

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Garnier*, 2017 NSSC 102

Date: 20170413

Docket: CRH No. 454738

Registry: Halifax

Between:

Her Majesty the Queen

v.

Christopher Garnier

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Judge: The Honourable Justice Peter P. Rosinski

Heard: April 4 and 5, 2017, in Halifax, Nova Scotia

Written Decision: April 13, 2017

Subject: Considerations regarding the revocation of bail (second-degree murder) – s. 524 Criminal Code of Canada

Summary: Mr. Garnier was released on bail with conditions including that he must present himself at the door to his approved residences, in response to compliance checks by police. On one occasion he did not present himself when police expected him to be present. Police laid new charges in Provincial Court based on his non-compliance therewith under s. 145(3) Criminal Code. In Supreme Court, the Crown concurrently sought to revoke his bail pursuant to s. 524 Criminal Code (“where an accused... is taken before a judge and the judge finds [that an accused]”:.) under paragraph (a): “has contravened... his... recognizance”; or (b): “there are reasonable grounds to believe that the accused has committed an indictable offence after... recognizance was issued”.

Issues: (1) The proper interpretation and application of s. 524(4) (a) and (b) Criminal Code

Result:

- (i) The mere fact that a peace officer has sworn an information that they have reasonable grounds to believe an indictable offence under s. 145 (3) has been committed, does not obligate a judge to “find” that therefore “there are reasonable grounds to believe that the accused has committed an indictable offence”;
- (ii) In circumstances such as here, where an accused is alleged to have only breached the substantive conditions of his bail (e.g. failure to present himself for a house- arrest compliance check), statutory interpretation and policy considerations dictate that the court consider those circumstances under only s. 524(4)(a)-and not under s. 524(4)(b);
- (iii) In cases where an accused suggests that they were asleep and did not become aware of the police officer’s compliance check activities, the onus is on the Crown to demonstrate that the *mens rea* component has been satisfied, by proof on a balance of probabilities, that the accused was aware of the police officer’s compliance check activities, and thereby knowingly refused to comply therewith;
- (iv) The court was not satisfied that the Crown had demonstrated on a balance of probabilities that Mr. Garnier was aware of the police officer’s compliance check activities, or that he was otherwise in breach of his bail conditions, and therefore did not revoke his existing bail.

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