PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R v Redden*, 2024 NSPC 29

Date: 20240517
Docket: 8752455 8752456 8784330 8784331
8806284 8806285 8806286
Registry: Dartmouth

Between:

His Majesty the King

v

Joshua Michael Redden

DECISION REGARDING BAIL

Judge:	The Honourable Judge Del W Atwood
Heard:	2024: 17 May, in Dartmouth, Nova Scotia
Charge:	Sections 266 and 430(4) of the *Criminal Code of Canada*
Counsel:	Robert Fetterly KC for the Nova Scotia Public Prosecution Service Emma Lutz and Alexander Baranowski for Joshua Michael Redden

By the Court:

[1] The Court is releasing the following amplifying written reasons.

[2] Mr Redden was arrested yesterday and is before the Court for show-cause and bail-revocation hearings.

[3] He has an assault charge pending for sentencing in Dartmouth 5 on 3 July 2024 (case 8752455); there is an accompanying mischief charge with no plea entered (case 8754256). There are counts of mischief and assault scheduled for plea on 10 July 2024 (cases 8784330 and 8784331). Mr Redden was taken into custody on 16 May 2024 and is now charged with two new counts of assault (cases 8806284 and 8806285) and a count of mischief (case 8806286). All of the charges appear to have arisen from incidents at a group home where Mr Redden is a resident.

[4] Counsel have worked out a mutually satisfactory plan of release.

[5] In *R v Antic*, 2017 SCC 27 at ¶ 68 [*Antic*], the following guidance was offered on the issue of consent-release plans:

> Of course, it often happens that the Crown and the accused negotiate a plan of release and present it on consent. Consent release is an efficient method of achieving the release of an accused, and the principles and guidelines outlined

> above do not apply strictly to consent release plans. *Although a justice or a judge should not routinely second-guess joint proposals by counsel*, he or she does have the discretion to reject one. Joint proposals must be premised on the statutory criteria for detention and the legal framework for release. [Emphasis added].

[6] Right after quoting this passage, the presiding judge in the case of *R v Murphy*, 2018 NSSC 56 [*Murphy*] offered additional advice on the role of bail courts when presented with consent-release plans. *Murphy* concerned a bail-review application under § 520 of the *Code*, seeking to lift a house-arrest condition from a recognizance imposed in Provincial Court; the terms of the recognizance had been negotiated between and agreed upon by the prosecution and the defence, and a judge of the Provincial Court adopted the terms proposed by counsel. In allowing the application and varying the house-arrest condition, the reviewing judge in *Murphy* stated:

> I believe it is incumbent upon the bail judge to inquire into the reasons for the release plan being presented to satisfy the statutory requirement that release be on the lease [*sic*] onerous conditions.

[7] If the intent of the reviewing judge in *Murphy* was to underscore the need for bail courts to approach consent-release plans with careful consideration, it is a proposition that would enjoy the full-throated endorsement of every court that deals with judicial-interim release. It is a truism that the bail project is always a serious matter, not a mere rubber-stamp function: *Lauzon v Ontario (Justices of the Peace Review Council)*, 2023 ONCA 425 at ¶ 42.

[8] Unfortunately, *Murphy* has been interpreted by some as requiring courts, when presented with consent-release plans, to drill down into every proposed term to ensure that each one meet the least-onerous-condition requirement of § 515(2.01) of the *Code*, almost as a line-item-veto operation.

[9] As my colleague Hartlen J observed in an unreported decision regarding a consent-release plan that emerged as a controversial constitutional issue at trial, converting every consent-release proceeding into what would essentially be a full-blown bail hearing would undermine the efficiency of permitting counsel to reach agreements regarding terms of release, and would thwart the imperative of speedy adjudication of bail: *R v MacKenzie* (22 April 2024), Case No 8555090 [*MacKenzie*]. I adopt that portion of *MacKenzie* in its entirety, as it is aligned perfectly with what was stated in *R v Zora*, 2020 SCC 14 at ¶89 [*Zora*]:

> The practicalities of a busy bail court do not make it realistic or desirable to require that the judicial official inquire into conditions which do not raise red flags.

[10] This implicitly overrules the incumbent-to-inquire piece in *Murphy*, which was non-binding *obiter*, in any event.

[11] Much as with joint submissions on sentence, there are many good reasons why courts should give effect to consent-release plans negotiated by counsel.

[12] First, it will often be the case that counsel will have access to deep-background information best left unrevealed until trial. Accordingly, counsel are generally in a privileged position to make informed judgments regarding the advisability of particular terms of release.

[13] Second, there are statutory mandates for certain weapons-related bail restrictions, eliminating or reducing significantly the need for judicial inquiry: see *eg* § 515(4.1).

[14] Third, the merit of certain conditions will often be self-evident from the nature of the charges facing the person seeking release (as with non-communication or abstain-from-going conditions under § 515(4) and (4.2), in cases involving allegations of actual or threatened violence).

[15] Fourth, consent-release plans will commonly be dependent on the assent of proposed sureties. Conditions of house arrest offer a good example. In *Murphy* at ¶ 26, the reviewing judge expressed concerns about a house-arrest condition being included, at all, in a consent-release plan, and described house arrest as "normally only found in conditional sentence orders." With all due respect, as a statement of forensic fact, this proposition is not accurate. While house arrest is not a frequently imposed bail condition, it is certainly not abnormal to see it in release

orders. When it is imposed, it is often the case that it is a condition insisted upon by sureties who have come before the court to provide support for and supervision of persons facing profoundly serious charges, persons who might not be able otherwise to get admitted to bail. I recall one consent-release case when a fairly neutral question asked by me from the bench about a proposed house-arrest condition led a surety to walk out of the courtroom in disapproval; counsel were able to repair the situation, and the plan went ahead successfully with the surety back on board. The object lesson is that unnecessary interventions by judicial officers into carefully crafted plans negotiated by counsel can have counterproductive effects, and it is not a safe assumption that inquiries from the bench will necessarily improve things.

[16] Finally, as pointed out in *Zora* at ¶ 101, it happens sometimes that a person in custody will agree to terms that might appear somewhat onerous. This still works as a legitimate *quid pro quo*: both the prosecution and the defence achieve a guaranteed result and avoid a contested show-cause hearing; the detained person obtains immediate release; the prosecution secures enhanced protection-of-the public conditions. Consent-release plans of this type operate within the shadow of the law, given the fact that, as underscored in *MacKenzie*, persons who have been admitted to bail have access to ever-present review and variation mechanisms to

guard against the imposition of overly onerous bail conditions, or bail conditions that might become unreasonable as circumstances change.

[17] In Mr Redden's case, the Court has been presented with a thoughtfully crafted consent-release plan. Without prompting from the court, counsel have explained the need for a keep-the-peace condition, satisfying the principles in *R v Doncaster*, 2013 NSSC 328: a bail requirement to keep the peace should never be seen as automatic.

[18] In the result, it is not necessary for the Court to inquire into the reasons for the consent-release plan. The merits of it are self-evident and none of the conditions raises a red flag.

[19] Mr Redden will be released on the terms set out in the checklist provided to the Court by counsel.

Atwood, JPC