

CANADA / JUDGMENT

R. v. Purdy

2005 BCCA 99

COURT

British Columbia Court of Appeal

DECIDED

24 February 2005

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2005 BCCA 99 R. v. Purdy COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Purdy, 2005 BCCA 99 Date: 20050224 Docket: CA32658 Between: Regina Respondent And Kelvin Kingsbury Purdy Appellant Before: The Honourable Chief Justice Finch (In Chambers) D.M. McKimm, Q.C. Counsel for the Appellant F.A. Dubenski Counsel for the Respondent Written Submissions of the Appellant Dated: Written Submissions of the Respondent Dated: February 8, 2005 February 21, 2005 Place and Date of Judgment: Vancouver, British Columbia February 24, 2005 Reasons for Judgment of the Honourable Chief Justice Finch:

- [1] Mr. Purdy applies under Section 680 of the Criminal Code for a direction that the order of Madam Justice Baker pronounced 10 September 2004, refusing him bail pending trial, be reviewed by this Court.
- [2] The Crown opposes the application on the ground that this Court has no jurisdiction to review the detention order in the circumstances of this case.
- [3] Mr. Purdy originally applied for judicial interim release in April 2004. The application was heard by Mr. Justice Lander. On 22 April 2004 he dismissed the application on the basis that the applicant's custody was justified in order to maintain confidence in the administration of justice, and that his release might interfere with the administration of justice (s.515(10)(c)).
- [4] The application before Madam Justice Baker on 10 September 2004 was brought under the provisions of the s.523(2)(c)(ii) which in material part provides: 523(2) Order vacating previous order for release or detention-Notwithstanding subsections (1) and (1.1), . . .
 - (c) with the consent of the prosecutor and the accused at any time, (ii) where the accused is charged with an offence listed in section 469, a judge of or judge presiding in a superior court of criminal jurisdiction for the province, may, on cause being shown, vacate any order previously made under this Part for the interim release or detention of the accused and make any other order provided for in this Part for the detention or release of the accused until his trial is completed that the court, judge or justice considers to be warranted.

- [5] The Crown consented to the application being brought under s.523. The application proceeded on the basis of an acknowledgement by appellant's counsel that the original detention order made by Mr. Justice Lander was correct at the time it was made, but that subsequent evidence disclosed as a result of a continuing R.C.M.P. investigation called into question some of the facts underlying the original detention order.
- [6] Madam Justice Baker refused the application to vacate the order of Lander J. because in her opinion the material before her showed that Mr. Purdy's release would present a risk to the safety of several potential witnesses, and that his release would cause the public to lose respect for the administration of justice.
- [7] Section 680(1) provides: 680(1) Review by court of appeal-A decision made by a judge under section 522 or subsection 524(4) or (5) 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.
- [8] It will be seen that s.680 contemplates the possibility of a review by the Court of Appeal of orders made (inter alia) by a judge under s.522 or s.524(4) or (5). Section 680 does not provide for the possibility of reviewing an order made under s.523.
- [9] The appeal of a detention order for an offence listed in s.469 to the Court of Appeal is a statutory right of appeal pursuant to s.680. There is no statutory right of appeal pursuant to s.680 for a detention order made pursuant to s.523.
- [10] The jurisdiction of this Court is statutory. As the statute, in this case the Criminal Code, does not provide for an appeal from the order in question, this Court has no jurisdiction to entertain the appeal.
- [11] The effect of the legislation is that one may apply under s.680 for a direction to review a first order denying bail, but that if one applies unsuccessfully in the trial court under s.523 to vacate that first order, the Court of Appeal may not review the dismissal of the application to vacate. I make no comment on the legislative policy underlying the statutory scheme. However, the legislative intent is clear.
- [12] I dismiss the application for a direction to review under s.680 on the ground that the Court has no jurisdiction to entertain the proposed review. "The Honourable Chief Justice Finch"

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