

CANADA / JUDGMENT

R. v. White

2024 BCSC 1839

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 1839 R. v. White

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. White,

2024 BCSC 1839

Date: 20241003

Docket: 36633W

Registry: Vancouver

Rex

v.

Shane Randy White

Before: The Honourable Justice Shergill

Oral Reasons for Judgment

Counsel for Crown:

T. Cullen

Counsel for Accused:

R. Larmer

Place and Date of Hearing:

Vancouver, B.C.

September 24, 2024

Place and Date of Judgment:

Vancouver, B.C.

October 3, 2024

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I. Overview

[1] THE COURT: Shane Randy White is before the Court for a detention review hearing pursuant to s. 525 of the Criminal Code, R.S.C. 1985, c. C-46. He has been in custody in excess of 90 days. He is scheduled to go to trial in January 2025.

[2] Mr. White is charged on two Informations:

- a) The first is Information 270521-1, which is a 4-count indictment concerning weapons related offences, including robbery and aggravated assault. These offences are alleged to have occurred on July 20, 2023 in Vancouver, BC.
 - b) The second is Information 256394-1, which is a 2-count indictment for robbery and wilfully resisting or obstructing a peace officer. These offences are alleged to have occurred in Surrey, B.C. on April 18, 2024.
- [3] The second set of offences are alleged to have occurred while Mr. White was out on bail in relation to the first set of charges. Both counsel agree that he is in a reverse onus situation at this detention review hearing.

II. Statutory Framework

- [4] Pursuant to s. 525 of the Criminal Code, this Court is required to consider whether the continued detention of Mr. White is justified within the meaning of s. 515(10) of the Criminal Code. Section 515(10) provides justification only on one or more of following grounds:
- a) To ensure the accused's attendance in court;
 - b) For protection of the safety of the public; and
 - c) To maintain confidence in the administration of justice.
- [5] Crown Counsel seeks detention of Mr. White on the primary and secondary grounds.
- [6] Crown Counsel relies on the seriousness and circumstances of the alleged offences, Mr. White's criminal record, his failure to comply with his bail conditions, and the fact that the arrest for the Surrey incident occurred while Mr. White was out on bail for the Vancouver charges and had been absent without leave for approximately two months.
- [7] Defence Counsel submits that the proposed bail plan is in keeping with the jurisprudence. It will adequately address the primary and secondary concerns, such that the risk that Mr. White will not attend court and the risk to public safety will be reduced to an acceptable level. Further, Defence Counsel argues that any remaining risk, albeit small, is outweighed by the prejudice to Mr. White of his ongoing detention.
- [8] At the heart of a s. 515(10) analysis is the presumption of innocence. Section 515(1) mandates that an accused charged with an offence other than a s. 469 offence, be released without conditions after giving an undertaking to a judge. If the Crown wants the court to impose any restrictions on the accused's freedom before the accused has been tried, the Crown has the duty to establish why the accused should be kept in jail pending trial or why conditions should be placed on the accused.
- [9] However, both counsel agree that by operation of s. 515(6)(a)(i) there is a reverse onus on the accused in this case. Because Mr. White is alleged to have committed an indictable offence while out on bail, the onus falls on him to show cause why his continued detention is not justified.

III. Factors to Consider

- [10] In determining whether ongoing detention is justified, the court must consider a number of factors.

