
CANADA / JUDGMENT

Sisett v. British Columbia (Attorney General)

2018 BCCA 227

COURT

British Columbia Court of Appeal

DECIDED

29 May 2018

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2018 BCCA 227 Sisett v. British Columbia (Attorney General)

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Sisett v. British Columbia (Attorney General),

2018 BCCA 227

Date: 20180529

Docket: CA44470

Between:

Ian Royce Sisett and Marguerite Beverley Sisett

Appellants

(Petitioners)

And

Her Majesty the Queen and the Attorney General of British Columbia

Respondents

(Respondents)

Before:

The Honourable Chief Justice Bauman

The Honourable Mr. Justice Harris

The Honourable Mr. Justice Willcock

On appeal from: An order of the Supreme Court of British Columbia, dated May 10, 2017 (Sisett v. British Columbia (Attorney General), Kelowna Registry S113022).

Oral Reasons for Judgment

The Appellants, appearing in person:

I. Sisett

M. Sisett

Counsel for the Respondents:

N. Carnegie

Place and Date of Hearing:

Kelowna, British Columbia

May 24, 2018

Place and Date of Judgment:

Vancouver, British Columbia

May 29, 2018

Summary:

A driver received a ticket for excessive speeding and the police impounded his vehicle. The driver brought a petition arguing that the provisions of the Motor Vehicle Act relating to impounding a vehicle were contrary to the Charter. The driver's petition was dismissed. Held: appeal dismissed. The chambers judge properly rejected the Charter claims and dismissed the petition.

Overview

[1] BAUMAN C.J.B.C.: Ian and Marguerite Sisett ("the petitioners"), appeal from the order of Justice Betton, pronounced 10 May 2017, dismissing their petition to declare ss. 148(1) and 251 of the Motor Vehicle Act, R.S.B.C. 1996, c. 318 [MVA], as contrary to the Charter. The petitioners allege that the chambers judge made a variety of errors and failed to consider various rules of natural justice.

Facts

[2] On 29 June 2015, while driving his motor vehicle outside Grand Forks, British Columbia, Mr. Sisett was stopped by a member of the RCMP and was issued a ticket for excessive speeding contrary to s. 148(1) of the MVA. His vehicle was immediately impounded for seven days pursuant to ss. 251 and 253.

- [3] After impounding Mr. Sisett's vehicle, the RCMP officer confirmed that Mr. Sisett would ride with the tow truck operator to Grand Forks and spend the evening there, while family members arranged transportation for him to return to Kelowna.
- [4] In the course of challenging the ticket for excessive speeding, Mr. Sisett raised issues regarding the constitutionality of the provisions which could not be heard by the Provincial Court judge adjudicating the speeding offence. As a result, Mr. Sisett brought a petition in the Supreme Court.

Decision Under Appeal

- [5] After discussing the background facts and legislative provisions, the chambers judge then observed that the petition did not set out specifics with respect to the alleged Charter violations, beyond referencing certain provisions. The judge addressed the claims related to ss. 7, 8, 9, 11(d) and 12. The judge cited the many authorities that are relevant to each of the arguments raised under these sections of the Charter. They are set out in his reasons. I will not reproduce the many citations to case law here.
- [6] As to the s. 7 claim, the chambers judge applied authorities which held that the right to drive a motor vehicle was a privilege. He held that as a result, absent any potential for imprisonment, the offence did not engage the life, liberty or security of the person interests protected by s. 7.
- [7] With respect to s. 8, the judge held that while the impoundment was a seizure, it was authorized by law. It was also reasonable because under the MVA the Superintendent may review an impoundment decision, and speeding is a serious safety issue.
- [8] The judge also dismissed the petitioners' claim that the MVA violated s. 11(d). The judge held that the MVA constitutes an administrative regime that does not carry penal consequences and therefore such administrative regimes do not attract s. 11 protections.
- [9] The judge similarly found that the impoundment did not amount to an arbitrary detention contrary to s. 9. The petitioners only challenged the "de facto detention" that resulted from Mr. Sisett being left in Grand Forks while waiting to return home, not the initial police stop itself. The judge rejected that this "de facto detention" was within the scope of s. 9.
- [10] Finally, the judge rejected the argument that impoundment of the petitioner's vehicle breached the s. 12 protection against cruel and unusual punishment. The judge held that there was no suggestion that the punishment was so excessive as to outrage standards of decency.
- [11] The judge therefore dismissed the petition.

Submissions

- [12] The petitioners' somewhat prolix submissions allege a variety of errors. I would group them into three main issues.
- [13] First, the petitioners raise arguments as to whether the judge erred by failing to consider that the excessive speeding offence was one of absolute liability. They rely on *Re B.C. Motor Vehicle Act*, [1985] 2 S.C.R. 486, where the Supreme Court held that an absolute liability offence that carries the risk of imprisonment violates s. 7. The petitioners also argue that it infringes the presumption of innocence that they are punished by being ticketed and having their vehicle impounded before a trial.
- [14] The second issue arising out of the petitioners' submissions is whether the judge properly considered the limited avenues for judicial review of the decision by a peace officer to impound a vehicle. The petitioners repeatedly emphasize that the limited procedural mechanisms to challenge the decision to impound a vehicle render the provisions contrary to the Charter.
- [15] The third issue raised is whether the chambers judge failed to consider that impounding a vehicle was a disproportionate penalty for the offence of excessive speeding. The petitioners say the judge misconstrued their argument that impounding their vehicle was contrary to the guarantee against cruel and unusual treatment or punishment in s. 12.
- [16] Aside from these main issues, in their factum the petitioners again assert that there were violations of several sections of the Charter, referencing ss. 6-9, 11, 12 and 15, though they do not set out how their rights under those sections have been infringed. In oral submissions before this Court, the petitioners focused primarily on the infringements of ss. 8 and 12.
- [17] The Province submits that the petitioners have failed to point to an error in the judge's decision. The Province submits that the petitioners did not specifically plead or otherwise analyze the various Charter violations they alleged, but the chambers judge still properly identified and dismissed them.

