

CANADA / JUDGMENT

R. v. Walsh

2021 BCSC 261

COURT

Supreme Court of British Columbia

DECIDED

13 January 2021

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2021 BCSC 261 R. v. Walsh IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Walsh, 2021 BCSC 261 Date: 20210113 Docket: 31351W Registry: Vancouver Regina v. Justin Randy Walsh Before: The Honourable Mr. Justice Verhoeven (appearing via teleconference) On review from: Provincial Court of British Columbia (R. v. Walsh, Surrey File No. 241160-1) Oral Reasons for Judgment re Detention Review Hearing (In Chambers) Counsel for the Crown appearing via teleconference: N.M.D. Reithmeier Counsel for the Defence appearing via teleconference: M. Lowe Place and Date of Trial/Hearing: New Westminster, B.C. January 13, 2021 Place and Date of Judgment: New Westminster, B.C. January 13, 2021

- [1] THE COURT: This is an application brought pursuant to s. 525 of the Criminal Code, R.S.C., 1985, c. C-46 [Code] for review of the custodial status of the accused, Mr. Walsh.
- [2] The order for detention was made by Judge Hamilton in the Provincial Court on September 18, 2020. In his decision Judge Hamilton lays out the circumstances of the alleged offences, which relieves me of the necessity to do so in any detail.
- [3] As Judge Hamilton indicates, there are numerous charges; 22 counts on a 35-count information. The charges involve Mr. Walsh together with Mr. Billy on many of the counts, and separately on the others.
- [4] The Crown makes a preliminary objection, which is that Mr. Walsh is not eligible for a review of detention under s. 525 because he is "required to be detained in custody in respect of any other matter", within the meaning of s. 525(1) of the Code. I accept that submission.
- [5] The circumstances are that in addition to these matters, which are being dealt with in the Surrey Provincial Court, Mr. Walsh is facing other charges being dealt with in the Abbotsford Provincial Court. The Abbotsford matters involve several charges of breach of probation, also one of robbery, and associated offences. Mr. Walsh is detained in custody on those matters. An arraignment is set for January 28, 2021, in Abbotsford.
- [6] The Abbotsford matters are not before me on this application. They were the subject of a s. 525 review in this court previously. Justice Harvey confirmed the detention on May 25, 2020.

- [7] The relevant portions of Section 525 of the Criminal Code are as follows: Time for application to judge 525 (1) The person having the custody of an accused -- who has been charged with an offence other than an offence listed in section 469, who is being detained in custody pending their trial for that offence and who is not required to be detained in custody in respect of any other matter -- shall apply to a judge having jurisdiction in the place in which the accused is in custody to fix a date for a hearing to determine whether or not the accused should be released from custody, if the trial has not commenced within 90 days from
- (a) the day on which the accused was taken before a justice under section 503; or
 - (b) in the case where an order that the accused be detained in custody has been made under section 521, paragraph 523.1(3)(b)(ii) or section 524, or a decision has been made with respect to a review under section 520, the later of the day on which the accused was taken into custody under that order and the day of the decision. The person shall make the application immediately after the expiry of those 90 days. Release order
- (5) If, following the hearing, the judge is not satisfied that the continued detention of the accused in custody is justified within the meaning of subsection 515(10), the judge shall make a release order referred to in section 515.
- [8] I am urged to take a purposive view of the section, in light of the intent, as described in recent Supreme Court of Canada cases such as *R. v. Myers*, 2019 SCC 18; *R. v. Antic*, 2017 SCC 27; *R. v. Zora*, 2020 SCC 14. However, I find myself constrained by the language of the section, which seems quite clear. It is clearly the case that Mr. Walsh is required, presently, to be detained in custody in respect of other matters.
- [9] Also, I consider that the decision of this Court in *R. v. Sihata*, 2020 BCSC 761 is not distinguishable. In that decision the court held that where the accused is in custody on other matters the court has no jurisdiction under s. 525.
- [10] Of course the practical matter is that a favourable decision to the accused on this application would not result in his release, because he is required to remain in custody on the other matters. No release order can be made. Bearing in mind the words that I mentioned, the intent of s. 525 is to apply where the application could succeed -- in other words, where the accused could be released from custody, on conditions or otherwise -- and that is not the case here.
- [11] It is argued that an order in the accused's favour on this application could have a practical effect, because it could make a difference in relation to an application that might be brought, for example, under s. 520, in respect of the Abbotsford matters. That may be so, but I cannot fit that reasoning within the plain wording of s. 525.
- [12] So I accept the Crown's preliminary objection, and I rule that the court has no jurisdiction to entertain the application. The application is therefore dismissed. "Verhoeven J."

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