

CANADA / JUDGMENT

R. v. Sihata

2020 BCSC 761

COURT

Supreme Court of British Columbia

DECIDED

20 May 2020

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2020 BCSC 761 R. v. Sihata IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Sihata, 2020 BCSC 761 Date: 20200520 Docket: 30740W Registry: Vancouver Regina v. Jacob Paul Sihata Before: The Honourable Madam Justice Devlin Oral Reasons for Judgment re: Detention Review Hearing Counsel for the Crown: John Lester Counsel for the Accused: Philip R. Derksen Place and Date of Hearing: New Westminster, B.C. May 12, 2020 Place and Date of Judgment: New Westminster, B.C. May 20, 2020

Introduction

[1] The accused, Jacob Paul Sihata, is before the Court for a detention review hearing pursuant to s. 525 of the Criminal Code, R.S.C., 1985 c. C-46 [Code]. At the commencement of the detention review hearing, the Crown raised a preliminary issue of jurisdiction. It is the Crown's position that this Court lacks jurisdiction to conduct a s. 525 detention review hearing relying on R. v. Myers, 2019 SCC 18 [Myers], R. v. Lambert, 2019 BCSC 1401 [Lambert] and R. v. Levett, 2020 BCSC 565 [Levett]. The Crown submits Mr. Sihata is "required to be detained on other matters" because he is in custody on other charges which are subject of a pending judicial interim release decision before a Provincial Court judge and is therefore disentitled to a s. 525 hearing at present. Counsel for Mr. Sihata submits that Mr. Sihata has consented to remain in custody on the other charges therefore he is entitled to a detention review hearing relying on Lambert.

Procedural History

[2] Mr. Sihata is charged on Information 65908-2C with nine charges, which occurred on August 31, 2019, in Hope, BC. On September 3, 2019, Mr. Sihata was arrested and he was granted judicial interim release in October 2019 with a condition to reside at a residential treatment facility, Joshua House. On November 28, 2019, Mr. Sihata was granted a bail variation to permit him to reside at the Next Step Recovery facility instead of Joshua House.

- [3] Mr. Sihata is charged on Information 65908-3A with one count of breach of his bail. He is alleged to have been out of the residence beyond his curfew on November 30, 2019. Mr. Sihata was released on the same conditions including residing at Next Step Recovery. For ease of reference, I will refer to Information 65908-2C and Information 65908-3A as the "Hope charges".
- [4] On January 23, 2020, Mr. Sihata was arrested and charged with several new charges related to an incident which occurred in Abbotsford, BC (the "Abbotsford charges"). Mr. Sihata has applied for judicial interim release on those matters in Abbotsford Provincial Court. That decision is pending.
- [5] As a result of the new charges arising on January 23, 2020, in Abbotsford, a warrant pursuant to s. 512.3 of the Code was granted with respect to the Hope charges. On March 17, 2020, the Honourable Judge Mundstock conducted a bail hearing with respect to the Hope charges. Mr. Sihata was detained on the secondary grounds pursuant to s. 515(10)(b) of the Code.
- [6] In summary, on March 17, 2020 Mr. Sihata was detained on the secondary grounds with respect to the Hope charges. Those matters are now before this Court for a detention review pursuant to s. 525. At the same time, Mr. Sihata is also detained on the Abbotsford charges awaiting a judicial determination of his application for judicial interim release. Issue
- [7] The issue to be determined is whether this Court has jurisdiction to conduct a s. 525 detention review hearing of Mr. Sihata's detention on the Hope charges, while he awaits a judicial determination in Provincial Court on the Abbotsford charges.

Analysis

- [8] Section 525(1) of the Code states: 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. [Emphasis Added.]

