PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R. v. Paul*, 2022 NSPC 60

Date: 20220928
Docket: 8471714-20
Registry: Pictou

Between:

His Majesty the King

v

Jeremiah Paul

DECISION REGARDING ADJOURNMENT OF BAIL HEARING

Judge:	The Honourable Judge Del W. Atwood
Heard:	September 28, 2022 in Pictou, Nova Scotia
Charge:	Sections 266, 267(a), 279, 733.1 of the *Criminal Code of Canada*
Counsel:	Jody McNeill for the Nova Scotia Public Prosecution Service Pavel Boubnov for Jeremiah Paul (Mr Boubnov not appearing due to illness)

By the Court:

Preamble

[1] A bail hearing for Jeremiah Paul was scheduled to be heard today; unfortunately, counsel for Mr Paul is unable to appear due to illness and is unable to join proceedings virtually. The prosecution is ready to proceed, and Mr Paul is content to represent himself, but is not seeking to discharge his counsel. Persons who represent themselves at bail hearings tend to encounter significant difficulties.

[2] Does the court have the authority to adjourn a bail hearing of its own motion to ensure that Mr Paul will have his counsel present to assist him in putting forward a release plan?

Procedural history

[3] Mr Paul is charged with offences alleging:

- unlawful confinement (case 8471717);
- kidnapping (case 8471715);
- assault with a weapon (case 8471716);
- assault (case 8471717);

- breach of probation (case 8471718);
- damage to property (case 8471719); and
- damage to property (case 8471720).

[4] Mr Paul was released by the court on 8 October 2020, following a contested show-cause hearing. He pleaded not guilty, and was scheduled for trial 21 July 2021. Problems arose shortly after the trial date was set. Mr Paul ended up being arrested in Truro on a number of occasions, and was readmitted to bail on a succession of new release orders.

[5] Mr Paul did not appear on the day of his trial. Mr Paul's former counsel applied on that date to be removed from the record as he had discovered a conflict which prevented him from defending Mr Paul; however, he agreed to defer that application until 18 August 2021 and to try to make contact with Mr Paul to have him appear in court without a warrant having to be issued.

[6] On 18 August 2021, Mr Paul failed to appear and a warrant was issued for his arrest.

[7] After a considerable passage of time, Mr Paul was eventually arrested, and was to have a bail-revocation hearing today; he was to have been represented by Mr

Boubnov, who is unable to be present due to a medical issue which has prevented him from returning from abroad.

[8] Mr Paul would like to go ahead with his hearing without the assistance of counsel, and the prosecution is prepared to proceed. I am of the view that the court ought to adjourn the hearing until Mr Paul can have defence counsel present. An issue has been raised in other fora whether a court may adjourn a bail hearing of its own motion.

Core legal questions

[9] Can the court adjourn a bail hearing of its own motion?

Specific legal provisions—Part XVI—Bail-hearing procedures

[10] This issue is controversial in virtue of *R v Ashini*, [2014] NJ No 407 (PC) [*Ashini*] and *R v Grande*, 2021 ABPC 7 [*Grande*]. These cases seem to hold that an adjournment of a bail hearing is dependent upon an application by either the prosecution or the accused; a court may not adjourn a hearing of its own motion.

[11] Subsection 516(1) of the *Criminal Code* addresses in part the issue of bail-hearing adjournments:

> A justice may, before or at any time during the course of any proceedings under section 515, *on application by the prosecutor or the accused*, adjourn the proceedings and remand the accused to custody in prison by warrant in Form 19, but no adjournment shall be for more than three clear days except with the consent of the accused [emphasis added].

[12] Although Mr Paul is in a reverse-onus position in virtue of not having appeared for trial and having committed further indictable offences since the time of his release (engaging § 515(6)(a)(i) and § 524(2) of the *Code*), the adjournment provisions in § 516(1) apply to any proceedings under § 515 and are incorporated into breach hearings under § 524 in virtue of § 524(8). Subsections 515(6) and 524(4) require that Mr Paul be given a reasonable opportunity to show cause why his detention is not justified.

[13] Subsection 516(1) has been the subject of some controversy in the past regarding the meaning of "clear days" and whether the prosecution is entitled to a full three-clear-day adjournment. These questions were settled in Nova Scotia in *R v CGF*, 2003 NSCA 136 at ¶ 24 and 34 [*CGF*]:

- the term "clear days" is subject to the definition in §27(1) of the *Interpretation Act*, RSC 1985, c I-21;

- the prosecution is entitled to request an adjournment of up to three clear days, but the length of the adjournment is within the discretion of the court—a 3-clear-day adjournment is not automatic.

[14] Subsection 516(1) and *CGF* silent regarding an adjournment of a bail hearing by the court of its own motion.

