

2012 ABPC 121
Alberta Provincial Court

R. v. Savova

2012 CarswellAlta 861, 2012 ABPC 121, [2012] A.W.L.D. 4423, [2012]
A.J. No. 486, 102 W.C.B. (2d) 332, 541 A.R. 85, 78 Alta. L.R. (5th) 18

Her Majesty The Queen and Dimitrina Savova

L.G. Anderson Prov. J.

Judgment: April 30, 2012
Docket: Edmonton 110342060P1

Counsel: Mr. Christian Lim for Crown
Ms N. Rodych (Agent) for Accused

Subject: Criminal; Public

Headnote

Criminal law --- Victims' rights and third party remedies — Peace bonds

Accused took her cat to veterinarian and was told that it was ill and required surgery — Accused indicated that she wanted second opinion and would take her cat to another veterinarian clinic — First veterinarian spoke to second veterinarian and was told that accused had not brought her cat in for second opinion — First veterinarian called Humane Society, which contacted accused and told her to act quickly — Accused brought her cat in for surgery, which was unsuccessful and cat died on operating table — Accused was charged with causing distress to animal and failing to provide animal with adequate care — At trial, Crown and accused jointly agreed to common law peace bond with conditions that would include restriction on pet ownership and condition that accused attend for psychiatric counselling or treatment — Court declined to make order sought — Court was not convinced that it had jurisdiction to impose common law peace bond in provincial regulatory matters, nor that even if it had jurisdiction, that this would be appropriate circumstances to make such order — Provincial Offences Procedure Act did not provide court with jurisdiction sought — If common law peace bond were imposed, then accused would be open to criminal sanctions if she violated it, despite fact that she never faced criminal allegation in first place — Using threat of criminal sanction to curb non-criminal behaviour had no place in our law — Accused did not want psychiatric treatment and even under Criminal Code it was not proper to impose rehabilitative term in probation order, for example, that was resisted — Order sought concerning psychiatric treatment had no apparent connection to original alleged delict — Other potential consequences of accepting peace bond would be grossly unfair: accused would be exposed to criminal charge should she not get psychiatric treatment, and terms of order would be available on criminal records search and might restrict her employment opportunities or right to travel outside of Canada.

Table of Authorities

Cases considered by L.G. Anderson Prov. J.:

Broomes v. R. (1984), (sub nom. *R. v. Broomes*) 12 C.C.C. (3d) 220, 1984 CarswellOnt 1385 (Ont. H.C.) — referred to

Cunningham v. Lilles (2010), (sub nom. *R. v. Cunningham*) [2010] 1 S.C.R. 331, 480 W.A.C. 280, 283 B.C.A.C. 280, (sub nom. *R. v. Cunningham*) 317 D.L.R. (4th) 1, (sub nom. *R. v. Cunningham*) 254 C.C.C. (3d) 1, 73 C.R. (6th) 1, 399 N.R. 326, 2010 CarswellYukon 21, 2010 CarswellYukon 22, 2010 SCC 10 (S.C.C.) — referred to

Port Alberni (City) v. Smillie (2007), 2007 CarswellBC 1308, 2007 BCPC 180 (B.C. Prov. Ct.) — distinguished

R. v. Doyle (1976), (sub nom. *Doyle v. R.*) 35 C.R.N.S. 1, 1976 CarswellNfld 3, 1976 CarswellNfld 15F, (sub nom. *Doyle v. R.*) [1977] 1 S.C.R. 597, 17 A.P.R. 45, 10 Nfld. & P.E.I.R. 45, (sub nom. *Doyle v. R.*) 29 C.C.C. (2d) 177, 9 N.R. 285, 68 D.L.R. (3d) 270 (S.C.C.) — referred to

R. v. Rogers (1990), 2 C.R. (4th) 192, 61 C.C.C. (3d) 481, 1990 CarswellBC 328 (B.C. C.A.) — referred to

R. v. Taylor (2001), 2001 BCPC 183, 2001 CarswellBC 1668 (B.C. Prov. Ct.) — distinguished

R. v. Wells (2012), 2012 ABQB 77, 2012 CarswellAlta 155 (Alta. Q.B.) — referred to

R. v. Whittle (2005), 2005 BCPC 610, 2005 CarswellBC 3147 (B.C. Prov. Ct.) — distinguished

Statutes considered:

Animal Protection Act, R.S.A. 2000, c. A-41

s. 2(1) — referred to

s. 2.1(b) [en. 2005, c. 22, s. 4] — referred to

Criminal Code, R.S.C. 1985, c. C-46

Generally — referred to

s. 810 — referred to

Provincial Offences Procedure Act, R.S.A. 2000, c. P-34

Generally — referred to

s. 3 — considered

Forms considered:

Criminal Code, R.S.C. 1985, c. C-46

Form 32 — referred to

RULING on joint submission that accused be subject to common law peace bond.