A. Particulars of the offences

- [11] It is alleged that in the late hours of July 20, 2023, a male went into a building on Hastings Street. The male interacted with the building manager, Alan Angus. He ordered Mr. Angus into a hallway at gunpoint. The male then had an interaction with another person, Derek Khan, who apparently was a resident in the building.
- [12] A verbal altercation occurred between the male and Mr. Khan, during which Mr. Khan was shot twice in the leg. The male fled the scene. The police were called, and they recovered 2 bullets and shell casings, but did not recover the firearm. Part of the incident was caught on CCTV. The victims identified Mr. White, who was known to them, as the assailant. Mr. White was apprehended sometime later.
- [13] Mr. White had a bail hearing on December 14, 2023. Judge Gordon released Mr. White on the condition that he post a \$5,000 cash deposit, report to a bail supervisor at least twice per week in person, reside at his girlfriend's residence, and abide by a curfew which required him to be present at the residence 24 hours a day with the exception of the three hours from noon until 3:00 p.m., Monday to Friday.
- [14] In early February 2024, the police conducted some curfew checks at Mr. White's residence. On numerous instances, the authorities were not able to get in touch with Mr. White as he allegedly failed to respond to phone calls or present himself at the door. In late February 2024, Mr. White asked permission from his bail supervisor to change his residence. The bail supervisor denied the request, advising Mr. White that he needed to seek permission from the court. Subsequent efforts to contact Mr. White at the residence were unsuccessful. A warrant was issued for his arrest, and the Crown brought an application to revoke his bail.
- [15] The police had no further interactions with Mr. White until April 18, 2024, when they responded to the call related to the Surrey incidents.
- [16] Close to midnight on April 17, 2024, a woman called the police and reported that she was following someone who had stolen her boyfriend's cell phone. The theft ostensibly occurred near the Boston Pizza restaurant at the Central City shopping mall, located near Surrey Central Skytrain Station. The woman told the police that she had followed the man to the Surrey Central Skytrain Station. A police officer arrived at the scene, and the woman pointed out Mr. White. The police officer got on the Skytrain and began to arrest Mr. White. Apparently, an altercation ensued, but Mr. White was ultimately arrested. He has been in custody since that time.
- [17] Mr. White appeared before Judge St. Pierre on May 13, 2024, and consented to a detention order.
- [18] He has now been brought before the Court pursuant to the s. 525 detention review hearing process, because more than 90 days have passed since his detention.

B. Circumstances of the accused

- [19] Mr. White is 29 years old. His parents immigrated to Canada from Jamaica. He grew up in Toronto and experienced significant trauma starting at a young age. His father was abusive and Mr. White was also exposed to violence in the community. Mr. White began to use substances at around the age of 14. By the time he was 20, he had experienced the death of his brother, had almost been shot himself, and had been subjected to the trauma of his father stabbing his mother. Mr. White's attempts at coping with these events lead to his increased use of alcohol and cocaine.
- [20] At some point Mr. White relocated to British Columbia. Mr. White has a 3-year-old child with his girlfriend, Lauren. Lauren is supportive of him, as is her mother. Indeed, Mr. White was released to Lauren and her mother's residence when he allegedly breached his bail conditions.
- [21] Mr. White views his addictions as being the source of much of his criminality. He has decided to enter an alcohol and drug treatment program at New Vision S.H. Society ("New Vision"), which forms part of his proposed release plan.
- [22] Before I set out the details of the proposed release plan, I will address Mr. White's criminal record.
- [23] Mr. White's contact with the criminal justice system began while he was still a youth.
- [24] Mr. White's adult record begins in 2015, when Mr. White was convicted in Ontario for "exercising control" contrary to the now-repealed s. 212(1)(h) of the Criminal Code. He was given a suspended sentence with probation for 12 months. Mr. White served about seven months in pre-sentence custody, which appears to be the longest period that he has been detained in a custodial setting, thus far. Another conviction followed a few months later, for failure to comply with the recognizance. He received a fine and credit for four days of pre-sentence custody.
- [25] Three years transpired before Mr. White's next conviction. In 2018, he was convicted in Ontario of assault with a weapon and given a suspended sentence with three years' probation. Mr. White was also placed on a weapons prohibition for 10 years. The weapons prohibition was in effect at the time of the alleged Vancouver offence.
- [26] In 2020, Mr. White was convicted in Ontario of assault and theft of a motor vehicle. He received another suspended sentence and this time was placed on probation for 24 months.
- [27] Counsel agree that while Mr. White's criminal record is concerning, relatively speaking, it is not considered to be extensive.

C. Strength of the Crown's Case

- [28] Both counsel agree that the Crown's case on the Vancouver offence is relatively strong. Defence characterizes the ultimate question before the court as one of "recognition". In this case, the eyewitness testimony is from people that are ostensibly known to Mr. White, so this testimony may not suffer from the same inherent frailties of stranger identification. There is also CCTV footage which, according to the Crown, appears to show Mr. White at the location of the incident on the day in question.
- [29] In contrast to the Vancouver charges, the Crown's case on the Surrey incident is not very strong. The main issue in the Surrey charges will also be identification. However, the eyewitness testimony could be characterized as being less reliable, as the witnesses are strangers to Mr. White and the events occurred at night.

