

CANADA / JUDGMENT

R. v. Plehanov

2024 BCSC 2583

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 2583 R. v. Plehanov

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Plehanov,

2024 BCSC 2583

Date: 20241213

Docket: 85146-1

Registry: New Westminster

Rex

v.

Aleksandr Vladmirov Plehanov

Before: The Honourable Justice Schultes

On appeal from: Provincial Court of British Columbia,

May 30, 2023 & October 30, 2023

(R. v. Plehanov, New Westminster No. 77990-8BC)

Oral Reasons for Judgment

Counsel for the Respondent:

B.D.M. Israel

The Appellant, appearing in person:

A. Plehanov

Place and Date of Hearing:

New Westminster, B.C.

December 10, 2024

Place and Date of Judgment:

New Westminster, B.C.

December 13, 2024

Introduction

- [1] On May 30, 2023, Mr. Plehanov was convicted by a provincial court judge of breach of probation and failing to comply with an obligation under the Sex Offender Information Registration Act. A third count on which he was also found guilty, which arose out of the same circumstances, was conditionally stayed pursuant to the rule against multiple convictions.
- [2] On October 30 of that year, he was sentenced to credit for pretrial custody of 21 and seven days respectively on the counts on which convictions were entered, as well as probation for two years, on essentially the same conditions on which he had been released pending trial.
- [3] He is appealing against both the conviction and sentence.
- [4] He was represented by counsel at the trial, but has acted on his own behalf on this appeal.

The conviction appeal

Evidence at trial

- [5] It was admitted that 1) he was bound by a probation order following a conviction for a sexual offence that included a condition that he not change the address at which he resided without the prior approval of his probation officer, and 2) he was obligated under the SOIRA order to report to a registration centre within seven days of a change in his residence.
- [6] The allegations were that after his tenancy at an address on Union Street in Burnaby came to an end on April 30, 2022, pursuant to a Residential Tenancy Branch proceeding, he began to live with his mother in an apartment on Clare Avenue, also in Burnaby, without complying with the requirements of those orders.
- [7] Taran Bachra, Mr. Plehanov's probation officer, testified that when Mr. Plehanov came under his supervision in September 2020, he stressed to Mr. Plehanov the importance of obtaining advance approval for any change in his residence. When Mr. Bachra became aware in February 2022 that Mr. Plehanov was having difficulty with his tenancy at the Union Street address, he stressed once again the importance of informing him if there was any chance of Mr. Plehanov being evicted.

- [8] On May 11, Mr. Plehanov discussed his plans to move to a new residence and to find a roommate there, and also told Mr. Bachra at that time that there were no further issues with his landlord. Mr. Bachra agreed in cross-examination that Mr. Plehanov had mentioned landlord problems when he reported in April.
- [9] When he reported on June 8, he told Mr. Bachra that he had been evicted on June 1. He initially said he was living at a homeless shelter in Burnaby, but when Mr. Bachra questioned him further, it emerged that he was actually living out of his vehicle in a vacant parking lot. Mr. Bachra submitted a breach of probation charge on the basis that Mr. Plehanov had changed his residence without obtaining prior approval.
- [10] During this period, Mr. Plehanov did not provide any information to Mr. Bachra about the Clare Avenue address. Mr. Bachra only found out about it from the RCMP, who were investigating further breach charges. Nor did Mr. Plehanov inform him of the order of the Residential Tenancy Branch requiring him to vacate the Union Street address on April 30, rather than June 1 as he had advised Mr. Bachra.
- [11] Significantly, Mr. Bachra testified that after Mr. Plehanov's probation order had expired (during which Mr. Bachra was supervising him on bail in relation to these charges) he asked "why there would be an issue preventing him from returning to that address" - that is, the Clare Avenue address. Mr. Plehanov's mother lived at the Clare Avenue address, and in cross-examination, Mr. Bachra said that Mr. Plehanov had also used the word "move" rather than "visit" her there, although he did not have any notes with respect to that specific comment. Further, when Mr. Bachra told him that the property management company did not want him to return to that residence, that Mr. Plehanov became visibly upset.
- [12] The Crown also called Melissa Hunnensen, who was the downstairs tenant at that residence, along with her seven-year-old daughter, from April 30, 2022, onward. She testified that when they moved in, Mr. Plehanov and his mother were living upstairs.
- [13] She said that she saw him at least a few times a day, from nine o'clock in the morning to 11 o'clock at night. Among other times, she would see him inside the upstairs residence, which had a solarium that allowed her to see into it whenever she went outside to have a cigarette.
- [14] She also spoke to Mr. Plehanov, and during their conversations he told her that he and his mother had moved in just before she and her daughter had, as well as that his bedroom was directly above her daughter's. Based on footsteps she could hear above her, it sounded like there was more than one person present in that upstairs apartment. One set of footsteps was heavier and louder, as though the person were wearing boots, as opposed to lighter steps of the other person.
- [15] In addition, she said that Mr. Plehanov spoke to her daughter regularly when she was outside, and played catch with her when she was in the backyard, to which she and her daughter had exclusive access, and he was on his balcony. She recalled an incident in which he had invited them upstairs for tea and laid out an extensive array of sweets for them.

