

CANADA / JUDGMENT

R. v. Levett

2020 BCSC 565

COURT

Supreme Court of British Columbia

DECIDED

14 April 2020

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2020 BCSC 565 R. v. Levett

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Levett,

2020 BCSC 565

Date: 20200414

Docket: 30481W

Registry: Vancouver

Regina

v.

Paul Michael Levett

Before: The Honourable Mr. Justice Crabtree

Reasons for Judgment re Detention Review Hearing

Counsel for the Crown:

P.R.J. Blessin

A.M. Tosso

Counsel for the Accused:

M.S. Lowe

Places and Dates of Hearing:

Chilliwack, B.C.

March 12, 20 & 27, 2020

Place and Date of Judgment:

Vancouver, B.C.

April 14, 2020

INTRODUCTION

- [1] Mr. Levett appeared before the court on March 12, 2020, for a scheduled detention review hearing ("DRH") pursuant to s. 525 of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. A preliminary issue was raised as to whether the court had jurisdiction to hear the matter at this stage, given Mr. Levett's circumstances.
- [2] After hearing submissions, I found the court did not have jurisdiction to hear the matter in circumstances where a defendant had been detained pursuant to a warrant executed earlier the same day, prior to the DRH, for an offence on which Mr. Levett had yet to make his first appearance in Provincial Court.
- [3] These are the reasons for my decision.

BACKGROUND

- [4] The circumstances of Mr. Levett's case are as follows:
- a) Mr. Levett is charged with a number of criminal offences alleged to have taken place in the latter part of 2018 and part of 2019;
 - b) on November 13, 2019, Mr. Levett appeared before a Provincial Court judge in Abbotsford, for a bail hearing on all the outstanding matters. On several of the matters, the Crown applied to revoke bail previously granted and sought his detention. On the remaining matters, those for which bail had not yet to be determined, the Crown showed cause that he be detained until all matters were resolved;
 - c) in essence, the Crown was seeking Mr. Levett's detention on all matters, while Mr. Levett sought his release on all matters; and
 - d) at the conclusion of the hearing, the Provincial Court judge revoked bail on matters where bail had been previously granted; and on the remaining matters, he ordered Mr. Levett's detention.
- [5] As a result, Mr. Levett was detained on November 13, 2019, on all outstanding matters.
- [6] In February 2020, as Mr. Levett approached the 90-day detention review date, steps were taken to have the matter scheduled for a DRH. The DRH was scheduled for March 12, 2020; and on this date, he appeared in person with counsel, ready to proceed.

- [7] At the outset of these proceedings, the Crown advised that Mr. Levett faced a new charge on Information 91196, arising from Abbotsford, B.C., alleging the break and enter of a business premise on January 18, 2019 (the "new matter").
- [8] The information setting out the charge was sworn March 10, 2020. A warrant was issued for his arrest on the new matter.
- [9] The warrant was executed upon Mr. Levett earlier in the day on March 12, 2020, prior to the commencement of the DRH.
- [10] The Crown advised the originating jurisdiction (Abbotsford) required Mr. Levett's return, as they intended to seek his detention on the new charge.
- [11] Accordingly, when Mr. Levett appeared before the Supreme Court on March 12, 2020, it was to review the detention order made November 13, 2019. At that time, he was also detained on a warrant in relation to the new charge.
- [12] This is the context within which Mr. Levett appeared and the Crown raised their preliminary objection to jurisdiction.

ISSUE

- [13] Does the court have jurisdiction to hear a detention review where the defendant has: 1) been denied bail, 2) has been in custody for in excess of 90 days on those matters, and 3) is also being held pursuant to a warrant on an unrelated matter?

DISCUSSION

- [14] The statutory provision in issue is s. 525(1) of the Code, which reads:

525(1) The person having the custody of an accused--who has been charged with an offence other than an offence listed in section 469, who is being detained in custody pending their trial for that offence and who is not required to be detained in custody in respect of any other matter--shall apply to a judge having jurisdiction in the place in which the accused is in custody to fix a date for a hearing to determine whether or not the accused should be released from custody, if the trial has not commenced within 90 days from

- (a) the day on which the accused was taken before a justice under section 503; or
- (b) in the case where an order that the accused be detained in custody has been made under section 521, paragraph 523.1(3)(b)(ii) or section 524, or a decision has been made with respect to a review under section 520, the later of the day on which the accused was taken into custody under that order and the day of the decision.

The person shall make the application immediately after the expiry of those 90 days.

- [15] The issue centres on the highlighted portion of s. 525 and the meaning of the phrase "who is not required to be detained in custody in respect of any other matter."

