

CANADA / JUDGMENT

Virk v. Judicial Justice Makhdoom

2025 BCSC 854

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2025 BCSC 854 Virk v. Judicial Justice Makhdoom

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Virk v. Judicial Justice Makhdoom,

2025 BCSC 854

Date: 20250507

Docket: S256997

Registry: New Westminster

Between:

Inderjit Singh Virk

Petitioner

And

Judicial Justice Makhdoom

Respondent

Before: The Honourable Mr. Justice Gibb-Carsley

Reasons for Judgment

Counsel for the Petitioner:

N.S. Chhabra

No further appearances

Place and Date Hearing:

New Westminster, B.C.

April 10, 2025

Place and Date of Judgment:

New Westminster, B.C.

May 7, 2025

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I. Introduction

[1] The petitioner, Inderjit Singh Virk, applies for judicial review of a decision of Judicial Justice Makhdoom made January 23, 2025 (the "Decision"). In the Decision, Judicial Justice Makhdoom refused to allow the petitioner's dispute of a violation ticket issued to the petitioner on July 12, 2024, under the Motor Vehicle Act, R.S.B.C. 1996, c. 318 (the "Violation Ticket"). The effect of the Decision is that it ends the petitioner's opportunity to proceed with a dispute of the Violation Ticket.

[2] The reason the judicial justice did not allow the petitioner's dispute to proceed is because he determined that the petitioner did not meet one of the grounds required to allow the dispute to proceed. As I will describe below, Judicial Justice Makhdoom found that the petitioner raised no arguable defence to the charges alleged on the Violation Ticket.

[3] The Violation Ticket cited the petitioner for three offences:

- a) Excessive speed contrary to s. 148(1) of the Motor Vehicle Act;
- b) Failure to produce a driver's licence contrary to s. 33(1) of the Motor Vehicle Act; and

- c) Failure to display "N" sign in violation of licence conditions contrary to s. 30.10 of the Motor Vehicle Regulations, B.C. Reg. 26/58.
- [4] The petitioner failed to dispute the Violation Ticket within 30 days of being served with it and, as such, was deemed to have pleaded guilty to the offences.
- [5] Judicial Justice Makhdoom determined that the petitioner did not satisfy the test set out under s. 16(2.1) of the Offence Act, R.S.B.C. 196, c. 338 to proceed with a dispute of the Violation Ticket. More specifically, Judicial Justice Makhdoom concluded that the petitioner did not raise an arguable defence against the ticket in the affidavit provided by the petitioner on January 21, 2025 (the "16(2) Affidavit"). The 16(2) Affidavit is a pre-printed form provided to a person seeking to have their dispute of a violation ticket proceed, despite not being within the time limits for so doing.
- [6] The sole issue before me is whether the Decision was reasonable in the circumstances. For the reasons that follow, I find that it was reasonable. Accordingly, I dismiss the petition.
- [7] The petition was served on the Attorney General of British Columbia ("AGBC") and upon the Office of the Chief Judge of the Provincial Court of British Columbia ("BCPC"). Both parties responded with a letter to the petitioner indicating that neither would participate in the proceeding. Neither letter set out any position of that party on the merits of the petition. Given neither the AGBC or the BCPC participated, only the petitioner appeared before me at the hearing of the petition.
- [8] In these reasons for judgment, I will set out some brief facts for background and context and then turn to my analysis and determination.

II. Facts

- [9] The petitioner filed an affidavit in support of his petition for judicial review affirmed March 4, 2025 (the "JR Affidavit"). In the JR Affidavit, he affirms that he intended to dispute the Violation Ticket but failed to do so within 30 days.
- [10] The Violation Ticket provides that it was served on the petitioner on July 12, 2024, the same date as the alleged offences. In the JR Affidavit, the petitioner acknowledges he was issued the Violation Ticket, but affirms that he never received any notice of hearing concerning the Violation Ticket.
- [11] The petitioner further affirms that sometime in January 2025, "he discovered that the Violation Ticket was still listed on [his] record despite [his] dispute." Upon this discovery he attended at the Traffic Window at the Provincial Court (presumably at the Vancouver Registry) and completed the 16(2) Affidavit on January 21, 2025.