L.G. Anderson Prov. J.:

Introduction and Statement of the Issues

1 In October, 2010, Ms. Savova went to a veterinarian's office to get some different food for her cat. She thought it was pregnant. The veterinarian's office suggested that she bring the cat in, which she did. Ms. Savova was told that the cat was ill and needed surgery or alternatively the cat should be euthanised.

2 Ms. Savova said she wanted to get a second opinion and advised that she would take it to a different clinic, identifying which one. On the following day the first veterinarian's office phoned the second one and learned that the cat had not been taken

in. The office phoned the Humane Society and Ms. Savova was notified that she had to act quickly. She brought the cat back to the first office promptly and agreed to pay for the required surgery.

3 The cat died on the operating table and Ms. Savova, who speaks very limited English, made angry comments to the veterinarian staff and later to animal protection staff, accusing them of having murdered her cat and gouging her.

4 Following these unhappy events, Ms. Savova was charged with two provincial offences - one count of causing distress to an animal contrary to s. 2(1) of the *Animal Protection Act (APA)* and one count of failing to provide an animal with adequate care contrary to s. 2.1(b) of the *APA*.

5 A trial was scheduled to be heard by this Court on February 8, 2012. Instead of hearing evidence, however, the Court heard a proposal, led by the Crown and agreed to by the Defence. These provincial offences carry potential fines of up to \$20,000. The joint proposal was that the Court should impose a "common law peace bond" for one year with conditions that would include a restriction on pet ownership and a condition that the accused attend for psychiatric counselling or treatment.

6 Through a Bulgarian interpreter, the accused advised that she does not want to attend for psychiatric treatment but would do so if it were ordered.

7 After setting the matter over to hear from both parties concerning the Court's jurisdiction to make such an order, this matter was further adjourned for decision on two (2) issues:

- a) Does the Court have jurisdiction to issue a 'common law peace bond' where a provincial offence has been alleged?
- b) If so, should the Court make such an order?

Is there Jurisdiction to Issue a 'Common Law Peace Bond'?

8 In support of its position, the Crown submits that the Court could find jurisdiction to impose a common law peace bond by considering first that common law peace bonds have been upheld in relation to criminal matters, citing *R. v. Wells*, [2012 ABQB 77](#) (Alta. Q.B.). Second, it is submitted that the summary procedure provisions of the *Criminal Code* are incorporated into provincial proceedings, except to the extent that they conflict, through s. 3 of the *Provincial Offences Procedure Act*, RSA 2000, c P-34. Ergo, it is submitted, peace bonds can be imposed in provincial matters.

9 In the alternative, it is submitted that the Court should find jurisdiction to impose a peace bond in an animal protection case for the same reasons that jurisdiction was found in a line of cases, beginning with *R. v. Taylor*, [\[2001\] B.C.J. No. 1653](#) (B.C. Prov. Ct.) and followed in *R. v. Whittle*, [2005 BCPC 610](#) (B.C. Prov. Ct.). In these cases, the Court imposed a form of peace bond on dog owners whose dogs had been found to be vicious, requiring the owners to control their dogs as an alternative to having them put down.

10 The Court appreciates that in some circumstances an order such as the one sought in this case may have a laudable purpose and provide a practical remedy. The Court is not persuaded however, there is any jurisdiction to impose a common law peace bond in provincial regulatory matters. Nor is the Court persuaded that this would be an appropriate circumstance to make such an order, even if the jurisdiction existed.

11 The Court accepts that a provincial court judge has jurisdiction to impose a common law peace bond in criminal matters, although the power is not without limits (see *Wells*, *supra* and *Broomes v. R.* (1984), [12 C.C.C. \(3d\) 220](#) (Ont. H.C.)). The Court would go further to observe that not only are such orders made frequently, particularly in domestic assault cases as an alternative to criminal prosecution, they are often a practical alternative to the more cumbersome peace bond procedure under s. 810 of the *Criminal Code*.

12 Common law peace bonds have a place in criminal matters. This, however, is not a case involving a criminal allegation. It is an alleged provincial infraction, albeit an infraction with a potentially stiff monetary penalty.

13 The Court agrees with the Crown that s. 3 of the *Provincial Offences Procedure Act* allows for the importation of summary *Criminal Code* procedures into the prosecution of regulatory matters. However, a common law peace bond is not a codified *Criminal Code* procedure. It is the antithesis of one. The Court does not see the *Provincial Offences Procedure Act* as having any application.

14 There is a further problem with the notion of a 'peace bond' being an available option in provincial matters. Although there was some confusion during argument as to what form a 'peace bond' would take, it is clear that when a court issues a peace bond in the Alberta Provincial Court, whether at common law or under s. 810 of the *Criminal Code*, the form that it takes is a Form 32 Recognizance. Short of a form being made up by the Court, there are no other forms that fit.

