

IN THE CHILDREN'S COURT OF VICTORIA  
AT MELBOURNE  
CRIMINAL DIVISION

OPP

v

BC

IN THE MATTER of an Application for Bail by BC

MAGISTRATE: HER HONOUR MAGISTRATE GIBSON  
DATE OF DECISION: 27 June 2018  
CASE MAY BE CITED AS: Re BC (Bail Application)  
MEDIUM NEUTRAL CITATION: [2018] VChC 6

REASONS FOR DECISION

Catchwords: Bail application by child accused – charges including the offence of attempted murder – whether exceptional circumstances established – whether unacceptable risk – relevant circumstances surrounding BC's application – bail granted.

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
<u>For the Applicant:</u>	Ms Munster	Victoria Legal Aid
<u>For the Crown:</u>	Mr Henderson	Office of Public Prosecutions

HER HONOUR:

1. You, 'BC', have made an application for bail in respect to charges laid by Detective Senior Constable 'ZZ'.
2. The prosecution opposes your application.
3. The charges include the offence of attempted murder. That offence falls within Schedule 1 of the *Bail Act 1977* (Vic) ('the Act'). Therefore, for you to be successful in your bail application, I must be satisfied that there are exceptional circumstances that would justify the grant of bail to you.
4. I must also be satisfied that you would not pose an unacceptable risk of:
  - Endangering the safety and welfare of any person;
  - Committing an offence on bail;
  - Interfering with witnesses or obstructing the course of justice;
  - Or failing to answer your bail.
5. In determining this bail application, I must have regard to s1B of the Act, which sets out the guiding principles for any decision made under the Act, specifically for the Court to have regard to the importance of:
  - (a) maximising the safety of the community and persons affected by crime to the greatest extent possible; and
  - (b) taking account of the presumption of innocence and the right to liberty; and
  - (c) promoting fairness, transparency and consistency in bail decision making; and
  - (d) promoting public understanding of bail practices and procedures.
6. Also, because of your age, s3B(1) of the Act makes it mandatory for me to take into account:
  - (a) the need to consider all other options before remanding you in custody; and
  - (b) the need to strengthen and preserve the relationship between you and your family;  
and

- (c) the desirability of allowing your living arrangements to continue without interruption or disturbance; and
- (d) the desirability of allowing your education or employment to continue without interruption or disturbance; and
- (e) the need to minimise the stigma resulting from being remanded in custody; and
- (f) the likely sentence if found guilty of the offence charged; and
- (g) the need to ensure that the conditions of bail are no more onerous than are necessary and do not constitute unfair management of you.

7. The relevant circumstances surrounding your application are as follows.
8. The nature and seriousness of the alleged offending is extremely high. The allegations contained in the remand summary read to the court by the Informant were horrifying, detailing a violent and premeditated attack on a young girl, without any provocation. Such allegations demand that I prioritise and focus on the need to protect the safety of the community.
9. The victim's attitude to the prospect of you being released on bail, and the fact that she feels unsafe, is entirely understandable, relevant, and not without foundation given that she continues to struggle emotionally from the event. There is also the fact that her home is in such proximity to yours in the small community in which both of you and your families live.
10. The prosecution case against you, at least in terms of your participation in a prolonged and violent attack on the victim is overwhelming. There may well be arguments about the admissibility of certain statements you have allegedly made, but taking the case at its highest, as I must, I consider it a strong one.
11. There is also, however, evidence before me that a defence under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic) could be a live issue at trial, if you chose to run it.
12. And while that is ultimately a matter for trial, it is not a matter I can or should ignore on the bail application.
13. Nor indeed can I ignore how the issue of your mental health would affect your moral culpability for the crime if you were found guilty or there was a plea of guilty.

14. The assessment by Dr B about your mental health; that it was “more likely than not that you experienced a psychotic state at the time of the offence...and that there was a differential diagnosis of either a *brief reactive psychosis* or *schizophreniform psychosis*...with a third alternative diagnosis of *feigned psychosis* appearing unlikely” is compelling.
15. Dr B is a very experienced and highly qualified psychiatrist. He is an expert in his field. Having interviewed you on two occasions, your mother on one, and familiarised himself with the hand up brief and FOI materials from the hospital, I consider his assessment to have been a thorough one.
16. Neither his assessment, nor his evidence, were diminished in any way by cross examination. Nor was any evidence called in rebuttal.
17. His expert opinion was that while the two likely but alternative mental health conditions were both treatable, a further intensive and possibly longitudinal psychiatric assessment was required prior to consolidating a formal diagnosis and initiating treatment.
18. In his opinion, this would be difficult in custody given the level of the assessment required, the associated monitoring involved, the availability for clinicians to attend on you in custody, the nature of rotating Youth Justice staff and the potential for breakdowns in communication between staff and clinicians about symptoms and the like, and the effect on you of the stressful nature of the custodial environment.
19. His evidence on this issue must be considered in the context of him having had direct experience of working at Parkville.
20. It is a matter of great concern to me that a formal diagnosis for you, and the commencement of appropriate treatment, could be impeded and/or delayed by you remaining in custody. That is particularly so, given your age, your vulnerabilities, and the fact that your rehabilitation, and ultimately the safety of the community and the victim, are interconnected.
21. When one considers that you have no priors or criminal history of any kind, no previous history for violence or aggression, no known risk factors for being violent, no history of drug use, and indeed have been described by witnesses who were called on the bail application as being a generally quiet and compliant young person, the prospects for your rehabilitation and the fostering of it are matters that must weigh heavily on my mind.

