COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Shaheen, 2022 ONCA 773
DATE: 20221114
DOCKET: M53851(C65070)

Benotto J.A. (Motions Judge)

BETWEEN

His Majesty the King

Respondent

and

Waseem Shaheen

Applicant

Diane Magas, for the moving party

Jennifer Conroy, Colleen Liggett, and Giuseppe Cipriano, for the responding party

Heard: November 2, 2022

REASONS FOR DECISION

[1] Mr. Shaheen applies for bail pending his application for leave to the Supreme Court of Canada. The Crown opposes his request and submits that the

application fails to satisfy the “not frivolous” criterion, and detention is necessary in the public interest.

FACTS

[2] Mr. Shaheen was a pharmacist. He was convicted of trafficking over 5,000 patches of fentanyl by using fraudulent prescriptions. To cover the discrepancy in the pharmacy’s inventory, he staged a fake robbery and claimed insurance for the value of the fentanyl allegedly stolen. In 2018, he was sentenced to 14 years in prison. His appeal of conviction to this court was unanimously dismissed. His sentence appeal was allowed, and the sentence was reduced to 12 years.

[3] Mr. Shaheen has been ill for several years. He suffered from kidney disease, which led to a transplant in 2012. He also has heart problems and underwent an angioplasty about 10 years ago. This year, he caught COVID and was hospitalized. His wife filed an affidavit on the day of this oral hearing, citing information from a medical app that she uses to track her husband’s test results. There is no medical evidence to decipher what the test results mean. In any event, he submits here, as he did before the sentencing judge and the court of appeal, that his kidney disease is an exceptional circumstance that should favour his release from custody.

ANALYSIS

[4] Mr. Shaheen must meet the requirements of s. 679(3) of the *Criminal Code*, R.S.C. 1985, c. C-46 and establish: (1) that the appeal is not frivolous, (2) that he

will surrender into custody when required, and (3) that detention is not necessary in the public interest.

[5] There is no issue that Mr. Shaheen will comply with the bail conditions. He has done so for the many years that he has been part of the criminal justice system. However, the Crown contends that the proposed application is frivolous, as well as that detention is necessary in the public interest.

[6] I therefore turn to the two issues raised by the Crown.

A. Not Frivolous

[7] Mr. Shaheen submits that the application for leave passes the low threshold to determine that it is not frivolous. He submits that this court did not properly deal with the trial judge's determination of his claims under the *Canadian Charter of Rights and Freedoms* because they were only dealt with summarily.

[8] He relies on *R. v. Scott*, 2022 ONCA 659. In that case, the applicant had raised unreasonable verdict as a ground of appeal. However, this court did not deal with the issue, commenting that the applicant did not "claim that the trial judge reached an unreasonable verdict": para. 6. This was significant, because the appeal was seeking a review of a ground of appeal that had not been dealt with by this court. The motion judge granted the release in the "unusual circumstances of this case": para. 13. This decision does not assist Mr. Shaheen, who is seeking a

second review of a ground of appeal already considered and rejected by a panel of this court.

[9] The trial judge, in an extensive ruling, considered each step of the proceedings and determined that the delay was not unreasonable. The *Charter* application was dismissed.

[10] This court dealt with the ss. 7, 8, and 11(b) issues succinctly, but thoroughly:

> The appellant submits that the trial judge erred in rejecting his pretrial and midtrial s. 11(b) *Charter* applications. We would dismiss this ground of appeal. In our view, the trial judge properly categorized the periods of delay and appropriately considered the complexity of the case. The trial judge also correctly applied the transitional exception as articulated in *R. v. Jordan*, 2016 SCC 27, [2016] 1 S.C.R. 631 and R. v. Cody, 2017 SCC 31, [2017] 1 S.C.R. 659. Consequently, the appellant's s. 11(b) ground of appeal fails.
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> We would similarly dismiss the appellant's ss. 7 and 8 *Charter* grounds of appeal. No breaches arose when the Ontario College of Pharmacists ("the College") shared the fruits of their investigation with the police. While the trial judge did not specifically use the language from *R. v. White*, [1999] 2 S.C.R. 417, or *R. v. Fitzpatrick*, [1995] 4 S.C.R. 154, he nevertheless applied the correct legal principles to find that the appellant's right against self-incrimination was not violated. The trial judge also did not err when he held that the disclosure by the College to the police was authorized by s. 36(1)(e) of the *Regulated Health Professionals Act, 1991*, S.O. 1991, c. 18, and therefore did not violate s. 8 of the *Charter*. Finally, we see no error in the trial judge's ruling on the appellant's lack of standing to challenge the production orders.

[11] The chances of success on an application for leave are low to nil.

B. Public Interest

[12] Leave is granted to the Supreme Court of Canada if the question is so significant as to warrant a decision by the highest court: *Supreme Court Act*, R.S.C. 1985, c. S-26, s. 40(1). There is no public importance to the proposed appeal.

[13] The public interest ground also engages the preservation of public confidence, which involves weighing the interests of enforceability and reviewability. In the oft quoted words of Doherty J.A., when the appeal has been dismissed by this court, "priority should be given to the enforceability principle": *R. v. Drabinsky*, 2011 ONCA 582, 107 O.R. (3d) 595, at para. 11.

[14] The interest in reviewability is low. Conversely, the interest in enforceability is high. By trafficking a large quantity of fentanyl, the applicant participated in putting a dangerous drug on the street, thereby endangering the public. In *R. v. Parranto*, 2021 SCC 46, 463 D.L.R. (4th) 389, Moldaver J. found it necessary to write concurring reasons to focus on the gravity of largescale trafficking in fentanyl for personal gain. He stated, at para. 93:

> As grave a threat as drugs such as heroin and cocaine pose, that threat pales in comparison to the one pose by fentanyl and its analogues. Indeed, over the past decade, fentanyl has altered the landscape of the substance abuse crisis in Canada, revealing itself as public enemy number one.

[15] Fentanyl is extremely dangerous and addictive and causes extraordinary harm and death. It has a devasting impact on lives, on communities and on families. As Moldaver J. said, at para. 98 of *Parrento*, fentanyl trafficking is:

> … a crime marked by greed and the pursuit of profit at the expense of violence, death, and the perpetuation of a public health crisis previous unseen in Canadian society … Put simply, it is a crime that can be expected to not only destroy lives, but to undermine the very foundations of our society.

[16] These factors weigh towards enforceability.

[17] I turn to the question of Mr. Shaheen's health. He has health issues that will need to be managed by the correctional facilities, which have a statutory obligation to care for persons in their care. These health issues were considered in sentencing. On this application, they do not outweigh the public interest in enforceability.

[18] Balancing the very high interest in enforceability with the low interest in reviewability, the applicant has failed to discharge his burden.

[19] The application is dismissed.

"M.L. Benotto J.A."