- [9] The issue centres on the highlighted portion of s. 525, and considers whether the pending judicial determination of bail on the Abbotsford charges takes Mr. Sihata out of the purview of the phrase "not required to be detained on other matters" such that he can have a s. 525 detention review hearing on the Hope charges forthwith.
- [10] As I understand his position, counsel for Mr. Sihata relies on Lambert to support his position that by consenting to remain in custody on the Abbotsford charges he remains entitled to a s. 525 detention review hearing with respect to the Hope charges. I find there are two fundamental flaws with that position. Firstly, Mr. Sihata has not consented to remain in custody on the Abbotsford charges. Rather, he has commenced a judicial interim release application, which is pending before the Abbotsford Provincial Court. Secondly, the findings in Lambert do not support Mr. Sihata's position that an accused who consents to remain in custody is not required to be detained. In fact, in Lambert Chief Justice Hinkson rejected the same argument that counsel for Mr. Sihata now raises. In his reasons, Chief Justice Hinkson held that an accused should not be entitled to avoid a judicial determination of his in custody status on the more recent charges, by consenting to remain in custody, yet concomitantly argue that his detention is not one where he is required to be detained for the purposes of having a s. 525 hearing (at para. 27). In that decision, Mr. Lambert was detained on a new matter when he consented to remain in custody and that constituted an intervening event that reset the s. 525 detention review hearing clock on the original charges. Following Myers, Lambert establishes that an accused's consent to remain in custody on other charges constitutes detention for the purpose a s. 525 hearing. Accordingly, the Court in Lambert concluded it did not have jurisdiction to conduct a detention review hearing while Mr. Lambert was "required to be detained in custody in respect of any other matter" as set out in s. 525. Even if Mr. Sihata consented to his detention on the Abbotsford charges - which he did not - for these reasons, Lambert does not support the position that Mr. Sihata would now be entitled to a s. 525 hearing on the Hope charges. Counsel's argument on consent has already been tried and rejected in that case.
- [11] The Crown relies on Levett. In Levett, the accused was subject to a detention order made after a bail hearing but also detained on a warrant for new charges issued earlier the same day of his scheduled s. 525 hearing. Unlike Lambert, the accused in Levett had not consented to be in custody on the new charges. In Levett, Mr. Justice Crabtree found that Mr. Levett was required to be detained in respect of new charges and therefore the Court did not have jurisdiction to conduct a s. 525 detention review hearing.
- [12] In both Levett and Lambert, the Court concluded there was no jurisdiction to hold a detention review hearing because the accused was required to be detained on other matters in addition to being subject of a detention order following a judicial interim release hearing. The fact that in Lambert the detention was by consent and in Levett the detention was due to a newly executed warrant pending a bail hearing did not change the application of s. 525. In both cases, the accused were detained on other matters which prevented the Court from conducting a detention review pursuant to s. 525(1). Counsel for the defence attempted to

distinguish Lambert in the case of Levett, without success. Justice Crabtree held that a judicial determination of his detention on the new charges (in that case he awaited a s. 515 hearing), was pending. If Mr. Levett was ordered to be released on bail for the new charges, he would be entitled to a s. 525 hearing immediately. If, however, Mr. Levett was ordered detained on the new charges, that would reset the s. 525 detention hearing clock.

- [13] In my view, there is no discernable difference between Mr. Sihata's circumstances and those considered in Lambert and Levett. With respect to the Hope charges, Mr. Sihata is subject of a detention order and is seeking a review of his detention pursuant to s. 525, however, Mr. Sihata is also in custody awaiting a bail decision with respect to the Abbotsford charges. As discussed in Myers, detention can occur in several circumstances. Detention is not restricted to a detention order made under s. 515. Myers does not distinguish detention based on the mode by which an accused is detained. Mr. Sihata is detained on the Abbotsford charges just as Mr. Levett was detained on a new warrant and equally as Mr. Lambert was detained by virtue of his consent to remain in custody. Whether an accused is detained in the scenarios considered in Lambert and Levett or in Mr. Sihata's situation, all were "required to be detained in custody in respect of other matters". I find there is no distinguishing component in any of these scenarios to justify a contrary finding that Mr. Sihata's detention is not also required by law. Awaiting the judicial determination of bail from the Abbotsford Provincial Court presently disentitles Mr. Sihata from a s. 525 hearing on the Hope charges.
- [14] Therefore, I find this Court does not have jurisdiction to conduct a s. 525 hearing. "Devlin J."

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