22. Further, I cannot overlook the fact that there will be a delay of some 5 months before your committal is even held given the delay involved with the e-crime investigations, that there will be further delay after that, that you have already spent 122 days in custody without treatment, and that you have been assaulted in there and are self-isolating.
23. It is also not an irrelevant matter, indeed s3B of the Act demands that it be considered, that your education is being severely disrupted in custody. The letter from Ms C from Parkville College details the immense challenges you have faced in completing your year 12 VCE studies in Parkville, as well as your unwavering commitment to your education.
24. You appear to be an unusual student at Parkville College; unusual in terms of your level of education and your approach and commitment to it.
25. It is abundantly clear to me that for you conditions in custody are not at all conducive to improving your mental health, advancing your educational prospects, or for your prospects for rehabilitation generally. And, according to s3B(1)(a) of the Act, I must consider alternatives, if they exist and do not involve an unacceptable risk to the community.
26. In that context, Dr B's evidence that you could be effectively managed in the community with appropriate supports and monitoring by an assigned mental health service has much impact.
27. I have heard that [name removed] is a community mental health service that has been identified by Youth Justice, and accepted by Dr B, as an appropriate service to oversee your mental health treatment and care in the community and to undertake the further assessment of you.
28. I have also heard that a referral has been made and accepted, with Dr B's assessment report having been provided to it, and discussions between the community mental health service, Youth Justice and your mother having taken place. I am told that an appointment with the early psychosis team has been scheduled for you tomorrow.
29. It appears you can receive immediate and appropriate attention, if you were released.
30. You would also have the support of Youth Justice who have assessed you as suitable for supervised bail, and devised a bail plan which involves the following:
  1. That you would be monitored by them, as well as the community mental health service;

2. That you would be able to complete your year 12 VCE in a more conducive environment via Distance Education and supported by your school;
  3. That you would be involved in pro social activities, such as some volunteer work with Mr D, who I have I heard from;
  4. That you would return to live at home with your family, a law abiding, concerned and close family, who have undertaken to support you, facilitate your treatment with the community mental health service, and according to your mother's evidence, supervise you intensely.
31. I understand that the prosecution specifically opposes this return to your family, but those concerns relate to the question of risk, and I will turn to that issue shortly.
32. On the issue of whether you have satisfied me that there are exceptional circumstances to justify a grant of bail however, I have taken into account the following matters:
- (a) the evidence about your mental health;
  - (b) the difficulties associated with assessing and treating it whilst in custody;
  - (c) the benefit of such treatment for you and ultimately for society;
  - (d) the delay involved before your matter will even reach the committal stage, in the context of your age and vulnerabilities;
  - (e) the s3B factors, including your age and the significant disruption to your VCE studies;
  - (f) your lack of priors, the proposed level of support available from Youth Justice under supervised bail, and from your family;
  - (g) and the existence of an appropriate mental health service in the community to assess and treat your mental health.
33. These matters, in combination, I consider, create exceptional circumstances.
34. I will now turn to the issue of risk, and specifically the question of whether you would, on that bail plan or despite it, be an unacceptable one within the scope of the Act.

35. It is the Prosecution's contention that one of the very matters that you rely upon to show exceptional circumstances, your mental health issues, makes you an unacceptable risk of committing further offences and endangering the safety and welfare of persons.
36. This is because those mental health issues, identified by Dr B as being the likely driver of your offending, have yet to be formally diagnosed or treated and I am being asked to release you from custody back to the same environment where your mental health deteriorated, in the absence of any treatment having commenced and indeed in the absence of a formal diagnosis.
37. Given the extreme and unusual reaction you had to what appears to have been your first episode of psychosis, the potential for it occurring again and the risk of another similar reaction is raised by the prosecution as presenting an unacceptable risk for the community.
38. In fact, it was the prosecution submission that only in-patient care, during which you could be formally diagnosed and then commence treatment, would be an appropriate alternative to custody, in so far as ensuring that the risk you posed was at an acceptable level.
39. That however was not Dr B's assessment. His expert opinion was that you might benefit from a psychiatric inpatient admission, but you could equally be managed in the community with appropriate supports and monitoring by a mental health service.
40. Further, his evidence to me was that your current general presentation; that you are no longer hearing voices, that there have been no behavioural issues in custody, that you have been able to focus on your education, and your openness and co-operation with his assessment were matters that indicated that you were unlikely at this stage to warrant in patient treatment.
41. I also consider it a significant factor that until the terrible events in February, your vulnerabilities were unknown. Now that they are, as indeed are the risks that associated with them, I have no doubt that you will be watched by your family, and by those involved in your care in the community, very carefully.
42. This will add an additional important layer of protection that was lacking in February, which I consider will operate to reduce your level of risk.
43. The prosecution contends that the bail plan that has been devised by Youth Justice, with its proposal that you return home, and with significant reliance being placed on the support and

supervision of your family, is both inappropriate and unworkable, and therefore does not adequately address or reduce the level of risk you pose to the safety and welfare of the community generally, and the victim.

