
CANADA / JUDGMENT

R. v. Straus

2020 BCSC 2305

COURT

Supreme Court of British Columbia

DECIDED

16 September 2020

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Straus,

2020 BCSC 2305

Date: 20200916

Docket: 30636-1

Registry: Vancouver

Regina

v.

David Matthew Straus

Before: The Honourable Madam Justice Sharma

Oral Reasons for Judgment

Counsel for the Crown:

K. Gagnon

Th Accused, appearing on his own behalf:

D. Straus

Place and Date of Trial/Hearing:

Vancouver, B.C.

September 16, 2020

Place and Date of Judgment:

Vancouver, B.C.

September 16, 2020

- [1] THE COURT: This is a summary conviction appeal from a speeding ticket. On June 13, 2020, Mr. Straus was served with a speeding ticket when he was driving up to Whistler. That constituted a violation of s. 146(3) of the Motor Vehicle Act, R.S.B.C. 1996, c. 318.
- [2] Although he has not filed any evidence on this appeal, he did address me in person and in the interests of justice and fairness, I accept what he said and take it into account. I understand that is not normal, but in the interests of justice I decided to do so. He is representing himself. He says he has not been in court before.
- [3] He explained the circumstances of the ticket. He admits to speeding. He does not admit to how fast he was going. He was in the passing lane, passing another car. He says it was necessary for him to speed. They were nearing the end of the passing lane, and he tells me he had to speed up in order to pass the other car safely. Apparently, there was a curve in the road at that point, or nearby, although I am not sure how that is involved. A police officer driving in the opposite direction must have witnessed his speeding up and passing, and issued the ticket.
- [4] Mr. Straus was going up to Whistler for a night of respite from working many days in a row, staying at a friend's Airbnb. He tells me that he called ICBC because he wanted to know what the impact of this ticket would be on his driving license. He says that, and I accept, the first time he called the ticket had not shown up on his record yet. He says he followed up with another phone call and was told the ticket appeared, but no action would be taken because of it yet.
- [5] As I said before, I do not have any of the preceding evidence in a sworn statement before me. However, for the purpose of this appeal, I am going to assume all of that is true.
- [6] In any event, on that basis of what he understood from the conversation with ICBC in the last phone call, he said he decided to pay the ticket.
- [7] In his submissions, he appears to have understood that he took into account that if he wanted to dispute the ticket, he might have to show up in court and take time off work, with comes with other complications. In light of that, he decided to pay the ticket.
- [8] He tells me that he was surprised when he then received a letter from ICBC around July 20, 2020 informing him that in fact that ticket did result in points against his license. I am not sure how many points, but they were sufficient to suspend his licence. He tells me the suspension would have a very serious impact on him. A suspension of driving licence can have a serious impact on people's lives. I understand that.

- [9] The issue now is having paid the ticket, he is deemed to have pled guilty to it. That arises from the ticket itself, but also applicable case law.
- [10] A copy of the ticket was put into evidence by Crown. On the back of the ticket, there are two sections with bold lettering: "How to Pay the Ticket" and "How to Dispute the Ticket." In the section "How to Pay the Ticket", there is a section called "What happens if you pay a ticketed amount in full," and it states clearly that you are deemed to have pleaded guilty to the offence.
- [11] Crown counsel referred me to case law that is relevant. There are three cases that address the principles a court has to take into account in order to decide whether to allow an accused person to withdraw a guilty plea: *R. v. Staples*, 2007 BCCA 616; *R. v. Jack*, 2012 BCSC 1991; *R. v. Alec*, 2016 BCCA 282.
- [12] I have some discomfort applying the stringent tests articulated in those cases in the context of a desire to dispute a speeding ticket. Nevertheless, I am mindful that the procedural protections offered in the Criminal Code are almost always greater than what one would get when dealing with the principles of administrative fairness in non-criminal offences. Accordingly, there are certain advantages to the appellant by applying the criminal law, where, among other things, proof is required to be proven beyond a reasonable doubt.
- [13] It is possible that procedures regarding withdrawal of a guilty plea may be more stringent in terms of their impact on the accused, but Crown counsel tells me, and I am satisfied, that this case law that applies in these circumstances.
- [14] In addition, in *R. v. Miller*, 2010 BCCA 39, the Court of Appeal considered an appeal by the Attorney General in circumstances when someone who did not dispute a ticket but also did not pay it, wanted to appeal from their deemed conviction. The Court of Appeal said that it was improper for it to take into account the impact on that person's driving privileges, which flowed from that kind of deemed conviction. The reasoning was those effects were not involved in the legal issues.
- [16] In my view, what is to be taken from *Richard* for present purposes is that, before an informed waiver of the right to be presumed innocent can be made, the recipient of a ticket must be informed that if the ticket is not disputed within 30 days he or she will be deemed to have consented to a conviction or, here, pleaded guilty. The recipient will have waived the Charter rights of presumed innocence and a hearing such that the court will then have no part in making a determination of guilt or imposing the prescribed fine. It is only the deemed guilty plea, and hence the loss of the recipient's s. 11(d) rights, that are the consequences of not disputing a ticket which are germane to a valid waiver. It is those consequences of which the recipient who chooses not to dispute a ticket must be informed.
- [17] The addition of penalty points to a driving record is an administrative function in which the court takes no part. Points do not affect any right a driver has but, rather, may affect what is a driver's privilege to hold a licence. Depending on the number of points that a driver may

have previously accrued, or may subsequently have added to his driving record, the points added as a result of an undisputed ticket being issued may have no immediate effect and be of no consequence to the exercise of the privilege. What may, in a broad sense, be said to be "consequences" of a deemed guilty plea will differ from one driver to another depending on the driver's record. These cannot, in my view, be consequences contemplated by what was said in *Richard*. They are not matters of which any given recipient of a ticket must be informed before his or her s. 11(d) Charter rights can be waived under s. 16(1) of the Offence Act.

- [18] It follows that I consider the judge erred in concluding Mr. Miller had not made an informed waiver of his s. 11(d) Charter rights under s. 16(1) of the Offence Act in choosing, as he did, not to dispute the ticket he received for having contravened s. 7A.01 of the Motor Vehicle Regulations. By virtue of the statement on the ticket, he was properly informed of the consequences germane to his choosing not to dispute the ticket and so waived his right to be presumed innocent and his right to a hearing by not disputing it within 30 days.
- [15] That reasoning was followed by Associate Chief Justice Cullen's decision in *R. v. Yilmaz*, 2015 BCSC 904, who stated that "the prospect of losing [one's] license due to an accumulation of points is not something that need have been brought to the appellant's attention before he decided whether or not to enter a guilty plea" (para. 4).
- [16] Therefore, what I am left with is Mr. Straus' understandable dismay that once he paid the ticket, he was deemed guilty. On an appeal he now wants to say: "I would like to change that plea and dispute the ticket", but that implicates a body of case law which makes it very difficult for him to accomplish that. It is unfortunate for him, and I understand the impact will be difficult on him, but he did understand when he paid that ticket that he was pleading guilty. He tells me he did not understand that doing so would end up meaning his licence would be suspended, based on what ICBC told him.
- [17] Even assuming that is true, given the Court of Appeal's comments from *Miller*, and this court's comments in *Yilmaz*, that is not something I am allowed to take into account to determine whether there was a problem with his deemed conviction. He tells me that there were circumstances that perhaps justified his speeding, but he was candid enough to say that he was speeding, although he says only a little bit over the limit. Unfortunately, in this case, the law simply does not allow him to dispute the ticket. Given the cases I have mentioned, and the other cases Crown referred me to, I have no option but to dismiss the appeal.

"Sharma J."

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