

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

KATRINA STIOPU

Transcript of the Decision on the Bail Review by
The Honourable Justice S. H. Smallwood, sitting in
Yellowknife, in the Northwest Territories, on the
23rd day of August, 2016.

APPEARANCES:

Mr. D. Praught: Counsel for the Crown
Mr. J. Bran: Counsel for the Defence

BAN ON PUBLICATION PURSUANT TO SECTION 517 CRIMINAL CODE

1 THE COURT: This is a 90-day review
2 of the accused's detention pursuant to Section
3 525 of the Criminal Code. The accused, Katrina
4 Stiopu, is charged, along with 13 others,
5 on an Information that contains nine counts.
6 Ms. Stiopu faces three charges: Conspiracy
7 to traffic and possess for the purposes of
8 trafficking cocaine, fentanyl and marijuana,
9 contrary to Section 465(1)(c) of the Criminal
10 Code; trafficking in substances in Schedule I
11 and II, that is cocaine, codeine and marijuana,
12 contrary to Section 5(1) of the Controlled Drugs
13 and Substances Act; and possessing the proceeds
14 of crime, currency, contrary to Section 354(1)(a)
15 of the Criminal Code.

16 Ms. Stiopu was arrested on April 4th, 2016.
17 She had a show cause hearing on April 22nd, 2016,
18 before a Justice of the Peace and was detained
19 on the secondary and the tertiary grounds. At
20 the show cause hearing before the Justice of the
21 Peace Ms. Stiopu proposed that she be released
22 on a recognizance with a \$5,000 cash deposit,
23 and with her boyfriend Justin Mantla as a
24 surety, pledging \$500 no-cash deposit.

25 The proposed conditions were that
26 Ms. Stiopu would be under house arrest,
27 residing in N'Dilo, subject to several

1 exceptions, such as to attend work or
2 school as arranged with the bail supervisor,
3 to take her daughter to school, to attend
4 church, to do errands and to get groceries
5 two times a week, and otherwise with the
6 permission of the bail supervisor. She was
7 also to have no contact with the co-accused
8 except with her mother and grandmother, who
9 are co-accused, but through a third party
10 for them, and also to report once a week.

11 The Crown was opposed to the release of
12 the accused on the secondary and the tertiary
13 grounds. The allegations before the Justice
14 of the Peace involved wiretap evidence which
15 implicates Ms. Stiopu, along with others,
16 in the distribution of cocaine and fentanyl.
17 The wiretap evidence also discloses her and
18 another co-accused discussing the arrest of
19 her mother and grandmother for possession of
20 drugs that they were apparently transporting,
21 and although Ms. Stiopu is not charged in
22 relation to this conversation, she and co-accused
23 Mr. Dube are recorded discussing having her
24 mother and grandmother lie about their knowledge
25 of the contents of what they were transporting.

26 The Justice of the Peace in the decision
27 noted that the charges were serious, that

1 the drugs involved were serious drugs and it
2 involved very large quantities. The Justice
3 of the Peace had no concerns on the primary
4 grounds, that is whether the accused would
5 attend court. With respect to the secondary
6 grounds the Justice of the Peace noted that
7 there was a strong possibility that the
8 accused would commit another crime.

9 With respect to the tertiary grounds
10 the Justice of the Peace noted that the
11 Crown's case seemed very strong, but also
12 recognized that the wiretap evidence might
13 not be admissible. With respect to the
14 gravity of the offence the Justice of the
15 Peace noted that it was a serious matter and
16 commented on the prevalence of drugs in the
17 community. In discussing the circumstances
18 of the offence the Justice of the Peace noted
19 that firearms were seized on the accused's
20 arrest but that there were no firearms charges
21 that had been brought against the accused.
22 The Justice of the Peace also noted that there
23 was potential for a lengthy term of imprisonment.

24 With respect to the plan that was proposed
25 by the accused, the Justice of the Peace felt
26 that the plan was not strong enough to alleviate
27 her concerns that the accused would re-offend if

1 released. The Justice of the Peace was concerned
2 that the accused had been overheard on the
3 wiretaps discussing counselling her mother and
4 grandmother to say that they did not know what
5 was in the bags that they were transporting.
6 The Justice of the Peace was concerned that if
7 the accused was released that she would tamper
8 with evidence and with other cases, and the
9 Justice of the Peace remanded the accused into
10 custody on the secondary and tertiary grounds.

11 Ms. Stiopu now comes before the Court
12 arguing that there has been unreasonable delay
13 and presenting a new plan of release. The new
14 plan of release proposes that the accused's
15 sister, Tanya Christie Lafferty, would be
16 a surety pledging \$500 no-cash deposit.
17 Ms. Stiopu herself is prepared to deposit
18 \$5,000 in cash to secure her release.

