IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *R.* v. *Taylor,* 2004 YKSC 16

Date: 20040213
Docket No.: 03-01508
Registry: Whitehorse

HER MAJESTY THE QUEEN

Between:

Respondent

And

JOSEPH NEIL TAYLOR

Applicant

Appearances:

Mr. Ludovic Gouaillier — For the Respondent
Ms. Jennifer Reid — For the Applicant

Before: Mr Justice L.F. Gower

REASONS FOR JUDGMENT

Introduction

[1] Mr. Taylor has applied to this court under s. 520 of the *Criminal Code,* for review of a detention order made by Justice of the Peace Cameron on January 29, 2004, principally on the tertiary grounds under s. 515(10)(c). Mr. Taylor is charged with intent to escape lawful custody, contrary to s. 144, and also with mischief by damage over $5,000 contrary to s. 430 of the *Criminal Code.*

[2] The preliminary issue on this review application is whether I treat it strictly as an appeal on the record, as a *de novo* (i.e. fresh) hearing, or as some type of hybrid combination of the two. My determination of that preliminary issue will dictate the

standard of review in order to decide the ultimate issue, which is whether Mr. Taylor should be released from custody.

[3] If this review is nothing more than an appeal on the record, I can only release Mr. Taylor if the Justice of the Peace made some error in law or in principle at the initial bail hearing. If I treat this review as a fresh hearing, then I can consider additional evidence and I am at liberty to substitute my discretion for that of the Justice of the Peace. If the review is a hybrid procedure, then in the absence of any fresh and sufficient evidence being introduced at this stage, I should defer to the decision of the Justice of the Peace, unless there has been an error in law or jurisdiction, or a serious error in his appreciation of the facts.[1]

[4] Both counsel have informed me that they have been unable to locate any precedents within the Yukon as to the standard of review. The legal texts vary in their view of the appropriate standard. *Martin's Annual Criminal Code*, 2004, at page 927 suggests that preponderance of authorities support the conclusion that this type of review is a fresh hearing. *Tremeear's Criminal Code*, 2004, at page 921, only cites appellate level authority and refers to the case of the *R.* v. *Carrier* (1979), 51 C.C.C. (2d) 307 (Man C.A.), which is between the hybrid and the fresh hearing points on the continuum. E. G. Ewaschuk, in his text *Criminal Pleadings and Practice in Canada*, Second Edition, seems to suggest that the prevailing view is that these reviews are not fresh hearings but appeals on the record, while acknowledging that contrary authorities exist.

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[1] *R.* v. *Bradley and Bickerdale* (1977), 38 C.C.C. (2d) 283 (Que. S.C.).

Analysis

[5] It is important to note at the outset that s. 520(7) of the *Criminal Code* allows the reviewing judge to consider the transcript of the original proceedings, any exhibits filed in those proceedings, and such additional evidence or exhibits as may be tendered by the accused or the prosecutor. That alone suggests that a review under s. 520 is not strictly limited to being an appeal on the record.[2]

[6] Further, s. 520(7) authorizes the reviewing judge, if the accused shows cause, to allow the application, vacate the original detention order and "make any other order provided for in s. 515 that he considers is warranted". If the original detention order is set aside, the reviewing judge must necessarily exercise some independent discretion on deciding what the new release order should contain.

[7] It appears that the *Carrier* decision is one of the few, if not the only appellate level decision squarely dealing with this issue. There, Matas J.A. said at p. 313:

> I am satisfied that Parliament intended the review to be conducted with due consideration for the initial order but, depending on the circumstances, with an independent discretion to be exercised by the review Court.

[8] Matas J.A. then went on to quote with approval the decision of *R.* v. *Hill*, [1973] 5 W.W.R. 382, where Berger J. was discussing the onus upon the accused in these types of applications.

> … In my view that onus is discharged if it is shown that the circumstances have altered since the hearing below … Or, if the judge below misconceived the facts or was guilty of an error in law … Those are not the only grounds. A judge of this Court may, if cause is shown, substitute his own discretion for that of the judge below …

[2] See also *R.* v. *Johnson*, [1985] N.W.T.R. 4 (N.W.T.S.C.) at 8.