Once, when Ms. Hunnensen was not feeling well, she allowed her daughter to visit him alone, but kept a window open to monitor the situation. She said that in general he was very friendly, including offering them rides and her daughter help with her homework.

- [16] According to Ms. Hunnensen, these interactions with Mr. Plehanov began in mid-May and ended around the first week of June 2022.
- [17] In cross-examination, it emerged that her relationship with him was "non-existent" after that three-week period, as she came to believe, based on information that her romantic partner had provided to her, that he had broken into her suite and sprayed her with urine while she was sleeping. After she reported this incident to the police, she did a Google search of Mr. Plehanov and found that he was a convicted sex offender, so she reported that as well. She agreed with the suggestion in cross-examination that her motivation in making that report was the hope that Mr. Plehanov would no longer be permitted to live there.
- [18] In his testimony, Mr. Plehanov said he was evicted from the Union Street residence on June 1, after the landlord discovered that he was still living there. Pursuant to the settlement with the RTB, he and his mother were to have left on April 30. She did so, taking all of their belongings. But he said that, for the month of May, he would sneak back into their former rental unit at night and sleep on a mattress and blanket that he otherwise kept in storage. He claimed that he told Mr. Bachra when he reported on May 11 that his mother had left, but that he was still living there and looking for another place.
- [19] He testified that after he was evicted on June 1, he lived in his car for a few days. When he reported to Mr. Bachra (which we know from Mr. Bachra's evidence was on June 8), he directed him to go to a shelter. In addition to informing Mr. Bachra of this situation, he also advised the SOIRA registry that he was of no fixed address. He acknowledged that, looking back at the situation, he should have informed Mr. Bachra right away that he was no longer living at the Union Street address, but that he was "kind of frustrated, upset, and scared at the time." He believed that he had met his obligations to Mr. Bachra by informing him on an ongoing basis of his disputes with the landlord and the likelihood that the tenancy would be coming to an end.
- [20] He initially found a shelter in Burnaby, but there was no room available for that night. In any event it permitted its residents to use drugs, which he did not like. Shortly after that, he was able to find a room in a more suitable shelter in New Westminster.
- [21] Although he had signed the lease for the Clare Avenue residence along with his mother, he maintained that he did not live there and that he had signed only because, without his disability income being added to hers, she would not have qualified to rent it. His belongings were at the suite in boxes, but he did not unpack them, he said.
- [22] Contrary to Ms. Hunnensen's testimony, Mr. Plehanov claimed that he had only visited his mother at the Clare residence a few times a week, for a couple of hours each time, in his role as a dutiful son. He said that he only spoke to Ms. Hunnensen about five times in total,

although he subsequently sent her text messages because she and her boyfriend were quite noisy late at night, which disturbed his mother's sleep. His position was that their initially friendly relationship had soured once he began to raise this issue of the noise that she and her boyfriend were making with her. He denied ever having interacted directly with her daughter. He also denied having told Mr. Bachra that he wanted to return to live at that residence after Ms. Hunnensen and her daughter had moved out.

- [23] In cross-examination, he was challenged on what were said to be a number of inconsistencies and deficiencies in his evidence, the most prominent being his willingness to effectively break into his former residence on a nightly basis, including dishonestly retaining a set of keys to it. This was despite the intimidation that he said members of the landlord's family had subjected him to during his tenancy, which made him feel unsafe, and despite having accepted a \$5,000 payment to vacate the premises on April 30 as part of the RTB settlement. It was suggested to be implausible that he would engage in these elaborate activities simply in order to avoid breaching his residency condition.
- [24] Crown counsel also focused on the element of dishonesty inherent in representing to the Clare street landlord that he would be living there with his mother when, in fact, he had no intention of doing so according to his evidence.

