

CANADA / JUDGMENT

R. v. Mastin

2020 BCCA 90

COURT

British Columbia Court of Appeal

DECIDED

13 March 2020

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2020 BCCA 90 R. v. Mastin COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Mastin, 2020 BCCA 90 Date: 20200313 Docket: CA46679 Between: Regina Respondent And Colin Peter Mastin Applicant Direction of the Chief Justice on an Application for Review Pursuant to Section 680 of the Criminal Code of Canada. The Applicant, on his own behalf: C. Mastin Counsel for the Respondent: J. Caldwell Written Submissions for the Applicant Filed: February 4, 2020 Written Submissions for the Respondent Filed: February 12, 2020 Place and Date of Judgment: Vancouver, British Columbia March 13, 2020 Summary: The applicant applies for a direction under s. 680(1) of the Criminal Code that this Court review the conditions of his interim release. Held: Application dismissed for want of jurisdiction. Section 680(1) applies only to those charged with offences under s. 469, and the applicant is not charged with such an offence. This Court does not have the authority to review the applicant's conditions of release under s. 680(1). Reasons for Judgment of the Honourable Chief Justice Bauman:

- [1] Colin Mastin seeks a direction under s. 680(1) of the Criminal Code, R.S.C. 1985, c. C-46 that this Court review a decision concerning his interim release.
- [2] For the following reasons, I decline to direct a review for want of jurisdiction.

Background

- [3] On 18 April 2019, Mr. Mastin was charged with offences under ss. 129(a) (obstructing a peace officer), 264 (criminal harassment), 349 (being unlawfully in a dwelling-house), and 430(1)(d) (mischief) of the Criminal Code. That same day, he was granted interim release by a judge of the Provincial Court.
- [4] On 31 January 2020, Mr. Mastin went before a judge of the Supreme Court on an application to have his interim release reviewed. Pursuant to s. 520 of the Criminal Code, he sought to have the conditions of his release varied. The judge dismissed his application.
- [5] Mr. Mastin requests that a division of this Court be constituted, pursuant to s. 680(1), to review the decision from that January hearing.

Analysis

- [6] Section 680(1) does not permit a review be directed of the decision in question.
- [7] The section concerns a limited ambit of decisions: 680 (1) A decision made by a judge under section 522, a decision made under subsections 524(3) to (5) with respect to an accused referred to in paragraph 524(1)(a) or a decision made by a judge of the court of appeal under section 320.25 or 679 may, on the direction of the chief justice or acting chief justice of the court of appeal, be reviewed by that court and that court may, if it does not confirm the decision,
- (a) vary the decision; or
 - (b) substitute such other decision as, in its opinion, should have been made. [Emphasis added.]
- [8] "A decision made by a judge under section 522" applies only to those accused persons charged with an offence under s. 469, such as treason, intimidation of Parliament, or murder. For these particularly serious offences, only a superior court judge is given the authority to determine if an accused should be granted interim release.
- [9] The same principle applies to a decision made with respect to an accused referred to in s. 524(1)(a), which affects only a person charged with a s. 469 offence.
- [10] This interpretation of s. 680(1) is consistent in the jurisprudence: *R. v. Veeken*, 2018 BCCA 334; *R. v. Jerace*, 2013 BCCA 424; *R. v. Hammerstrom*, 2013 BCCA 62.
- [11] Section 680(1) was modified in 2019 pursuant to An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts, S.C. 2019, c. 25, ss. 280, 402. However, the change does not expand the section's application. The previous provision read: 680 (1) A decision made by a judge under section 522 or subsection 524(4) or (5) or a decision made by a judge of the court of appeal under section 261 or 679 may, on the direction of the chief justice or acting chief justice of the court of appeal, be reviewed by that court and that court may, if it does not confirm the decision,
- (a) vary the decision; or
 - (b) substitute such other decision as, in its opinion, should have been made. [Emphasis added.]
- [12] Sections 522 and 524(4) or (5) as they existed before December 2019 are substantially the same as ss. 522 and 524(3)-(5) now for the purposes of limiting s. 680(1) jurisdiction to those facing s. 469 charges.

- [13] As Mr. Mastin was not charged with an offence under s. 469, s. 680(1) does not afford the jurisdiction to order a review of the conditions of his release. Further, the decision he seeks review of--the dismissal of an application under s. 520--is itself a review of the original granting of interim release, and not a new decision. Section 680(1) does not provide an avenue to appeal a Supreme Court judge's refusal to vary bail.
- [14] For these reasons, I dismiss Mr. Mastin's application for review. "The Honourable Chief Justice Bauman"

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Prepared on 24 October 2026 · Esheria