[9] Matas J.A. next referred to the definition of review found in *Blacks Law Dictionary*, 4th ed., which reads:

> To re-examine judicially. A reconsideration; second view of examination; revision; consideration for purposes of correction.

[10] *R.* v. *Dellacio,* unreported, December 23, 1987 (Que. S. C.), also looked at the definition of the word “review” in this context.

[11] Hamilton J., of the Manitoba Court of Queen’s Bench, in *R.* v. *Tomassetti*, [1981] M.J. No. 370, followed *Carrier* and said at para. 5:

> It appears to me that the hearing in this court then becomes almost a *de novo* hearing. It is less a consideration of whether the judge hearing the original application has erred in any way and more one of a reconsideration of all of the factors existing at the time of the review hearing, at the end of which the reviewing judge may say whether or not, in his opinion, in view of the facts and the principles of law set out in the Criminal Code, it is or is not appropriate for the accused to be released pending his trial and, if so, what, if, any, conditions should be imposed.

[12] A number of other courts have followed *Carrier* : *R.* v. *McKay,* [2000] B.C.J. No. 979 (B.C.S.C.); *R.* v. *Johnson*, [1990] N.B.J. No. 1172 (N.B.Q.B.); *R.* v. *Rosato*, [2001] N.J. No. 342 (Nfld. S.C.); *R.* v. *Andrews*, [2000] O.J. No. 715 (Ont. Sup. Ct).

[13] It is notable that McFarlane J.A., sitting as a judge of the British Columbia Court of Appeal, dealt incidentally with this question in *R.* v. *Sanita* (1981), 60 C.C.C. (2d) 184, sitting in review of a release order made by Mr. Justice Paris on a direct indictment charging conspiracy to traffic heroin. The application was under what is now s. 521, however, the last phrase of s. 521(1) is worded identically to s. 520(1), i.e. “apply to a judge for a review of the order”.

[14] In reviewing the primary and secondary grounds, McFarlane J.A. said:

> Considering all of the matters I have mentioned, *independently of the view taken by Mr. Justice Paris*, it is my opinion, that the respondent has shown that his detention is not necessary on the primary ground …(emphasis added)

In other words, it is apparent that McFarlane J.A. had no difficulty substituting his discretion for that of the originating judge, even though the matter was purely an appeal on the record and there was no fresh evidence.

[15] Crown counsel queried the utility of a bail hearing in the first instance, if an accused can simply apply for a review under s. 520 and take another run at it. This concern was expressed in the case *R.* v. *Johnson* (cited above), a decision of the Northwest Territories Supreme Court, where Mr. Justice de Weerdt said at p. 9:

> I am generally in agreement with that submission, on the ground that a judicial order should not be lightly set aside. Reviews on a “better luck next time” basis are not to be encouraged. *Where a judicial discretion has been properly exercised* at first instance, even thought the result is not one that would be reached by the appellate bench, it will *generally* and quite properly be left undisturbed. (emphasis added)

[16] It is interesting to note that in that case there was no transcript. Rather, the evidence led before the reviewing court was the same as that before the original justice. There was no new evidence. Nevertheless, Justice de Weerdt felt that he had the discretion to reach his own independent conclusions upon hearing that evidence. In any event, I do not take the quoted comment by de Weerdt J. as being contrary to the opinion in *Tomassetti* and *Carrier* that this type of review is a reconsideration of whether judicial discretion was properly exercised at the initial bail hearing.

[17] I am persuaded that the approach in *Carrier* is the appropriate one and that the reviewing Court may exercise independent discretion, with due regard for the original order, regardless of whether fresh evidence is introduced.