19 The proposed conditions of release would
20 be that she reside in Fort Resolution at her
21 sister's residence and not to leave the property
22 except for a few exceptions, to seek employment,
23 to go to and from work, medical appointments,
24 to meet with the bail supervisor, to report
25 to the RCMP, to attend religious or cultural
26 events which were approved in advance by the
27 bail supervisor, to complete personal errands

1 three times a week, and also otherwise with
2 the written permission of the bail supervisor.
3 She would also be subject to the condition that
4 she have no contact with any of the co-accused,
5 that she not leave the NWT unless with the
6 written permission of the bail supervisor,
7 and there would also be a reporting condition
8 to the RCMP on Mondays and Thursdays. Counsel
9 also advised in submissions that not possessing
10 any cell phones could be added to the list and
11 indicated that Ms. Stiopu was willing to follow
12 any conditions that the Court would impose.

13 The Crown continues to be opposed to
14 Ms. Stiopu's release. The Crown argued that
15 unreasonable delay had not been established,
16 and the application should be dismissed and
17 no further consideration of the review is
18 necessary. Defence argues that delay is
19 one of the factors for the Court to consider,
20 but not the only factor.

21 Section 525 of the Criminal Code states:

22
23 (3) On the hearing described in
24 subsection (1), the judge may, in
25 deciding whether or not the accused
26 should be released from custody,
27 take into consideration whether the

1 prosecutor or the accused has been
2 responsible for any unreasonable
3 delay in the trial of the charge.

4
5 (4) If, following the hearing
6 described in subsection (1), the
7 judge is not satisfied that the
8 continued detention of the accused
9 in custody is justified within the
10 meaning of subsection 515(10), the
11 judge shall order that the accused
12 be released from custody pending
13 the trial of the charge on his
14 giving an undertaking or entering
15 into a recognizance...

16
17 This Court has traditionally approached
18 Section 525 reviews as contemplated in R. v.
19 Caza, a decision of this Court from 1999, where
20 the Court considers whether there has been
21 unreasonable delay in coming to trial, whether
22 the Crown or accused is responsible for any such
23 delay, the original reasons for detention, and
24 any new circumstances that may be relevant.
25 Where there is no extraordinary delay, the
26 factors set out in 515(10) are the ultimate
27 consideration.

1 The Crown has argued that the decision
2 of the Supreme Court of Canada in St-Cloud,
3 and recent case law in other jurisdictions,
4 have resulted in a line of authority where
5 in a Section 525 review the consideration
6 of whether there is unreasonable delay is
7 the first step of a two-step process. If
8 unreasonable delay is not established in the
9 first step then no further consideration is
10 required and the application is dismissed.

11 The decision of the Supreme Court of
12 Canada in St-Cloud considered applications
13 under Section 520 for a review of a bail
14 decision. A Section 520 application is an
15 application brought by the accused to review
16 a bail decision. In considering an application
17 under Section 520 the Supreme Court of Canada
18 held that a reviewing judge's discretion to
19 review a decision is not open ended and is
20 only appropriate in three situations: Where
21 there is admissible new evidence that shows a
22 material and relevant change in circumstances,
23 where the decision contains an error of law,
24 and where the decision is clearly inappropriate.

25 Section 525 of the Criminal Code is
26 a mechanism that automatically reviews the
27 detention of a person in custody when their

1 trial has not commenced within 90 days for
2 indictable matters and within 30 days for
3 summary conviction matters. It is a section
4 that has been in place for many years and
5 is intended to ensure that an accused person
6 does not languish in prison awaiting trial.
7 The section has not been amended for many
8 years, so the 90-day and 30-day timeframes
9 that are contemplated in the section are
10 not realistic in today's justice system.
11 Indictable matters rarely go to trial within
12 90 days. However, the automatic review is
13 intended to ensure that the Court continues
14 to monitor when matters proceed to trial and
15 that accused persons in custody do not get lost
16 in the system as a result of unreasonable delay.

17 Clearly, whether there has been unreasonable
18 delay must be a focus of the inquiry under
19 Section 525. However, I am not convinced that
20 we need to depart completely from the approach
21 taken in Caza and take a strict two-step
22 approach. A Section 525 review should review
23 the detention of the accused, considering delay,
24 as well as other relevant factors. I do not
25 think that a full de novo hearing is appropriate
26 or that the review should be open ended. It does
27 not seem to accord with the purpose of the bail

1 review provisions that a Section 525 review
2 would give an accused person any broader right
3 of review than contemplated in Section 520.

4 As well, there are circumstances that are
5 unique to this jurisdiction. It may not always
6 be feasible for an accused person to bring a
7 Section 520 application before the time for a
8 Section 525 review elapses. The limited number
9 of defence counsel in this jurisdiction are very
10 busy, often travelling on circuit, and it can
11 be difficult for an accused person in custody
12 to keep in touch with their lawyer. The result
13 is that a 525 review may be scheduled before an
14 accused can realistically bring a Section 520
15 application.

16 In my view, it can be appropriate to
17 consider the factors that are relevant under
18 Section 520 as part of a Section 525 review,
19 rather than requiring an accused person to
20 bring a separate 520 application at the time
21 of a Section 525 review. In a Section 525
22 review the Court must consider whether there
23 has been any unreasonable delay, whether the
24 Crown or the accused is responsible for any
25 such delay, and the Court should also consider
26 whether the original reasons for detention
27 contained an error of law or were clearly

1 inappropriate or whether there is admissible
2 new evidence that demonstrates a material
3 change in circumstances. The presentation
4 of a new plan, one that could not have been
5 presented at the initial bail hearing, can in
6 some circumstances constitute a material change
7 in circumstances. Overriding this is whether the
8 detention is still justified within the meaning
9 of the factors set out in Section 515(10).

