

IN THE SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Regan, 2004 NSSC 30

Date: 20040108
Docket: CR 213300
Registry: Halifax

Between:

Stephen Gordon Regan

v.

Her Majesty the Queen

Judge: The Honourable Justice David W. Gruchy

Heard: January 8th, 2004, in Halifax, Nova Scotia

Oral Decision: January 8, 2004

Written Decision: February 2, 2004

Counsel: Craig Botterill, for the Crown
J. Patrick L. Atherton, for the Defence

Gruchy, J.:

[1] The accused brought an application for bail review pursuant to s. 520 of the Criminal Code. I heard the application on January 8th, 2004 at which time I dismissed the application, but ordered the release of the applicant for reasons I now set forth.

[2] On August 26th, 2002, the accused was charged with and arrested for common assault. The applicant then applied for and was granted bail pursuant to s.515 of the Criminal Code. His trial was scheduled for June 23rd, 2003. As the Applicant failed to appear on the scheduled date a warrant was issued by the Provincial Court for his arrest. On July 4th, 2003, the Applicant turned himself in and was then again released pursuant to s.515 on the original bail order. Trial was then scheduled for April 19th, 2004. On August 28th, 2003, the accused was arrested for committing two new criminal offences. Upon application by the Crown the Provincial Court revoked bail previously granted. The Applicant was remanded into custody pending his April 19th, 2004 trial.

[3] The Applicant then pleaded guilty to one of the two subsequent charges and was sentenced. A trial was held on November 6th, 2003 for the second of the two subsequent charges and he was found not guilty. The Applicant has remained in custody awaiting the April 19th, 2004 trial. It was clear that his bail with respect to the charge for which he is awaiting trial was revoked as a result of the two subsequent charges. Those charges have been disposed of.

[4] The Application was for "...bail review pursuant to s.521 of the Criminal Code..." The Crown has pointed that this application cannot be taken under s.521 and has fairly asked me to assume that the application was intended to be made pursuant to s.520, as that is the only section which might empower this Court to review a judicial release. Counsel for the Applicant agreed.

[5] Section 520(1) reads:

If a justice, or a judge of the Nunavut Court of Justice, makes an order under subsection 515(2) , (5), (6), (7), (8), or (12) or makes or vacates any order under paragraph 523 (2)(b), the accused may, at any time before the trial of the charge, apply to a judge for a review of the order.

[6] The Crown took the position, and counsel for the Applicant, on reflection, agreed that this application is not authorized by virtue of s.520. Strictly speaking, the applicant does not require a bail review, but rather, a review of the decision whereby bail was revoked. That authority cannot be found in s.520. Defence counsel agreed.

[7] I have concluded that the Criminal Code does not grant a jurisdiction to entertain a bail review of a bail revocation decision except in one narrow circumstance, not applicable herein. Section 520 only allows an application to be made for a review of an order made under the specified subsections of s.515 or 523. The latter subsection does not apply to accused persons whose bail is revoked subsequent to their being arrested for new criminal offences while awaiting trial; it applies only to situations where the Provincial Court, at the conclusion of a Preliminary Inquiry, upon committing the accused to stand trial, revokes bail.

[8] During submissions I suggested to counsel that an application for *Habeas Corpus* might lie in the circumstances, but the Crown fairly pointed out that in the peculiar circumstances before me where the accused had been held in custody for a period longer than 90 days a remedy was available pursuant to s.525 of the

Criminal Code. On that basis the Crown conceded that the accused should be granted reasonable bail, considering especially the minor nature of the offence for which his bail had been revoked, the substantial period of time he had already spent on remand which period was probably longer than a typical sentence for such an offence.

[9] On the suggestion and agreement of counsel I granted bail pursuant to s.525 of the Criminal Code.

Gruchy, J.