The Tertiary Grounds

[18] The so-called tertiary grounds are set out in s. 515(10)(c) of the *Criminal Code.* For ease of reference, I will quote the relevant parts of the section:

> 515 (10) For the purposes of this section, the detention of an accused in custody is justified only on one or more of the following grounds:
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> …
>
> (c) on any other just cause being shown and, without limiting the generality of the foregoing, where the detention is necessary in order to maintain confidence in the administration of justice, having regard to all the circumstances, including the apparent strength of the prosecution's case, the gravity of the nature of the offence, the circumstances surrounding its commission and the potential for a lengthy term of imprisonment.

[19] The Supreme Court of Canada in *R.* v. *Hall* (2002), 167 C.C.C. (3d) 449, ruled that the phrase "any other just cause being shown" is unconstitutional because it confers an open-ended discretion to refuse release, which is inconsistent with both s. 11(e) of the *Charter* and the presumption of innocence. Nonetheless, the balance of s. 515 (10)(c), which permits denial of bail where it is necessary to "maintain confidence in the administration of justice", is constitutional.

[20] E.G. Ewaschuk, cited above at page 6-4.1, paraphrases Hall as follows:

> Public confidence is essential to the proper function of the bail system and the justice system as a whole. Bail denial to maintain confidence in the administration of justice is *not* a mere “catch-all” for cases where the first two grounds for denial of bail have failed. Instead, it represents a “separate and distinct basis” for denial of bail *not* covered by the other two categories.

[21] In *R.* v. *Morales*, [1992] 3 S.C.R. 711, Lamer C.J., speaking for the majority of the Supreme Court of Canada, said at pp. 14 and 15:

> In *Pearson*, I noted that s. 11(e) [of the *Charter*] creates a basic entitlement to bail. Bail must be granted unless pre-trial detention is justified by the prosecution. …
>
> …
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> In *Pearson*, I identified two factors which in my view are vital to a determination that there is just cause under s. 11(e). First, the denial of bail must occur only in a narrow set of circumstances. Second, the denial of bail must be necessary to promote the proper functioning of the bail system and must not be undertaken for any purpose extraneous to the bail system. …
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> …
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> In my view, the bail system also does not function properly if individuals commit crimes while on bail. One objective of the entire system of criminal justice is to stop criminal behaviour. The bail system releases individuals who have been accused but not convicted of criminal conduct, but in order to achieve the objective of stopping criminal behaviour, such release must be on condition that the accused will not engage in criminal activity pending trial. … Similarly, if there is a substantial likelihood that the accused will engage in criminal activity pending trial, it furthers the objectives of the bail system to deny bail.
>
> …
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> The bail system has always made an effort to assess the likelihood of future dangerousness while recognizing that exact predictions of future dangerousness are impossible.

These comments were made in relation to the public safety component in the secondary grounds, however they also apply to bail entitlement generally.

[22] In *R.* v. *Hall,* cited above, McLachlin C.J.C. echoed the above remarks at pp. 465 and 466:

> It is important that a bail provision not trench more than required on the accused's liberty and the presumption of innocence. Denial of bail must be confined to a "narrow set of circumstances" related to the proper functioning of the bail system: *Pearson* and *Morales, supra*.
>
> …
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> As discussed earlier, situations may arise where, despite the fact the accused is not likely to abscond or commit further crimes while awaiting trial, his presence in the community will call into question the public's confidence in the administration of justice. [McLauchlin C.J.C. then went on to set out the four factors in s. 515(10(c).]
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> …
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> This, then, is Parliament's purpose: to maintain public confidence in the bail system and the justice system as a whole. … The judge must be satisfied that detention is not only advisable but *necessary*. The judge must, moreover, be satisfied that detention is necessary not just to any goal, but *to maintain confidence in the administration of justice.* Most importantly, the judge makes this appraisal objectively through the lens of the four factors Parliament has specified. … At the end of the day, the judge can only deny bail if satisfied that in view of these factors and related circumstances, a reasonable member of the community would be satisfied that denial is necessary to maintain confidence in the administration of justice. … the reasonable person making this assessment must be one properly informed about "the philosophy of the legislative provisions, *Charter* values and the actual circumstances of the case".