Mr. Plehanov's position at trial

- [25] In submissions, his counsel argued that, although the act of changing his residence without prior permission had been committed, Mr. Plehanov did not have the required mens rea for that offence, because he had kept Mr. Bachra informed about his tenancy situation on an ongoing basis, including the imminent nature of his loss of the Union Street residence, and had managed the loss of that residence as best he could in the circumstances. Thus, it was argued, it could not be said that he knew his course of conduct would constitute a breach of the orders, which is an essential element of the offence of breach of probation or of a SOIRA order.
- [26] His counsel also argued that Ms. Hunnensen's evidence was strongly affected by the hostility that she developed towards Mr. Plehanov during their interactions, including the belief that he had thrown urine on her, and that her lurid descriptions of his stereotypical sex-offender-type behaviour towards her daughter were an example of her willingness to exaggerate to his detriment. Since the finding that he lived at the Clare street address hinged on her credibility, he submitted that there should at least be a doubt on that issue, leaving only Mr. Plehanov's reasonable efforts after being evicted from Union Street.

The trial judge's reasons

- [27] After summarizing the evidence, and instructing herself on the requirement of proof of the Crown's case beyond a reasonable doubt and the authorities that govern the application of that requirement to the assessment of credibility, the trial judge made the following essential findings:
- [12] I find that Probation Officer Bachra was a balanced witness whose conversations were backed up by his notes in addition to his own detailed personal recollections. I found him to be a credible witness who was genuinely interested in helping the accused.
- ...
- [15] Despite the suggestion that she may have been a biased witness, I find that [Ms. Hunnersen's] evidence was detailed and internally consistent. She certainly wanted the accused gone when she [heard] of his past but her evidence was given in a straightforward manner. She wanted to protect her daughter.
- [16] I find that she was a credible witness who initially liked the accused at the outset. They texted back and forth. She was not impeached in cross-examination and I accept her evidence.
- [17] The accused testified in his own defence. I found his version of events to be fanciful. He claimed that he never lived at the Clare residence even though he had signed a lease with his mother. That unit was beyond her financial means but achievable if they pooled resources. It was a two-bedroom unit and the accused said unopened boxes were stored in the second bedroom and he would have had no place to sleep. He said he never lived there but that he would attend regularly a few times a week to help his mother with household chores and shopping.
- [18] The accused testified that even though he had been evicted from the address on Union Street and was to be out by April 30th of 2022 that he concealed a roll up mattress in that basement suite and kept a set of keys so that he could sleep there even with the landlord upstairs, all the while claiming to have been fearful of the landlord's son and friend who had previously threatened him.
- [19] The accused reluctantly admitted that he had been dishonest and accepted \$5,000 as part of a Residential Tenancy Act settlement and he did not leave until he was directed to a shelter by the probation officer on June the 8th of 2022.
- [20] The accused's version of events strains credulity. He claimed to be more afraid of a probation breach than of individuals who had been threatening him.

[21] I do not believe the accused. I reject his evidence in its entirety and it does not raise a reasonable doubt. I find that the accused knew and understood his obligations to report any changes of address before doing so and understood the terms of the orders by which he was bound as set out in the admission of facts.

[22] I find that he was evicted from the Union Street address and signed a contract for the residence on Clare with his mother, and that he, in fact, lived there with her for a period of time.

[23] I find he concealed this fact from the probation officer and SOIRA because he knew the premises would never be approved as Ms. Hunnensen's seven-year-old daughter was at the premises.

[That would have been contrary to another condition of his order.]

[24] I accept Ms. Hunnensen's evidence that the accused was there daily. I find that he engaged with Ms. Hunnensen's daughter while he lived there before ultimately moving out.

[25] I find that the accused knew he was in breach of his conditions, that he had other options for residence which had been discussed over the preceding months with his probation officer and which he took no steps to avail himself of.

[26] On the totality of the evidence, I have no doubt at all of the guilt of the accused and I find him guilty as charged.