- [12] As referenced above, the 16(2) Affidavit is a pre-printed form that provides a person space to provide the reasons that the person should be permitted to dispute a violation ticket, despite missing the 30 day deadline, and thus being deemed to have pleaded guilty. The available space and questions pre-printed on the form accord with the test under s. 16(2.1) of the Offence Act a judicial justice must consider in granting the person's application to proceed with the dispute. I will return to the five-part test set out in 16(2.1) later in these reasons.
- [13] In the 16(2) Affidavit, there is a box that can be "ticked" that indicates that the person requires more space to provide an explanation or answer to the questions posed in the 16(2) Affidavit.
- [14] In the JR Affidavit, the petitioner says that he included an additional sheet of paper with answers because there was insufficient room on the 16(2) Affidavit. However, he acknowledges that he failed to "tick" the box indicating that he required more room to provide answers. As such, the petitioner accepts that Judicial Justice Makhdoom had only the information that was on the face of the 16(2) Affidavit and no additional information from which to make his decision to deny or accept the petitioner's application to proceed with the dispute.
- [15] On January 23, 2025, Judicial Justice Makhdoom stamped the 16(2) Affidavit with the words "Denied No arguable defence" and signed the 16(2) Affidavit with a stamp of his name. No further reasons for the denial were provided.
- [16] It is with this information that I now turn to whether in the circumstances of this case the Decision is reasonable.

III. Discussion

A. Relevant Provisions of the Offence Act

- [17] As referenced above, pursuant to s. 15(1) of the Offence Act, when a person is served with a violation ticket, they have 30 days from its receipt to dispute the ticket. Section 15(1) provides as follows:

15(1) A person on whom a violation ticket has been served may, within 30 days of being served, dispute the allegation or the fine portion of the ticketed amount indicated on the ticket by

- (a) delivering or causing to be delivered to the address set out in the ticket or to an address set out in the instructions prescribed under section 132(2)(a.3) a written notice of dispute,
- (b) appearing in person at the location set out in the ticket or at a location set out in the instructions prescribed under section 132 (2) (a.3) to give notice of dispute,
- (c) submitting by or in accordance with any electronic means set out in the ticket or set out in the instructions prescribed under section 132 (2) (a.3) a notice of dispute, or
- (d) providing in accordance with the regulations a notice of dispute.

[18] Section 16(1)(a) of the Offence Act provides that if a person served with a violation ticket fails to dispute the ticket within 30 days of the date of service, they are deemed to have pleaded guilty to the alleged contravention. Pursuant to s. 16(2) of the Offence Act, a person who is deemed to have pleaded guilty but wishes to dispute the violation ticket may apply to a judicial justice for an order striking the conviction and allowing the person to dispute the allegation or the amount of the fine in the violation ticket. However, to allow the dispute to proceed, the judicial justice must be satisfied that the five conditions set out under s. 16(2.1) of the Offence Act are met. The conditions are as follows:

16(2.1) Before making an order under subsection (2) allowing a dispute to proceed, a justice must be satisfied that

- (a) through no fault of the defendant, he or she did not have an opportunity to dispute the allegation or the amount of the fine,
- (b) the defendant had a genuine intention to dispute the ticket before the dispute period under subsection (1) expired,
- (c) no undue prejudice will result from the extension of the dispute period,
- (d) the defendant has an arguable defence to the violation ticket, and
- (e) it is in the interests of justice to allow the dispute to proceed.

[Emphasis added.]

[19] The conditions set out in 16(2.1) of the Offence Act are conjunctive, meaning that the judicial justice must be satisfied that all of the criteria are met if she or he is to allow the dispute to proceed.