D. Amount of Time in Pre-Trial Custody

- [30] When reviewing detention under s. 525 of the Criminal Code, the court should consider the amount of time the accused has already been - and could remain - in pre-trial custody, and how this impacts the appropriateness of detention: *R v. Myers*, 2019 SCC 18 at para. 50.
- [31] The ultimate question is whether the time in pre-trial custody is proportionate to the sentence the accused would likely serve if convicted: *Myers* at para. 51. When the period of pre-trial custody is equivalent to or exceeds a fit sentence, this threatens to erode public confidence in the administration of justice: *Myers* at paras. 50-51.
- [32] Mr. White has been in custody since April 18, 2024. As of the date of this hearing, he has spent approximately 5 months in pre-trial custody. Calculated at time-and-a-half, this amounts to approximately 7.5 months of a custodial sentence. Mr. White's trial on the Surrey charges is set to commence on January 9, 2025. His trial on the Vancouver charges is set to commence on January 15, 2025. If Mr. White remains in custody, then by the conclusion of the trial proceedings, he will have spent approximately nine months in pre-trial custody. At time-and-a-half, this translates to approximately 13.5 months of a custodial sentence. There is no dispute that if Mr. White is convicted of the Vancouver offence, based on his record and circumstances of the offence, that could result in a period of incarceration ranging from four to six years. If Mr. White is convicted of the Surrey offence, the sentence would likely be considerably less, calculated in months rather than years. This sentence, if imposed, would most likely be served concurrently.
- [33] The potential sentences on conviction of the offences, raises concerns about the appropriateness of continuing to keep Mr. White in detention pending the trials. Should Mr. White be convicted of the Surrey charges, 13.5 months in pre-trial custody substantially exceeds the anticipated sentence. While 13.5 months in pre-trial custody is less than the anticipated sentence for a conviction on the Vancouver charges, it nevertheless represents a substantial portion of the anticipated custodial sentence. It must be borne in mind that Mr. White has not yet been convicted of any of these offences, and is innocent until proven

guilty. Ongoing detention pending trial becomes less justifiable in these circumstances, particularly in the face of a reasonable release plan.

IV. Proposed Release Plan

[34] Defence Counsel proposes that Mr. White be released on bail on the condition that Mr. White:

- a) post a \$2,000 cash deposit and a \$3,000 promise to pay;
- b) be released directly to a representative of New Vision, and be required to reside at New Vision pending trial;
- c) not be permitted to leave New Vision unless he is in the direct company of a representative of the facility;
- d) be under electronic monitoring for the duration of the time that he is at New Vision;
- e) report regularly to his bail supervisor;
- f) be prohibited from possessing any weapons; and
- g) have no contact with the complainants on either of these matters.

(the "Release Plan")

[35] In support of the Release Plan, counsel has submitted a letter from New Vision which provides details about their program; how they deal with residents that are in contact with the criminal justice system to address concerns about compliance with bail conditions; their code of conduct and expectations of all residents; and the consequences of a breach of the code of conduct or rules and regulations of New Vision.

[36] A Technical Suitability Report ("TSR") has also been provided which indicates that New Vision's residences are suitable for electronic monitoring. The TSR sets out some proposed terms and conditions for release, should the Release Plan be approved. Mr. White has indicated a willingness to abide by those proposed conditions, in addition to the Release Plan.

[37] Defence counsel argues that short of a substantial cash or security deposit, there is no more restrictive form of release imaginable than what is being proposed above. It is submitted that this proposed release plan will satisfy any concerns that arise with regard to Mr. White not attending court or to his re-offending.

[38] Crown Counsel opposes release on the proposed bail conditions on the grounds that the Release Plan is inadequate to address the primary and secondary ground concerns that are raised.

[39] I turn now to my analysis of the issues raised.

V. Analysis

- [40] I start with the principle that an accused person is at all times presumed to be innocent.
- [41] Despite the reverse onus that is placed on Mr. White in this case, pre-trial detention of an accused is an exception and not the rule. As the court affirmed in *R. v. Antic*, 2017 SCC 27 at para. 31, all accused persons have a constitutionally-protected right to reasonable bail: Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.) 1982, c. 11, s. 11(e).
- [42] At issue is whether Mr. White has satisfied me that his continued detention is not justified on either the primary or secondary grounds.