Merits Of The Application

[23] Much has been said about the strength of the Crown's case as it relates to the probability of conviction. This is something that I must take into consideration as part of my analysis of the tertiary grounds for detention under s. 515(10)(c). Section 518(1)(c)(iv) also authorizes the Crown to lead evidence about the circumstances of the alleged offence, "particularly as they relate to the probability of conviction". It is acknowledged by both counsel that the Crown's case is entirely circumstantial. To date, no witnesses have provided statements directly implicating Mr. Taylor.

[24] The allegations are, in summary:

1. At approximately 11:30 p.m. and again at about 12:00 a.m., the R.C.M.P. received calls indicating a problem at the Whitehorse Correctional Centre.
2. The police arrived at 12:15 a.m. They determined that there had been a riot by some prisoners in A Dorm and that the entrance to that Dorm had been barricaded. Some fires had been lit and some property damage was suspected.
3. At 12:35 a.m., two inmates left the Dorm on their own, saying that they wanted to come out and leave.
4. At 1:10 a.m., two other inmates similarly indicated that they wanted to come out and leave the dorm, which they were allowed to do.
5. The standoff continued with eight inmates remaining in A Dorm. Mr. Taylor was a member of the group of eight.

6. In general, the Crown does not have any clear evidence of any statements made by any of the eight prisoners, except one brief comment by one of them, Mr. Dyck, which indicated that he was the ringleader. Beyond that, the Crown says that the R.C.M.P. reports are not “the clearest at this time”. However, those reports indicate that the police heard other voices beside that of Mr. Dyck, apparently yelling obscenities at the police.

7. There is no evidence that any of the members of the group of eight were in distress or under coercion.

8. At 1:30 a.m., the group of eight surrendered to the police. All eight came to the A Dorm entrance. Upon surrendering, no one in the group made any comments indicating that they were under pressure to remain in the Dorm or being prevented from leaving. Nor were there indications from their appearance that anyone had been physically restrained or harmed.

9. After entering the Dorm, the authorities discovered a fairly large hole partway through one of the exterior walls. It appears from the photographs that the wall was constructed of two layers of bricks or concrete blocks, with insulation in between. The interior layer of blocks had been breached and the hole was apparently large enough for someone to crawl through. However, the exterior layer of concrete blocks had not yet been penetrated. There was also a much smaller hole in another interior wall apparently separately A Dorm from the

women’s dormitory. It is not clear whether that hole penetrated through fully. In any event, it was not yet large enough to allow a person to crawl through.

10. There was miscellaneous other damage to other fixtures and facilities in A Dorm, including the urinals and sinks, as well as fire, smoke and water damage. The Crown says that the total estimate for the damage is approximately $50,000.

[25] Defence counsel argues that there is no direct evidence of Mr. Taylor doing anything or saying anything while he was behind the barricade in A Dorm. She also says that mere passive presence or acquiescence is insufficient to make Mr. Taylor a party to either offence. She says that the escape charge is one requiring specific intent and evidence of that intent is entirely lacking. Finally, she says that one of the circumstances of the Crown’s case is that Mr. Taylor had three days left on his sentence at the time of this incident. She asked me to conclude that it would have been foolhardy on his part, if not so absurd as to be irrational and unexpected, to attempt an escape with three days left to serve. Consequently, I should infer that he would not have intentionally participated in this incident.

[26] Crown counsel counters by saying that the circumstantial evidence can prove Mr. Taylor’s involvement. Further, the prisoners in the Correctional Centre are under a positive duty to obey the lawful orders of their captors, including, in this case, the R.C.M.P. Therefore, the failure of any of the group of eight to surrender upon the arrival of the R.C.M.P. means that their presence or their acquiescence transformed from merely passive to culpable.

