R. v. Stiopu, 2017 NWTSC 7 S-1-CR-2016-000063

 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

 Official Court Reporters

 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

 Official Court Reporters

 1

 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

 Official Court Reporters

 2

 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

 Official Court Reporters

 3

 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

 Official Court Reporters

 4

 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

 Official Court Reporters

 5

 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.

 Official Court Reporters

 6

 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

 Official Court Reporters

 7

 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

 Official Court Reporters

 8

 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

 Official Court Reporters

 9

 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

 Official Court Reporters

 10

 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

 Official Court Reporters

 11

 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

 Official Court Reporters

 12

 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. Stiopu 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. Stiopu 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. Stiopu were released,

 Official Court Reporters

 13

 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

 accurate transcript, pursuant

 18 to Rules 723 and 724 of the

 Supreme Court Rules.

 19

 20

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 21 Joel Bowker

 Court Reporter

 22

 23

 24

 25

 26

 27

 Official Court Reporters

 14