

R. v. C. (D.)

In The Matter of the Youth Criminal Justice Act, S.C. 2002, c.1

Her Majesty The Queen v. D. C.

Ontario Court of Justice

P. Jones J.

Heard: June 30, 2009

Oral reasons: June 30, 2009

Docket: Toronto 293821-01, 293069-01

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Counsel: Ms D. Moskowitz, for Provincial Crown
Mr. S. **Pieters**, for Young Person

Subject: Criminal

Criminal law --- Pre-trial procedure — Review of release orders — Review of order of justice of peace — Factors considered.

Statutes considered:

Youth Criminal Justice Act, S.C. 2002, c. 1
s. 51 — referred to

Madam Justice P. Jones (Orally):

1 This, of course, is a bail de novo brought by D. C.. He is seeking that the Court review a consent detention order. This is not a review in the sense of a review on the basis of transcripts. He has the right to bring this as a bail de novo and the Court looks at the situation with fresh eyes. However, I am aware that he did consent to his detention in January and that he has been in custody since January to today's date.

2 His plan, as put forward by his counsel, is that he be released and that there are two sureties that have been proposed: one is his 21-year-old brother E. and the other is his 19-year-old sister S.. The plan is that he would live at his mother's address with his three sisters, one brother, and mother. So, at that address, there would be six adults. One of the proposed sureties, S., is eight-months-pregnant and anticipates giving birth in July.

3 I note that the young man's mother did not testify. Apparently, in the past, she has been a surety, probably with respect to the carry a concealed weapon in September or where there was a finding of guilt in September 2007. She apparently pulled the bail because she could not manage the behaviour of the young person. She is not here. She, obviously, is the authority person and major tenant in that household. She is the mother or step-mother of all the young people in the home. She is not here to indicate that this is a plan that meets with her approval, that she feels that she has any ability to manage the situation or to propose herself as a surety. So, I think that is a pretty important deficit in the plan.

4 Now, this young person is facing extremely serious charges and these charges include robbery, possession over \$5,000, forcible confinement, carry concealed weapon, fail to comply, fail to comply, disguise with intent and use of a firearm on the commission of an offence.

5 At the time that these charges were laid, the young person, was subject to a bail and I understand that one of the proposed sureties was also the surety with respect to that charge.

6 The young person was arrested and one of the charges related to a fail to comply with bail terms. I understand that one of the terms was that he be in his residence between 9 p.m. and 6 a.m. He was arrested at four o'clock in the morning in a house that included much of the items that had been stolen in a house invasion that had occurred the night before. I also understand there is an allegation that when he was arrested that he was found with a knife on his person. I note from his record that there was a Section 51 order that he not possess any weapons. Was it also a terms of his probation? Does anybody know? Did I hear that? I certainly know there is a 51 order here.

7 So, his brother gave evidence that he had been called into work that night, that he had not called. He had been advised that night that his brother had been picked up and he was not aware until that occurred. So, he, as a surety, had made no prior arrangements, obviously, at the home to indicate what would happen if he were called into work because nobody indicates to him that his brother was not at home and he first hears this when his brother is subject to an arrest.

8 There is a domestic history. I note there is a charge of mischief here dating back to 2007. It relates to a domestic incident occurring at the home of all of the young people here. Apparently, there was an argument with the sister over the use of a phone and an argument with the mother. The nature of the mischief charge was that the young person pled guilty to using a hammer to damage some doors in the home and then throwing the hammer over the balcony. He then flees the home.

9 A few days later, while on the street, he commits a robbery using a knife held to the throat of a Pizza Pizza delivery man. It is a very serious offence there relating to a stranger.

10 So, the Crown indicates that the reverse-onus has not been satisfied on the basis of the primary and secondary grounds. I note there is a failure to attend court on the record. I think it would have been possible to perhaps craft a release plan to meet the primary ground. I do not think that this plan at all is sufficient to meet the secondary ground and that the young person has not satisfied the onus with respect to that. The secondary ground, of course, refers to a substantial likelihood that the young person would commit a criminal offence or interfere with the administration of justice. The history of this young person with respect to his record and the inadequate plan do not satisfy me that the secondary ground could be satisfied in the release plan.

11 I have looked at his record. I have looked at the nature of the allegations of the charges that he faces. The fact that his mother is not here and she is the person I would have wanted to hear from as to whether she felt that she had any authority to control D. C.. I note that in the past she has pulled his bail, and that she has indicated to Justice Weinper that she was unable to manage his behaviour.

12 I do not think that this release plan put forward by the youth's 19-year-old sister who is about ready to give birth and her 22-year-old brother (even if they have the 'best intentions and they are motivated by all the appropriate familial concerns for their brother), is a sufficient plan to deal with the problems that D. C. would pose if I were to release him into this home. It is a very small place. There are lots of adults living there. There has been a history of familial problems in the past. He has a very serious record. He faces serious charges. He has not abided by his bail in the past and I do not feel that this is a sufficient plan. He has not satisfied his onus

and I am going to confirm the detention order.

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