PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Taheri*, 2014 NSPC 82

Date: 2014-10-06
Docket: 2738308
Registry: Halifax

Between:

Her Majesty the Queen

v.

Alireza Mohammad Taheri

DECISION ON PROBATION TERMINATION

Judge: The Honourable Judge Marc C. Chisholm

Heard: September 24, 2014, in Halifax, Nova Scotia

Decision: October 6, 2014

Charge Section 334(b) CC

Counsel: Donald Murray, for the Applicant
Ronald Lacey, for the Crown

By the Court:

[1] The accused, Mr. Taheri, through his counsel has made application pursuant to Section 732.2, para. 3, clause C for the Court to decrease the length of the probation period by ordering that the period of probation end immediately. The Crown is opposed to the application.

[2] Section 732.2(3) reads:

> A court that makes a probation order may at any time on application by the offender, the probation officer, or the prosecutor, require the offender to appear before it and after hearing the offender, and one or both of the probation officer and the prosecutor…in clause (c) decrease the period for which the probation order is to remain in force.

[3] The background facts in relation to this application are as follows. The accused, Mr. Taheri, pled guilty to an offence of theft under $5000. On July 21, 2014, the accused was sentenced to a Conditional Discharge and ordered to serve a period of twelve months' probation. The probation order included four optional conditions, those being: that he report to a probation officer as directed; that he perform community service work in the amount of 25 hours; that he not be on or within 10 metres of the Costco premises on Chain Lake Drive in Halifax; and that

he make a donation in the amount of $100 to a charity approved by his probation officer.

[4] The Defence evidence on this application included a letter from the accused's probation officer, Greg Jennings, in which Mr. Jennings confirmed that the accused successfully completed 25 hours of community service work. The evidence also included a receipt for a charitable donation made by Mr. Taheri to the Canadian Cancer Society in the amount of $200; $100 more than was required by his probation order. The Defence application was also supported by a report from Dr. Brad Kelln, clinical psychologist. Dr. Kelln's report indicated that he met with Mr. Taheri on four occasions; August 25 and 27; September 3 and September 5. The report outlines the topics of discussion, including the accused's personal circumstances and his difficulties with the Canadian immigration process. Dr. Kelln expressed the opinion that Mr. Taheri was "keen to gain a greater insight into his actions". Further he outlined that Mr. Taheri's theft was a means of expressing frustration and anger. He concluded that Mr. Taheri had "difficulty in processing difficult emotions".

[5] At page 2 of his report, Dr. Kelln stated;

> "Mr. Taheri's insight into his shoplifting is now vastly improved. He recognizes that a failure on his part to effectively process negative emotions can put him in a vulnerable position. This insight alone is protective against future acts of theft. Our examination of the role of anger and pent up resentment has also been helpful for Mr. Taheri in considering alternative informal and formal ways to seek out support. He realizes that building his social networks is important and is now open to seeking professional help, i.e. a psychologist, if stressors continue to mount. As a result, he now has much better insight into his personality and how to more effectively cope with anger. Overall, the likelihood of any future criminal behaviour is greatly reduced by his participation in therapy. He should be encouraged to continue practicing effective coping strategies and is booked to return to see the undersigned for a refresher session in approximately 3 to 4 months".

[6] The Defence also submitted three case decisions for the Courts consideration. The first, *R. v. Basran* 2008 BCCA 338 (BCCA), the accused in that case broke down a door and engaged in a fight with his former common law partner and the mother of his daughter. The accused pled guilty to mischief. He had a prior conviction for assault of the same victim in 2005, three years previous. The relationship was described as tumultuous. The accused was sentenced to a suspended sentence and 18 months probation. The terms of probation included a prohibition from contacting the complainant except by telephone when arranging access to the complainant's daughter. The accused appealed the sentence, claiming the contact restriction was unworkable and no longer appropriate given that the parties appeared to be getting along better. The appeal was dismissed. The court in dismissing the appeal was satisfied that the conditions were reasonable and

responsive to the circumstances of the case. The court added that the accused could apply for a variation under s. 732.2(3) if he could persuade the judge that the optional condition "was no longer necessary".

[7] In the Court's view, that case provides little more than verification of that option under the criminal law and perhaps in a general way a statement of what is required to satisfy that provision.

[8] The next case submitted by the Defence, *R. v. Carbone and Carbone*, [2012] O.J. No 176, the two accused were involved in a business of importing and distributing tobacco products. During a warranted search of the business premises, prohibited firearms were discovered. The accused were charged and convicted of possession of prohibited firearms. They testified that they purchased the firearms for protection, they having received threats. Neither had any prior record. They were each sentenced to a period of 60 days in custody to be served intermittently and probation when not in custody and a further probation of 18 months thereafter. Several optional conditions were imposed including the completion of 240 hours of community service work. The sentencing judge commented that if the accused finished the community service work at a faster rate than the court specified, he

would "likely give favourable consideration to an application to decrease the period for which the probation order is to remain in force".

