

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

- and -

J.D.B. (A YOUNG PERSON)

Applicant

MEMORANDUM OF DECISION

[1] J.D.B. is 17 years old and is charged with a number of offenses alleged to have been committed between February 16 and May 7, 2007. On May 14, 2007, he had a bail hearing and a Youth Court Judge ordered his detention. He has entered guilty pleas on some of the charges. Others are set to proceed to trial in September and October. J.D.B. seeks to have the Youth Court Judge's Order reviewed. He is asking to be released on his own recognizance.

A) Legal Framework

[2] Section 28 of the *Youth Criminal Justice Act* S.C.2002,c.1 (*YCJA*) provides that the bail regime applicable to youths is, for the most part, the same as the regime that applies to adults. Section 28 reads:

Except to the extent that they are inconsistent with or excluded by this Act, the provisions of Part XVI (compelling appearance of an accused and interim release) of the *Criminal Code* apply to the detention and release of young persons under this Act.

[3] The detention of an accused pending trial can only be based on three grounds: the primary ground is that the detention is necessary to ensure that the accused will attend court; the secondary ground is that the detention is necessary for the protection

and safety of the public; the tertiary ground is that the detention is necessary to maintain confidence in the administration of justice. *Criminal Code*, R.S.C. 1985, c. C-46, Subs.515(10).

[4] At the bail hearing, the Youth Court Judge ordered J.D.B.'s detention on the primary ground. The Crown continues to oppose his release and relies on the primary and secondary grounds.

[5] Section 520 of the *Criminal Code* sets out this Court's power to review bail decisions made at the first instance. There are varying views as to the scope of review contemplated by that provision. I agree with those who say that the review procedure is a hybrid one that requires a review of the record as well as a fresh hearing. This means that this Court's intervention is warranted if it is shown that the Youth Court Judge has made a reversible error, or that there is new evidence or a change in circumstances that makes the Youth Court Judge's decision no longer valid. *R. v. Poitras* [2003] N.W.T.J. No.31.

B) Whether the Youth Court Judge committed reversible errors

[6] J.D.B. argues that the Youth Court Judge made a number of errors at the bail hearing.

[7] The first alleged error is that the Youth Court Judge made no mention of Subsection 29(2) of the *YCJA* in his decision. There is no merit to this argument because that provision is relevant only to the secondary ground for detention. It has no application to the primary ground, which was the one upon which the Youth Court Judge based his decision.

[8] Second, it is argued that the Youth Court Judge misapprehended certain relevant facts. In setting out the procedural history of the matter, he did not mention that J.D.B. had appeared before the Court on April 23, 2007 and entered guilty pleas on a number of charges. Counsel argues that this is significant because it demonstrates that J.D.B. was willing to appear in Court and deal with these charges, even on his own and without the help from counsel.

[9] The Youth Court Judge's failure to mention the appearance on April 23 does not necessarily mean that he overlooked it. It was not something that counsel who

appeared at the bail hearing emphasized in any way or even brought to his attention during submissions. In any event, in the overall context of this matter, and in particular considering the number of charges that J.D.B. faced for breaching release conditions, I am not satisfied that this one fact would have made a difference in the Youth Court Judge's conclusion that J.D.B.'s detention was required on the primary ground.

[10] I have reviewed the transcript of the bail hearing carefully in light of J.D.B.'s submissions and I am unable to find anything in it that shows that the Youth Court Judge misdirected himself or committed any reversible errors in dealing with this matter. He considered the fact that J.D.B. had a limited connection to the Northwest Territories; that he faced a number of charges that accumulated over a relatively short period of time; that he had been released on process before and was facing charges for breaching some of his release conditions; and that limited evidence was presented about the nature of the connection between J.D.B. and the person who was offering to act as his surety. All these were relevant factors to consider under the primary ground.

On the whole, I am unable to say that the Youth Court Judge's finding that J.D.B.'s detention was required to ensure his appearance in court was unreasonable or that it flowed from an error in law or a misapprehension of the evidence.

C) New evidence or changes in circumstances

[11] J.D.B. submits that there have been changes in circumstances since the bail hearing and that those changes are sufficiently significant that his detention is no longer required.

[12] The first change that is put forward is a change in J.D.B.'s attitude, as evidenced by the affidavit he has sworn in support of this application, and by some additional facts that have been agreed to. J.D.B. has taken steps to obtain his birth certificate and a social insurance number. This will enable him to apply to obtain his learner's permit, and eventually, a driver's licence. Having a social insurance number will be helpful to him in seeking employment. This, it is argued, shows that J.D.B. is now taking a responsible approach to his life and is evidence that he can now be trusted to abide by release conditions and appear in Court as required to deal with his charges.

