COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Ameyaw, 2024 ONCA 364
DATE: 20240506
DOCKET: M54977 & M55031 (COA-22-CR-0346)

Sossin J.A. (Motions Judge)

BETWEEN

His Majesty the King

Respondent
(Moving Party/Responding Party)

and

Ronny Ameyaw

Appellant
(Responding Party/Moving Party)

Robert Tomovski, for the responding party (M54977)/moving party (M55031)

Kevin Pitt, for the moving party (M54977)/responding party (M55031)

Heard: April 22, 2024 and May 2, 2024

ENDORSEMENTS

OVERVIEW

[1] Pursuant to s. 679(6) of the *Criminal Code*, R.S.C. 1985, c. C-46, the Crown applies for an order revoking Miller J.A.'s bail release order, dated January 10, 2024, which extended the release of the appellant, Ronny Ameyaw. The appellant opposes the Crown's application.

[2] In the event I grant the Crown's application, the appellant brings his own application for release pending appeal.

[3] For reasons that follow, I am revoking the bail release order and denying the appellant's request for release pending appeal.

MATERIAL FACTS

[4] On February 7, 2022, the appellant was convicted by Misener J. of the Ontario Court of Justice of a series of frauds perpetrated against customers of TD Bank. The appellant was sentenced on November 21, 2022 to three years and six months in custody. He was also ordered to pay restitution in the amount of $300,000.

[5] The appellant filed a notice of appeal on November 23, 2022, and sought bail pending appeal in this Court. On November 28, 2022, the appellant was granted bail pending appeal. On September 8, 2023, the Crown brought an application to revoke the appellant's bail as he had been arrested on new substantive fraud charges. On that date, Coroza J.A. denied the application on the basis that the Crown had not demonstrated, based on the material it had filed, that there were reasonable grounds to believe the appellant had committed an indictable offence. Those charges were subsequently withdrawn.

[6] On February 5, 2024, the appellant filed a supplementary notice of appeal along with a factum proposing to tender fresh evidence.

[7] The appellant's current release order, issued on January 10, 2024 by Miller J.A., provides that the appellant is required to:

- Remain in your residence at all times, except:
  - For medical emergencies involving you or a member of your immediate family (spouse, child, parent, sibling); or
  - While in the direct presence of your surety; or
  - While in the direct presence of your legal counsel[;]
  - While travelling directly to and from, and while at legitimate employment[.]
- Do not possess any identification that is not in your name[.]
- Do not possess any bank cards, bank information, credit cards, cheques, or money transfers that are not in your name[.]

[8] On March 12, 2024, the appellant was stopped while operating a vehicle at in the city of Vaughan. He was the only occupant of the vehicle. A search of the vehicle revealed multiple pieces of identification as well as banking instruments not issued in the appellant's name. Several of these are believed to be forgeries. The appellant was charged with breaching his release order and with new substantive forgery and impersonation offences.

[9] On March 13, 2024, the appellant was granted bail in relation to these charges.

[10] The Crown seeks an order granting a Warrant for Arrest and Committal of the appellant, together with an order revoking the release order issued by Miller J.A. on January 10, 2024; and an order canceling the recognizance of bail entered into pursuant to the order issued by Miller J.A.

ISSUES

[11] There are two issues to be addressed.

[12] The first is the Crown's application before me pursuant to s. 679(6) of the *Criminal Code* to revoke Miller J.A.'s bail release order of January 10, 2024.

[13] The appellant contests the Crown's application. However, in the event the Crown is successful on this application, the appellant is applying for bail pending appeal. The second issue, therefore, is whether the appellant meets the threshold for a fresh bail pending appeal order.

[14] I will address each application in turn.

ANALYSIS

(1) The release order of Miller J.A. is revoked

[15] By virtue of s. 679(6) of the *Criminal Code*, s. 524(3) of the Criminal Code is incorporated into the bail pending appeal regime. By virtue of s. 524(3)(b), I am required to cancel the appellant's release if I find "there are reasonable grounds to

believe that the [appellant] has committed an indictable offence while being subject to the … release order."

[16] I need not determine whether the appellant is guilty. Section 524 sets out a standard of "reasonable grounds to believe."

[17] In my view, unlike the situation before Coroza J.A. where he denied the Crown's attempt to revoke the appellant's bail, these new charges do give rise to reasonable grounds to believe the appellant has committed an indictable offence while subject to Miller J.A.'s release order. The items found in the appellant's vehicle, considered in the context of the investigating officer's affidavit, the offences for which the appellant was convicted in the decision on appeal, and the terms of his release, all underscore the significance of the new charges.

[18] I conclude that there are reasonable grounds to believe that the appellant has committed an indictable offence while being subject to Miller J.A.'s release order, and that the new charges are sufficient to require that Miller J.A.'s order for release be revoked, and I do so.

(2) The application for bail pending appeal is denied

[19] Turning to the appellant's application for a fresh bail order pending appeal, the onus is on the appellant to demonstrate that he should be released pending appeal. The test is well-settled and not in dispute. On an application for bail pending the appeal of a conviction, the applicant must establish, pursuant to

s. 679(3) of the *Criminal Code*, that: a) the appeal is not frivolous; b) the applicant will surrender himself into custody in accordance with the terms of the release order; and c) the applicant's detention is not necessary in the public interest: see *R. v. Oland*, 2017 SCC 17, [2017] 1 S.C.R. 250, at para. 19.

