

SUPREME COURT OF YUKON

Citation: *R. v. Wong*, 2012 YKSC 91

Date: 20121029
Docket T.C. No. 12-10062
Registry: Watson Lake
Heard: Whitehorse

BETWEEN:

REGINA

AND:

CRYSTAL CHERYL-LEE WONG

Before: Mr. Justice R.S. Veale

Appearances:

Keith Parkkari
Lynn MacDiarmid

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT DELIVERED FROM THE BENCH

[1] VEALE J. (Oral): The application before the Court is made by Crystal Wong, and she is applying for bail review under s. 520 of the *Criminal Code*. She has essentially been in custody for approximately four and a half months out of some drug allegations arising in the community of Watson Lake. She was previously denied bail by a Justice of the Peace for reasons that were questionable, to say the least, at the time, in terms of it being very difficult to determine what the grounds of detention were. This application essentially proceeds as a rehearing of the matter and there is some

evidence that was not before the Justice of the Peace, that being an affidavit of the proposed surety, Billy Wong, who is the father of Crystal Wong, as well as the affidavit of Crystal Wong herself, and two support letters coming from the Gitwangak Education Society.

[2] Let me first deal with the allegations, which are of some concern to the Court. On June 13 of 2012, the Watson Lake RCMP initiated an investigation into drug trafficking at the residence of John Lewis McPhee. They obtained a search warrant of that residence and attended at the residence and found not only John Lewis McPhee there, but an individual whose name I think is Douglas [sic] Clayton Moore, Louis John Olson, and also a female, Crystal Cheryl-Lee Wong, who was present as well. A search of the residence located approximately \$5,000 in Canadian currency, \$4,185 of that amount being located on Louis John Olson, the boyfriend of Ms. Wong. There was also the sum of \$205, I believe, that was found on Ms. Wong itself.

[3] The residence itself is of significant concern because it could be legitimately described as a small-scale drug operation. There were 31 morphine tablets, 121 Tylenol 3's, which is a codeine product, approximately 50 grams of marihuana, which was located in Mr. McPhee's bedroom, approximately 40 grams of crack cocaine, 35 grams of which were located inside a bedroom, individually wrapped in tinfoil packages, in a bag allegedly belonging to Ms. Wong. There was also a significant amount of alcohol on the premises as well as some weapons, but none of the weapons offences have been charged against Ms. Wong and she faces the four counts of possession for the purpose of trafficking the marihuana, Tylenol 3 and morphine, in addition to the crack cocaine.

[4] The onus is on Ms. Wong under the bail release provisions in s. 515 because of s. 515(6)(d), and the offences she has been charged with involving potential imprisonment for life under s. 5 of the *Controlled Drugs and Substances Act*. The onus shifts from the Crown to Ms. Wong because of s. 515(6)(d). Both counsel have referred to the decision of *R. v. Pearson*, [1992] 3 S.C.R. 665, a decision of Lamer J., where the reverse onus provision was ruled constitutional, essentially on the reasoning that it was to ensure that individuals involved in large-scale drug trafficking organizations or rings would not be allowed to return to the street to continue to traffic. It also, of course, does catch small-scale drug operations like the one before us today, and that is the reason, of course, that we have the reverse onus, because the expectation is that Ms. Wong will establish why she should not be detained under one of the three grounds of detention, the first being that it is necessary to ensure her attendance in court, and the second being that there is no substantial likelihood that she will, if released from custody, commit further offences or interfere with the administration of justice, and thirdly, the detention is necessary to maintain confidence in the administration of justice.

[5] The submission of Ms. Wong's counsel is that Ms. Wong has been scooped up in this search warrant and the police had no expectation that she was going to be there, contrasting with the Crown view that she is part and parcel of this small drug trafficking ring in Watson Lake because some of the crack cocaine was found in her personal handbag. The issue before me, though, is whether or not s. 11 of the *Charter* applies, and s. 11 states that:

Any person charged with an offence has the right:

...

- (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal; and
- (e) not to be denied reasonable bail without just cause;

[6] That brings me to the plan that has been presented by Ms. Wong. Ms. Wong, I believe, is a 25-year-old woman who is a member of the Gitwangak First Nation which is a First Nation in northern British Columbia, a First Nation that can be accessed from the Yukon by highway. She has lived there in the past with her father, whose name is Billy Wong, and she wishes to return there to attend the Gitwangak adult school full time. She has provided correspondence from the Gitwangak Education Society, a Deborah Bright, who indicates that prior to her departure from Gitwangak she was actively engaged in attending the adult education program there, and she is welcome to return to that course and has support in the community. The completion of the adult education program would assist her in obtaining other employment.