44. The prosecution submits that it is inappropriate because of the proximity of your home to the victim's, and the potential for you to come into contact with her, causing her unnecessary added stress and fear.
45. The prosecution submits that it is unworkable because of the many demands and issues that your family, and particularly your mother, already faces. They argue that the added duties of supervising you, driving you around to appointments with the community mental health service, with Youth Justice, to the proposed pro-social activities, and assisting you with your distance education VCE studies will amount to a too significant burden for her to discharge, and will compound an already very difficult situation, leaving her stretched and you exposed, and thus an unacceptable risk.
46. As for whether the bail plan does in fact place unrealistic demands on your mother, and is unworkable and insufficient to address risk, that submission in my view underestimates what a parent, and indeed this parent, can and will do for their child.
47. It presupposes that your mother will be the only person involved in driving you around and supervising you, and that is simply not the case. There is also your father. He may be off work for health reasons but the evidence is that he drives and is very much an active participant in home and family life.
48. The submission fails to take into account the involvement of Mr D, who sat through each day of these proceedings with your parents, and gave evidence in support of you.
49. It pays no regard to your commitment to your studies and to the role and benefits of Distance Education, and access to the internet, to encourage and enhance your educational pursuits, or to the potential benefits of the Youth Justice involvement, and the community mental health service interventions.
50. It ignores the fact that you are a generally compliant, reserved and conservative young person, with no history of risk taking, or of failing to follow direction or advice.
51. I do not consider that the bail plan places unrealistic or unworkable demands on your family, and while there are risks with it, I do not consider them to be unacceptable risks.



52. In so far as the appropriateness or otherwise of you returning to the small community where your home is, I do accept that this is not an ideal situation. The stress and emotional trauma it will cause to the victim who is an innocent young girl, who has been put through the most terrifying ordeal, and who has suffered at your hands, and to her family, cannot be underestimated or disregarded. Indeed, this issue was the very first, and seemingly most significant issue, for the Informant, in his evidence in opposition to bail. And it has caused me concern also.
53. The unfortunate reality is that this small community where the victim lives, is where your family live, and your family's support is essential to reduce the risk involved in you reoffending were you to be released into the community.
54. Your family is an important protective factor for you and I would not countenance a community placement with anyone else at this time.
55. To require your family to move home and away from their community for you to be released into their care would place an unrealistic demand on them. Indeed it would ultimately make their ability to manage your supervision and care unworkable, particularly given what else is occurring in their lives.
56. When considering how this placement affects the level of risk you pose to the victim, and the risk of you having contact with her, or of attempting to interfere with her, or indeed with her family members some of whom are also witnesses, or of causing stress to her and thereby endangering her emotional welfare and safety, I am satisfied that such intentional conduct by you would be a minimal one.
57. The existence of the Personal Safety Intervention Order provides protection for the victim against that, and hopefully it also provides her with some comfort particularly as I have explained to you the significant ramifications that would follow any breach.
58. Further, your prior history is such that there is no reason for me to consider that you would not comply with the order, or intentionally breach it.
59. As for an unintentional breach of that order, or accidental contact, that is a different matter, and there is an undeniable and real risk of it occurring given the small community in which you both live.

60. The evidence from your mother about the lengths she will go to so to minimise it, by ensuring you are supervised always, by avoiding the street where the victim lives, her school, the places she might go, including driving you along alternative routes; that evidence makes it clear that your mother has the necessary insight to assist you in trying to manage the risk of such contact and the consequent damage such contact could have on the victim's emotional welfare.
61. It is relevant to note that since your remand, there has indeed been accidental contact between your family and the victim's family. I am told that this was managed and it was not described as being anything but minimal. There will no doubt be an added incentive for all, of avoiding further contact if you were released into your family's care.
62. In any event, and as undesirable as it may be, I do not consider that the risk of unintended contact is one which would elevate your level of risk to the community, or to the victim, to an unacceptable level such as to warrant a denial of bail.
63. The *Bail Act* simply does not contemplate a refusal of bail on the sole ground that there might be a significant risk that an applicant could endanger the emotional safety and welfare of any person, by virtue of accidental contact.
64. The other matter I consider that reduces the risk you pose to the community to an acceptable level is the fact that Youth Justice will report any breaches of conditions they become aware of to the Informant. Indeed, your mother gave similar evidence in this regard and I accept her as a witness of truth.
65. Finally, I intend to have you appear before me for regular bail reviews until your committal is held so that there is also a court monitoring of the risks.
66. In all the circumstances, I am not persuaded by the prosecution that the level of risk you pose to the community, with the imposition of the bail plan and associated conditions, is an unacceptable one.