[20] The Crown has not raised a concern with respect to the second requirement relating to the appellant surrendering into custody in accordance with the terms of the release order so the analysis below focuses on the first and third requirements, which are contested.

(a) The appeal is not frivolous

[21] The appellant's supplementary notice of appeal sets out that admissible fresh evidence in the form of a psychiatric report from Dr. Julian Gojer and an affidavit from the appellant sworn on February 4, 2024, renders the verdicts against him unreasonable and unsupported by the evidence, and requires the verdicts to be set aside to avoid a miscarriage of justice. In the alternative, the appellant argues that the $300,000 in restitution ordered as part of his sentence was not reasonably ascertainable, was not fit and ought to be varied.

[22] The Crown argues that the appellant's notice of appeal does not meet the "not frivolous" threshold.

[23] According to the Crown, the appellant chose not to testify at trial and now rests his appeal on an application to admit fresh evidence, which is intended to

show what he would have testified to at trial had he elected to do so. The appellant has tendered a report from a psychiatrist, Dr. Julian Gojer, stating that the appellant was fit to stand trial, although the psychiatrist opines that the appellant's "depression, anxiety, sleep disturbances and substance [*sic*]" would have "likely" impacted his ability to communicate with counsel.

[24] I would characterize the central ground of appeal raised by the appellant as both weak and uncertain. The appeal will turn on whether the fresh evidence will be admitted, which must overcome both the hurdle of due diligence as well as the potentially more serious hurdle as to whether the evidence could have affected the verdict given the record on which the trial judge relied in the convictions.

[25] That said, I am not prepared to conclude at this stage that the merits of the appeal do not cross the threshold of being not frivolous.

(b) The appellant's detention is necessary in the public interest

[26] The appellant submits that his detention is not necessary in the public interest, highlighting that, prior to the March 2024 charges, the appellant had been on release pending trial and appeal for over 4 years without being found to have breached any of his bail conditions (including a 6-month period on house arrest between September 14, 2023 and April 12 2024, when earlier charges were outstanding that eventually were dropped). The Crown contends that the appellant has failed to establish that his detention is not necessary in the public interest.

[27] The "public interest" criterion under s. 679(3)(c) has two elements: public safety and public confidence in the administration of justice: *Oland*, at paras. 23, 26.

(i) Public Safety

[28] While the appellant does not appear to pose a risk to the public's physical safety, the concept of public safety includes being secure from frauds of the kind the appellant was convicted of perpetrating: *R. v. Omitiran*, 2020 ONCA 261, at paras. 20-23.

[29] The appellant argues that certain deficiencies in the Crown's case in relation to the new March 2024 charges need to be considered in this analysis, particularly potential avenues open to the appellant to challenges the police stop and search of his vehicle under ss. 8, 9 and 24(2) of the *Charter*.

[30] Notwithstanding the possibility that the appellant may have avenues to challenge the new charges when they ultimately are adjudicated, these charges on their face make it difficult to conclude that there is not a "residual" or "lingering public safety concern" that attenuates the enforceability interest: see *Oland*, at paras. 27 and 50; and *R. v. I.W.*, 2021 ONCA 628, at para. 20.

[31] The appellant submits that he has been compliant with bail conditions for a significant period of time, but the new charges undercut the support this period of compliance might lend to eligibility for a fresh release order. Further, I note that the

proposed surety, the appellant's father, was also the surety at the time of the conduct giving rise to the new charges.

[32] In my view, residual public safety concerns remain in light of the seriousness of the crimes for which the appellant was convicted and the nature of the new charges, even if attenuated somewhat by the appellant's compliance with bail conditions for a substantial period of time.

(ii) Public Confidence

[33] The public confidence component involves a weighing of two sometimes competing interests: enforceability and reviewability.

[34] Enforceability concerns the need to respect the general rule with respect to the immediate implementation of court orders. Reviewability concerns the need to provide for a meaningful review process, which includes a concern that persons convicted of offences not serve all or a significant part of their sentence, only to have their conviction overturned on appeal: *Oland*, at paras. 24-26.

[35] In this case, the Crown asserts that the enforceability concerns have been heightened by the revocation of bail in light of the new charges. According to the Crown, the fact that the appellant was recently caught with multiple forged identify documents, blank bank cards and a printer in his vehicle is highly concerning given his criminal history and suggests that the appellant is continuing to engage in the same type of fraudulent activity for which he has already been found guilty.

[36] As stated above, the reviewability interest is limited by the weak and uncertain nature of the grounds of appeal. Further, there is little danger that the appellant will now serve all or even the majority of his sentence before his appeal is heard, provided that he pursues his appeal with diligence.

[37] Consequently, I conclude that a thoughtful, dispassionate person informed of the circumstances of the case and respectful of society's fundamental values would conclude that the enforcement interest outweighs the reviewability interest in this case. This is especially so given the revocation of bail addressed above. As Paciocco J.A. observed in *R. v. Isaac*, 2022 ONCA 156, at para. 15:

> In my view, the spectre of disrepute looms large when an appellant who has already been released on bail pending appeal and who is no longer presumed to be innocent of the charges under appeal, seeks to be re-released after being arrested based on credible evidence that he committed a serious offence despite being on conditions of bail.

CONCLUSION

[38] The appellant's bail release is revoked and his application for release pending appeal is denied. The draft orders revoking the appellant's bail release, and for his arrest, that were submitted by the Crown with its application will issue.

"L. Sossin J.A."