

CANADA / JUDGMENT

R. v. Tallio

2020 BCCA 14

COURT

British Columbia Court of Appeal

DECIDED

9 January 2020

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2020 BCCA 14 R. v. Tallio COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Tallio, 2020 BCCA 14 Date: 20200109 Docket: CA44096 Between: Regina Respondent And Phillip James Tallio Appellant Restriction on publication: Portions of this file are sealed or subject to publication bans in orders dated October 24, 2017, November 7, 2017, November 8, 2017, July 23, 2019, and August 8, 2019. A publication ban has been imposed restricting the publication, broadcasting or transmission in any way of the name and address of the residence the appellant will reside at during his judicial interim release. Further orders or directions may be issued pursuant to the November 8, 2017 order. FILE SEALED IN PART Before: The Honourable Madam Justice Bennett (In Chambers) On appeal from: An order of the Supreme Court of British Columbia, dated November 1, 1983 (R. v. Tallio, Prince Rupert Docket 74/83). Oral Reasons for Judgment Counsel for the Appellant: T.M. Arbogast R.M. Barsky K. Kirkpatrick, Articled Student Counsel for the Respondent: M.T. Ainslie, Q.C. J.A.M. Dickie Counsel for the Intervenor, Marion Bolton: S.J. Rauch Place and Date of Hearing: Vancouver, British Columbia January 8, 2020 Place and Date of Judgment: Vancouver, British Columbia January 9, 2020 Summary: Mr. Tallio re-applies for bail pending his appeal. Held: Application granted. The proposed release plan is sufficient to protect public safety.

- [1] BENNETT J.A.: Phillip Tallio brings his second application for judicial interim release pending appeal. For the reasons that follow, I would grant the application.
- [2] On August 9, 2019, I refused Mr. Tallio's first application in reasons indexed at 2019 BCCA 300. These reasons should be read in conjunction with those reasons. My main concern when I refused release was that the facility where he planned to reside could not provide sufficient supervision for him.
- [3] The Crown opposes his release.
- [4] This application is based on the John Howard Society accepting Mr. Tallio into one of its facilities. I have a complete affidavit, and heard evidence regarding the sufficiency of the supervision and programming available. I am satisfied that the John Howard Society will provide sufficient supervision of Mr. Tallio to protect the public safety. As a result, I am satisfied that the requirements for judicial interim release found in s. 679(3) of the Criminal Code, R.S.C. 1985, c. C-46 have been met. In order to satisfy the public safety aspect of the

public interest component, a number of conditions will be imposed as terms of his release. The conditions have generally been agreed to by the parties.

- [5] Thus, I order Mr. Tallio's release on a recognizance in the amount of \$10,000 without deposit or surety with the following conditions:
- a) You must keep the peace and be of good behaviour.
 - b) You must report to a bail supervisor no later than January 10, 2020 at Abbotsford Community Corrections at 2865 Cruickshank Street, Abbotsford, British Columbia, and thereafter once per week in person, or otherwise as directed by your bail supervisor.
 - c) You must reside at [residence name and address redacted], Abbotsford, British Columbia. You must abide by all of the rules and regulations required by [the residence]. If you are expelled from [the residence], or no longer reside there for any reason, you will surrender forthwith into police custody.
 - d) You are to go directly to [the residence] upon your release, in the company of your lawyer, a John Howard Society staff member or a Correctional Service of Canada employee.
 - e) You shall not leave the Province of British Columbia.
 - f) You will notify your bail supervisor and seek their permission before participating in any volunteer activity or obtaining employment. If you are granted permission by the bail supervisor to volunteer or work, you will provide a copy of this release document to a supervisor of the volunteer organization and/or your employer. You will immediately notify your bail supervisor if you are no longer volunteering or employed.
 - g) You shall have no contact directly or indirectly, including by social media, with Marion Bolton or her family known to you, nor with Blair Mack or his family known to you, except through legal counsel.
 - h) You are not to be in the presence of any person under the age of 16 years, unless accompanied by or in the presence of an adult at all times. You will not attend any public swimming area, community centre, daycare centre, school ground or playground where persons under the age of 16 years are present or can reasonably be expected to be present, except with the written permission of your bail supervisor, which you will carry with you.
 - i) You must not go to Bella Coola, Bella Bella or Hagensborg, British Columbia.
 - j) You must not consume alcohol or any illegal substances.
 - k) You must not be in possession of any weapons, including knives, except for the preparation of or eating food, or for the purposes directly related to your employment.
 - l) You shall obey the following curfew by being in the residence, which includes the exterior property of the residence, except for medical emergencies, or with the bail supervisor's written permission which must be carried with you:

- i. between the hours of 12:00 p.m. and 7:00 a.m. for the first thirty days of your release; ii. between the hours of 2:00 p.m. and 7:00 a.m. for the next thirty days of your release; iii. between the hours of 4:00 p.m. and 7:00 a.m. for the next thirty days of your release; and iv. after the first 90 days of your release, between the hours of 9:00 p.m. and 7:00 a.m.
- m) You must present yourself at the door of the above-noted residence when asked by a bail supervisor or peace officer.
- n) You must comply with the reporting requirements of [the residence], and report as and when directed to them, and by them.
- o) You must carry a copy of this release document with you at all times when outside your residence.
- p) You must have meetings as directed by [the residence] staff to ensure the progress and development of a Resident Action Plan and counselling program.
- q) Having consented, you shall continue to receive trauma counselling from Sandra Dykstra, which is funded through Indian and Northern Affairs Canada, or you shall work with [the residence] to locate and utilize a different counsellor if Ms. Dykstra is unable to provide continued counselling services.
- r) You shall not travel into the City of Vancouver, British Columbia unless accompanied by a John Howard Society staff member, or other person approved by your bail supervisor in writing, which you will carry with you, or with your counsel.
- s) You shall surrender into custody at 9:00 a.m. on March 30, 2020 to the Sheriff's office at the Law Courts at 800 Smithe Street, Vancouver, British Columbia. "The Honourable Madam Justice Bennett"

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