

CANADA / JUDGMENT

R. v. Moazami

2019 BCCA 226

COURT

British Columbia Court of Appeal

DECIDED

20 June 2019

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2019 BCCA 226 R. v. Moazami

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Moazami,

2019 BCCA 226

Date: 20190620

Docket: CA43308; CA43857

Between:

Regina

Respondent

And

Reza Moazami

Appellant

Restriction on Publication: A publication ban has been mandatorily imposed under s. 486.4(1), s. 486.4(2) and s. 486.5 of the Criminal Code restricting the publication, broadcasting or transmission in any way of evidence that could identify a complainant, witness or victim (or any witness under the age of 18), referred to in this judgment by the initials S.W., H.W., Z.C., E.S. and M.N. This publication ban applies indefinitely unless otherwise ordered.

Pursuant to s. 16(4) of the Sex Offender Information and Registration Act, no person shall disclose any information that is collected pursuant to an order under SOIRA or the fact that information relating to a person is collected under SOIRA.

SEALED (IN PART)

Before:

The Honourable Mr. Justice Frankel

(In Chambers)

On appeal from: orders of the Supreme Court of British Columbia, dated September 15, 2014 and February 11, 2016 (R. v. Moazami, 2014 BCSC 1727, Vancouver Docket 26108; R. v. Moazami, 2016 BCSC 99,

Vancouver Docket 26423).

Counsel for the Appellant:

T.M. Arbogast

A. Grewal

Counsel for the Respondent:

T.A. Shaw

M.G. Scott

Place and Date of Hearing:

Vancouver, British Columbia

May 6, 2019

Place and Date of Judgment:

Vancouver, British Columbia

June 20, 2019

Summary:

Application for release pending appeals from convictions arising from two trials. In one, the appellant was convicted of multiple prostitution-related and sexual offences and sentenced to 17 years' imprisonment. In the other, he was convicted of attempting to obstruct justice and breaching a court order and sentenced to a further three years' imprisonment. The appellant seeks release on a recognizance with his mother as surety. His criminal record includes a number of convictions for offences committed in breach of court orders. Held: Application dismissed. The appellant has not established that, if released, he will not engage in criminal activity. His mother previously acted as his surety and was unable to ensure his compliance with court orders. In the absence of a suitable surety, electronic monitoring would not adequately address the appellant's risk of reoffending.

Reasons for Judgment of the Honourable Mr. Justice Frankel:

Introduction

- [1] Reza Moazami applies for bail pending the determination of two separate conviction appeals, which I will refer to respectively as the "prostitution appeal" (CA43308) and the "obstruction appeal" (CA43857).
- [2] This application is governed by s. 679(3) of the Criminal Code, R.S.C. 1985, c. C-46. By virtue of that provision Mr. Moazami must establish on a balance of probabilities that: (a) his appeal is not frivolous; (b) he will surrender himself into custody in accordance with terms of his release; and (c) his detention is not necessary in the public interest: *R. v. Oland*, 2017 SCC 17 at para. 19, [2017] 1 S.C.R. 250. The public interest criterion has two components: (a) public safety; and (b) public confidence in the administration of justice: *Oland* at paras. 23–26.
- [3] Mr. Moazami submits he has met all the requirements for release. He seeks release on a recognizance with one surety--his mother--and a cash deposit to be provided by his mother. He proposes the conditions of the recognizance include requirements that he live with his mother and be subject to a strict curfew and electronic monitoring. He does not suggest a dollar amount for either the recognizance or the cash deposit, but notes his mother was previously accepted as his surety in the amount of \$100,000 without deposit.
- [4] The Crown accepts the grounds being advanced in the appeals rise above the frivolous threshold, but submits Mr. Moazami has failed to meet any of the other criteria.
- [5] For the reasons that follow, Mr. Moazami's application is dismissed. My decision rests on his failure to satisfy me he will refrain from committing further offences if released. In this connection, I am not satisfied Mr. Moazami's mother is capable of ensuring he does not engage in criminal activity. I do not find it necessary to address the other bail criteria.