[7] Her father has provided an affidavit indicating that he will put up \$1,000 cash bail and apparently that \$1,000 has been provided to the Elizabeth Fry Society in Whitehorse. That money is available to be placed into Court. Billy Wong has satisfied me in his affidavit that he understands the role of a surety, he understands the serious nature of the charges that have been filed against Ms. Wong, and he is prepared to be a surety for his daughter, but he lives on a fixed income from a Canada Pension Plan, and old age pension. He lives in his home with a younger daughter and her two sons, and he is prepared to take her in to assist her to get back on her feet, essentially. He appears to me to be prepared to support her in that endeavour.

[8] I am satisfied that with this plan that the three concerns in s. 515(5) have been substantially met. I am concerned, of course, that each one of those presents a risk because she may not return to court; she may commit other offences; the offences that she has been charged with, there is some indication that there is strength in the prosecution case; I have no doubt on all those issues. But I am satisfied that the plan that she has proposed is one that goes a long way to meeting those concerns and if, in fact, she does not meet those concerns, she is a person who is going to suffer more in the process.

[9] I say that to you, Ms. Wong, because this is your chance to straighten out. You are obviously on a downhill track, and with four and a half months in jail you have had an opportunity to see what that life is all about and you have had an opportunity to become clean again. I am hopeful that your release under the conditions that I am going to set will be a positive force in your life, and that you will be back here to deal with the allegations that the Crown has brought before you.

[10] So I am going to release you on a judicial interim release recognizance, which requires you to:

1. Keep the peace and be of good behaviour;
2. Appear before the Court when required to do so;
3. Notify your Bail Supervisor in advance of any change of name or address and promptly notify the Bail Supervisor of any change of employment or occupation;

4. You are required to attend at the Territorial Court in Whitehorse, Yukon on Tuesday the 5th day of March, 2013, at 10:00 a.m. at Whitehorse, Yukon, and attend thereafter as required by the court order in order to be dealt with according to law;
5. You are to report to a Bail Supervisor immediately upon your release from custody and thereafter when and in the manner directed by the Bail Supervisor;
6. You are to remain in the Yukon until you depart for Gitwangak, British Columbia, and thereafter remain in the Province of British Columbia unless you have the prior written permission of the Bail Supervisor or permission of the Court;
7. You are to abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;
8. You have given your consent, and I am therefore ordering that you provide a sample of your breath and urine for the purposes of analysis upon demand by a Peace Officer or Bail Supervisor who has reason to believe that you may have failed to comply with this condition;
9. You are not to attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
10. You are to have no contact directly or indirectly in any manner or communication in any way with John Lewis McPhee, Douglas [sic] Clayton Moore and Louis John Olson, except as allowed by the Court and

incidental contact by your counsel. You are not to attend within 100 metres of any residence of any of those three individuals, or their work places;

11. You are to reside as directed by your Bail Supervisor, but firstly at Kaushee's Place until October 31, when you will depart for British Columbia, and thereafter to reside at 302 Wolf Street, Gitwangak, British Columbia, and not change that residence without the prior written permission of your Bail Supervisor;
12. You are to abide by a curfew by remaining in your place of residence between the hours of 8:00 p.m. and 6:00 a.m. daily except with the prior written permission of your Bail Supervisor, which written permission, if granted, must be carried on your person at all times. You must always present yourself at the door or answer the telephone during reasonable hours for curfew checks, and the failure to do so will be a presumptive breach of this condition;
13. You are not to have in your possession any firearms, knife or other weapons, or ammunition or explosive substance, and no pager or cell phones, period;
14. You are to enroll in and attend at the Adult Education Program of the Gitwangak Education Society and, upon completion of that program, to make reasonable efforts to find and maintain suitable employment and provide your Bail Supervisor with all necessary details concerning your efforts to continue in the educational program as well as pursue suitable

employment, should you complete that program prior to your trial date in Whitehorse.

[11] Any issues that you wish to raise on those conditions?

[12] MR. PARKKARI: Not on the conditions, no.

[13] MS. MACDIARMID: No, just -- I wanted to clarify again that the name of one of the witnesses is Donald Clayton Moore. I think you said Douglas but we've been confused all along. It's Donald.

[14] THE COURT: It is Donald. I did say Douglas. Mr. Clerk, it is Donald.

[15] THE CLERK: Thank you, Your Honour.

[16] MR. PARKKARI: And I don't believe the Court has addressed the sureties or the form or amount of bail.

[17] THE COURT: There will be \$1,000 cash deposit which will be paid by Billy Wong.

[18] MR. PARKKARI: And Mr. Wong will be a surety?

[19] THE COURT: And Mr. Wong is a surety as well. So you have to make arrangements, Mr. Clerk, for him to sign that surety, which I gather is done by reading it over by telephone. Is that the practice?

[20] THE CLERK: I believe that's correct, Your Honour.

[21] MR. PARKKARI: I believe the normal practice is it would be faxed down to him. It would then be read to him over the phone while he has the copy in front of him. He would sign it and fax it back.

[22] MS. MACDIARMID: Yes, I'll make those arrangements.

[23] THE COURT: Is that correct, Mr. Clerk?

[24] THE CLERK: That's correct.

[25] THE COURT: Thank you.

VEALE J.