- [16] Recently in *R. v. Myers*, 2019 SCC 18 [Myers], Chief Justice Wagner outlined the basis and purpose of the DRH, stating at para. 1:
- [1] The right to liberty and the presumption of innocence are fundamental tenets of our criminal justice system. In the pre-trial context, release--at the earliest opportunity and in the least onerous manner--is the default presumption in Canadian criminal law. Pre-trial detention is the exception, not the rule.
- [17] Wagner C.J.C. further notes (at para. 41) that the purpose of the s. 525 review is "to prevent accused persons from languishing in pre-trial custody and to ensure a prompt trial. Parliament sought to achieve this purpose by subjecting lengthy pre-trial detentions to judicial oversight" at set points in time, by affording an opportunity to have a judge consider whether the continued detention of an accused person is justified, and by conferring on the judge the discretion to expedite the trial of an individual in pre-trial detention.
- [18] To that end, the approach to be followed for the s. 525 DRH, as outlined in the Code and confirmed in *Myers* (at para. 62), is:
- a) to have the jailer "apply for [a detention review] hearing immediately upon the expiration of 90 days following the day on which the accused was initially taken before a justice under s. 503" of the Criminal Code, on an indictable matter; and
 - b) "[u]pon receiving the application from the jailer, the judge must fix a date and give notice for the hearing".
- [19] In this case, the approach was followed with February 19, 2020, fixed as the first date. The next appearance was scheduled for Chilliwack on February 24, 2020, at which time the DRH was fixed for March 12, 2020.
- [20] The Crown submits the court does not have jurisdiction to hear the matter relying on *Myers* and *R. v. Lambert*, 2019 BCSC 1401 [Lambert], arguing the new matter faced by Mr. Levett is an event which requires the 90-day period to begin again, before he is entitled to a DRH.
- [21] The defence submits that Mr. Levett's circumstances are different; *Myers* and *Lambert* do not apply and Mr. Levett's DRH should proceed.
- [22] In *Myers*, Wagner C.J.C. discusses the impact of an intervening event pursuant to ss. 520, 521 or 524 of the Code, following the initial appearance of the accused and outlines the approach to be taken at para 37:
- [37] The rule is therefore as follows: the person having custody of the accused must ordinarily apply to the judge immediately upon the expiration of 90 days following the day on which the accused was initially taken before a justice under s. 503: s. 525(1)(a)(i) Cr. C. Where, however, a new detention order is made against the accused--or a decision is made to continue an existing order--under s. 520, 521 or 524 after the initial appearance of the accused under s. 503, the result of s. 525(1)(a)(ii) is that the 90-day period will effectively begin again. By way of example, if an accused person is taken before a justice under s. 503

and detained in custody on day 1, then applies to a judge for a review of that decision under s. 520 on day 50 and the detention is confirmed, the jailer's obligation to make the application will not arise until 140 days following the day on which the accused person was first detained in custody. In addition to conforming to the words of s. 525(1), this interpretation minimizes the risk of redundancy, addresses any concerns related to the scarcity of judicial resources and limits the applicability of s. 525 to situations in which the accused has actually been in custody for a long period without judicial oversight.

- [23] The approach outlined by C.J.C. Wagner addresses circumstances where an accused is taken before a justice and is initially detained, following which under ss. 520, 521 or 524, a new detention order is made or the original detention order is extended. In either case, the 90-day time period recommences; at the conclusion of which, the DRH can be heard.
- [24] In *Lambert*, the accused, while detained on a matter, was charged on a new matter which occurred prior to his being detained. He appeared on the new matter and consented to remain in custody, foregoing his right to a bail hearing. This was not a circumstance where Mr. Lambert was held pursuant to a new bail order or an extension of an existing one made pursuant to ss. 520, 521 or 524 of the Code. Chief Justice Hinkson held that Mr. Lambert was detained on a new matter when he consented to remain in custody and this was an intervening event, causing the 90-day period to restart.
- [25] The Crown submits Mr. Levett faces a similar situation, in this case. Counsel for Mr. Levett submits this is not the case before me, as a new charge was sworn and a warrant issued for his arrest which was executed prior to his appearing at the commencement of his DRH hearing on March 12, 2020.
- [26] In this circumstance, counsel for Mr. Levett submits he had not consented to remain in custody on the matter, as he had yet to be brought before a justice pursuant to s. 503 of the Code. Accordingly, the court has jurisdiction to hear the s. 525 review and Mr. Levett should be permitted to proceed.
- [27] When Mr. Levett appeared before me on March 12, 2020, he was subject to the detention order made at the conclusion of his bail hearing in November 2019, and detained on the warrant issued for his arrest on the new matter. To be clear, Mr. Levett has not consented to be in custody on this warrant but is being held on it, such that even if I proceeded with the DRH today, no matter the outcome, Mr. Levett would still remain in custody on the new matter and be transported to Abbotsford for a bail hearing.
- [28] The relevant part of s. 525 provides that an accused is entitled to a review of bail after 90 days, provided that he or she "is not required to be detained in custody in respect of any other matter". In this case, Mr. Levett is held by a warrant on another matter.