Basis of the conviction appeal

[28] Mr. Plehanov argues that the trial judge erred by:

- finding that he had the necessary intent to breach the probation order, given Mr. Bachra's knowledge of his tenancy issues and his efforts to secure a new residence once he was finally evicted from Union Street;
- failing to give effect to the possibility that there had been a miscommunication between him and Mr. Bachra on this issue, particularly in light of the fact that English is Mr. Plehanov's second language;
- showing bias in accepting only the evidence of the Crown's witnesses, despite Ms. Hunnensen being "a drug addict and an alcoholic";
- failing to find a reasonable doubt based on his evidence, or on the whole of the evidence;
- reaching a "hasty" decision to convict him, having indicated before standing down that she would "take about 15 or 20 minutes" to provide her reasons for judgment (although it is not clear from the record how long she actually took); and

· ignoring the "humanitarian" grounds that were raised by his evidence, including the extreme difficulty that he faces in obtaining suitable housing in light of his probation conditions and the housing situation, and his very poor mental and physical health.

Discussion

- [29] Since it does not appear to be alleged that the trial judge made any palpable or overriding error of fact, or that she applied a wrong legal principle in coming to her verdict, I treat Mr. Plehanov's argument as a submission that the verdict is unreasonable and cannot be supported by the evidence pursuant to s. 686(1)(a)(ii) of the Criminal Code, which applies to summary conviction appeals by virtue of s. 822(1).
- [30] The governing principles of this ground of appeal were helpfully summarized by Justice Ker in *R. v. Mohammad*, 2015 BCSC 2525:
- [29] The test to be applied by an appellate court in determining whether a verdict is unreasonable or cannot be supported by the evidence is . . . whether the verdict is one that a properly instructed jury acting judicially could reasonably have rendered . . .
- [30] In applying this test, the Court must review, analyze and, within the limits of appellate disadvantage, weigh the evidence . . . but it must neither retry the case nor substitute its view of the evidence for that of the trial judge: *R. v. M.B.*, 2006 BCCA 465 at para. 6 . . .
- [31] An appellate court reviewing reasons starts from a stance of deference when it comes to findings of fact and particularly to the assessment of credibility. Absent palpable and overriding error by the trial judge, "his or her perceptions should be respected": *R. v. Gagnon*, 2006 SCC 17 at paras. 20-21.
- [32] To succeed in his argument under s. 686(1)(a)(i) of the Code, [the appellant] must establish that the verdict was not one that a judge could reasonably have rendered or the trial judge drew an inference or made a finding of fact essential to the verdict that is (1) plainly contradicted by the evidence relied on by the trial judge in support of that inference or finding, or (2) is shown to be incompatible with the evidence that has not otherwise been contradicted or rejected by the trial judge: *R. v. R.P.*, 2012 SCC 22 at para. 9.
- [33] The scope of the review under [this section] is circumscribed because of the special position of the trier of fact on matters of credibility and the appellate disadvantage of reweighing the evidence : *Biniaris* at para. 36; *R. v. Ceal*, 2012 BCCA 19 at para. 23.
- [34] The focus is on whether there is any evidence to support the trial judge's findings, based on the totality of the evidence before him or her, and whether the verdict logically flows from those findings: *Ceal* at para. 25.

- [35] An appellate court, reviewing findings of credibility to determine the reasonableness of the verdict, cannot interfere with those assessments unless it is established that they cannot be supported by any reasonable view of the evidence: *R. v. Burke*, [1996] 1 S.C.R. 474 at para. 7; R.P. at para. 10.
- [31] Viewed in light of these principles, I think that the submissions here amount to an invitation for me to retry the case, which of course I cannot do. The points that Mr. Plehanov now raises were all squarely before the trial judge and she made findings of fact and credibility that were clearly open to her on the evidence. In particular, she was entitled to prefer Mr. Bachra's account of the nature of the discussions during Mr. Plehanov's reporting sessions, including his assessment of Mr. Plehanov's level of comprehension of his ongoing warnings to report changes in his residence.
- [32] She was also entitled to accept Ms. Hunnensen's description of his living at the Clare Street residence, despite the hostility that Ms. Hunnensen clearly developed towards him over time, and to place weight on Ms. Hunnensen's desire to protect her daughter by reporting him to the police. The evidence at trial did not disclose that she was a drug addict and alcoholic, as he now claims.
- [33] It was also open to the trial judge to find that his version of events was fanciful and strained credulity. The examples that she provided of dishonest conduct and the improbability that he would risk surreptitiously remaining in his former residence in light of the nature of his disputes with the landlord's family were properly grounded in the evidence and amply supported her rejection of his narrative.
- [34] Because the judge found as a fact that Mr. Plehanov had been living at the Clare Street residence, the defence that he had no intent to breach his order during his period of homelessness in early June was not applicable, as his counsel had conceded during submissions.
- [35] In short, this was unquestionably a verdict that a properly-instructed jury acting judicially could have rendered.
- [36] In reaching that conclusion, I would not put any weight on the suggestion that the trial judge reached her decision hastily. There is no prescribed amount of time for which a judge must deliberate before rendering judgment. In fact, I take notice that many judgments in provincial court are rendered from the bench directly following submissions.
- [37] These reasons for judgment clearly identified the key evidence, findings, and conclusions that the conviction hinged on and showed a clear pathway to that outcome. They are not deficient in any respect.

