

~~V. Appendix "A" Regina v. Beverly Richard Wilson~~

ORIGINAL

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20060901  
Docket: 22464  
Registry: Vancouver

Regina

v.

Beverly Richard Wilson

**Ban on Disclosure 486(3) CCC INHERENT JURISDICTION**

Order that the identity of a complainant or a witness and any information that could disclose the identity of the complainant or witness shall not be published in any document or broadcast in any way. (a) No person shall broadcast or publish any evidence, statements by the presiding judge or counsel, or other matters arising at the fitness hearing and the hearing of the application for a judicial stay of proceedings. (b) No person shall broadcast or publish any evidence, statements by the presiding judge or counsel, or other matters arising at the hearing of the application for this publication ban. (c) This ban shall remain in force until the disposition of the trial of the accused or until further order of the court.

Before: The Honourable Mr. Justice McEwan

**Oral Reasons for Judgment**

September 1, 2006

Counsel for Crown

T.W. Buziak

Counsel for Defendant

R.S. Fowler

Place of Trial:

Vancouver, B.C.

(L)

[1] **THE COURT:** On October 26, 2005, this court found Mr. Wilson unfit to stand trial on account of a mental disorder on an indictment charging four counts of indecent assault and three counts of gross indecency arising out of historic events in the 1970s.

[2] At the time that order was made, this court made no disposition under s. 672.47(1), which leaves the matter to the review board to hold a hearing and make a disposition as soon as practicable but not later than 45 days after the verdict. The review board held hearings on November 30, 2005, and on January 4, 2006, and made a recommendation under s. 672.851(1) recommending that the court hold an inquiry to determine whether a stay of proceedings should be ordered.

[3] A report has been prepared by Dr. Melih Dilli, dated June 7, 2006. Dr. Dilli provided evidence at the hearing on October 26, 2005, and the updated report prepared for the purpose of this inquiry makes it clear that there has been no change in the five or six months elapsing since the order was first made in Mr. Wilson's psychiatric condition and opining that it is irreversible and will continue worsening during his remaining life expectancy.

[4] The relevant provision for the court's consideration on this inquiry is s. 672.851(7). It reads that:

The court may, on completion of an inquiry under this section, order a stay of proceedings if it is satisfied

- (a) on the basis of clear information, that the accused remains unfit to stand trial and is not likely to ever become fit to stand trial;

- (b) that the accused does not pose a significant threat to the safety of the public; and
- (c) that a stay is in the interests of the proper administration of justice.

[5] The court has the further guidance of paragraph 8 of that section:

In order to determine whether a stay of proceedings is in the interests of the proper administration of justice, the court shall consider any submissions of the prosecutor, the accused and all other parties and the following factors:

- (a) the nature and seriousness of the alleged offence;
- (b) the salutary and deleterious effects of the order for a stay of proceedings, including any effect on public confidence in the administration of justice;
- (c) the time that has elapsed since the commission of the alleged offence and whether an inquiry has been held under section 672.33 to decide whether sufficient evidence can be adduced to put the accused on trial; and
- (d) any other factor that the court considers relevant.

[6] In this case, there is clear evidence that the accused remains unfit to stand trial and is not likely ever to become fit to stand trial.

[7] There is also clear evidence that the accused does not pose a significant threat to the safety of the public in any way.


[8] The question of whether a stay is in the interests of the proper administration of justice falls to be determined in terms of the criteria I have just outlined from s-s. (8).

[9] The nature of the offences is serious. However they are very old, and the circumstances in this case, given the condition of Mr. Wilson, are such that, although it is never a satisfactory outcome for serious charges not to be dealt with in a court of law, there comes a time when it is apparent that an accused cannot properly be prosecuted given other factors.

[10] The situation in this case is such that any reasonable member of the public would recognize that at times crimes will not be addressed owing to the nature of the human condition, including the fact that accused persons like Mr. Wilson may simply, by the time matters are brought before the court, be unfit.

[11] It strikes me that it would be more likely to undermine the public confidence in the administration of justice if our legal system appeared to relentlessly prosecute persons in Mr. Wilson's condition. There is a point at which certain realities have to be recognized and this is a proper point in this particular case for that to be done.

[12] Accordingly, taking account of the circumstances which have been fully explored before me and bearing in mind that no member of the public could feel that the Crown in this case or defence counsel had not been thoroughly conscientious in the way they approached the case and in airing all of the considerations necessary, I direct a stay of proceedings in this matter pursuant to s. 672.851(7).

  
The Honourable Mr. Justice McEwan