10 In considering the delay in this case,
11 the accused was arrested on April 4th, 2016;
12 she has been in custody since that time.
13 Her next appearance in Territorial Court is
14 on August 30th, 2016, along with a number of
15 other co-accused. At this point no elections
16 have been made by any of the accused, and I am
17 advised that since the last few court dates that
18 significant disclosure has been made to all of
19 the accused. Defence argues that there has been
20 delay, that delay will continue to occur, and
21 that it will take significant time to get all
22 of the accused to trial, and that the time
23 required will also depend on the elections
24 made by the various accused and co-accused,
25 as they are all on one Information.

26 Delay is a curative issue, not a
27 prospective one. Whether the proceedings

1 will continue to be delayed, how long this
2 matter will take to get to trial, whether
3 some or all of the accused will proceed
4 to trial, are all speculative questions.
5 The Court must consider the delay that
6 has occurred to date and not the potential
7 for further delay. Factored into this
8 consideration is the complexity of the
9 case. Cases that involve multiple accused
10 and voluminous disclosure will often take
11 longer to proceed to trial than a one or
12 two-witness assault, for example.

13 Taking into account the scope of the
14 investigation, the number of the accused,
15 the amount of disclosure that has to be
16 made and the status of the proceedings,
17 there has been no unreasonable delay so far.
18 In cases like this with multiple co-accused
19 and significant disclosure, the Crown needs
20 to be vigilant to ensure that that continues
21 to be the case, but at this point the delay
22 that has occurred is still within the bounds
23 of what is reasonable.

24 Defence has also presented a new plan,
25 one that he argues is a stronger plan and
26 addresses the Justice of the Peace's major
27 concern of the release of the accused into

1 Yellowknife and exposure to others who might
2 be involved in the drug trade. The accused
3 was detained on the secondary grounds and the
4 tertiary grounds pursuant to Section 515(10).
5 The secondary grounds are concerned with
6 whether there is a substantial likelihood
7 that the accused will, if released, commit
8 a criminal offence or interfere with the
9 administration of justice. The tertiary
10 grounds are concerned with whether the
11 accused's detention is necessary to maintain
12 the public's confidence in the administration
13 of justice taking into account a number of
14 circumstances.

15 With respect to the secondary grounds,
16 the accused does not have a criminal record.
17 She is not employed, but is hoping to secure
18 employment if she is released. However, she
19 is accused of conspiring with a number of other
20 people to traffic in drugs, which is a lucrative
21 enterprise. The possibility of her falling back
22 into that activity, even in Fort Resolution, is
23 a factor to be considered. More seriously, of
24 concern is the evidence of her discussion with
25 Mr. Dube and planning to counsel her mother and
26 grandmother to lie about their knowledge that
27 they were transporting drugs. While Ms. Stiopu

1 is not charged with an offence arising out of
2 that conversation, it is a concern that she was
3 contemplating counselling other accused persons
4 to lie. If Ms. Stioapu is released, whether it is
5 in Yellowknife or in Fort Resolution, she would
6 have the ability to contact other accused who are
7 not in custody, even if there were conditions
8 regarding not contacting them. The possibility
9 that she would do so and interfere with the
10 administration of justice is a serious one.

11 With respect to the tertiary grounds,
12 the concerns expressed by the Justice of the
13 Peace are valid. These are serious charges.
14 The accused is liable for a lengthy period
15 of imprisonment if convicted. The evidence
16 against her includes the wiretap evidence,
17 where Ms. Stioapu is recorded discussing drug
18 transactions with other accused. The case
19 for the Crown appears strong. However, it
20 must be acknowledged that the admissibility
21 of the evidence has not been determined,
22 and that is not an issue before me today.
23 Ultimately, if the evidence is admissible,
24 the Crown has a strong case. As I say,
25 that is to be determined.

26 In my view, the confidence of the public
27 would be affected if Ms. Stioapu were released,

1 whether she were to be released in Yellowknife
2 or Fort Resolution. In this case I am not
3 satisfied that the plan proposed by the accused
4 sufficiently addresses the concerns expressed
5 by the Justice of the Peace on the secondary
6 and tertiary grounds. Therefore, I find that
7 the detention of the accused continues to be
8 justified on the secondary and the tertiary
9 grounds.

10 This matter, I understand, is on the docket
11 in Territorial Court next week. Is that correct?

12 MR. BRAN: Yes.

13 THE COURT: Thank you, counsel. We will
14 adjourn court.

15 -----

16
17 Certified to be a true and
18 accurate transcript, pursuant
19 to Rules 723 and 724 of the
 Supreme Court Rules.

20
21 _____
 Joel Bowker
 Court Reporter

22
23
24
25
26
27