[38] Finally, the sympathetic factors of Mr. Plehanov's health and the difficulty that his probation order undoubtedly poses to his search for a suitable accommodation may well have been mitigating factors on sentence, but they were not relevant to the question of whether he knowingly breached these orders.

[39] Accordingly, the appeal against conviction must be dismissed.

The sentence appeal

Positions at the sentencing hearing

[40] At the sentencing hearing, the Crown conceded that Mr. Plehanov's presentence custody of approximately 77 days (the defence's count was 80) meant that a further period of imprisonment was not required. Crown counsel sought a further probation period of three years.

[41] Mr. Plehanov's counsel concurred that no further imprisonment was required, and said that if the court concluded that further probation was necessary, it should be for the shortest period possible. His counsel specifically brought to the judge's attention that Mr. Plehanov had spent 11 months on bail on the same conditions that the Crown was now seeking.

Reasons for sentence

[42] The trial judge made the following relevant comments:

[1] I want to emphasise that Mr. Plehanov is not being re-sentenced for any type of sexual interference, sexual -- nothing like that. He is here because he did not comply with terms of orders, and there are two counts that I convicted you of, sir. The circumstances of the trial matter that was before me are disturbing in the overall context of the matter that is before the court because you were in the company of a young girl and I have found you guilty of those two breaches.

[2] Now, I have heard two positions on sentencing, if you will, at least two; that it should be time served because you have done the equivalent of 80 days in custody according to defence calculations, 77 according to Crown's calculations. Crown has indicated they do not want more jail time but they want supervision in the community and a continued approval process, which I know is inconvenient but it has been put in place for a reason.

[43] After imposing the credit for time served, the judge said the following:

[4] I am also going to impose a probation order of two years, that seems to be a middle ground, and it will be on the same terms as are set out in the release order. That approval process is going to be in place. The circumstances of the case before me indicate that it is still required. It is certainly in the public interest. I accept that denunciation and deterrence have been dealt with but there are larger issues in these circumstances. You have been able to comply, you have told me that. It is difficult but you have been able to comply. I think three years is a little on the long side for a probation order so it will be two years.

Basis of the sentence appeal

[44] On appeal Mr. Plehanov submits that because of:

- the number of years that he has already been subject to restrictive probation and bail terms, which include not just orders arising from the underlying conviction and this breach but conditions that were attached to a previous matter of which he was eventually acquitted;
- the highly restrictive nature of the residence approval term, and
- the disproportionate effect that it has had on his life, both in itself and in light of his health conditions

a further two-year probation period was harsh and excessive in this case. His position is that the lack of any other allegations of breach since this one, including the absence of any suggestion of a repetition of the conduct that led to the underlying conviction, show that the remaining period of probation could safely be terminated.

Discussion

[45] There is no issue that an appellate court can only interfere to vary a sentence when it is demonstrably unfit or is the result of an error in principle: *R. v. Lacasse*, 2015 SCC 64 at para. 67.

[46] Neither of those shortcomings are present here. Both the need for a probation order and its length were amply justified by the circumstances of the breach which, on the evidence that the judge accepted, involved not just living in an unapproved residence, but the very contact with a child that the probation term in question was designed to prevent. The trial judge was informed of the period of bail on the same conditions and was explicitly mindful of the need to avoid an excessively lengthy probation period. In those circumstances, I cannot say that a further two-year period was unfit in any respect. It was certainly not an error of principle to emphasize protection of the public, despite Mr. Plehanov's mitigating personal circumstances.

[47] Therefore, despite Mr. Plehanov's resourceful submissions, which I appreciated, the sentence appeal must be dismissed as well.

"Schultes J."

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