[20] In the hearing before me, the petitioner argued that the Decision must be set aside because Judicial Justice Makhdoom only considered whether the petitioner raised an arguable defence. In my view, this demonstrates a misunderstanding in interpreting this provision. As set out above, the conditions are conjunctive and, as such, all five of the circumstances must be met for the dispute to proceed. In my view, the only reasonable interpretation of the Decision is that Judicial Justice Makhdoom accepted that the petitioner met the requirements of 16(2.1)(a), (b), (c), and (e) but concluded that the petitioner did not present an arguable defence as required under 16(2.1)(d) of the Offence Act.

B. Is the Decision Reasonable?

[21] The Decision is subject to judicial review. The applicable standard of review is reasonableness: see e.g. *Grossi v. Judicial Justice Plater* (11 March 2021), Vancouver S211207 (B.C.S.C.); *Shoolman-Strom v. Judicial Justice Makhdoom* (2 June 2021) Vancouver S213224 (B.C.S.C.); *Eide v. Judicial Justice Adair*, 2019 BCSC 207, rev'd on other grounds, 2019 BCCA 384; *Donaghue v. British Columbia*, 2022 BCSC 1610 at para. 20; *Stoklosa v. Judicial Justice Lesperance*, 2025 BCSC 828 at para. 20.

- [22] The Supreme Court restated the principles applicable to judicial review of administrative decisions, confirming that reasonableness is, in general, the standard of review to be applied: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [Vavilov]. The Supreme Court in Vavilov held that where a tribunal issues reasons, it is the reasons given that must be the focus of the court on judicial review: at paras. 83-84.
- [23] In Vavilov, the Court held that such review finds its starting point in judicial restraint and requires respect for the distinct role of the administrative decision makers: at para. 75. A decision is reasonable if it is "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker", having regard to both the outcome of the decision and its reasoning process: Vavilov at paras. 85, 87.
- [24] Reviewing courts must refrain from "reweighing and reassessing the evidence considered by the decision maker": Vavilov at para. 125. It is for the adjudicator to weigh the evidence, and in doing so must address and seek to resolve conflicts in material parts of the evidence. A reasonable decision is one that is justified, transparent, intelligible, and based on internally coherent reasoning: Vavilov at para. 99.
- [25] Judicial Justice Makhdoom determined that in the 16(2) Affidavit the petitioner failed to provide an arguable defence to the allegations in the Violation Ticket.
- [26] The petitioner provided the following as the entire basis for his arguable defence:
- I was driving my mom's car and forgot to check/display for "N" sign properly visible, officer refused for me to call (family/friend) to bring my licence over to me.
- [27] Before turning to my determination of whether it was reasonable for Judicial Justice Makhdoom to find that the petitioner failed to provide an arguable defence to the petitioner's failure to display the "N" sign and why the petitioner did not produce his driver's licence I will first examine how courts are to interpret the meaning of an arguable defence.
- [28] Courts have held that an arguable case is a low standard, and one that is not frivolous or vexatious. It was articulated as follows in *Boychuk v. Edmonton (City) Police Service*, 2014 ABCA 163, at para. 53:

Chief Justice Wittmann offered this definition of a "good arguable case" in *Scott & Associates Engineering Ltd. v. Ghost Pine Windfarm, LP*, 2011 ABQB 630, 520 A.R. 190, 200 (Q.B. 2011): "[I]t meant a case that was not fanciful or speculative but was grounded upon some evidence upon which an objective trier would say 'well, on the basis of the facts presented, the case is arguable and certainly is not to be dismissed out of hand'". To my mind, a question of law is arguable if it is not frivolous. See *Manitoba v. Metropolitan Stores (MTS) Ltd.*, 1987 CanLII 79 (SCC), [1987] 1 S.C.R. 110, 128 (to secure a stay an applicant must present "a serious question to be tried as opposed to a frivolous or vexatious claim") & *Greenbuilt Group of Companies Ltd. v. RMD Engineering*, 2013 ABQB 287, (the court catalogued service ex juris cases which utilized the "good arguable case" standard). This is a very low standard.

