

Court of Queen's Bench of Alberta

Citation: R v Coates, 2021 ABQB 179

Date: 20210305
Docket: 210161956U1
Registry: Edmonton

Between:

Her Majesty the Queen

Crown

- and -

James David Coates

Accused

**Reasons for Decision
of the
Honourable Mr. Justice Peter Michalyshyn**

Introduction

[1] This is an application by the Accused James David Coates for a review of a condition on the bail order granting him release on February 16, 2021. Neither the Crown nor the Accused sought an order pursuant to s 517 of the *Criminal Code*. As such, there is no order made restricting publication of the representations made, or these reasons.

Background

[2] Mr. Coates is charged with three offences all arising on or about February 14, 2021. Two of the offences are under s 73(1) of the *Public Health Act* of Alberta; the third is under the *Criminal Code*; it alleges that Mr. Coates, while being at large on an undertaking, failed without

lawful excuse to comply with a condition of that undertaking – the condition being that he abide with the conditions of the *Public Health Act*.

[3] Bail was first spoken to before a Justice of the Peace on February 16, 2021. A transcript of that proceeding is before the court. The Crown opposed Mr. Coates' release on the secondary and tertiary grounds under s 515(10)(b) and (c) of the *Criminal Code*. As noted, the Justice of the Peace held against the Crown and ordered Mr. Coates released, on conditions.

[4] The history as disclosed in the transcript of the February 16, 2021 proceedings is that, as alleged by the Crown, from March 25, 2020 and through January 2021 Alberta Health Services investigated complaints against Grace Life Church of which Mr. Coates is the Pastor, of non-compliance with Covid-19 measures pursuant to the *Public Health Act*. In December 2020, it is alleged that an email was received by members of the Grace Life Church congregation that the church, and Mr. Coates, intended not to follow Covid-19 restrictions including restricting gatherings to one third, or 15 per cent as required by the order of the Chief Medical Officer of Health (CMOH), and intend not to enforce a masking bylaw or distancing bylaw.

[5] Again in December 2020 it is alleged that in the course of an Alberta Health Services (AHS) visit the need to comply with CMOH orders was repeated, and that the church communicated it understood there were laws and rules in place but that the church could not and would not police their members on the then-current public health restrictions, but rather they would do what is best for the church.

[6] It is further alleged that certain further observations were made and steps taken in December 2020 and January 2021, including a civil Order by the Court of Queen's Bench, all relating to alleged non-compliance with distancing, masking and building occupancy requirements of the CMOH.

[7] On February 7, 2021 Mr. Coates was charged on an Information alleging two breaches of the CMOH orders – one relating to being over 15 per cent capacity, the second based on improper distancing. Mr. Coates was arrested and released on a Promise to Appear with an Undertaking that he comply with CMOH orders going forward.

[8] It is alleged that a week later, on February 14, 2021, authorities attended at Grace Life Church and observed multiple non-compliances with CMOH orders in the nature of no masking, improper distancing, and over 15 per cent capacity.

[9] It is alleged that there are news releases, photos and videos in which Mr. Coates is indicating he will not comply with CMOH orders.

[10] Mr. Kitchen appeared for Mr. Coates before the Justice of the Peace on February 16, 2021. Of course he also appeared before me to argue this application on March 4, 2021. Before the Justice of the Peace, and before me, Mr. Kitchen argued that it is not a question of Mr. Coates' *willingness* to comply with CMOH orders; rather, it is a question of Mr. Coates' very *ability* to do so.

[11] Mr. Kitchen submits that Mr. Coates is *unable* to comply with orders owing to what he calls a strong and literal interpretation of Holy Scriptures. He submits those scriptures command Mr. Coates and congregants of Grace Life Church to meet in person, physically; they command that they gather as the whole church together, that they do not cover their faces when they are worshipping, and that they minister to each other in ways that make them *unable* to comply with distancing orders.

[12] Mr. Kitchen states that Mr. Coates does not engage in non-compliance lightly. He states that Mr. Coates follows government orders as much as he possibly can, but in certain respects – including those giving rise to the charges before the court - he is simply *unable* to do so.

