

CANADA / JUDGMENT

R. v. Wilder

2006 BCCA 85

COURT

British Columbia Court of Appeal

DECIDED

23 February 2006

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2006 BCCA 85 R. v. Wilder COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Wilder, 2006 BCCA 85 Date: 20060223 Docket: CA31910 Between: Regina Respondent And Dara Wilder Appellant BAIL REVIEW UNDER SECTION 680(1) OF THE CRIMINAL CODE The Honourable Chief Justice Finch (In Chambers) Written Submission of the Applicant Filed: February 7, 2006 Written Submission of the Crown Filed: February 21, 2006 Place and Date of Judgment: Vancouver, British Columbia February 23, 2006 Reasons for Judgment of the Honourable Chief Justice Finch:

- [1] Mr. Wilder applies under Section 680(1) of the Criminal Code for a direction that the order of Madam Justice Newbury refusing him bail pending his application for leave to appeal to the Supreme Court of Canada be reviewed by a division of this Court.
- [2] The applicant was convicted on 17 December 2003 of seven counts of fraud, and one count of possessing the proceeds of those frauds, following a lengthy re-trial of charges based on events in 1984. On 14 May 2004 the applicant was sentenced to nine years imprisonment, and a restitution order for \$5,000,000 was made.
- [3] The applicant's appeal from conviction was heard by this Court in November 2005. On 3 January 2006 reasons for judgment were pronounced dismissing the appeal. On 7 January 2006 the applicant filed a notice of application for leave to appeal to the Supreme Court of Canada. That leave application is presently pending.
- [4] Mr. Wilder's application for release came before Madam Justice Newbury on 23 January 2006. Her reasons for refusing the application are summarized in this paragraph:
- [7] At the end of the day, I am not satisfied that if bail were granted, Mr. Wilder would necessarily turn himself in to the Canadian authorities when travel to the U.S. or elsewhere is an easy matter to arrange. As for the grounds of appeal, I think it fair to say that they are dubious if not frivolous, arising as they do out of a very strained reading of the reasons of one member of the panel who was speaking only for herself. Even Southin J.A. described the case against Mr. Wilder as "overwhelming", and as counsel are aware, the room for appellate interference with a trial judge's findings of fact is very limited.

- [5] On the appeal against conviction, members of the court expressed differing views as to the admissibility at trial of the evidence of the witness Russ. The majority held that evidence to be admissible. Madam Justice Southin was of the opinion that it was not admissible. However, she held that even without the evidence of Russ, the Crown's case was "overwhelming." All three judges agreed that the appeal ought to be dismissed.
- [6] Apart from the issue of admissibility, the case at trial appears to have turned, in addition to the documentary evidence, on the credibility and reliability of the witness Breitzman.
- [7] Although many other grounds of appeal are set out in the applicant's application for leave to appeal, it appears to me that the merits of the proposed appeal are weak. Madam Justice Newbury described the grounds of appeal as "dubious, if not frivolous." I am prepared to assume, for the purposes of this application, that the applicant has met the test in s. 679(3) (a) of showing that the application for leave to appeal is not frivolous.
- [8] The remaining criteria under s. 679(3) are whether the applicant has established that he will, if released, surrender himself into custody; and that his detention is not necessary in the public interest.
- [9] On the surrender issue, the evidence as summarized in the Crown's submission shows:
1. Mr. Wilder has not filed a tax return in Canada since 1983.
 2. He owns no property in British Columbia.
 3. He owns no vehicle in British Columbia.
 4. During the trial before Mr. Justice Romilly he testified that his residence was in Bellingham, Washington.
 5. Three other witnesses testified that the appellant resided in Bellingham when they dealt with him in the mid-1980s.
 6. He is the registered owner of three motor vehicles in Washington.
 7. Neither he nor his wife hold valid B.C. Drivers Licenses but both hold valid Washington State Drivers Licenses.
 8. His B.C. company has never filed a corporate tax return in Canada.
- [10] With regard to the evidence of the applicant and his flight risk, Madam Justice Newbury noted:

- [6] The fact remains, however that Mr. Wilder has been convicted of large scale frauds for which a substantial sentence can be handed down. He has been found to have lied consistently at trial, a fact which makes it difficult to place credence in his affidavit material concerning his ties to British Columbia. This material is further challenged by evidence pointed out by Ms. Smith that his real home is in Bellingham, Washington and that he now has no real estate or other substantial ties here.
- [11] In my opinion, there was ample evidence to support the conclusion of the chambers judge that the applicant failed to establish that he would surrender himself into custody if released on bail. He has no real ties to British Columbia, and substantial ties to the State of Washington. He is facing a lengthy sentence of incarceration. The Crown submits that the applicant's risk of flight has increased since his appeal against conviction has been dismissed. I agree.
- [12] On the question of the public interest, the applicant argues that his continued detention will affect his ability to prepare his appeal and that there is no reason to believe that he would re-offend. In my view these arguments do not help the applicant's position. The fact remains that he has failed to establish that he will surrender himself into custody and therefore has failed to satisfy one of the criteria under s. 679(3).
- [13] On this application, I have had placed before me a letter from the applicant's wife setting out an argument for the applicant's release based on sympathetic grounds relating to the terminal illness of a close friend of the applicant. I do not consider this matter relevant to any of the issues that could properly be raised on review of the order refusing bail.
- [14] In my view, there is no reasonable prospect of success on a review of the order refusing bail. The application for a direction under s. 680(1) is dismissed. "The Honourable Chief Justice Finch"

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