[29] I accept that the standard needed for a petitioner to meet in presenting an arguable case is not onerous. However, it must have some merit such that it cannot be dismissed out of hand. With this definition in mind I turn to a consideration of whether the Decision concluding that the petitioner presented no arguable defence to the offences set out in the Violation Ticket was reasonable.

C. Analysis of the Defences Set out by the Petitioner

[30] As a starting point, the petitioner did not provide any defence to the allegation that he was driving at an excessive speed and his explanations are limited to his failure to display the N sign and his failure to produce his driver's licence.

i. Failure to display the new driver sign on the vehicle

[31] In the 16(2) Affidavit, the petitioner provides the entirety of his defence in respect of not having an "N" sign on his car as follows:

I was driving my mom's car and forgot to check/display for "N" sign properly visible

[32] Judicial Justice Makhdoom concluded that the explanation provided by the petitioner failed to present an arguable defence.

[33] The petitioner states that he forgot to check or display the N sign. In my view, forgetting to display the sign is not an arguable defence and is, in fact, an admission that the sign was not displayed. Put another way, the reason provided by the petitioner as his argument against the allegations is a defence that, in my view, is inculpatory and can be dismissed out of hand. I find the judicial justice's determination that this does not provide an arguable defence reasonable.

[34] In this regard, I note that s. 30.10 of the Motor Vehicle Act Regulations, BC Reg 26/58, provides that a new driver must not operate a vehicle unless the new driver sign depicting the letter "N" is clearly visible and prominently displayed from the rear of the motor vehicle:

New driver sign condition for Class 7L, 8L, 7 and 8 licences

30.10 (1) In this section, "new driver sign" means a sign, issued by the Insurance Corporation of British Columbia for the purposes of this section, to indicate that a motor vehicle is being driven by a person who is learning to drive or by a novice driver.

(4) Subject to the exception set out in subsection (5), a person to whom a Class 7 or 8 licence is issued must not operate a motor vehicle of a category designated in section 30.01 (2) for that class of driver's licence unless a new driver sign depicting the letter "N" is clearly visible and prominently displayed from the rear of the motor vehicle or trailer, as the case may be.

[35] In *R. v. Cai*, 2008 BCCA 332, at para. 28, our Court of Appeal determined that the appellant's argument that the "N sign had come off", was not a defence to not displaying the N sign on the vehicle. In my view, this is support that there is not a requisite mens rea element for a

new driver to intentionally not display the N sign. In other words, forgetting to check if the N sign was on a vehicle affords an accused no defence. In the case at bar, the judicial justice concluded that the petitioner's admission that he forgot to check or display the N sign because he was driving his mother's car was not an arguable defence. I conclude that this aspect of the Decision is reasonable and I find no basis to quash the Decision on these grounds.

[36] I now turn to the second ground that the petitioner says provides him with an arguable defence.

ii. Failure of the Petitioner to Produce his Driver's Licence

[37] In the 16(2) Affidavit, the petitioner provides the entirety of his defence in respect of not presenting his driver's licence to the officer as follows:

officer refused for me to call (family/friend) to bring my licence over to me.

[38] Judicial Justice Makhdoom determined that the petitioner's statement regarding why he did not present his drivers licence did not provide an arguable defence to that charge against the petitioner. In my view, that is not an unreasonable conclusion.

[39] In British Columbia, a person must carry his or her license with them while operating a motor vehicle. Section 33 of the Motor Vehicle Act provides:

Production of licence and liability card, duplicates

33 (1) Every person, except

(a) a person driving or operating a motor vehicle exempted under section 2 (5) or section 8 or 10, or

(b) a person driving or operating a motor vehicle of a fire department of a municipality,

must have the person's driver's licence and driver's certificate and a motor vehicle liability insurance card or financial responsibility card, issued for the motor vehicle the person is driving or operating, in the person's possession at all times while driving or operating that motor vehicle on a highway, and must produce the licence, certificate and card for inspection on demand of a peace officer.

[Emphasis added.]