[13] Mr. Kitchen also argued before the Justice of the Peace, and before this Court, that no demonstrable harm to the public has been established to justify the CMOH orders.

[14] Invoking the tertiary ground, Mr. Kitchen argues that “it would be a stain on the administration of justice to put a Christian Minister behind bars for doing exactly what Christian ministers do, which is to hold church.”

[15] With regard to the alleged s 145(4)(a) *Criminal Code* offence, Mr. Kitchen argues that Mr. Coates did not sign the undertaking in question and did not have the necessary mental element to allow a conviction for the offence. The Crown observes that pursuant to s 501(6) of the *Criminal Code* the absence of a signature on an undertaking does not invalidate the undertaking. Whether or not the Crown can prove the necessary mental element for the s 145(4)(a) offence is a matter that will be determined at trial.

[16] It is interesting to note again that the undertaking in question, whether it is valid or not, intended to require Mr. Coates to undertake to comply with CMOH orders going forward. Mr. Kitchen acknowledged, before the Justice of the Peace, that Mr. Coates would be unable to comply with a similar undertaking to comply with CMOH rules, as a condition of his release, because again to do so would violate his conscience.

[17] Mr. Coates’ willingness, or ability to be bound by such a condition was considered by the Justice of the Peace in the context of s 515(10)(b) secondary grounds considerations of the safety of the public, in light of the certainty – by Mr. Coates’ own admission – that if released *unconditionally* he would continue not to comply with CMOH orders.

[18] The Justice of the Peace commented, with regard to the two s 73(1) *Public Health Act* charges, that the Crown’s case was strong. The Justice of the Peace also found that “there is an obvious danger to the public by the circulation of people through that church in excess of what Public Health has ordered to be the requirements”. (Transcript, p 20, ll 26-27)

[19] Despite the finding of that obvious danger, the Justice of the Peace found that in all of the circumstances Mr. Coates’ detention was not justified. He ordered Mr. Coates released. But of course and again having regard for all of the circumstances, he ordered Mr. Coates to sign the impugned condition which is the subject of this review application. As the Justice of the Peace concluded, Mr. Coates was going to have to agree to sign the condition to comply with CMOH orders, or he would be detained. It was Mr. Coates’ choice to make.

[20] In so concluding, the Justice of the Peace satisfied himself that on the facts before him and in law, a rational connection existed between the condition and the charges in question. As he put it:

[It’s] basically telling [Mr. Coates] to do what he’s charged with not doing. That would be an obvious and rationally connected condition to this release.
(Transcript, p 24, l 41 to p 25, l 1)

At the end of the day the condition imposed by the Justice of the Peace was that:

You will not attend or conduct services at Grace Life Church... unless you have complied with any existing orders of the CMOH, Alberta Health Services Executive Officers or orders of the Court of Queen's Bench.

Analysis

[21] I turn now to what is before this court. This is a bail review pursuant to s 520 of the *Criminal Code*. As interpreted by the Supreme Court of Canada in *R v St Cloud*, 2015 SCC 27 at para 6 a reviewing court may revisit a decision, such as that made by the Justice of the Peace in this case, if the reviewing court is satisfied there has been an error of law, or if it is shown that the decision was clearly inappropriate.

[22] Additional material before me that was not before the Justice of the Peace are Mr. Kitchen's written submissions filed March 23, 2021 and in particular Appendix A. I have also been provided with a book of authorities, and an affidavit of Erin Coates sworn February 26, 2021.

[23] Erin Coates is Mr. Coates' spouse. Her affidavit speaks to the events giving rise to her husband's arrest, to his religious beliefs, and to the impact of remand on him.