[27] As for Mr. Taylor's pending release date, the Crown says that is a double-edged sword and may also indicate that Mr. Taylor was exercising extremely poor judgment by participating. That, says the Crown, is consistent with the evidence of his activities generally prior to this incident. Specifically, he was convicted on September 26, 2003, on charges of theft under and driving over .08. For the latter, he received a six-month conditional sentence. However, he breached that conditional sentence by committing offences of uttering a death threat and another theft under, for which he was sentenced on December 9, 2003, to 45 days in jail. It is jointly acknowledged that Mr. Taylor has a severe alcohol problem and the Crown says that Mr. Taylor's actions between the fall of 2003 and the current offence date shows that he was not acting rationally, or at the very least was not exercising good judgment.

[28] The Crown cites the case of *R.* v. *Rondeau* (1996), 108 C.C.C. (3d) 474 (Que. C.A.) as authority for the proposition that I can take into account the behaviour of the accused at the time of the offence charged. However, that case is somewhat distinguishable in that it leads to the eventual conclusion that the behaviour was proof of the accused's "dangerousness", which relates principally to the public safety feature of the secondary ground. Mr. Taylor's dangerousness was not an issue in this case and, it is apparent from what follows that, the secondary ground is only of passing relevance.

[29] Justice of the Peace Cameron said at paras. 2 and 3 of his oral Reasons for Judgment:

> The secondary grounds are of some limited concern, and they really arise only out of the fact that over the period of the last 28 years, Mr. Taylor has amassed a number of offences. So that really only arises on the concern that randomly Mr. Taylor, from time to time, finds himself in trouble with the

> courts and with the law, and again, in and of itself, would certainly not constitute his detention.
>
> What we're really talking about here are the tertiary grounds.
> …

[30] I conclude from those comments that there was nothing beyond Mr. Taylor's criminal record which concerned the Justice of the Peace, and that, standing alone, that criminal record would not constitute grounds for Mr. Taylor's detention. The Justice of the Peace said nothing more about the secondary grounds, but concluded his Reasons by saying "I am detaining you on both the secondary and the tertiary grounds." It is apparent from reading his oral judgment in its entirety, including the passage that I just quoted, that the secondary grounds did not form part of the *ratio* of his decision*,* i.e. the reason or point which was determinative of the judgment.

[31] Defence counsel argues that the Justice of the Peace misunderstood the importance of the application of the presumption of innocence in this bail hearing. As a result, she says that he either effectively imposed a reverse onus upon Mr. Taylor or that his approach to the decision gave rise to a reasonable apprehension of bias.

[32] Let me dismiss the last point first. There is nothing in the transcript or the decision of the Justice of the Peace which creates a reasonable apprehension of bias.

[33] Admittedly, there was a certain lack of clarity on the part of the Crown and the Justice of the Peace as to whether or not this was a reverse onus situation. Nevertheless, I am satisfied after reading the submissions of the Crown in their entirely and the comments and decision of the Justice of the Peace, that the Justice of the Peace did not impose a reverse onus upon Mr. Taylor.

[34] What is clear is that Justice of the Peace Cameron was focused on the tertiary grounds. He summarized his concerns about these grounds in para. 11 of his Reasons:

> The allegations are that Mr. Taylor was involved with a number of individuals who, at this stage, created something in the way of an attempted escape. Whether it's been proved or not, those are what the allegations are. The administration of justice could hardly be looked at with, I would think, respect if the response was that these individuals that allegedly were involved in this were unsuccessful at this stage, so now we should be releasing them. This becomes a very difficult scenario to try to grasp. Where does the administration of justice lie if, in fact, we take individuals who have been charged with, at this point, attempting or being involved in some form of possible escape, and then turn them loose. This becomes a very difficult issue and I think it is one that is very hard to justify with the release plan as it has been put forward.

[35] In concluding that the tertiary grounds justified Mr. Taylor's detention, it seems as though the Justice of the Peace was focused on the nature of the offence of intended escape. In particular, that releasing Mr. Taylor for this type of offence would tend to undermine the public's confidence in the administration of justice.

[36] I pause to note that Justice of the Peace Cameron did address each of the factors required in s. 515(10)(c), namely the apparent strength of the prosecution's case, the gravity of the nature of the offence, the circumstances surrounding its commission and the potential for a lengthy term of imprisonment.

