

SUPREME COURT OF YUKON

Citation: *R. v. Anderson*, 2010 YKSC 02

Date: 20100108
Docket S.C. No.: 09-01506
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND:

CHARLES LESLIE ANDERSON

Before: Mr. Justice W.M. Darichuk

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 JUDGMENT DELIVERED FROM THE BENCH

[1] DARICHUK J. (Oral): This is an application by the accused pursuant to the provisions of s. 520 of the *Criminal Code* for a review of an order for his continued detention. This order was pronounced by a justice of this Court on December 2, 2009. The order followed a review of his detention under s. 525 of the said *Code*.

[2] The accused has been in custody since April 17, 2009, on a charge of sexual assault. The assault is alleged to have been committed at the Village of Carmacks, in the Yukon Territory, on April 30, 2008.

[3] Following a preliminary inquiry, he was ordered to stand trial on this charge on August 27, 2009. The trial was scheduled to commence in this Court on November 30, 2009. On November 27 of 2009, the unavailability of a key RCMP witness for the trial resulted in a joint application for adjournment of the trial. The trial is now set for March 29, 2010. According to the learned defence counsel, the trial may not proceed on this date.

[4] The evidence and powers of a judge on the review of such an order of detention attracts the consideration of s. 520(7) of the *Code*. It reads that:

On the hearing of an application under this section, the judge may consider

- (a) the transcript, if any, of the proceedings heard by the justice and by any judge who previously reviewed the order made by the justice,
 - (b) the exhibits, if any, filed in the proceedings before the justice, and
 - (c) such additional evidence or exhibits as may be tendered by the accused or the prosecutor,
- and shall either
- (d) dismiss the application, or
 - (e) if the accused shows cause, allow the application, vacate the order previously made by the justice and make any other order provided for in section 515 that he considers is warranted.

[5] Three exhibits have been filed in the proceedings before me. Firstly, a bail assessment report dated July 29, 2009; secondly, a copy of the probation order; and thirdly, a bail assessment report bearing today's date.

[6] The central issue in these proceedings is whether the requisite onus on the part of the accused has been discharged. While no transcript of the proceedings before the justice was filed, it is clear from paragraphs 2 and 3 of his Reasons for Decision, and I

refer to the citation of *R. v. Anderson*, (2009) YKSC 77, that the continued detention of the accused was ordered on the basis of the secondary ground set forth in s. 515(10) of the *Code*. He states in these paragraphs:

- [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.

Further on in his Reasons for Decision he notes at paragraph 6:

- [6] I am not persuaded that the Crown has established the tertiary grounds.
- [7] To address the specific concerns of the community of Carmacks, as well as the complainant, appropriate terms and conditions of release were stipulated. They included a requirement that, pending his trial, he reside at a "suitable residence." As such accommodation was not available his continued incarceration was ordered. As he noted at paragraph 5 of his Reasons:

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

[8] Learned counsel for the accused submits that such a residence is now available and, accordingly, the order of detention should be vacated. Neither the material on file nor the Reasons for Decision refer to the bail assessment report prepared by the Probation Officer for July 29, 2009, or the terms and conditions of a probation order dated January 15, 2009. As noted, they are now exhibits before the Court. This probation order was for a term of two years coming into force on the expiration of the sentence imposed for another sexual assault.

[9] The bail assessment report, Exhibit 1, dated July 29, 2009, states as follows, in part:

Mr. Dempsey, manager of Offender Programs, Justice was contacted for input of his involvement with Mr. Anderson while residing at the YARC on probation prior to his arrest for his current charge. Mr. Dempsey indicated that Mr. Anderson is a moderate to high risk sexual offender who has not benefitted from any treatment and presents a risk to re-offend in the community.

Mr. Anderson is a fifty-four year old Carmacks First Nation man who is before the Court for the purpose of Judicial Interim Release. He is charged with one count of sexual assault and he has a related criminal history. He has three property offences, one fail to comply with a probation order, two impaired driving convictions, one assault conviction and three prior sexual assault convictions.

Given that Mr. Anderson was given ample time to develop a release plan he was unable to present a viable release plan. He was not accepted for residency at the YARC. He is not welcome back to the community of Carmacks, Yukon. He is deemed a moderate/high risk untreated sexual offender thus presenting a high risk to re-offend in the community.

[10] A number of the terms and conditions of the probation order address the concerns of the community and focus on the issues of risk of re-involvement,

assessment and counselling. Significantly, the probation order will remain in effect if the order of detention is vacated.

[11] There is merit in the observation of the learned defence counsel that the narrow issue for resolution is whether the residence of Andy Silverfox at House 67A in the Village of Pelly Crossing is a suitable residence. If he were to reside at this residence, it would appear that there is a prospect of employment, or that such a prospect is excellent. As he noted at paragraph 5 of his Reasons, Mr. Justice Stach states:

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

[12] Following submissions of learned counsel yesterday, a further assessment report was ordered concerning the suitability of the A. Silverfox residence at Pelly Crossing. Under the heading of "Recommendations" in Exhibit 3, the Probation Officer notes in part:

Mr. Anderson is a fifty-four year old Carmacks First Nation man who is before the Court for the purpose of a Judicial Interim Release. He is charged with one count of sexual assault. His criminal record includes convictions sexual assault, three property offences, one fail to comply with a probation order, two impaired driving convictions, one assault conviction and three prior sexual assault convictions.

Both Victim Services and the RCMP have expressed concerns regarding Mr. Anderson's release to the community.

The balance of that paragraph is not being considered by the Court.

[13] Continuing with her report, she states:

Mr. Anderson's release plan to reside in the home of Mr. Andy Silverfox, Pelly Crossing, Yukon, is not considered a suitable residence due to the children living in the home. The writer would have grave concerns of an untreated high risk sexual offender residing in a home where children are constantly present.

Mr. Anderson was residing in a supervised living environment, the Yukon Adult Resource Centre, when charged with the offence that currently brings him before the court. Therefore the option of living in some isolation such as that of a small community also raises grave concerns due to the lack of resources for supervision and treatment. Given the above information the writer does not support a release.

[14] In his Psychological Screen and Risk Assessment report, which is part of Exhibit 3, under the heading "Summary and Recommendations," Mr. Dempsey observes that the accused "...should not be allowed to have access to children or be in places where vulnerable women and children are."

[15] Considering these recommendations, and given the totality of the circumstances, the continued detention of the accused is justified. His application to vacate the order of detention is dismissed.

DARICHUK J.