

Date: 19961210
Docket: CA022299
Registry: Vancouver

Court of Appeal for British Columbia

BETWEEN:

REGINA

RESPONDENT

AND:

HUBERT PATRICK O'CONNOR

APPELLANT

Before: The Honourable Chief Justice McEachern
(In Chambers)

Christopher M. Considine Counsel for the Appellant

Malcolm D. Macaulay, Q.C. Counsel for the Respondent

Place and Date of Hearing Vancouver, British Columbia
December 6, 1996

Place and Date of Judgment Vancouver, British Columbia
December 10, 1996

Reasons for Judgment of the Honourable Chief Justice McEachern:

[1] This is an application under **Criminal Code** s. 680 for an order reviewing the decision of a judge of this Court dismissing the appellant's application for interim judicial release pending the hearing of his appeal against conviction.

[2] The question of whether the appellant should be released on bail is not before me on this application.

[3] As I mentioned on the hearing of the application, my jurisdiction is to screen out frivolous applications and to refuse to order a review in cases where the appellant would have no hope of success: **R. v. Moore** (1979), 49 C.C.C. (2d) 78 (N.S.C.A.). Mr. Considine outlined the grounds of appeal he would be arguing upon the appeal which satisfied me only to the extent that there are arguable grounds. I go no further than that. I am comforted in this view, however, by the fact that learned counsel for the Crown does not assert that the appeal is frivolous.

[4] I turn then to consider the public interest aspect of the appeal. The judge making the detention order referred to **R. v. Farinacci et al.** (1993), 86 C.C.C. (32) (Ont. C.A.); **R. v. Dhindsa et al.** (1987), 30 C.C.C. (3d) 368 (B.C.S.C.); **R. v. Demyen** (1975), 26 C.C.C. (2d) 324 (Sask. C.A.); **R. v. Kingwatsiak** (1977), 31 C.C.C. (2d) 213 (N.W.T. C.A.); **R. v.**

Morenstein (1977), 40 C.C.C. (2d) 131 (Ont. C.A.); and **R. v. Lebel** (1989), 70 C.R. (3d) 83 (Que. S.C.) and concluded that it was not in the public interest that this appellant be released.

[5] While there are some cases where it can readily be determined on a s. 680 application that the public interest requires a detention order, such as where there has been recent violence or a risk of future violence or other offences, it is generally preferable that the question of the public interest be reserved to the division of the Court responsible for conducting a review.

[6] As I am satisfied that the appeal is not frivolous and that there is no likelihood of further offences being committed I consider it my duty to allow the detention order in this case to be reviewed by a division of the Court and I so order.

[7] Counsel should arrange with the Deputy Registrar for a convenient time to hear the application.

"The Honourable Chief Justice McEachern"