

CANADA / JUDGMENT

R. v. Steer

2020 BCSC 613

COURT

Supreme Court of British Columbia

DECIDED

26 March 2020

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2020 BCSC 613 R. v. Steer IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Steer, 2020 BCSC 613 Date: 20200326 Docket: 30607 Registry: Vancouver Regina v. Scott Stanley Matthew Steer Before: The Honourable Mr. Justice Macintosh On appeal from: An order of the Provincial Court of British Columbia, dated March 4, 2020 (R. v. Steer, North Vancouver Docket 67147). Oral Reasons for Judgment on Bail Review Hearing Counsel for the Crown, appearing by teleconference: A. Switzer Counsel for the Accused, appearing by teleconference: B. Movassaghi Place and Date of Hearing: Vancouver, B.C. March 26, 2020 Place and Date of Judgment: Vancouver, B.C. March 26, 2020

- [1] Mr. Steer has been charged with offences under the Fisheries Act, R.S.C. 1985, c. F-14 [Fisheries Act]. 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. In this application, Mr. Steer applies for the review, under s. 520 of the Criminal Code, R.S.C. 1985, c. C-46 [Code], of the order of a Provincial Court judge made on March 4, 2020, whereby Mr. Steer was detained pending trial on the secondary ground under s. 515(10)(b) of the Code. He bears the onus on this review application. This is not a hearing de novo. I must determine whether there is a change in circumstances, if there was an error of law, or if the decision under review was clearly inappropriate. See, R. v. St-Cloud, 2015 SCC 27.
- [2] Because of the coronavirus, the hearing was held by telephone. Both counsel were at home. I was at home too. Mr. Steer attended by video-link from custody into a courtroom at 800 Smithe Street in Vancouver, where a court clerk was present. I received the application materials electronically yesterday and early this morning, and was able to read them before the hearing began this morning. In my view, the outcome of today's application turns on a consideration of the change in circumstances since March 4 because of the coronavirus. I add that my observations below concerning the coronavirus are based on the judicial notice I take of it.

- [3] Before turning to an analysis of the change in circumstances, I mention a concern I had had about the Crown's reliance on s. 515(10)(b) of the Code. It addresses the protection or safety of the public, including any victim or witness to the offence, or any person under the age of 18. Mr. Steer, on all the available evidence, has never posed any physical threat to anyone in the ordinary meaning of those words. My concern was that alleged Fisheries Act offences such as those before me today, in the absence of any evidence of any possible direct physical harm to anyone, cannot attract a s. 515(10)(b) analysis. However, Ms. Switzer, in her able submissions, has satisfied me that the fisheries legislation in question has as one of its purposes the protection or safety of the public, such that I am not prepared to rule against the Crown in the present application based on there being no element of protection or safety of the public to consider within the meaning of s. 515(10)(b).
- [4] The Crown has reason to be vexed with Mr. Steer for fisheries offences committed from April 8, 2008, to, most recently, approximately four years ago, on April 10, 2016. He has been convicted, by my count, 11 times by the Provincial Court and this Court, sitting in Nanaimo, Victoria, and Surrey. Punishments have included custodial sentences. In 2016 alone, it appears that he was sentenced respectively to custodial sentences of 45 days, 21 days on two occasions, one day, 60 days, and 80 days for breaching various undertakings, court orders, and orders under the Fisheries Act. The Crown advised that if Mr. Steer is convicted at trial on the new charges, summarized in the first paragraph of these reasons, it will request a custodial sentence of two years. Assuming the Crown has a strong case, and is able to obtain convictions on some or all of the counts, it is, of course, impossible to know what the actual sentence after conviction will be.
- [5] March 4, 2020 is a long time ago in assessing British Columbia's experience in dealing with the coronavirus. The virus played no part in the submissions or deliberations before the Provincial Court judge on March 4, which is not surprising. Nor had it begun to cause proceedings to be adjourned and rescheduled in any of the province's courts. Today, on the other hand, judicial proceedings in the province have almost come to a halt. In this Court, in Vancouver, only three or four courtrooms are open, and those only in emergency cases, including this application, and that is only after the particular application has received judicial clearance through the consideration of a written request for an urgent hearing. One consequence of those delays and uncertainties is that no one can reasonably know at this stage when cases such as this one will get to trial. That, in my view, introduces the concern that the accused in a case of this sort probably risks being detained pretrial for a longer period than he or she will be sentenced to serve as a result of a conviction after trial.
- [6] That grave uncertainty was not before the Provincial Court judge in this matter, but is before me now. In my view, it constitutes a material change in circumstances which is to be taken into account. I have concluded that there are conditions that can be attached to Mr. Steer's release based on this changed circumstance, such that he will be released in this unprecedented circumstance to return to his home in Nanaimo where his wife resides. Ms. Steer works outside the home. Mr. Steer looks after their children who are at home. Mr.

Steer will be released on the following terms and conditions.

- [7] You, Mr. Steer, will report to a bail supervisor by telephone or email as directed by the justice of the peace.
- [8] You will be under house arrest on your property on Catalina Drive in Nanaimo, 24 hours a day, seven days a week, subject to the exceptions below.
- [9] You must present yourself immediately at the door of your residence, or answer the phone, when any peace officer or bail supervisor attends or calls to check on you during your house arrest.
- [10] You may be away from your residence during the house arrest only with the written permission of your bail supervisor. Such permission is to be given only for medical appointments, or emergencies, or other compelling reason, including your court appearances. You must carry that permission, which can be in electronic format, with you when you are outside your residence. If asked, you must provide your bail supervisor with proof of your attendance at any facility covered by this paragraph.
- [11] You will have no contact, direct or indirect, with Sammy Alvin Raymond Williams, or Christopher Robin Schill.
- [12] There will be a surety in the amount of \$10,000, without deposit. The surety will be your mother, Janet Steer.
- [13] You will abstain from the consumption of alcohol, other intoxicants, and non-prescription drugs.
- [14] Those are the terms and conditions of release. Mr. Steer's counsel will need to make clear to him after today's proceedings are concluded that he is on dangerous ground with his history of non-compliance. In another bail hearing, no court is likely to enable him to remain out of prison pending trial, but that, of course, will be left to such court if the circumstances arise. "Macintosh J."

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