Convictions Under Appeal

Prostitution Appeal

- [6] On September 15, 2014, Justice Bruce found Mr. Moazami guilty of 30 prostitution-related and sexual offences involving 11 victims between the ages of 14 and 19 years of age: *R. v. Moazami*, 2014 BCSC 1727. The offences were committed between February 1, 2009, and October 7, 2011. Where Mr. Moazami was found guilty of both sexual assault and sexual interference with respect to the same victim, Bruce J. stayed the sexual assault charge pursuant to the rule against multiple convictions set out in *Kienapple v. The Queen*, [1975] 1 S.C.R. 729. As a result, she entered convictions with respect to 26 charges. In brief, Bruce J. found Mr. Moazami had operated a relatively sophisticated and lucrative prostitution business which involved his having sex with the victims and using drugs to control their behaviour.

- [7] On November 10, 2015, Bruce J. sentenced Mr. Moazami to imprisonment for 17 years and 339 days: *R. v. Moazami*, 2015 BCSC 2055. She arrived at that sentence by first determining what a fit sentence would be for the offences separately committed against each victim. This resulted in an aggregate sentence of 48 1/2 years. Applying the "totality principle", Bruce J. reduced that sentence to 23 years. In light of pre-sentence custody, there was then a further reduction of five years and 26 days.

Obstruction Appeal

- [8] On February 11, 2016, Justice Bowden convicted Mr. Moazami of attempting to obstruct justice and breaching a court order made pursuant to s. 516(2) of the Criminal Code: *R. v. Moazami*, 2016 BCSC 99. That order prohibited Mr. Moazami from communicating directly or indirectly with S.W., one of the victims.
- [9] Mr. Moazami committed those offences between August 9 and October 12, 2012, while he was in custody awaiting trial on a direct indictment containing the prostitution-related and sexual offence charges. Acting through intermediaries, Mr. Moazami attempted to bribe S.W. not to testify against him and to tell other witnesses not to testify.
- [10] On August 15, 2016, Bowden J. sentenced Mr. Moazami to three years' imprisonment on the obstruction charge and six months' concurrent on the breach charge: *R. v. Moazami*, 2016 BCSC 2137. Those sentences were ordered to be served consecutive to the sentences he was already serving.

Bail History on the Prostitution-Related and Sexual Offences

- [11] Mr. Moazami was initially charged in an information with three prostitution-related offences. He was arrested on October 7, 2011. On December 22, 2011, he was released on a recognizance in the amount of \$100,000, without deposit and with his mother as surety. That bail was continued when a second information containing 18 counts was laid.
- [12] On August 1, 2012, a 36-count direct indictment was filed. A warrant was issued, but held until August 13, 2012, to allow Mr. Moazami time to surrender himself. However, Mr. Moazami was arrested on August 9, 2012, for breaching the conditions of his bail.
- [13] Mr. Moazami remained in custody by consent until October 11, 2012. On that day a Provincial Court judge revoked his bail pursuant to s. 524(8)(b) of the Criminal Code. On January 17, 2013, Mr. Moazami consented to a detention order on the direct indictment.

Mr. Moazami's Criminal Record

- [14] In addition to the convictions that are the subject matter of the present application, Mr. Moazami has the following criminal record:

Charge

Offence Date

Disposition Date

Sentence

Obstructing a peace officer

June 22, 2007

February 6, 2008

\$250 fine

Obstructing a police officer

August 2, 2007

February 6, 2008

\$250 fine

Failure to appear

March 17, 2009

March 30, 2009

4 days (credit of 8 days)

Failure to appear

March 30, 2010

October 12, 2010

\$1,500 fine

Assault with a weapon

August 19, 2010

May 16, 2011

Suspended sentence, 2 years' probation

Breach of recognizance

June 5, 2012

January 28, 2016

30 days consecutive to sentence currently serving

Breach of recognizance

April 3, 2012

January 28, 2016

14 days

[15] The following information pertains to those convictions:

