

CANADA / JUDGMENT

R. v. Vincent

2023 BCSC 2025

COURT

Supreme Court of British Columbia

DECIDED

15 August 2023

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2023 BCSC 2025 R. v. Vincent

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Vincent,

2023 BCSC 2025

Date: 20230815

Docket: 34964W

Registry: Vancouver

Rex

v.

Shane Ryan Emond Vincent

Before: The Honourable Justice Duncan

Oral Reasons for Judgment

Re s. 525 Detention Review

Counsel for the Crown:

J.W. LaPorte

Counsel for the Accused:

T.P. Ochitwa

Place and Date of Trial/Hearing:

Vancouver, B.C.

August 11, 2023

Place and Date of Judgment:

Vancouver, B.C.

August 15, 2023

- [1] Shane Vincent is before the court pursuant to s. 525 of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. He has been in custody for more than 90 days and his trial has not commenced. Mr. Ochitwa, counsel for Mr. Vincent, maintains that his client's continued detention is not necessary. Mr. LaPorte, counsel for the Crown, takes the position that nothing has changed since Mr. Vincent was detained on the secondary ground of s. 515(10) of the Code in April of this year and he should remain in custody pending trial.
- [2] Mr. Vincent is charged on Information 266826-2-C with one count of assault causing bodily harm to Serji Johal and one count of simple assault of Miranda Pozniak. The Crown is not proceeding with the third count on the Information, which is also a charge of simple assault. The Crown is proceeding summarily.
- [3] The two offences arose on August 11, 2022. Early that afternoon, Ms. Pozniak was walking along Smithe Street in downtown Vancouver when an individual approached her from behind and grabbed her purse. Ms. Pozniak pulled away, causing her assailant to swear and spit at her.
- [4] Ms. Pozniak watched the man continue eastbound along Smithe Street, where he encountered Serji Johal. Without warning, the man threw his elbow and shoulder into Ms. Johal's upper body. She fell to the ground and suffered fractures to both hands.
- [5] Ms. Johal was 86 years old at the time.
- [6] Ms. Pozniak called 911. Police arrested Mr. Vincent and released him on an undertaking. The assault of Ms. Johal was captured on CCTV.
- [7] At the time of the Pozniak and Johal assaults, Mr. Vincent was on bail for a December 6, 2021 assault. Staff at a Tim Horton's outlet asked him to wear a mask. He became belligerent and spat at a staff member. He entered a guilty plea to that offence on August 12, 2022, the day after he was released on an undertaking for the August 11 allegations.
- [8] The August 11 undertaking lapsed before the Crown approved charges, which did not occur until January 5, 2023.
- [9] On October 19, 2022, Mr. Vincent entered guilty pleas to three counts of assault. Two occurred on September 3, 2022 and one occurred on September 18.

- [10] On September 3, Mr. Vincent approached an individual who was unknown to him and kned them in the thigh with significant force. Mr. Vincent mumbled "Asian" then ran away. Later that same day, Mr. Vincent approached another individual who was simply minding her own business, standing on the sidewalk, and struck her on the side of the head with an open palm.
- [11] On September 18, 2022, Mr. Vincent he approached a woman on the street. He asked her if she spoke English. When she replied no, he spat in her face. Following his arrest, he remained in custody until he was sentenced on October 19. He received a sentence of 9 days in jail plus probation for one year after being credited with 50 days time served.
- [12] On November 10, 2022, January 5, 2023 and February 14, 2023 Mr. Vincent failed to report to his probation officer. By April 17, 2023, Mr. Vincent was in custody on the probation breach charges as well as the assault charges from August 11, 2022. He applied for judicial interim release before Judge Sutherland.
- [13] Mr. Ochitwa outlined Mr. Vincent's substance abuse and mental health problems and sought his release from custody to his home of three years at the Murray Hotel on Hornby Street. Counsel noted that Mr. Vincent had been free of substantive charges for some six months prior to his bail hearing and had cut back on his drug use in an effort to detox so he could go into treatment.
- [14] Judge Sutherland reviewed Mr. Vincent's background and criminal record. He noted that the purpose of reporting to a probation officer was to address Mr. Vincent's mental health and substance use concerns for his own benefit and for the protection of the public. Failing to report puts the public at risk.
- [15] Judge Sutherland was not satisfied that Mr. Vincent's plan of simply going back to where he had been living and trying to detox himself through willpower could overcome the substantial likelihood that he would offend, particularly in light of the nature of the random unprovoked assaults he was charged with, his record for those types of offences and his failure to report.
- [16] Mr. Vincent entered guilty pleas on May 5 of this year to the probation breaches. He received a sentence based on the time he had served in custody.

The Nature of a s. 525 Detention Review

- [17] The question to be addressed at a s. 525 detention review hearing is whether the continued detention of the accused is justified within the meaning of s. 515(10) of the Code. Part of that analysis engages the effect that the amount of time that has elapsed, or the anticipated passage of time until trial, will have on the proportionality of detention and whether the continued detention of the accused could erode public confidence in the administration of justice: *R. v. Myers*, 2019 SCC 18 at para. 50.

