

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *R. v. Fox*,
2019 BCSC 810

Date: 20190314
Docket: 27178-4
Registry: Vancouver

Regina

v.

Patrick Henry Fox

Ban on Publication: Inherent Jurisdiction

Before: The Honourable Associate Chief Justice H. Holmes

Oral Ruling re Application to Amend Probation Conditions

Counsel for the Crown:

M. Myhre

Appearing on his own behalf:

P. Fox

Place and Date of Hearing:

Vancouver, B.C.
March 14, 2019

Place and Date of Judgment:

Vancouver, B.C.
March 14, 2019

[1] **THE COURT:** Mr. Fox, you are applying once again, or continuing an application you have been making for some time – have a seat, you do not need to stand – to have your probation conditions varied to remove the term that requires you to remain in British Columbia, and to either remove or vary the term that prohibits you from going within a certain distance of the US border. You submit that those terms are not appropriate because they prevent you supporting yourself, and cast you into homelessness, because you claim you have no immigration status in Canada and are therefore unable to work.

[2] Your position that you have no status in Canada is a subject of serious contention.

[3] The facts on which you rely, and the different evidence or information on which the Crown relies, have been the subject of discussion in at least one previous appearance. They were further developed in this morning's hearing.

[4] I have said on a previous occasion that any doubt there may be about your immigration status, about whether you are a Canadian citizen, as the Crown contends, or a US citizen and not a Canadian citizen, as you contend, is a problem entirely of your own making. Even if one were to accept that there is no clear evidence about whether or not you are a Canadian citizen – and I do not view the evidence that way – we have your admission on numerous occasions, Mr. Fox, including in the recordings you have just played to the Court, that you applied for a Canadian passport under false pretenses, to use your language, and received and presumably used one.

[5] There is also the fact of your conviction by a court in Arizona, USA, in 2011, for offences of perjury and making a false claim of US citizenship. You have maintained for a considerable time that the convictions will eventually be set aside, when you are able to appeal them, but today Crown counsel gave me the decision of the District Court of August 4, 2011, declining to set aside those convictions on appeal. The District Court not only upheld your convictions, but also provided

considerable background information that again reinforces my view that your difficulties, if there is any ambiguity about your status, are much of your own making.

[6] Crown counsel provided information or evidence in the form of statements of counsel this morning, which provide yet further, and powerful, indication that you were born in Canada and have Canadian citizenship. I am not going to repeat that evidence. If there are any further proceedings on the point, I am referring to the evidence as outlined in Mr. Myhre's submission. I accept that evidence without hesitation. Mr. Myhre has conducted himself in an exemplary fashion in relation to these proceedings in extremely challenging circumstances over a long period of time.

[7] Your own evidence to support your claim that you are not a Canadian citizen is extremely weak. Today you played two recordings of telephone calls that, you suggest, confirm your position that you are not Canadian. However, it is abundantly clear from those recordings that in seeking out that form of evidence you have continued to manipulate, or to attempt to manipulate, institutions in the same way that, I conclude, you are now attempting to manipulate the Court. In the recordings you can be heard putting propositions to the people you were purporting to question as though those proposition were factually accurate, when there was and is serious reason to think that the propositions were untrue. You then presented the responses, which were necessarily based on those propositions, as confirming your position on the disputed facts that the telephone calls were ostensibly to clarify.

[8] I note also that the person with whom you spoke in the first call that you played seemed extremely puzzled when you told him that his institution had asked you to make the call. He appeared to put you on hold, in order for him to check out that possibility. It appeared from the recording that he found nothing to support your statement.

[9] In addition, there were things you said in those calls that are inconsistent with things you have said to this Court or to Crown counsel.

[10] On all the evidence, I find nothing reliable to support your contention that you have no status in Canada.

[11] But more fundamentally, you have put forward nothing to indicate that you have tried to support yourself by working and have not been successful in doing so. As I said earlier, your application for variation of the terms of your probation is based on your contention that the terms in question put you in a position of being unable to work because of what you say is your lack of status as a Canadian citizen.

[12] You are taking an entirely formalistic approach in this application. You are attempting to engage the Crown and the Court in an extensive examination of your citizenship status in circumstances that you, I conclude, have deliberately made as confusing as possible. The more basic question raised by your application is whether you can work or support yourself in British Columbia, and there is nothing to indicate that you cannot.

[13] I do not wish to speculate about why you are attempting to manipulate the courts and other institutions in the way I have described. It may be that this is a long-standing habit or approach. It is beyond the scope of this proceeding to make a determination on that point, but this application is coming to an end.

[14] The application is denied, and will go no further.

“The Honourable Associate Chief Justice H. Holmes”