- The first obstruction conviction relates to Mr. Moazami having given a false name to a police officer investigating a minor motor vehicle accident.
- The second obstruction conviction relates to Mr. Moazami having given a different false name to a police officer who stopped him for a motor vehicle offence.
- The failure to appear convictions relate to two different trial dates.
- The assault with a weapon charge relates to an incident involving S.W. Mr. Moazami pleaded guilty to that charge in 2010. The Crown proceeded summarily. On March 7, 2018, a judge of the Supreme Court dismissed Mr. Moazami's application to extend time to appeal that conviction: *R. v. Moazami*, 2018 BCSC 1761. Mr. Moazami has filed an application in this Court for an extension of time to bring an application for leave to appeal that dismissal: File no. CA45510.
- The breach of recognizance convictions relate to two conditions: (1) no-contact direct or indirect with a witness; and (2) a prohibition on possession and use of electronic communication devices, including cellular telephones and computers. Another condition required Mr. Moazami to live at his mother's residence. Mr. Moazami was found guilty of having used computers at his sister's residence, including for the purpose of contacting the witness: *R. v. Moazami* (January 28, 2016), Vancouver Information 222410-AC-6 (B.C. Prov. Ct.).

The Focus of the Appeals: Abuse of Process

- [16] I have been the case-management judge on the prostitution appeal since February of 2016. Another judge of this Court became involved in case-managing the obstruction appeal in November of 2016. I assumed responsibility for the obstruction appeal in October of 2018.
- [17] The primary focus of the prostitution appeal initially was an allegation of ineffective assistance of counsel. Although that ground has not been abandoned, the primary focus of the prostitution appeal has shifted to an allegation of abuse of process based on alleged misconduct by James Fisher, a former detective with the Vancouver Police Department. Mr. Fisher's conduct is also the focus of the obstruction appeal.
- [18] Mr. Fisher was one of the principal investigators with respect to the prostitution-related and sexual offence charges. He was also involved in investigating the obstruction and breach charges. The Crown called Mr. Fisher as a witness at both trials.
- [19] On December 29, 2016, Mr. Fisher was charged in a six-count information. Five counts concerned sexual offences with two young persons, H.W. and Z.C. H.W. was one of the victim witnesses at Mr. Moazami's prostitution trial. With respect to H.W., Mr. Moazami was found guilty of living off the avails of prostitution and sexual exploitation. Z.C. had not been

involved in that trial, but had been a potential witness against Michael Bannon who had pleaded guilty to prostitution-related offences. The sixth count alleged obstruction of justice in relation to a stabbing incident.

