

SUPREME COURT OF YUKON

Citation: *R. v. Anderson*, 2009 YKSC 77

Date: 20091202
Docket S.C. No.: 09-01506
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND:

CHARLES LESLIE ANDERSON

Before: Mr. Justice E.W. Stach

Publication of information that could disclose the identity of the complainant has been prohibited by court order pursuant to section 486.4 of the *Criminal Code*.

Appearances:

Melissa Atkinson
Malcolm Campbell

Appearing for the Crown
Appearing for the Accused

REASONS FOR DECISION DELIVERED FROM THE BENCH

[1] STACH J. (Oral): This is an application under s. 525 of the *Criminal Code* for a review of the detention of Charles Leslie Anderson. Counsel are in agreement that the Crown bears the onus on this application of establishing that the continued incarceration of the accused is necessary on one or more of the enumerated grounds.

[2] Neither counsel for the Crown nor counsel for the accused places any emphasis, in terms of reliance, on the primary ground. The major concern, as expressed by

counsel and as intimated in the exchange between the Court and counsel by me, is in regard to the secondary grounds. That concern is borne, in part, of the conviction of Charles Anderson of sexual assault in January 2009 and of a more dated history of sexual assault.

[3] I accept the submission of the Crown that the community of Carmacks and the complainant have expressed their concerns, in light of the current allegation against Mr. Anderson and in light of the history that I have briefly adverted to, about Mr. Anderson's return to that small community.

[4] In the course of today's hearing we had a recess to investigate options that may be available, in terms of housing and programming for Mr. Anderson, in the City of Whitehorse. Sadly, although programming is available here, it appears that housing for Mr. Anderson in a suitable residence cannot be ascertained today. I would have been disposed, assuming a suitable residence for Mr. Anderson could have been found in Whitehorse, to release him on a recognizance that would include, among other terms, that he report to a Bail Supervisor immediately upon his release from custody, that he have no contact, directly or indirectly, or communication in any way, with J.S. and that he not attend within 25 metres of her person, that he abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances except in accordance with a prescription given to him by a qualified medical practitioner, and that he not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol. I would have imposed a curfew that required him to be in an approved residence between the hours of 8:00 p.m. and 8:00 a.m., except as

permitted by his Bail Supervisor, and I am thinking primarily in terms of potential employment.

[5] An approved residence is all that stands between a current order for the release of Charles Anderson and his continued incarceration.

[6] I am not persuaded that the Crown has established the tertiary grounds.

[7] I am not persuaded that, despite having come so close to a scenario that would permit the release of Charles Anderson from incarceration, that in the absence of a suitable residence for him in this community, I should do so. I decline to order his release.

[8] I should like to make it plain that Charles Anderson is at liberty to renew his request for release on two days' notice to the Crown. It is my expectation that, with some additional exploration by Mr. Campbell on his behalf and in cooperation with the Bail Supervisor, that suitable housing can soon be found.

[9] Subject to the ability of Charles Anderson to renew his application, as expressed, I order his continued incarceration.

STACH J.