

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

BILLY FRED TOMMY PETERSON

Transcript of the Oral Decision on s. 525 Bail Review
delivered by The Honourable Justice L. A. Charbonneau,
sitting in Yellowknife, in the Northwest Territories, on
the 17th day of July, 2017.

APPEARANCES:

Ms. A. Piché: Counsel for the Crown

Mr. T. Boyd: Counsel for the Accused

(Charges under s. 90(2), 92(2), 95(2), 117.01(3) x2 of
the Criminal Code)

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broadcast or transmission of information contained herein
pursuant to s.517, s.520(9) and s.525(8) of the Criminal Code

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1 THE COURT: You can have a seat with your
2 counsel.

3 Before I give my decision on this, I want to
4 reiterate that there is a publication ban in
5 effect that prevents publication of any
6 information provided during the course of the
7 hearing this morning, including the submissions
8 and the allegations, and it applies to what I am
9 about to say.

10 Mr. Peterson is awaiting trial on a
11 five-count Indictment. Last April he had a show
12 cause hearing before a Justice of the Peace and
13 was ordered detained. He has now applied to this
14 Court for a review of that decision. He is also
15 now eligible for a 90-day review. This is as of
16 a few days ago, and so this morning Crown and
17 defence agreed that the hearing that we had this
18 morning could also be treated as a mandatory
19 review under Section 525 of the Criminal Code.

20 The allegations are that Mr. Peterson was
21 arrested by police on April 15th, 2016. They saw
22 him walking on a road in Inuvik. They were aware
23 that a warrant was outstanding for his arrest in
24 relation to a charge of assault causing bodily
25 harm.

26 Mr. Peterson was arrested without incident
27 and was cooperative. He was searched in a

1 cursory way and then placed in the back of the
2 police vehicle. The officers then heard a noise
3 in the back of the vehicle and, when they
4 checked, they found a Glock .40-calibre handgun
5 on the floor in the back of the vehicle in the
6 area where Mr. Peterson was. That handgun was
7 not loaded. Police then conducted a further
8 search of Mr. Peterson and, in his work coat,
9 they found a .40-calibre clip magazine with
10 ammunition in it.

11 At the time, Mr. Peterson was prohibited
12 from being in possession of firearms and
13 ammunition. A prohibition order had been made
14 against him in July 2009 as part of a sentencing
15 on a charge of assault causing bodily harm and
16 that order was to be in force until ten years
17 following his release from imprisonment on that
18 sentence. There is no question that that order
19 was in force in April 2016.

20 Mr. Peterson has been committed to stand
21 trial arising from these allegations and he
22 faces, now, five charges: one for carrying a
23 concealed weapon (s. 90(2) of the Code);
24 possession of a prohibited device (s. 92(2) of
25 the Code); possession of a restricted firearm
26 together with ammunition, (s. 95(2) of the Code);
27 and possession of the firearm while prohibited

1 and possession of ammunition while prohibited (s.
2 117.01(3) of the Code).

3 At the show cause hearing that was held last
4 April, the release plan was that there would be a
5 surety, Mr. Peterson's common-law spouse, and a
6 pledge of \$500, without deposit, in support of
7 his release.

8 The plan presented at that time showed that
9 there was a good chance that Mr. Peterson would
10 be able to have employment if released. It was
11 not 100-percent confirmed at the time, but it
12 appeared to be a good possibility. A number of
13 conditions were proposed at that time.

14 The submissions presented at the show cause
15 hearing included references to his personal
16 circumstances, including the fact that he and his
17 spouse have an infant child. There was also
18 mention of his very good work history and
19 employability. It was pointed out at that time
20 that the allegations do not include any
21 reference, suggestion or evidence that he is
22 affiliated with gangs, nor anything particularly
23 sinister in conjunction with the firearm that was
24 seized, aside from the fact that it is a
25 restricted weapon.

26 At that show cause hearing, the Crown
27 opposed release on the secondary and tertiary

1 ground. The Crown did not have any issues with
2 the suitability of the proposed surety. Its
3 concerns were really based on the very long
4 criminal record that Mr. Peterson has, which
5 includes numerous convictions for crimes of
6 violence and numerous convictions for offences
7 against the administration of justice. These
8 include, notably, several breaches of court
9 orders. The Crown expressed concern, as well,
10 about the nature of the firearm seized,
11 distinguishing this case from the situation, for
12 example, were a hunting rifle might be the weapon
13 concerned.