- [20] On May 19, 2017, a new nine-count information was sworn against Mr. Fisher. In addition to the counts in the original information he was charged with having sexually assaulted E.S. and M.N., and with breach of trust in relation to E.S. M.N. had been one of the victim witnesses at the prostitution trial. With respect to M.N., Mr. Moazami was found guilty of living off the avails of prostitution, sexual interference, sexual exploitation, and sexual assault. E.S. had been called as a Crown witness at the prostitution trial.
- [21] On March 27, 2018, two further informations were sworn. In one, Mr. Fisher was charged with two counts of breach of trust, one in relation to Z.C. and the other in relation to H.W. In the other information, Mr. Fisher was charged with sexual exploitation of Z.C.
- [22] Mr. Fisher pleaded guilty to the charges set out in the March 27, 2018 informations. Sentencing proceeded on an agreed statement of facts.
- [23] Mr. Fisher and H.W. met in 2011, in the course of the investigation into Mr. Moazami. She was then 16 years old. In the period leading up to and through the prostitution trial they were in frequent contact; he helped her prepare for trial. On December 15, 2015--approximately three weeks after Bruce J. sentenced Mr. Moazami--H.W. texted Mr. Fisher, asking him to meet her to discuss an investigation into a pimp. Later that day, the two met in Mr. Fisher's personal vehicle. As they were saying goodbye, he hugged her. He asked her for a goodnight kiss and then kissed her on the lips. After this incident was reported to the police, an investigation ensued. During that investigation information came to light that Mr. Fisher had failed to act appropriately after H.W. told him she had stabbed someone in the course of a drug deal. That stabbing occurred after Mr. Moazami had been convicted.
- [24] Mr. Fisher and Z.C. met in 2014, in the course of the investigation into Mr. Bannon. She was then 17 years old. Mr. Bannon pleaded guilty on January 30, 2018. In the summer and fall of 2015, Mr. Fisher kissed Z.C. on three occasions. Those incidents lasted between 30 seconds and 10 minutes. After those incidents were reported to the police, an investigation ensued.
- [25] On August 21, 2018, a Provincial Court judge sentenced Mr. Fisher to 20 months' imprisonment to be followed by two years' probation: *R. v. Fisher*, 2018 BCPC 210. On January 30, 2019, this Court dismissed Mr. Fisher's sentence appeal: *R. v. Fisher*, 2019 BCCA 33.
- [26] The Crown has provided Mr. Moazami with extensive disclosure from the Fisher-related investigations conducted by the police. Mr. Moazami intends to apply to have that material admitted as fresh evidence on his appeals. His position is that this material will demonstrate that Mr. Fisher: (a) during and after the prostitution trial engaged in inappropriate sexual misconduct with at least six of the victims and another key witness; (b) during and after the prostitution trial engaged in inappropriate other serious and possibly criminal misconduct

with 10 of the 11 victims and another key witness; and (c) engaged in inappropriate other serious and possibly criminal conduct with a key witness in the Bannon case.

[27] Based principally on the Supreme Court of Canada's discussion of abuse of process in *R. v. Babos*, 2014 SCC 16, [2014] 1 S.C.R. 309, Mr. Moazami intends to argue Mr. Fisher's actions amount to state misconduct that prejudiced his right to a fair trial or, alternatively, undermined the integrity of the judicial process. He states his position as follows in his written submission:

- i. The investigation and trial was so tarnished due to the conduct of Mr. Fisher as the lead investigator, and of the VPD as the primary investigative body, that it amounts to an abuse of process in the circumstances and the appellant's convictions should be stayed.
- ii. Alternatively, because Mr. Fisher's conduct was so flagrant, the credibility of the complainant witnesses and other key witnesses and thus the fairness of the trial was compromised, and the applicant should have a new trial.

[28] The Crown's position is that Mr. Moazami's allegations are vague and unfocused. It notes the Fisher-related disclosure material contains statements from three of the victim witnesses and one other key witness at the prostitution trial, all of whom say Mr. Fisher did not ask them to lie or change their evidence.

[29] The Crown also notes that in his testimony at the prostitution trial, Mr. Moazami admitted he was involved in prostitution and had sexual relations with the victims. As described by Bruce J. in her reasons for conviction at para. 326, Mr. Moazami asserted he and the victims were in a "relationship of equality" and that he did nothing to exert control over them.

[30] The Crown submits that even if Mr. Moazami is able to substantiate some of his allegations against Mr. Fisher, the possibility of his achieving blanket success is remote. The Crown says each count will have to be considered separately and that it is likely many of the convictions will be sustained. Further, the Crown says even if Mr. Moazami is partially successful, he will still be subject to a lengthy period of incarceration that will not have expired before his appeals can be heard and decided.

Should Mr. Moazami be Granted Bail?

[31] The only affidavit filed in support of this application was sworn by Mr. Moazami. In that affidavit he deposes that "If [he] is released, [he] will abide by any and all conditions imposed by the court." He says he is able to reside with his mother, and that she is the only person he knows of who is able to act as his surety. In other words, his mother is the only person who can take on the responsibilities Justice Ryan described as follows in *R. v. Patko*, 2005 BCCA 183 at para. 22, 197 C.C.C. (3d) 192:

The duty of the surety is to ensure the good behaviour of the accused while on bail and to render him if he does not appear to be keeping the peace and being of good behaviour.