[37] He found that this was a grave offence, noting that it is a straight indictable offence. He also noted that if convicted, Mr. Taylor could face a lengthy term of imprisonment. He implicitly dealt with the circumstances in his consideration of the facts.

[38] He was less clear in his treatment of the relative strength of the Crown's case:

> … with the evidence before me, I am not able to say one way or the other whether it is a strong case. It may be a difficult case. Ms. Reid, you may be very right, it may be very difficult for the Crown to prove their case, but that does not mean that is not a strong case. Difficulty often runs with the onus being one of beyond a reasonable doubt.
>
> So I am not concerned that – to oppose the wording and say that the Crown has a weak case. I would not go that far. So I do not believe that that is necessarily a concern with regards to the strength or lack thereof of the prosecution's case. (paras 8 and 9)

[39] To be fair, Justice of the Peace Cameron was rendering this oral decision apparently immediately after hearing the lengthy submissions of both counsel. The Justice of the Peace was no doubt aware that it is of the utmost importance to render decisions on judicial interim release as soon as possible because of the liberty interest of the accused. However, the problem that occasionally arises in oral decisions is that a judge's words are not always as clear as they could be.

[40] This is an entirely circumstantial case. In such a case the general rule is that, before a finding a guilt may be made, the trier of fact must conclude that the circumstances (that is, the facts proved) are not only consistent with an inference of guilt but also would not lead to any other reasonable inference. Conjecture, unsupported by evidence, cannot give rise to an alternative reasonable inference for the purpose of rebutting an apparently sufficient case for the Crown. However, the general rule cannot apply to determine requisite intent or the mental element: Harold J. Cox, *Criminal Evidence Handbook*, 1995 – 96, pages 17 and 18; *R.* v. *Cooper* (1978), 34 C.C.C. (2d) 18 (S.C.C.).

[41] Therefore, it seems there are at least two issues which might arise on the face of the Crown's case. First, there is the question of passive presence versus culpable presence. Second, there is the question of whether there is sufficient evidence to prove the specific intent in the escape charge. On the other hand, it seems as though mere speculation as to what was happening out of view and earshot in A Dorm is not sufficient to give rise to an alternative reasonable inference to rebut the one sought by the Crown, which is that Mr. Taylor was present for the purposes of participating in the mischief and the intended escape.

[42] As for the tertiary grounds, I respectfully disagree with Justice of the Peace Cameron. The nature of these alleged offences are not such that a fully-informed reasonable person, aware of the philosophy of the bail provisions in the *Criminal Code* (i.e. that bail must be granted unless pre-trial detention is justified and that denial of bail must occurred only in a narrow set of circumstances), would have their confidence in the administration of justice unduly shaken if Mr. Taylor is released. At the very least, I do not find it to be "necessary" to detain Mr. Taylor to maintain that confidence, especially in light of the release plan, which I will come to in a moment.

[43] I agree with defence counsel that if the offence of intended escape was one which Parliament considered to be exceptional, then it could have listed that offence under the reverse onus provision in s. 515(6). The fact that Parliament has not done so makes it difficult for me to treat the offence of intended escape any differently that I might treat other similarly serious offences. In other words, I do not read s. 515(10)(c) as justifying the detention of an accused whenever an accused is charged with a serious offence, which could result in a lengthy prison term. Rather, I must consider those factors as part

of “all the circumstances”, including the strength of the prosecution’s case and the circumstances surrounding the alleged commission of the offence.

[44] Frankly, I am not sure of the distinction between those last two factors. Like Justice of the Peace Cameron, I am not prepared to go so far as to say that the Crown has a weak case. However, it does not appear to be an overwhelmingly strong one either. There are issues which could give the Crown significant difficulty in successfully prosecuting, if not both offences, then at least the more serious offence of intended escape.