14 The Justice of the Peace ultimately agreed
15 with the Crown's position. He found the surety
16 to be a reasonably strong surety, but he did note
17 that Mr. Peterson was living with her when he
18 committed his last offence. This last offence is
19 the assault causing bodily harm that he was being
20 arrested for that day, for which he was
21 ultimately convicted and sentenced. The Justice
22 of the Peace concluded that Mr. Peterson had not
23 met his onus and ordered his detention.

24 The release plan that is being presented now
25 is similar to the one that was presented to the
26 Justice of the Peace. Mr. Peterson's common-law
27 is being offered as a surety. This time a cash

1 deposit is offered in the amount of \$500. The
2 proposed employer is not the same as the one that
3 was mentioned at the April show cause hearing,
4 but there is an exhibit to Mr. Peterson's
5 affidavit that shows that there is now a firm
6 employment offer for him if he is released. It
7 appears to be virtually certain that Mr. Peterson
8 will be employed if he is released, which is
9 stronger or more firm than what was the case in
10 April.

11 Mr. Peterson's counsel has argued that
12 because of the offer for cash deposit and the
13 firmness of the job offer, this plan is stronger
14 than the earlier one and this is a change in
15 circumstances that opens up the door to review by
16 this Court under the framework set down in R. v.
17 St-Cloud, 2015 SCC 27. Defence also argues that
18 the additional passage of time since the April
19 show cause hearing and the fact that there still
20 is no trial date set are also things that are
21 different from the situation that existed when
22 the Justice of the Peace made his decision. That
23 issue of delay fits within the main submission,
24 really, that was presented this morning on
25 Mr. Peterson's behalf, that his continued
26 detention could result in him spending more time
27 in custody than what he will be sentenced for if

1 he is found guilty.

2 The last aspect of this application which is
3 somewhat unusual is that in his affidavit
4 Mr. Peterson deposes that the Justice of the
5 Peace who heard the show cause hearing has a past
6 connection with him. I am going to quote from
7 the affidavit itself. At paragraphs 14 and 15,
8 Mr. Peterson deposes:

9 After the hearing was completed, I
10 mentioned to my lawyer that there
11 was a history between the
12 presiding JP and myself. We
13 attended the same school in Inuvik
14 and there were several incidents
15 where I bullied Mr. Anderson in
16 the playground when his father was
17 principal. My lawyer has
18 explained that we could have asked
19 the JP to refuse to hear my case
20 if this information was known
21 before April 13. I have not seen
22 Mr. Anderson for many years and it
23 took me some time to make the
24 connection.

25 What I understood from the submissions I
26 heard this morning is that the defence is arguing
27 that this should be taken into account, not so
28 much from the issue of actual bias, but from the
29 point of view of there being a possibility of a
30 perception of bias, that Mr. Peterson has a
31 perception that perhaps the original hearing may
32 not have been entirely fair given his connection
33 with the Justice of the Peace. That aspect of
34 things does not fall neatly in any of the

1 categories of things identified in St-Cloud as
2 opening the door to review by this Court.

3 This past connection was not raised before
4 the Justice of the Peace, so we cannot even be
5 sure that the Justice of the Peace realized that
6 he knew Mr. Peterson from the past, especially
7 considering that Mr. Peterson deposes that he
8 himself did not make the connection right away
9 either. There is no suggestion that the Justice
10 of the Peace should have recused himself or erred
11 in hearing the matter in the first place. Where
12 it fits best is probably under the "change in
13 circumstances" heading, although in this case it
14 would be more in the nature of new circumstances
15 being brought to the attention of this Court and
16 calling into question something about the
17 fairness of the first hearing.

18 This morning the Crown took the position
19 that this connection is entirely irrelevant. I
20 am not certain I would go that far. Although
21 there is no indication that this was brought to
22 the attention of the Justice of the Peace, and we
23 do not know if he was aware of it, as defence
24 counsel pointed out, our law is often concerned
25 as much about potential perception of bias as it
26 is with actual bias. This is not the case for me
27 to decide whether this, standing alone, would

1 open the door to review, but I think it is
2 something that goes into the overall assessment.
3 Given the fact that a cash deposit is now being
4 offered, combined with the now firm offer for
5 employment, and combined with this potential
6 concern about a perception of bias, I have
7 decided that the safest and fairest course is for
8 me to re-examine the issue of whether detention
9 is necessary to make sure that any lingering
10 issues are put to rest.

