

NOVA SCOTIA COURT OF APPEAL

Citation: R. v. Hobbs, 2009 NSCA 101

Date: 20091002

Docket: CAC 302995

and CAC 316120

Registry: Halifax

Between:

Kevin Patrick Hobbs

Applicant

v.

Her Majesty The Queen

Respondent

Judge: The Honourable Justice Elizabeth Roscoe

Application Heard: September 23, 2009, in Chambers

Written Decision: October 2, 2009

Held: Application for release pending appeal granted.

Counsel: Luke A. Craggs, for the appellant
Ann Marie Simmons, for the respondent

Decision:

[1] At the conclusion of the hearing of the application for release pending appeal, I advised that I would allow the application and grant bail on specific terms with reasons to follow. These are my reasons.

[2] The applicant, Mr. Hobbs, has two appeals pending in this court. The first is an appeal from convictions entered by Justice Cacchione on charges of possession and transportation of proceeds of crime. That matter is scheduled to be heard by this court on November 30, 2009. The second is an appeal from convictions by a jury instructed by Justice Coughlan on charges of possession of marijuana for the purposes of trafficking and production of a controlled substance. That appeal is scheduled to be heard on January 20, 2010.

[3] Mr. Hobbs had previously been released pending appeal on the first matter by decision of Justice Saunders on November 13, 2008 reported as 2008 NSCA 106. However, that order was superseded by the warrant of committal dated August 25, 2009 on the second matter. Mr. Hobbs made two separate applications to be released pending the two appeals. The applications were heard together and the evidence and submissions of counsel applied to both matters.

[4] In order to succeed on his application for bail, Mr. Hobbs must establish that the appeals are not frivolous; that he will surrender himself into custody in accordance with the terms of the order; and his detention is not necessary in the public interest.

[5] The Crown concedes and I agree that the grounds of appeal raised in the second appeal are not frivolous. The notice of appeal alleges error in the admission of hearsay testimony and a miscarriage of justice arising from the police providing information to the prosecutor about members of the jury pool which was not disclosed to the defence. I also agree with Justice Saunders that the grounds of appeal in the first matter are not frivolous.

[6] The Crown opposed the application for bail mainly because the proposed terms of release would require that Mr. Hobbs reside in Surrey, British Columbia with his mother until the hearing of the first appeal on November 30, 2009. It was submitted that allowing him to move from Nova Scotia lessened the likelihood that Mr. Hobbs would surrender himself in accordance with the terms of release and it

would be contrary to the public interest, given that Mr. Hobbs has now been convicted twice. The Crown argued that it would be more appropriate for Mr. Hobbs to remain in Nova Scotia and for there to be a higher cash surety.

[7] After hearing the evidence of Mr. Hobbs and his mother Sharon Hobbs, I am satisfied that releasing him on the condition that he reside with her in British Columbia is the best arrangement for several reasons. Mr. Hobbs does not have a place to live in Nova Scotia. The house where he lived with a friend, when released by Justice Saunders, is no longer available and he has insufficient means to rent an apartment. His mother deposited \$2,500 cash with the court and is willing to buy his return plane ticket and to house and feed him in British Columbia until the November 30 court date. She is however not willing to pay for an apartment in Halifax pending his appeals. Both witnesses are of the opinion that it would be much easier for Mr. Hobbs to find temporary employment in British Columbia than it would be in Halifax, since both his brother and stepfather have the possibility of helping him find a job at their places of work. I believe Mrs. Hobbs' evidence that she will watch over her son to make sure that he abides by the terms of his curfew and other terms of release and will not hesitate to call police if he breaches the rules. She clearly understands her role and the risks of being his surety. Furthermore, since the first charges were laid against him, Mr. Hobbs has been released on an undertaking or recognizance with strict conditions for more than four years and has not been charged with any breach nor failed to appear in court when required. I am satisfied that Mr. Hobbs will abide by the terms of release and surrender himself into custody when required.