- [29] In *Lambert*, the accused was held pursuant to a consent remand on a new charge, while he was detained in respect of another matter. The court held that it did not have jurisdiction to proceed with the DRH, at that point. This was an intervening event that required the 90-day period to recommence. In *R. v. Albino*, [1972] O.J. No. 1700 (Ont. C.C.), it was held that where an accused has been detained and is also in custody because his parole was revoked or cancelled, he is not entitled to a DRH: See also *Kenney (Re)*, 1986 CarswellNfld 180.
- [30] At the point Mr. Levett appeared before this Court, he was detained in custody in respect of another matter. Mr. Levett's detention pursuant to a warrant on a new matter falls within the contemplated meaning of s. 525 of the Code. While Mr. Levett's detention on the warrant occurred at a different point in the process than in *Lambert*, in my view, the effect is the same and I find the reasoning in *Lambert* to be applicable.
- [31] Counsel for Mr. Levett argues that the effect of the court declining jurisdiction at this juncture will result in the accused's languishing in custody contrary to the intent of s. 525 and the views expressed in *Myers*, regarding the importance of the s. 525 review.
- [32] The initial process for Mr. Levett's new charge is governed by s. 503. The Crown intends to seek his detention, which means he will be taken before a justice to have his pre-trial status determined pursuant to s. 515 of the Code. In the event Mr. Levett is detained following a bail hearing, he becomes subject to a detention order and a s. 525 review, 90 days following "the day on which the accused was taken before a justice under section 503", in accord with s. 525(1)(a)(i).
- [33] In the event he is not detained on the new matter, Mr. Levett would be entitled to pursue the s. 525 review on the original matter forthwith. It is only in the event he is detained that the 90-day time period would recommence.
- [34] In *R. v. Ferreira*, [1981] B.C.J. No. 279 (C.A.) [*Ferreira*] our Court of Appeal identified the situation where an individual faced two detention orders.
- [35] In *Ferreira*, the accused was detained on matters and in custody, when a warrant was issued for his arrest based on an allegation of a breach of recognizance. When he appeared in custody on the warrant in the Provincial Court, Mr. Ferreira consented to remain in custody on the warrant. In considering the impact of an accused facing two detention orders, the Court considered the situation whether an accused on two separate detention orders would ever be entitled to have his detention reviewed pursuant to s. 525.
- [36] The concern identified was the possibility that when an accused appeared on one matter for a review, it could be argued that he was detained on the other and thus disentitled to proceed.
- [37] The Court gave a restricted interpretation to the phrase "who is not required to be detained in custody in respect of any other matter", to address the possibility. At para. 6 the Court stated:

- [6] To give effect to it would mean that no accused detained in custody in the circumstances of the appellant could ever have his detention reviewed under the provisions of s. 459. That section contemplates a review upon the expiration of 90 days from the day on which the accused was taken before a justice under s. 454 or, where an order that the accused be detained in custody has been made under s. 458, upon the expiration of 90 days from the day on which he was taken into custody under that order. I think the intention of Parliament as expressed in s. 459 is that pending his trial, an accused person may have his detention reviewed upon the expiration of 90 days from the time when his detention was ordered under s. 458 or upon the expiration of 90 days from the time when he came before a justice under s. 454. I would give a restricted meaning to the words in s. 459(1) "and who is not required to be detained in custody in respect of any other matter" so that in the circumstances of this case where the appellant has been detained under both ss. 457 and 458 and where more than 90 days elapsed after the refusal of interim judicial release on May 2, 1980 and more than 90 days elapsed after the appellant was taken into custody pursuant to a warrant issued under s. 458 of the Criminal Code, those having custody of the appellant must act under the provisions of s. 459 and forthwith on the expiration of the later of the two 90 day periods apply to a judge having jurisdiction to fix a date for a hearing to determine whether the appellant should be released from custody.
- [38] The restricted meaning ascribed by the Court of Appeal applies to Mr. Levett's circumstances. In the event Mr. Levett is detained or consents to remain in custody on the new matter, upon the expiration of the 90-day period, he is entitled to a DRH on both matters. Those having custody of Mr. Levett must act pursuant to the provisions of s. 525 of the Code and make the necessary application in order for a judge having jurisdiction to fix a date for a DRH on both matters.
- [39] Proceeding in this fashion minimizes the risk of redundancy, addresses any concerns related to the scarcity of judicial resources, and limits the applicability of s. 525 to circumstances where the accused has actually been in custody for a long period without judicial insight, as noted in Myers at para. 37.

CONCLUSION

- [40] For the foregoing reasons, I find the court does not have jurisdiction to hear Mr. Levett's s. 525 detention review.

"T.J. Crabtree J."

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