A. Primary Grounds - Ensure attendance in court

- [43] Crown counsel submits that Mr. White's continued detention is required to ensure his attendance at court for the trial. According to the Crown, this Court should be concerned that Mr. White will not attend court should he be released, given his failure to abide by the conditions that were imposed on him when he was released on bail in December. Further, the fact that Mr. White was at large for several months before being apprehended, indicates that he is a flight risk.
- [44] In my view, continued detention on the primary ground is not warranted. I agree that it is concerning that Mr. White was absent without leave for a period of approximately two months. However, there is no evidence that Mr. White has a history of failing to attend court. Prior to the events of February 2024, the only relevant conviction was for a failure to comply with a recognizance, which related to an offence that is almost a decade old. Further, the terms of the previous judicial interim release order were substantially different than what is currently proposed. I find that the risk that Mr. White may not attend court can be adequately mitigated with the requirement for electronic monitoring and the very stringent curfew conditions that are proposed.
- [45] I now turn to the secondary ground, which is the main ground the Crown advances for opposing Mr. White's release on the proposed bail terms.

B. Secondary Grounds - Protection of Public Safety

- [46] In *R. v. Abdel-Rahman*, 2010 BCSC 189, para. 23, the Court set out the following four step analysis, which is useful when considering detention under the secondary grounds:
- a) whether there is a risk that the accused will either commit an offence, or will interfere with the administration of justice if he is released; if so
 - b) whether the risk is of such magnitude that it amounts to a substantial likelihood; if so
 - c) whether the risk would constitute a danger to public safety if the accused is released; and if so

- d) 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.
- [47] I find that the first three concerns are met in this case, such that there is a substantial likelihood that Mr. White will commit an offence if he is released, and that this would constitute a danger to public safety. However, I do not find that the detention of Mr. White is necessary because the identified danger to public safety can be prevented or reduced to an acceptable level by the Release Plan.
- [48] To that end, I note that New Vision operates a reputable recovery facility with the aim of teaching residents the tools needed to reintegrate them back into society as positive and productive members. The residences are monitored and staffed 24 hours per day, and anyone staying in the facility must agree to abide by New Vision's rules and regulations. These include: refraining from possessing any drugs or weapons; agreeing to random witnessed urine screenings for drugs and alcohol; and refraining from participating in illicit or illegal activity. New Vision requires strict compliance with their conditions and has a policy to report all infractions and breaches immediately to the local police department and Corrections.
- [49] In addition to the strict conditions at New Vision, Mr. White has agreed to electronic monitoring and leaving the facility only when under the direct supervision of a representative of New Vision. This, combined with the other terms of the Release Plan, provides significant assurance that Mr. White will be under constant supervision, thereby reducing any threat to public safety.
- [50] Mr. White's proposal to attend New Visions' residential treatment program reflects his willingness to turn his life around by focusing on the root causes of his criminality. He is aware that to do so, he must overcome his addictions and address his unresolved psychological issues. Those are laudable goals and, if Mr. White is successful, they will not only benefit him personally but also society as a whole. Success with the New Visions treatment program could mark the end of his criminality and ensure that he does not pose a danger to public safety in the future. Though this will not be easy, and Mr. White will likely face an uphill battle, it is important that he be given an opportunity to do so.
- [51] I find the two decisions on which Crown counsel relies to be distinguishable from the facts of this case.
- [52] In *R. v. Romanowski*, 2019 BCSC 1472, Justice Devlin concluded that the accused's detention pending trial was warranted under the secondary ground. In denying bail, Justice Devlin noted at para. 14, that a significant portion of the accused's record was comprised of repeated breaches of court orders which significantly heightened the skepticism regarding the efficacy of his bail plan. Such a history is absent in Mr. White's case.