15 The problem that this presents is not just administrative. It means that the subject of the order becomes exposed to criminal sanction, never having faced a criminal allegation in the first place. The accused, once a Form 32 recognizance is entered into, faces criminal jeopardy should there be a breach of conditions. It is understandable that an accused person may be induced to enter into such a recognizance to avoid the possibility of a large fine. Using the threat of criminal sanction to curb non criminal behaviour, however, has no place in our law.

16 With respect to the line of cases from the Provincial Court of British Columbia, including [R. v. Taylor, supra](#), [R. v. Whittle, 2005 BCPC 610](#) (B.C. Prov. Ct.) and [Port Alberni \(City\) v. Smillie, 2007 BCPC 180](#) (B.C. Prov. Ct.), the factual context in each is quite different from this case as the order in those cases is essentially a reprieve from a more draconian consequence of killing an animal. Further, the form of order that is described in those cases would not appear to have criminal consequences in the event of a breach and the type of bond contemplated in those cases does not include any restriction of human liberty. The Court also notes that although the courts take jurisdiction to make such an order in those cases, it is not clear where that authority comes from.

17 The provincial court is a statutory court. It does not have a plenary jurisdiction ([R. v. Doyle \(1976\), \[1977\] 1 S.C.R. 597](#) (S.C.C.)). The court has the powers conferred by statute and to a limited extent, common law powers can be inferred in order to allow the court to control its processes (see [Cunningham v. Lilles, 2010 SCC 10](#) (S.C.C.); also [Wells, supra](#)). The Court cannot see any basis to find the power to make the order sought in this case, however.

If Jurisdiction Exists, Would A Peace Bond Be Appropriate?

18 Assuming the Court had jurisdiction to make the order sought, this Court would not make such an Order. It would not be fair.

19 First, it is clear that Ms. Savova does not want psychiatric treatment and even under the *Criminal Code* it is not proper to impose a rehabilitative term in a probation order, for example, that is resisted. It is a recipe for a breach (see [R. v. Rogers \[1990 CarswellBC 328](#) (B.C. C.A.)], 1990 CanLII 432).

20 Second, the order sought concerning psychiatric treatment has no apparent connection to the original alleged delict. Frankly, it appears to be a high handed response to the accused's rude emotional outbursts.

21 Third, the Court cannot ignore the potential unintended consequences of the order sought. It is evident to the Court, having heard many trials, that a Form 32 recognizance is entered onto the federal CPIC database. If it weren't, police would be seriously impaired in their enforcement of such orders. Once on the CPIC database, the existence of, and presumably the conditions of, such a recognizance would potentially be available to U.S. Immigration and Homeland Security, to Interpol and to a vast potential network of policing agencies. The recognizance and the terms would certainly be accessible through the provincial database called JOIN.

22 If a person under a recognizance such as the one sought in this case were to seek a security clearance certificate in order to obtain employment, it is not clear to this Court whether such a certificate would be granted. However, the Court is mindful of Clayton C. Ruby's article, "[Not So Fast: The Unintended Consequences of Accepting a Peace Bond](#)", For the Defence, Volume

32, No. 7, p.55, which outlines some of the unintended consequences of peace bonds, one of which is that in a "Vulnerable Person Search", (where a person is seeking employment involving vulnerable persons) access is granted to "the full record of information known to police to be disclosed, not just the 'criminal record' ... It reveals the exact charges laid, the withdrawal of those charges, and the peace bond imposed by the Court".

23 To put Ms. Savova's situation into perspective, she appears to have been sufficiently concerned for her cat to seek out new food, take the cat to a vet on the vet's suggestion, and pay for surgery to save the cat although she appears to have failed to appreciate the seriousness of the cat's condition for a short period of time and then angered animal control personnel by her venting. She was then charged with two provincial regulatory offences.

24 Is it fair that in those circumstances she be exposed to a criminal charge should she not get psychiatric treatment? In the event that she were to seek employment involving vulnerable persons, is it fair that she face the hurdle of explaining how a court came to find that she is in need of psychiatric treatment?. If she travels, is it fair that she face the angst of wondering what a foreign jurisdiction might decide regarding her entry, potentially knowing that she is under a court order to seek psychiatric treatment? In the Court's view, all of these potential consequences would be grossly unfair.

Decision

25 For all of these reasons, the Court declines to make the Order sought. The Court trusts that reason will prevail and that this will end the matter.

Order accordingly.

Citing References (1)

Treatment	Title	Date	Type	Depth
Considered in	 1. R. v. Crocker 2012 CarswellNfld 248 (N.L. Prov. Ct.) Judicially considered 2 times	July 30, 2012	Cases and Decisions	