[15] It is important to note that there is a distinction between an order remanding a charged person because of a bail-hearing adjournment (governed by § 516(1), which results in a Form 19 "Warrant Remanding Prisoner"), and an order detaining a person after the prosecution has shown cause (governed by § 515(5), which results in a Form 8 "Warrant for Committal") as underscored in *R v Hopwood*, 2017 ONCJ 17 at ¶ 17 [*Hopwood*]. As observed by the judge in that case, the distinction is important, as it governs subsequent processes. If a court adjourns a bail hearing and orders a person who is brought before the court in custody to be remanded, the remand order lasts only to the adjourned date, and any subsequent hearing that addresses the substantive issue of bail falls under § 515. However, if a person is ordered detained, that detention order continues until the case is concluded (§ 523(1)), and the order may be set aside only (1) on review before a superior court of criminal jurisdiction under § 520 or 521, (2) under § 523(2) (typically by the trial court), (3) under § 680 before a court or appeal, or (4) under

§ 525, on a review before a superior court when the detained person's trial has been delayed.

Pertinent cases

[16] There are numerous reported cases dealing with bail courts adjourning hearings of their own motion:

- *R v SB*, 2014 ONCA 527: appeal dismissed from a trial-level decision denying stay of proceedings; the stay was sought as a result of multiple own-motion adjournments of bail hearings.
- *R v Dhami*, 2016 BCSC 2341: a court-ordered recess of a bail hearing for a lunch break (during which the detainee excreted controlled substances which he had concealed in his body; the incriminating substances were seized by authorities) found not to have been illegal.
- *R v Bajwa*, 2014 ONSC 1128: an own-motion adjournment of a bail hearing to allow judge to compose reasons not controversial.
- *R v Jameel*, 2016 BCPC 115: an own-motion adjournment of a bail hearing to allow a detainee to receive medical treatment not controversial.
- *R v Bryan*, 2016 ONSC 7585: an own-motion adjournment to allow time for closing argument not controversial.

- *R v Simonelli*, 2021 ONSC 354: a 12-day delay between a detainee's arrest and a show cause hearing resulted in a judicial stay of proceedings arising from a ¶ 11(e) *Charter* violation; at issue were own-motion adjournments of bail hearings, necessitated because of lack of judicial resources. The constitutional violation arose from the adjournments unduly prolonging the detention of the accused, resulting in a denial of reasonable bail. However, there was no controversy over whether the justices who ordered the adjournments had the jurisdiction to make them.

[17] One further case, which addresses tangentially the issue of own-motion adjournments, merits consideration.

[18] In *R v Hudson*, 2011 ONSC 5176, a person who had consented to a detention order under § 515(5) sought a superior-court review of that detention under § 520. The court found that the purported review was, in essence, an original bail hearing. The procedure that had been followed by the detainee was a common practice that had developed due to a policy of Toronto prosecutors to withhold disclosure until an accused person had been either released or formally ordered detained. The court found that the practice and the policy were improper, and that original bail hearings ought to be conducted under § 515 before justices of the peace or provincial court judges. The court

expressed the view, in *obiter*, that the best practice for dealing with detained persons who might require considerable time to develop release plans, would be for bail courts to remand and adjourn bail hearings *sine die*, instead of ordering detention or adjourning for multiple meaningless status-check dates—¶ 20-21. Detained persons could then seek bail under § 515 at times of their own choosing. The court appeared to conclude that, without the consent of the detained person, an own-motion adjournment should not exceed three clear days—fn 7.

Bail-hearing adjournment in practice

[19] There may be many reasons a court might need to adjourn a bail hearing without seeking the consent of the prosecution or the person in custody: time constraints, limited court resources, and adverse weather events come immediately to mind. Currently, there are pandemic-related issues that may work as barriers to cases going ahead as scheduled.

[20] I recall from many years ago a two-day bail hearing that was conducted in Newfoundland and Labrador in a major stolen-property-trafficking case; the judge adjourned the matter after a full-day's hearing because he was tired. Surely, there is nothing unconstitutional or illegal in this.

[21] While a person brought to court in custody cannot be remanded if the prosecution is not seeking detention (*CGF* at ¶ 29), in my view, a bail court must be able to adjourn a hearing of its own motion (and order a remand) in order to manage its own process: *R v Cunningham*, 2010 SCC 10 at ¶ 19: the authority to order an own-motion adjournment is an implied grant of power vested in a statutory court to enable it to function as a court of law. This allows the court to the deal with the exigencies that arise inevitably in the course of the day's busy docket without having to wait for an application from a party.

[22] It is not for this court to determine whether the judgments in *Ashini* and *Grande* correct; that is a concern for reviewing courts in the provinces where those cases were decided. All that matters is that they are not authoritative in Nova Scotia, and I am not obligated to follow them. I would note parenthetically that the decision in *Ashini* followed in large measure *R v Obed*, 2011 NLPC 1711A00694. In point of fact, *Obed* was reversed on a § 521 bail-review hearing in the Supreme Court of Newfoundland and Labrador; unfortunately, the review decision is unreported.

Conclusion

[23] The court will adjourn Mr Paul's bail hearing of its own motion. The court will set a date for a hearing to be held within three clear days to allow time for defence counsel to return to Canada.

JPC