[13] Having observed J.D.B. in these proceedings, I do not question the sincerity of his intentions. But the issue is not simply whether J.D.B. wants to make positive

changes in his life and begin acting like a responsible young man. The issue is whether this change of attitude alone can satisfy this Court that the significant concerns that existed at the time of the bail hearing can be addressed while allowing him to recover his freedom until his charges have been disposed of. I do not dismiss the change of attitude, nor do I consider it to be irrelevant. It is a factor that I must consider on this application, and I have done so.

[14] The next change in circumstances that is raised is that at the time of the show cause hearing, the allegations on some of the matters now set for trial (assault causing bodily harm, assault with a weapon, and assault) suggested that the Crown may have a strong case with many witnesses to the events, as the incidents were said to have happened in public places. The disclosure materials that have since been provided, counsel says, show that the Crown may have difficulty linking J.D.B. with those offenses. Counsel argues that these potential weaknesses in the Crown's case, which have emerged since the bail hearing, constitute a change in circumstances and militate in favour of J.D.B.'s release.

[15] The strength of the Crown's case is a factor that is referred to at Paragraph 515(10)(c) of the *Criminal Code*. That provision describes the tertiary ground for detention. The strength of the Crown's case is not necessarily relevant to the other grounds for detention. Its connection to the primary ground is particularly tenuous. It has little or no relevance to the question of whether the accused will appear before the Court. *R. v. Poitras, supra*, at paras 11 to 13. As the Crown did not rely on the tertiary ground at the bail hearing and does not rely on that ground on this application, the strength of the Crown's case is a factor that carries little weight in this case.

[16] The third change in circumstances that is put forward on behalf of J.D.B. is that some of the guilty pleas that had been entered at the time the bail hearing have since been struck, with the consent of the Crown. The pleas that were struck relate to traffic offenses alleged to have happened on April 18, 2007 and to a charge for possession of prohibited weapon (brass knuckles) on the same date.

[17] The striking of those guilty pleas can be considered to be a change in circumstances since the bail hearing. However, it is important to note that since the bail hearing J.D.B. has entered a guilty plea to a charge of failing to appear in Court on May 7, 2007. For the purposes of the primary ground, this charge is much more relevant than those on which the guilty pleas were struck.

[18] Finally, it goes without saying that if I am to consider changes in the circumstances since the bail hearing, I cannot ignore those changes that are not favorable to J.D.B.'s application for release. At the time of the bail hearing, a responsible adult was prepared to act as a surety and provide J.D.B. with a place to live. At the hearing of this application, that person was no longer willing to act as a surety, and no other person was offered as a surety. This is significant especially given J.D.B.'s age, his limited connection to this jurisdiction, and the fact that he is not currently in a position to support himself. J.D.B. was cross-examined on his affidavit and he acknowledged very candidly that he does not know where he will live if he is released. He is hopeful he can stay with friends, but there is no firm plan in place. Similarly, he has best intentions to secure employment to support himself, but that remains at the planning stage.

[19] Notwithstanding J.D.B.'s best intentions, he did not present a concrete release plan at this hearing. His counsel conceded that. He has no long standing connection with this jurisdiction. He does not have a place to live. He hopes to get a job if he is released, but nothing more specific is arranged at this point. He is awaiting sentencing on a number of charges that involve failing to comply with release conditions, including one for failure to appear in Court as required. All this raises significant concerns on the primary ground and at this time, there is not sufficient evidence before me to alleviate these concerns in a meaningful way.

D) CONCLUSION

[20] I am not satisfied that any reversible errors were made at the bail hearing held on May 14, 2007. Even if there had been errors, considering the evidence adduced at the hearing of this application, I would have to conclude that concerns under the primary ground remain live ones. On this application J.D.B. has the onus of showing that his detention is not required. He has not adduced evidence that is sufficient to meet this onus. Even if the onus was on the Crown, I would conclude that J.D.B.'s detention continues to be necessary to ensure that he will attend Court.

[21] Since I have concluded that J.D.B.'s detention is required on the primary ground, I do not need to consider the secondary ground.

[22] The application is dismissed.

L.A. Charbonneau
J.S.C.

Dated at Yellowknife, NT, this
26th day of July 2007

Counsel for the Respondent: Christine Gagnon
Counsel for the Applicant: Patrice Taylor

S-0001-CV2005000203

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