Analysis

- [18] I would dismiss the appeal.
- [19] The petitioners have failed to point to any specific errors in the chambers judge's reasons. The judge in fact considered cases dealing with absolute liability offences under the MVA, including *Re B.C. Motor Vehicle Act*. The judge correctly held that because the provisions at issue do not carry the potential for imprisonment, they do not infringe s. 7. Mere restrictions on the privilege to drive pursuant to a licensing scheme simply do not infringe the liberty interests protected by s. 7: *Buhlers v. British Columbia (Superintendent of Motor Vehicles)*, 1999 BCCA 114 at para. 94.

- [20] With respect to the alleged breach of s. 8, the petitioners place considerable emphasis on the Supreme Court of Canada's decision in *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145.
- [21] The judge dealt with s. 8 of the Charter at paras. 25 to 29 of his reasons. He referred to this Court's decision in *Brazier v. Vancouver (City)* (1997), 154 D.L.R. (4th) 186, which upheld the city's Impounding Bylaw in the face of a Charter s. 8 attack. The judge noted the jurisdiction of the Commissioner under s. 266 of the MVA to reverse an impoundment wrongly made at para. 27 of his reasons. The judge concluded (at paras. 28 and 29):
- [28] There is no procedure contained within the Act setting out how that discretion would be accessed, if you will, or exercised, but it is of note that such a discretion does exist. This is obviously a situation where the ticket and the impoundment was undertaken by a peace officer. A requirement in respect of the impoundment of the vehicle is that the peace officer must have reasonable grounds to believe that the person committed an offence under s. 148. Some issue is taken with respect to some of the evidence of the seriousness of speeding as a safety concern tendered by Her Majesty in this application. I am, however, prepared to take from it and generally recognize that speeding is a significant safety issue on highways. Obviously, the level of speeding and the particular circumstances in which the driving occurred can materially affect risks, but as a general proposition, speeding is a real safety issue on public highways.
- [29] Like the Court of Appeal in *Brazier*, I would reach the conclusion that this seizure through the impoundment of the vehicle was authorized by law and was reasonable in light of the purposes and objectives of the speeding legislation.
- [22] I can find no error in this analysis.
- [23] Furthermore, contrary to the assertions of the petitioners, the judge expressly considered s. 12 of the Charter and I can see no error in the judge's analysis. The petitioners here relied in particular on the Supreme Court of Canada's decision in *R. v. Smith*, [1987] 1 S.C.R. 1045.
- [24] In *R. v. Nur*, 2015 SCC 15, the court returned to the s. 12 issue and provided this summary (at para. 39):
- [39] This Court has set a high bar for what constitutes "cruel and unusual . . . punishment" under s. 12 of the Charter. A sentence attacked on this ground must be grossly disproportionate to the punishment that is appropriate, having regard to the nature of the offence and the circumstances of the offender: *R. v. Smith*, [1987] 1 S.C.R. 1045, at p. 1073. Lamer J. (as he then was) explained at p. 1072 that the test of gross disproportionality "is aimed at punishments that are more than merely excessive". He added, "[w]e should be careful not to stigmatize every disproportionate or excessive sentence as being a constitutional violation". A prescribed sentence may be grossly disproportionate as applied to the offender before the court or because it would have a grossly disproportionate impact on others, rendering the law unconstitutional.

- [25] Similarly, in *R. v. Lloyd*, 2016 SCC 13, the Court wrote:
- [24] This Court has established a high bar for finding that a sentence represents a cruel and unusual punishment. To be "grossly disproportionate" a sentence must be more than merely excessive. It must be "so excessive as to outrage standards of decency" and "abhorrent or intolerable" to society: *Smith*, at p. 1072, citing *Miller v. The Queen*, [1977] 2 S.C.R. 680, at p. 688; *Morrissey*, at para. 26; *R. v. Ferguson*, 2008 SCC 6, [2008] 1 S.C.R. 96, at para. 14.
- [26] Assuming for the purposes of argument that the legislative scheme before us provides for a punishment to which s. 12 of the Charter applies, it can hardly be said that the mandatory impoundment scheme here is "so excessive as to outrage standards of decency" or "abhorrent or intolerable" given the harms arising out of excessive speeding.
- [27] The judge also expressly considered the avenues for review of the decision to impound in his discussion of whether the seizure was reasonable under s. 8 of the Charter. To the extent that the lack of review is also relevant to the s. 12 issue I would still not consider there to be an infringement.
- [28] Finally, while the petitioners assert violations of certain sections of the Charter that were not specifically addressed by the chambers judge, they do not set out how those sections are infringed by the provisions at issue, and I would decline to address them.

Conclusion

- [29] In sum, I agree with the Province that the petitioners have not identified any reviewable errors in the chambers judge's decision and I would therefore dismiss the appeal.
- [30] HARRIS J.A.: I agree.
- [31] WILLCOCK J.A.: I agree.
- [32] BAUMAN C.J.B.C.: The appeal is dismissed.

"The Honourable Chief Justice Bauman"

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