- [18] Mr. Vincent has been in custody for 117 days. His trial date is September 7, only 22 days from today. I did not hear submissions that there has been a delay in getting this matter to trial.
- [19] By the time of trial, Mr. Vincent will have somewhere in the range of 150 days of pre-trial credit when the multiplier of 1.5 to 1 is applied. While the Crown is proceeding summarily, the maximum sentence for each count is two years less a day. Mr. LaPorte advises that if Mr. Vincent is convicted, the Crown would seek a sentence of between 18 and 20 months imprisonment.
- [20] I find there is no risk that Mr. Vincent would serve more time on remand than he would if convicted for the offences he is charged with. The issue before me turns on whether the secondary ground concerns that Judge Sutherland identified continue to tip the scale in favour of detention rather than release. There is no suggestion that Judge Sutherland erred in law or misstated any aspects of the allegations against Mr. Vincent or anything else that occurred at the bail hearing.
- [21] Mr. Vincent is entitled to the presumption of innocence. He is also entitled to release if, as an offender in a reverse onus situation, he can demonstrate that his continued detention is not necessary for the protection or safety of the public, having regard to all the circumstances including any substantial likelihood that he will, if released from custody, commit a criminal offence or interfere with the administration of justice: s. 515(10)(b) of the Code.
- [22] The reverse onus situation applies at the s. 525 stage if it applied at the original bail hearing: *R. v. Sarkozi*, 2010 BCSC 1410; *R. v. Ghuman*, 2019 BCSC 1708.
- [23] Mr. LaPorte sought to rely on the tertiary ground in s. 515(10)(c) as a factor for consideration; however, the Crown at first instance did not rely on it. In the absence of a demonstrated error, the Crown must tender new evidence and/or demonstrate a material change of circumstances to rely on a ground not dealt with at first instance: *R. v. Denesevich*, 2019 ONSC 3823 at para. 52. None has been articulated and I will confine my analysis to the secondary ground.
- [24] Mr. Ochitwa seeks Mr. Vincent's release on the same terms proposed before Judge Sutherland. He advised me that Mr. Vincent has been addicted to crack cocaine for some 20 years, stemming from his arrival in Vancouver to pursue a promising singing career. His efforts were derailed when his uncle introduced him to drugs and he has struggled ever since.
- [25] Mr. Ochitwa says that Mr. Vincent presents as a different person than he did 119 days ago because he has been sober and wants to stay that way. He is also now on medication for his mental health issues and has been getting short counselling sessions on a weekly basis. Mr. Ochitwa says that Mr. Vincent feels better and has the idea that he can get his life back on track. He would like to be able to call his daughter on her birthday at the end of August, he

wants to continue with his singing career and he does not want to lose all of his possessions, which is likely to happen if he is not released before the end of August. I understand he will be evicted at that point.

- [26] Mr. Ochitwa urges me to release Mr. Vincent on a curfew and residence condition with a "Rogers order" to stay on his prescribed medications and advise his bail supervisor if he has stopped taking them. If he does stop, Mr. Ochitwa maintains that the effects will be known very quickly and Mr. Vincent can be apprehended again.
- [27] In *R. v. Abdel-Rahman*, 2010 BCSC 189 at para. 23, Mr. Justice Halfyard set out the considerations a judge must take into account order to reach the conclusion that detention is justified on the secondary ground:
- a) First, that there is a risk that the accused will either commit an offence, or will interfere with the administration of justice, if he is released;
 - b) Second, that this risk is of such magnitude that it amounts to a "substantial likelihood";
 - c) Third, that the said risk would constitute a danger to public safety (in general, or to a specific victim or witness) if the accused is released; and
 - d) Fourth, that the detention of the accused is "necessary," because the identified danger to public safety cannot be prevented or reduced to an acceptable level by bail conditions (such as reporting to authorities, curfew, no-contact, mobility restrictions, sureties or cash bail).
- [28] In Mr. Vincent's case, I am satisfied that there is a risk that he will commit an offence if he is released. His adult criminal record commences in 2000 and reflects a steady stream of convictions, apart from a gap between the middle of 2015 and December 2021 when the Tim Horton's incident arose. He has been convicted of failure to abide by court orders on more than eight occasions and he has numerous convictions for assault and uttering threats which predate the spate of offences he has either acknowledged through guilty pleas or been charged with since the December 2021 Tim Horton's incident.
- [29] I am satisfied that the risk to reoffend amounts to a substantial likelihood, based on his criminal record, in particular the pattern of his offending between December 2021 and February 2023.
- [30] I am satisfied that the risk of Mr. Vincent offending is a danger to public safety, specifically the safety of unsuspecting pedestrians in the downtown core. I am mindful of the presumption of innocence, but I am equally mindful of the fact that Mr. Vincent has entered guilty pleas to assaulting people who are either simply going about their business or, in the case of the Tim Horton's assault, request that Mr. Vincent comply with health regulations in place during the Covid pandemic and wear a mask to protect himself and others.

- [31] Finally, I am satisfied that Mr. Vincent's detention is necessary because his risk of reoffending cannot be prevented or reduced to an acceptable level through the imposition of conditions. Three times in late 2022 and in early 2023, Mr. Vincent failed to report to his probation officer. His release plan - to return to his home, report to a bail supervisor and maintain his sobriety through willpower over an addiction that has had him in its grips for 20 years - does not reduce the risk he poses to an acceptable level.
- [32] I have no doubt that Mr. Vincent wants to stop using drugs and get his life back, but the risk to the public of his reoffending must take precedence in these circumstances, notwithstanding the presumption of innocence. I find his continued detention is necessary.

"Duncan J."

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