- [32] Mr. Moazami further deposes that, having been incarcerated for nearly nine years, he has no employment prospects. He hopes to find work or take classes at a community college. His affidavit contains no information with respect to his mother, other than her residential address.
- [33] Of immediate concern is that Mr. Moazami has a history of non-compliance with court orders. This is evinced by the fact that for almost the entire period during which he operated his prostitution business he was subject to one or more recognizances that required him to keep the peace and be of good behaviour. For approximately the last five months of that period he was bound by a probation order that required him to keep the peace and be of good behaviour. Added to this is the fact that: (a) he breached the conditions of the bail he was granted after being charged with prostitution-related offences; and (b) while in custody awaiting trial, he attempted to obstruct justice by breaching the terms of a court order.
- [34] As for Mr. Moazami's mother acting as a surety, of considerable concern is that she has previously been unable to ensure his good behaviour. Three of the recognizances in effect for portions of time Mr. Moazami operated his prostitution business were ones in which his mother was his surety. In addition, she was his surety in the amount of \$100,000 when he breached the conditions of the bail he was granted after being charged with prostitution-related offences. As a result of Mr. Moazami's breaches an estreatment order in the amount of \$10,000 was made against his mother.
- [35] Most troubling is the fact that Mr. Moazami operated his prostitution business from his mother's apartment while she was his surety. She was out of the country for part of that time, which made it impossible for her to monitor his compliance with his bail conditions. I note that in para. 41 of her reasons for sentence, Bruce J. said this in response to Mr. Moazami's submission that support from his mother and sister increased his potential for rehabilitation:

However, I note that Mr. Moazami openly used his mother's apartment to carry out his prostitution business. While there is insufficient evidence to find that she was complicit in his misconduct, clearly her influence over his behaviour was nominal during this period of time.

- [36] Given Mr. Moazami's track record of ignoring supervisory court orders I am not satisfied he will, if released, refrain from reoffending. Further, given his mother's track record as a surety, I am not satisfied she is better able now (when Mr. Moazami is in his mid-30s) to influence his behaviour, than she was in the past (when he was in his mid-20s).
- [37] I give no weight to Mr. Moazami's suggestion electronic monitoring could be used to ensure he abides by any conditions I might impose. To begin, there is nothing before me with respect to the availability and suitability of this technology. However, assuming that technology could be used to monitor his movements and provide information as to his geographic location, it would not adequately address the concerns I have with respect to his risk to reoffend. That is because electronic monitoring cannot stop a person from engaging in criminal activity within the allowed geographic locations or guarantee the intervention of

the police if a breach or offence is in progress. Apposite is the following from the judgment of Justice Nordheimer in *R. v. Bahman*, [2007] O.J. No. 4976 at para. 23 (S.C.J.):

[E]lectronic monitoring, at best, only establishes where a person is. It does not establish what that person is doing. Electronic monitoring does not, therefore, address the secondary ground concerns where the subject may be able to engage in criminal activity but remain within the geographic area that is the focus of the electronic monitoring. Electronic monitoring does not, therefore, displace the need to have capable sureties who will monitor the activities of the accused person and report any breaches of the conditions of release without hesitation to the authorities.

See also: *R. v. Chun*, 2015 QCCA 1021 at paras. 30–31, review dismissed, 2016 QCCA 164: "In the absence of appropriate sureties, electronic monitoring will rarely be sufficient in itself to support the release of an appellant" (per Mainville J.A.).

Disposition

[38] This application is dismissed.

"The Honourable Mr. Justice Frankel"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/ca/19/02/2019BCCA0226.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-moazami-2019>

Prepared on 28 October 2026 · Esheria