[8] Whether it is in the public interest to release a person pending appeal involves the consideration of both public safety and public confidence in the administration of justice. In **R. v. F.F.B.** (1992), 112 N.S.R. (2d) 423 (N.S.C.A.), Clarke, C.J.N.S. reviewed the authorities relating to the element of the public interest in an application for release pending appeal and concluded at page 430:

[31] It is evident from these authorities that while a judge has a "wide and unfettered discretion" in determining what the public interest is, that discretion does not extend to exclude the public interest as a criterion of equal weight and importance with the first two. Chief Justice Culliton in **Demyen**, supra, at pp. 326-327 sets forth a useful list of factors to be considered: "... the nature of the offence, the age of the victim, the circumstances surrounding the commission of the offence, and the public attitude to such an offence". It is relevant to consider these against the circumstances that relate to this application.

[9] Having considered the circumstances of the offences which did not involve any violence and the strict terms of release that will be in effect, I am satisfied that is not necessary in the public interest to detain Mr. Hobbs pending his appeals.

[10] The application for release pending appeal is therefore granted.

[11] The order signed by me on September 23rd 2009 provides as follows:

IT IS ORDERED THAT the Appellant/Applicant be granted judicial interim release pending appeal pursuant to s. 679(1) of the Criminal Code of Canada upon him entering into a recognizance, and upon Sharon Hobbs acting as surety for Kevin Patrick Hobbs posting \$2,500.00 cash bail with the clerk of this court, with the following conditions:

1. The Appellant/Applicant shall keep the peace and be of good behaviour;
2. The Appellant/Applicant shall reside with Sharon Hobbs at 34-16388 85 Avenue, Surrey, British Columbia and abide by a curfew between 10:00 p.m. and 6:00 a.m. seven days per week, except in the event of a medical emergency, from the date of his release until November 26, 2009.
3. The Appellant/Applicant shall appear before this court for his appeal hearing on November 30, 2009 and thereafter shall remain within the province of Nova Scotia.
4. The Appellant/Applicant shall establish a residence in the Halifax Regional Municipality before November 30, 2009 and notify the court and Cst. Darren Slaunwhite of the Royal Canadian Mounted Police of his intended address in the Halifax Regional Municipality and notify Cst. Darren Slaunwhite within 24 hours of any change in his address.
5. The Appellant/Applicant shall report by telephone twice weekly on Mondays and Fridays between the hours of 12:00 noon and 4:00 p.m. Atlantic Time to Royal Canadian Mounted Police officer Cst. Darren Slaunwhite, or his designate, at the Bedford Detachment of the Royal Canadian Mounted Police, such reporting to commence the first Monday or Friday, as the case may be, following his release from custody.
6. The Appellant/Applicant shall report in person to the Surrey, British Columbia, Royal Canadian Mounted [Police] Detachment once per week,

each Thursday, between the hours of 9:00 a.m. and 4:00 p.m. Pacific Time while he is residing in British Columbia.

7. Once the appeal hearing has been heard on November 30, 2009 the Appellant shall remain within the Halifax Regional Municipality and be subject to the same curfew referenced in paragraph two of this Order.
8. The Appellant/Applicant shall abstain from the consumption or possession of any alcoholic beverages or any controlled substances as defined by the Controlled Drugs and Substances Act.
9. The Appellant/Applicant shall comply with the alcohol and drug prohibition and curfew by presenting himself at the entrance of his residence if police attend to check compliance.
10. The Appellant/Applicant shall surrender himself into the custody of the Keeper of the Central Nova Scotia Correctional Facility at Dartmouth in Halifax Regional Municipality, by 1:00 p.m. of the day preceding the day on which the appeal decision will be released. The Appellant/Applicant will be advised at least 24 hours before the time by which he must surrender into custody. In the event [the appeal] is sooner dismissed, quashed or abandoned, the Appellant/Applicant shall surrender into the custody of the Keeper of the Central Nova Scotia Correctional Facility at Dartmouth, in the Halifax Regional Municipality, within 24 hours of the filing with the Registrar of this Court of an order dismissing, or quashing the appeal or the notice of abandonment of the appeal, as the case may be.
11. And it is further ordered that should the appellant not abide by the foregoing conditions, the said Recognizance shall be void, otherwise it shall stand in full force and effect.

Roscoe, J.A.