11 The primary ground is not a concern, so I am
12 not going to address it. The other two grounds
13 are what is of concern to the Crown and they are
14 also what is of concern to the Court.

15 The plan is probably as strong as it could
16 be, and as was noted by the Crown this morning,
17 and it was very ably and persuasively presented
18 by defence counsel.

19 The Crown has conceded that the surety is
20 suitable and that there are no issues with the
21 employment being lined up. There is little doubt
22 that having Mr. Peterson working would be better
23 for his family than having him sit in remand. I
24 also realize that having a young child and not
25 being able to be there to parent that child is
26 probably very difficult both for Mr. Peterson and
27 for his spouse, and it is not good for the child

1 either to be without a parent, if that can be
2 avoided.

3 At the same time, though, there is an
4 extensive criminal record here. It starts in
5 1995 and there was a conviction as recently as
6 July 2016. That recent conviction for assault
7 causing bodily harm gave rise to a significant
8 jail term. There are a lot of convictions for
9 crimes of violence, and this always raises
10 concerns about public safety. There is a large
11 number of breaches of court orders. There are
12 convictions for breaches of recognizances,
13 undertakings, probation orders, driving
14 prohibitions, and the allegations here involve
15 the failure to comply with the court order as
16 well - the firearms prohibition.

17 The combination of a long list of
18 convictions for crimes of violence and a long
19 list of convictions for failures to comply with
20 court orders is not a good mix when the Court is
21 asked to consider public safety. It is very
22 difficult for me to have any confidence that any
23 conditions that I would impose with a view of
24 protecting the public would be followed, given
25 the stead pattern of non-compliance with court
26 orders.

27 I also think there are concerns under the

1 tertiary ground. The allegations on their face
2 are serious and the Crown's case appears strong.
3 The arrest was effected on the strength of a
4 warrant. The initial search incident to arrest
5 must have been very cursory indeed since the
6 weapon and ammunition were not even discovered at
7 first. So I have a hard time seeing any basis
8 for any kind of Charter argument that could be
9 raised about the arrest, although, obviously, the
10 matter has not been litigated.

11 I cannot overlook the fact that defence
12 counsel this morning talked about what he
13 anticipates the defence may present when this
14 matter proceeds. He presented it with a view of
15 showing that, at best, this offence would fall at
16 the low end of the spectrum of seriousness as far
17 as these types of offences go. As I said during
18 my exchange with counsel this morning in
19 recognizing that this has not been litigated yet,
20 what has been presented this morning does not
21 appear to me to raise a defence to any of the
22 charges that Mr. Peterson faces. So while he
23 does benefit from the presumption of innocence,
24 the case against him appears very strong. Taken
25 at its highest, what I have heard this morning
26 may be mitigating as far as the level of
27 seriousness of the offence, but it is difficult

1 to see how it would offer a defence to the charge
2 of being in possession of the item in question.

3 All of that goes to the strength of the
4 Crown's case, which is one of the things that the
5 Code refers to specifically as a factor to
6 consider when examining the tertiary ground.

7 Some of the other factors mentioned are more
8 difficult to assess because they do depend on
9 findings of facts that would be made in the event
10 of conviction. For example, findings of facts
11 about how Mr. Peterson came to be in possession
12 of this firearm would fall under the heading
13 "circumstances of the commission of the offense".
14 Those findings of facts would also be linked to
15 the gravity of the offence and they would have an
16 impact on the potential length of any term of
17 imprisonment that could be imposed. And at this
18 stage, I cannot say much about any of those
19 things, including what the likely sentence would
20 be, because those facts have not been found. But
21 I do think that members of an informed and
22 reasonable public would have grave concerns if
23 someone with this kind of criminal record, facing
24 these charges, involving this type of firearm,
25 and in the face of what appears to be a very
26 strong case, were to be released into the
27 community. I am not satisfied that Mr. Peterson

1 has met his onus on either the secondary or
2 tertiary ground and, in that respect, although I
3 have taken a fresh look at matters, I reach the
4 same conclusion that the Justice of the Peace did.