[9] Again, in the Court's view, that case provides verification of the provision permitting a court to make changes to a probation order including reducing the term of the order but provides limited guidance to the Court with respect to the nature of the evidence that may be necessary to satisfy the Court that it is appropriate.

[10] The third case provided by counsel for Mr. Taheri is *R. v. B. (L.)*, 2000 Carswell Ont. 2075 (Ont. C.J.). In that case the accused pled guilty to illegally intercepting the private communications of his former common law spouse. The plea of guilty was part of an agreement between the crown and defence that upon the entry of the plea of guilty the crown would withdraw several other charges and there would be a joint recommendation for a suspended sentence and three years probation. The terms of probation included a restriction on contact by the accused with the complainant and conditions regarding treatment of the accused's mental health condition.

[11] Twenty months after the sentence was imposed, the accused made application pursuant to s. 732.2(c) for termination of his probation order. The

accused's major depressive disorder, a factor taken into consideration on sentencing, was in remission, his doctors considered him stable, subject to minor depressive symptoms. He did not find the terms of probation inconvenient or disruptive, but found the stigma of being on probation problematic. It troubled him and inhibited him from getting on with his life.

[12] The application included two letters in support. The first written by a Dr. P, a psychotherapist, opined that the accused did not require further treatment but would be required to continue to take medication for at least one more year after the symptoms were completely gone. In the second letter, a Dr. R. expressed the opinion that the accused did not present a risk to others. He felt it beneficial for the applicant to be allowed to move on with his life without the psychological burden of being subject to probation. Both doctors agreed that while inconvenient, the probation order was not harmful to the accused's stability or progress.

[13] That was the nature of the evidence before the sentencing judge. The application was dismissed. The judge found that the mutually agreed upon sentence provided the structure for the accused's progress. It's continuation would not negatively impact his status or progress. His condition still required monitoring. The probation order allowed the complainant a sense of security.

[14] This case highlights the relevance of an agreed statement of fact on sentencing and an agreed position on sentencing when dealing with a subsequent s. 732.2 application. It provides little guidance in terms of what weight ought to be given to a joint recommendation. But it makes clear, in my view, that if there was a joint sentencing recommendation at the time of the initial sentencing, that is a factor that appropriately ought to be considered on a s. 732.2 application.

[15] The decision also makes clear that the types of factors considered by the judge are appropriate and relevant. The decision also makes clear that the sense of security of the complainant is a factor to be considered in a s. 732.2 application. It is not just the circumstances of the accused but circumstances that the Court would describe as circumstances involving the public interest, including the interest of the complainant.

[16] The accused, Mr. Taheri, in this case, admits to having been referred to adult diversion on a previous occasion and completing that process in relation to an earlier allegation of theft.

[17] The evidence before this Court satisfies me that Mr. Taheri has acted promptly and responsibly in addressing the optional conditions of his probation order.

[18] I accept the opinion of Dr. Kelln, that Mr. Taheri has improved insight into why he acted as he did in committing theft. I am persuaded that the psychological counselling that has taken place to date has reduced the risk of a further offence. I am persuaded by Dr. Kelln's report that further counselling for Mr. Taheri would be beneficial. I'm not persuaded that the probation order's continuation would negatively impact the accused's progress in counselling.

[19] I have reviewed the documentation and the submissions of counsel with respect to the accused's immigration status and his concerns with that process. I am not satisfied that the accused's immigration situation is being significantly negatively affected by the continuation of the probation order. Further, any impact does not, in the Court's view, outweigh the public interest or benefits of the continued period of probation.

[20] As previously indicated, a discharge, in the Court's view, includes consideration of not only the accused's offence and circumstances, but the public interest, as in *R. v. B. (L.)*, a judge hearing an application under s. 732.2 must consider the application in context of all of the sentencing provisions. In this case, the accused was granted a conditional discharge and ordered to serve a period of

12 months probation with the conditions as indicated. After the service of only two months, the application was filed for termination.

[21] It is the Court's view that there is no limit on when an application may be filed, but the period of time which has been served as part of the sentence which was ordered is a factor that ought to be considered in assessing the appropriateness of granting the application.

[22] Given all of the evidence before me on this matter, I am not satisfied that it is appropriate for the Court to grant the application at this point in time. If Mr. Taheri continues to perform well on probation and continues to make progress, it is likely that a further application in a few months time would be well received by the Court.

[23] For those reasons the application for termination of the order at this time is denied.