[40] I note that "highway" as defined in the Motor Vehicle Act has a broad scope that includes:

(a) every highway within the meaning of the Transportation Act,

(b) every road, street, lane or right of way designed or intended for or used by the general public for the passage of vehicles, and

(c) every private place or passageway to which the public, for the purpose of the parking or servicing of vehicles, has access or is invited,

[41] The petitioner's argument that he needed to have a friend or family member retrieve his licence is tantamount to an admission that he did not have his license with him as required under the Motor Vehicle Act. There is no basis to quash the Decision based on this ground.

D. Sufficiency of Judicial Justice Makhdoom's Reasons

[42] The sufficiency of Judicial Justice Makhdoom's reasons was not raised as an issue before me as the petitioner focused on his position that he had raised an arguable defence in his 16(2) Affidavit. For completeness I will address the issue of sufficiency of the reasons.

[43] The entirety of Judicial Justice Makhdoom's reasons are reduced to four words: "Denied No arguable defence". It is an understatement to say the reasons supporting the Decision are concise. However, in my view, the reasons provide the result: that the application to dispute is denied. The Decision also provides the reason for that decision: no arguable defence. In this regard, the context in which the Decision was made and how it is presented is important.

[44] The text of the Decision - "Denied No arguable defence" - is provided directly on the form of the 16(2) Affidavit in the form of a stamp applied to the affidavit. As such, the specific answer provided to why the petitioner believes he has an arguable defence is contained in the space on the form after the words: "I have an arguable defence to the violation ticket as follows:" There can be no confusion that Judicial Justice Makhdoom was referencing that portion of the 16(2) Affidavit when making his decision. Indeed, it is the only information provided by the petitioner in support of raising an arguable defence under s. 16(2.1)(d) of the Offence Act.

[45] The Supreme Court in *R v. R.E.M.*, 2008 SCC 51, considered sufficiency of reasons and held:

[16] It follows that courts of appeal considering the sufficiency of reasons should read them as a whole, in the context of the evidence, the arguments and the trial, with an appreciation of the purposes or functions for which they are delivered.

[17] These purposes are fulfilled if the reasons, read in context, show why the judge decided as he or she did. The object is not to show how the judge arrived at his or her conclusion, in a "watch me think" fashion. It is rather to show why the judge made that decision.

[Citations omitted.]

[46] I expect it would be of assistance for a reviewing court if a judicial justice provided a brief articulation, in addition to words contained on a stamp, of the reasons for arriving at a decision. Even if only a sentence or two describing the basis for rejecting an application to allow a dispute to proceed. However, in the circumstances and context of the Decision now on review before the Court, I am satisfied that the reasons are sufficient.

[47] Put another way, because the Decision is based only on the two reasons offered as an arguable defence by the petitioner, the basis upon which the judicial justice came to his conclusion is clear. To reiterate, the context of the Decision is that it relates to assessing information on a form in which a person has missed a deadline and been deemed to have pleaded guilty. In my view, the reasons for denying the petitioner's application to proceed with the dispute, as brief as they are, are sufficient. Put in the language of the Supreme Court in R.E.M., the reasons given in the context of the 16(2) Affidavit allow the petitioner and the reviewing court to understand why Judicial Justice Makhdoom decided as he did.

[48] In coming to my conclusion, I have also considered Ghossn v. Canada (Citizenship and Immigration), 2022 FC 1338, in which the Federal Court quashed a decision because it was not clear and found that there is a distinction between a decision that "may be justifiable, but is not justified.": para. 31. Unlike the circumstances before Justice Pentney in Ghossn, I do not find that I am required to "fill in too many blanks" to make sense of the decision on review before me. In the context of the Decision, in my view, it is clear why the judicial justice made the Decision.

[49] I see no basis to set aside the Decision on the grounds of insufficiency of reasons.

IV. Conclusion

[50] Given the foregoing, I am not satisfied that the petitioner has established that the Decision is not reasonable. Accordingly, I dismiss the petition.

"Gibb-Carsley J."

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