity to make a conscious decision about what plea to make: R. v. Yukich, 2017 BCCA 77. I have been given no reason to suppose that the applicant's plea was anything other than voluntary. To the contrary, he personally and directly confirmed before the court at the time of his plea that it was voluntary, and he did so again this morning during his submissions on this application.

- [5] Crown counsel has advised me that there was no joint submission in the court below. It was a contested sentencing hearing. The applicant was sentenced to a time-served disposition with a three-year probationary term containing the usual conditions ordered to ensure that the applicant stayed away from Ms. S. and to protect her as she went about her business in the community.
- [6] I gather that the applicant has since been found guilty on at least a couple of occasions of breaching this probation order, and in fact he is presently in custody at the tail-end of a jail sentence for having done so.
- [7] The applicant now maintains that the guilty plea was entered, not because the applicant had done anything wrong but because the applicant hoped for a change in custodial status. If I understood the applicant correctly, the idea behind it was to get out of being confined in a secure unit with people who had contracted the COVID virus.
- [8] The test to be applied on an application to extend time to appeal is set out in *R. v. Smith*, [1990] B.C.J. No. 2933 (C.A.), at paras. 4-5:
4. The appellant in order to obtain an extension of time must satisfy certain rules. The governing principle on which this Court acts on applications to extend time for doing an act is that the applicant must establish special circumstances.
5. In considering whether there are special circumstances this Court has always taken into account such factors as whether: (1) the applicant had a bona fide intention to appeal before the expiration date of the appeal date; (2) informed the respondent either expressly or impliedly of his intention; (3) the respondent would not be unduly prejudiced by an extension of time; (4) there is merit in the appeal in the sense that there is a reasonably arguable ground; (5) it is in the interest of justice, that is the interest of the parties, that an extension be granted. . . .
- [9] In the present case, while it may be that the applicant always intended to appeal, and may have said so including on the record in various court proceedings along the way, the fact of the matter is that he has not done it within anything approaching a reasonable time. Far too much time has now elapsed for it to be in the interests of fairness or justice to permit an appeal. In my view, after the passage of such an excessive interval, prejudice to the respondent can be presumed.
- [10] Most importantly, of course, having considered the evidence submitted, including affidavit information provided by the applicant, as well as the applicant's arguments this morning, I have been given no reason to believe that there is any merit in the appeal. The applicant claims simply to have done nothing wrong, despite his guilty plea. It is, of course, no proper ground for an appeal that the accused made false representations, if that is what happened, to the Provincial Court judge who took the guilty plea.

[11] I am a long way from satisfied that the interests of justice would be served by making the order sought. It is my firm belief, instead, that after the passage of so much time, especially on the inadequate grounds advanced in support of it, such an order would bring the administration of justice into disrepute. It would be grossly unfair to the complainant to permit an appeal to proceed at this late hour as she will justifiably have considered that the matter was closed years ago.

[12] The application to extend time to appeal is dismissed. "Baird J."

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