5 With respect to the Section 525 review, at
6 this point it cannot be said that this matter has
7 been unduly delayed, and I do not find that
8 Mr. Peterson has showed that release would be
9 justified under that provision either.

10 There is a further pre-trial conference on
11 this that is scheduled for next week. It will
12 not be proceeding before me. Counsel have
13 confirmed that they want to use that as a blended
14 "trial management" and "settlement" pre-trial
15 conference. I will let the judge know that that
16 is what counsel want.

17 I want to go back to something that I
18 alluded to a little bit just now and more so this
19 morning when I was having my exchange with
20 counsel about the types of issues that the
21 defence expects to raise on this case. I am not
22 going to repeat all of that now, but I will just
23 say this, and I want to emphasize Mr. Peterson
24 has every right to have a trial if that is what
25 he wishes, he is entitled to put the Crown to the
26 proof of its case, and he has the right to have
27 this done within the process of a trial before a

1 jury if that is what he wishes. Nothing I say
2 now should be interpreted as suggesting that he
3 does not have that right, and I am confident that
4 Mr. Boyd, who is a very experienced defence
5 counsel, will be able to make that very clear to
6 Mr. Peterson. The reality is that scheduling a
7 jury trial is more challenging than scheduling
8 other types of hearings and for a few reasons.
9 The first is that more court time is needed to do
10 a jury trial, so that gives the Court less
11 flexibility in scheduling.

12 So as I heard emphasized this morning that
13 delay was a concern here, I reiterate that it may
14 be worthwhile for other options to be seriously
15 considered. In particular, if the central areas
16 of dispute between the parties have to do with
17 facts that do not go to the essential elements of
18 the offences charged but go to things that would
19 be aggravating or mitigating on sentencing, if
20 that is what is at the heart of the issue between
21 the parties, that opens up even more options,
22 procedurally speaking, for scheduling this
23 matter. I offer those comments simply because
24 the Court schedule is filling up quickly. We
25 have a large number of jury elections in this
26 jurisdiction. That has always been the case.
27 And although we do everything we can to have

1 matters scheduled as quickly as we can, there are
2 very real practical limitations to what we are
3 able to do. All of these things need to be
4 discussed first and foremost between Mr. Boyd and
5 Mr. Peterson, and depending on how those
6 discussions go, perhaps they can be the subject
7 of discussion between counsel before or during
8 the next pre-trial conference.

9 I make these comments perhaps more as part
10 of the 525 bail review. The Code says that when
11 a judge does not release on a 525 review, that
12 judge may give directions to expedite matters. I
13 certainly will do everything that I can to
14 schedule this quickly if it is possible. But one
15 of the things that I am going to suggest is,
16 subject to what the presiding judge at the
17 pre-trial conference says, that if by the end of
18 that pre-trial conference it is confirmed that
19 this matter is going to be going to trial, the
20 mode of trial should be firmed up so we know what
21 we are looking at in terms of scheduling, and
22 that within a week everybody send in their
23 availabilities so that the information that I
24 need to identify the quickest date possible is
25 provided to me as soon as possible.

26 Now, I say "subject to what the pre-trial
27 conference judge may direct" because obviously I

1 do not know how the discussions will go. But I
2 would urge counsel to try to get to some sort of
3 a final decision on the mode of trial, on whether
4 it will be a trial, and then to send in all the
5 information so I can schedule this because of the
6 reasons you put forward, Mr. Boyd, about the
7 importance of getting this done sooner rather
8 than later. But I am not directing anything yet
9 because I do not know what will happen next week.

10 Have I overlooked anything, Mr. Boyd? Are
11 there any clarifications needed?

12 MR. BOYD: No, ma'am.

13 THE COURT: Did you want to try to move up
14 the pre-trial conference or are you content to
15 leaving things as it is?

16 MR. BOYD: Monday is fine.

17 THE COURT: All right. Anything further
18 from the Crown?

19 MS. PICHÉ: No. Thank you, Your Honour.

20 THE COURT: All right. That is the
21 matters for the afternoon. Thank you.

22 MS. PICHÉ: Thank you, Your Honour.

23

24 Certified Pursuant to Rule 723
25 of the Rules of Court

26 Jane Romanowich, CSR(A)
27 Court Reporter