[45] There were three sureties put forward by Mr. Taylor at the bail hearing. Each testified that they were aware of Mr. Taylor’s background, his alcohol problem, his criminal record, and the current charges. Two of the three live in Carcross and the third, Janet Hume, lives in Whitehorse. Janet Hume’s suitability as a surety was checked by the probation officer who prepared the bail assessment report. A fourth individual, who also resides in Whitehorse was put forward as a potential support person who offered to counsel Mr. Taylor two hours each week. Mr. Taylor had also made plans to contact Alcohol and Drugs Services in Whitehorse and to enrol into a men’s alcohol treatment programme in April 2004 (that contact had been made by the time of this review). The release plan was described by the probation officer has having “some merit”, however there were concerns that the two individuals then put forward both resided in Whitehorse, whereas Mr. Taylor was planning to reside in Carcross.

[46] That concern was addressed at the bail hearing when Mr. Taylor suggested Ray Craft and Joyce Hume as potential sureties. Neither had previously acted as sureties for Mr. Taylor. Indeed, Mr. Taylor has never been previously released on bail. Apart from

the collapse of his conditional sentence on December 9, 2003, and a “drive while disqualified” in 1988, he has no previous convictions for failing to obey court orders.

[47] Mr. Craft has been sober for three years and indicated that he would be taking Mr. Taylor with him trapping and hunting. He plans to act a sober “role model” for Mr. Taylor, as that is the way that Mr. Craft achieved his own sobriety, i.e. by watching and being with other sober people. Joyce Hume is also a non-drinker and she is Mr. Taylor’s common-law spouse.

[48] All three sureties indicated that they would not hesitate to contact the authorities if Mr. Taylor drank in violation of his bail conditions. Each was prepared to pledge and forfeit a sum of money as part of their responsibility as a surety. Mr. Taylor himself (on this review) has agreed to pledge $1,000 without cash deposit on a recognizance.

[49] Lastly, Mr. Taylor’s counsel filed a letter from one Dean Lavoie, who operates a business known as “Complete Concrete”, affirming that he has employment for Mr. Taylor as soon as possible. This letter was tendered as an exhibit at the bail review. Accordingly, neither the probation officer nor the Crown had an opportunity to check it out. However, Ms. Reid, as an officer of the court, advised me that the letter came to her as a result of a direct conversation she had with Mr. Lavoie. In the circumstances, I believe I can treat the letter as credible and trustworthy (s. 518(1)(e) of the *Criminal Code*).

Conclusion

[50] To sum up, it is my respectful view that the release plan put forward by Mr. Taylor at the bail hearing and this review application adequately addresses both the concerns on the tertiary grounds, as well as any residual concerns about the secondary grounds.

[51] In conclusion, I find that Mr. Taylor has shown cause under s. 520(7)(e) for me to vacate the detention order made by Justice of the Peace Cameron. Pursuant to that same section, I order the release of Mr. Taylor upon his entering into a recognizance with the following sureties, each in the amount of $500 but without deposit: Janet Hume, Raymond Sidney Craft and Joyce Hume. The recognizance will be subject to the following terms; that Mr. Taylor:

1 Pledge the sum of $1,000 without cash deposit;

2 Remain within the jurisdiction of the Court, unless written permission is obtained from the Court or a Bail Supervisor;

3 Abstain absolutely from the possession and consumption of alcohol and non-prescription drugs and submit to a breath test upon demand by a peace officer or Bail Supervisor who has reason to believe that he has failed to comply with this condition;

4 Not attend any premises where the primary purpose is the sale of alcohol.

5 Abide by a curfew by remaining in his residence between the hours of 7:00 p.m. to 7:00 a.m. Monday to Friday and continuously on weekends, except with the prior written consent of a Bail Supervisor;

6 Report to the Carcross RCMP, during office hours, in person on Tuesday and Thursday of each week;

7 Use reasonable efforts to seek, obtain and maintain employment and provide his Bail Supervisor with details upon request;

8 Meet with Phil Gatensby for a minimum of two hours per week to engage in anger management and substance abuse counselling.

[50] If there are any remaining matters that need to be addressed, counsel can contact the trial coordinator and schedule an appearance before me.

_____
GOWER J.