[24] Exhibited to Erin Coates' affidavit is an affidavit of Mr. Coates itself sworn January 20, 2021. At paragraphs 4-11 of his affidavit Mr. Coates speaks to the religious beliefs and convictions of Grace Life Church and its members, including himself. Those beliefs and convictions are such that he says it is impossible to comply with CMOH orders as those orders contravene "the authority of the local church and the supreme authority of the Lord Jesus Christ". Mr. Coates specifically notes at para 13 of his affidavit the impossibility of complying with occupancy limits, restrictions compelling social distancing and mask-wearing. He states at para 14 that AHS lacks authority to mandate how worship will proceed at Grace Life Church. He states that when faced with a conflict between the mandate of scripture, and the mandates of government as represented by CMOH and AHS Orders, the former prevails. He states that these mandates of government infringe his rights under the *Charter of Rights and Freedoms*, in particular s 2 which protects the rights to freedom of religion and conscience, as well as rights to freedom of expression, of peaceful assembly, and of association. Mr. Coates says that the infringements of these protected rights cannot be justified in a free and democratic society.

[25] Mr. Kitchen relies on the leading bail authorities such as *R v Antic*, 2017 SCC 27, *R v Myers*, 2019 SCC 18 and *R v Zora*, 2020 SCC 14 – all for the proposition that all else being equal, detention is the exception, accused persons should be released as early as possible, and on the least onerous conditions as possible.

[26] These authorities were not argued, as they say, chapter and verse before the Justice of the Peace. I have no doubt however that the Justice of the Peace was well aware of them and had them in his mind as he concluded that Mr. Coates should be released, subject however to the condition already noted.

[27] These Supreme Court of Canada authorities aside, there is nothing in substance before me that was not before the Justice of the Peace. The written and oral submissions of Mr. Kitchen including his submissions with regard to the lack of evidence of negative health outcomes, add nothing to what was, in substance, argued before the Justice of the Peace. The Justice of the

Peace considered these, or similar submissions. He concluded the evidence of public health concerns was sufficient, in the context of justifying Mr. Coates' *conditional* release.

[28] I am satisfied that as noted in *Antic*, at para 67(j), the condition imposed by the Justice of the Peace was necessary to address concerns related to the statutory criteria for detention – in particular the secondary ground criterion that requires the bail judge to consider “the protection or safety of the public”. The Justice of the Peace did not impose a condition in the abstract that Mr. Coates simply obey the law. He imposed a condition after finding “an obvious danger to the public” that existed on the day Mr. Coates was charged under the *Public Health Act* and the *Criminal Code*. And he imposed the condition in the face of Mr. Coates' unrepentant admission that, if released unconditionally, he intended to continue violating CMOH orders.

[29] This state of affairs is exactly what Justice Martin in the Supreme Court of Canada had in mind in her comment in *Zora*, at para 1, that

...conditions of release can be imposed if the Crown satisfies the judicial official that particular restrictions are required...to ensure the protection or safety of the public...

[30] The affidavits of Erin Coates and of James Coates say nothing substantively different from what was said on Mr. Coates behalf before the Justice of the Peace. If anything, Mr. Coates' January 20, 2021 affidavit brings home even more clearly and personally the depth of his conviction not to be bound by the law as stated by the CMOH and AHS and, I infer, related orders of the Court of Queen's Bench.

[31] The fact that Mr. Coates intends to raise arguments that his *Charter*-protected rights have been breached does not persuade me that the Justice of the Peace erred in law by imposing the impugned condition, or that his order was clearly inappropriate.

[32] At the time of the February 16, 2021 hearing, as now, the law that Mr. Coates clearly intends not to be bound by, remains valid and enforceable against him. Mr. Coates' strongly-held religious beliefs and convictions, without more, do not overcome those valid and enforceable laws.

[33] Put another way, notwithstanding Mr. Coates' strongly-held religious beliefs and convictions, he remains subject to the *Rule of Law* which is itself a constitutional value of over-arching importance. As alluded to by the Justice of the Peace, the condition which Mr. Coates refuses to be bound by is rationally connected to the rule of law as manifested by the CMOH and AHS orders in question.

Conclusion

[34] For the reasons given, the bail review application pursuant to s 520 of the *Criminal Code* is dismissed.

Heard on the 04th day of March, 2021.

Dated at the City of Edmonton, Alberta this 5th day of March, 2021.

Peter Michalyshyn
J.C.Q.B.A.

Appearances:

Public Health Prosecutor
for the Crown

James Kitchen
for the Accused