- [53] Justice Devlin's concern expressed at para. 13 of Romanowski - that the proposed treatment would not adequately address the accused's criminality because the criminality was not solely caused by substance abuse issues - does not arise in this case. Mr. White experienced significant childhood trauma, which likely was a substantial contributing factor to his current criminality. The evidence from New Vision is that to treat the addiction, they employ a cognitive behavioural therapy model which aims to address: unresolved grief and loss; trauma and PTSD; and anger management. I am satisfied that the psychological treatment offered at New Vision as part of their residential treatment program, will adequately address the root causes of Mr. White's criminality, whether it arises from addiction alone or multiple factors such as trauma and PTSD.
- [54] In *R. v. Wareing*, 2019 BCSC 1878, which is another decision by Justice Devlin, the accused had a fairly recent criminal record and was on probation when he was alleged to have committed the subject offences. He was denied bail on the proposed release plan for several reasons, including the earlier articulated concern that the treatment would not address the root cause of the accused's criminality. At para. 16, Justice Devlin also noted that the proposed treatment facility was not licensed or authorized by the health authority. That is not the case here - as noted earlier, New Vision is a reputable agency and there are no concerns raised about the quality and efficacy of their programs.
- [55] After considering all of the evidence before me, I conclude that Mr. White has met the onus of establishing that the Release Plan will reduce the risk to public safety posed by his release on bail, to an acceptable level. In coming to this conclusion, I do not intend to minimize the gravity of the concerns raised by Mr. White failing to comply with his previous release conditions. The current charges that he faces in relation to alleged crimes committed by him during that time, are serious, and should not be taken lightly. However, I find that the Release Plan will adequately address the concerns that are raised.

VI. Release Conditions

- [56] Mr. White, will you please stand.
- [57] I order that you be released upon entering into a recognizance in the amount of \$5,000, which includes posting a cash deposit in the amount of \$2,000, and a promise to pay \$3,000.
- [58] You are to be released directly to a representative of New Vision.
- [59] You are to report immediately upon release to the Surrey North Community Corrections Office located at 103-10475 138th Street, Surrey, B.C., to be fitted with the electronic supervision equipment. If that office is closed, you must attend daily during regular business hours until you have been fitted with the electronic supervision equipment. After that, you must report as directed by the bail supervisor.
- [60] You must comply with the electronic supervision agreement, including the wearing of and care for the electronic supervision equipment.

- [61] You must reside at one of the five registered assisted-living residences operated by New Vision, and the residence must be approved in advance by your bail supervisor. You must also provide your bail supervisor with the address of the residence to which you are admitted, and your phone number. You must not change your residence or your phone number without written permission from your bail supervisor.
- [62] For the duration of this order, you must remain inside your residence at New Vision under house arrest 24 hours per day, 7 days per week. You must present yourself immediately at the door to your residence or answer the phone when any peace officer or bail supervisor attends at your residence or calls to check your compliance with the curfew condition of this order.
- [63] You may only be away from your residence in the company of a representative of New Vision, and for the following reasons:
- a) With the prior written permission of your bail supervisor. Such permission is to be given only for compelling reasons. You must carry the written permission with you when you are outside the residence and present it upon demand of the peace officer.
 - b) In the event of a medical emergency to attend at a health care facility, or when traveling directly to, or returning directly from the facility. If requested, you must provide your bail supervisor with written confirmation that you went to the facility, signed by a representative of the health care facility to which you went.
 - c) For your attendance at court. You must personally attend each court appearance unless you are excused by this court.
- [64] Regardless of the reason that you are absent from your residence, at no time are you to leave the New Vision facility without electronic supervision or a supervisor.
- [65] You must not possess or consume alcohol, drugs or any other intoxicating substances except in accordance with a medical prescription.
- [66] Having consented, you must attend all treatment as required by the healthcare professionals at New Vision, including attending all scheduled individual or group therapy appointments with a doctor, psychologist, or counsellor; and taking all medications prescribed to you.
- [67] You must not possess, either personally or through another person, any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition or explosive substance, or anything that resembles a weapon or firearm, as defined in s. 2 of the Criminal Code. The only exception is that you may be in possession of a knife at your residence which is used solely for the purpose of preparation and consumption of meals.

[68] You must not have any contact, directly or indirectly, with Alan Angus, Derek Khan, Robert Campbell, or Fahim Faysal. This includes that you may not attend at any residence, place of employment, place of education, or place of worship of these individuals that is known to you or becomes known to you.

[69] During the period of your release you must keep the peace and be of good behaviour.

"Shergill J."

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