

CANADA / JUDGMENT

R. v. Steer

2020 BCSC 1347

COURT

Supreme Court of British Columbia

DECIDED

1 September 2020

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2020 BCSC 1347 R. v. Steer IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Steer, 2020 BCSC 1347 Date: 20200901 Docket: 30607 Registry: Vancouver Regina v. Scott Stanley Matthew Steer Before: The Honourable Mr. Justice Macintosh Oral Reasons for Judgment re Application for Variation of Bail Conditions (via teleconference) Counsel for the Crown: A. Switzer Counsel for the Accused: A. Singleton, Articled Student, appearing as agent for B. Movassaghi Place and Date of Hearing: Vancouver, B.C. August 26, 2020 Place and Date of Judgment: Vancouver, B.C. September 1, 2020

- [1] Mr. Steer applies under s. 523(2)(c) of the Criminal Code, R.S.C. 1985, c. C-46 [Code], for a variation in the conditions of his bail from those I imposed on March 26, 2020. His main request is that he be relieved from the requirement of house arrest. He recognizes that he bears the onus on this application of having to show a material change in circumstances.
- [2] The Crown concedes that s. 523(2)(c) of the Code gives Mr. Steer the right to proceed with the application, but only because the indictment was not sworn until after my decision of March 26. The Crown attributes the late timing of the indictment being sworn to practical difficulties raised by COVID-19, and so says that Mr. Steer is saved only by what might be thought of as a technicality, enabling him to bring this application at this stage.
- [3] Mr. Steer has been charged with offences under the Fisheries Act, R.S.C. 1985, c. F-14. The offences are alleged to have been committed on March 2, 2020. The charges include being on board a fishing vessel when he was not allowed to be in possession of fishing gear, and when he was fishing without authorization, fishing in an area where the fishery was closed, and unlawfully possessing crabs.
- [4] On March 4, 2020, a Provincial Court judge detained Mr. Steer pending trial on the secondary ground under s. 515(10)(b) of the Code.
- [5] In the application for review before me on March 26, 2020, I found that the presence of COVID-19 in our midst, and the then largely unknown risks from COVID-19 on those confined in prison, amounted to a change in circumstances. I found the change to be material because it brought the so-called proportionality principle into play. The Crown, in the March 26 hearing, said it would be seeking a jail term of two years if Mr. Steer is

convicted at trial. My concern was that, with COVID-19, no one had a clear idea in late March of when Mr. Steer's trial would be held. When a probable sentence at trial, that is two years or less, was taken into account, in combination with a long wait in custody pretrial, proportionality caused me to conclude that Mr. Steer should be released with home arrest. My reasons are indexed as R. v. Steer, 2020 BCSC 613.

- [6] In both of the March hearings, the one in the Provincial Court, and the one before me in this Court, the Crown argued for continued detention. Before me, in March, Mr. Steer's request was for the house arrest he obtained, but which he now seeks to have removed.
- [7] There is now a trial set for January 4-8, 2021.
- [8] Mr. Steer, in the present application, submits there are three changed circumstances.
- [9] One, he says, is the Supreme Court of Canada's decision in R. v. Zora, 2020 SCC 14. Another change he points to is the birth of his son, born to his wife on July 8, 2020. Finally, Mr. Steer, in his affidavit, testifies that he is now trying to return to earning a living selling seafood, or as a marine mechanic, or both.
- [10] The Zora decision, in my view, cannot be regarded as a material change in circumstances. I do not have to decide whether a new decision from the Supreme Court of Canada, or our Court of Appeal, or this Court could ever constitute a material change in circumstances for the purposes of a bail review application, but Zora does not meet the test in this case. Zora extends the line of reasoning from earlier decisions of the Supreme Court of Canada articulating the legal principles governing bail hearings. While each new decision from the Court obviously adds to our law, Zora does not materially change the principles for determining bail. Zora reinforces the principle that courts must exercise restraint in the imposition of bail conditions, and must follow the so-called ladder principle. Both of those concepts were established as governing principles in place before Mr. Steer's two bail hearings in March of this year. Zora does not stand for a principle that accused should be released without conditions, but, instead, that courts must permit release where possible, and craft conditions so as to curtail an accused's liberty as little as possible, having regard to the grounds for pre-trial detention in s. 515(1) of the Code. Zora is more a decision of emphasis than of change, having regard to the principles associated with bail review.
- [11] Addressing the birth of Mr. Steer's son in early July, that obviously was anticipated at the time of the bail review hearing in late March, which makes it more difficult to treat as a material change in circumstance than would be the case if the bail review had preceded the pregnancy. Equally important, the Crown on this application placed in evidence an affidavit Mr. Steer's wife swore in the Provincial Court on July 15, 2020, the same day Mr. Steer swore his affidavit for this application. Ms. Steer's affidavit was in support of an application to have returned a flatbed truck and trailer which Fisheries people have seized, I believe in connection with Mr. Steer's arrest in the matters before this Court.

- [12] In Mr. Steer's affidavit sworn July 15, he testified that he is now the only income earner in the Steer household because Ms. Steer is a full-time mother and housewife. However, in Ms. Steer's affidavit sworn the same day, she testified in the Provincial Court that a numbered company owned by her and two others, not including Mr. Steer, owns the flatbed truck and trailer, and that the company needs the flatbed truck returned "so that Sandy Williams and I can continue our business" of buying, selling, and transporting seafood. It appears that after giving birth, Ms. Steer very quickly returned to her working life. I am unable, in all the circumstances, to conclude that the birth of the Steers' child on July 8 is a material change in circumstances in the context of the bail review.
- [13] The final material change Mr. Steer alleges is the desire to get back to work as a fish broker and marine mechanic, work he testifies he did before his arrest in March. The difficulty Mr. Steer faces regarding that alleged change in circumstances is that he has presented no evidence whatever of any work plan or particular employment opportunity. There is, for example, no letter or email from any prospective customer or employer for any boat repair work, or any evidence of any plan, or customer, or employer for the buying and selling of fish, nor is any other detail presented in his affidavit. I am reluctant to curtail an accused's work opportunities pre-trial, but, in my view, in order for Mr. Steer to succeed in overcoming the onus which he bears, some evidence of such work opportunities is needed before converting the wish to work, or even the need to work, into a material change in circumstances. It may be that in future, Mr. Steer can marshal concrete evidence of particular employment opportunities from which an argument for a material change in circumstances can be presented, but that is not the case on the evidence to this point.
- [14] Accordingly, I must conclude that Mr. Steer has not demonstrated a material change in circumstances and, in the result, his application is dismissed. However, the Crown accepts that one condition of Mr. Steer's existing bail can be removed. That is the prohibition against the consumption of alcohol and non-prescription drugs. There is no history of abuse there. That condition is hereby removed. That concludes my reasons. "Macintosh J."

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Prepared on 29 October 2026 · Esheria