



Case in Brief: ***R. v. Penunsi***

Judgment of July 5, 2019 | On appeal from the Court of Appeal of Newfoundland and Labrador

Neutral citation: 2019 SCC 39

Judges can give bail conditions to people not charged with crimes while they wait for a peace-bond hearing, the Supreme Court has unanimously ruled.

Mr. Penunsi was in prison. A police officer thought he might hurt someone once he was freed and asked a judge for a “peace bond.” A peace bond is a promise to the court to keep the peace, behave, and follow certain conditions. It is meant to prevent crime. Having a peace bond against you is different than being charged with a crime, but breaking the promise to the court is a crime. The judge put out an arrest warrant to make Mr. Penunsi come to court to respond to the request. But he was already in prison, so he wasn’t arrested. A court date was scheduled for after he would be freed. The Crown (the prosecution) was afraid he might hurt someone in the meantime. It said Mr. Penunsi should either have to stay in jail or follow certain conditions until then. It asked for a bail hearing so a judge could decide what to do.

Mr. Penunsi argued that bail rules didn’t apply to peace bonds. He said bail was only for people charged with crimes, and he wasn’t being charged with anything. The provincial court judge agreed that bail rules didn’t apply to peace bonds. Because of this, he said he didn’t have the power to hold a bail hearing.

The Crown asked a superior court judge to review the provincial court judge’s decision. (The superior court that handles trials in Newfoundland and Labrador is called the “Supreme Court.”) That judge said bail rules applied to peace bonds. The Court of Appeal, however, said they didn’t. This was because someone waiting for a peace-bond hearing isn’t charged with a crime.

The issue was moot before the superior court judge heard it. “Moot” means the judge’s decision didn’t matter for practical purposes because the problem was already solved. Mr. Penunsi had willingly agreed to follow certain conditions after he left prison. But the issue was important, so the judge decided to hear the case anyway. Courts in other parts of Canada also couldn’t agree on what to do in situations like Mr. Penunsi’s. It depended on how parts of the *Criminal Code* were interpreted. The law wasn’t clear.

The Supreme Court of Canada unanimously said that arrest and bail rules applied to peace bonds. But it said the rules applied in a unique way, so they had to be modified. This was to make sure they were appropriate for *preventing* crime, rather than dealing with someone already accused of one. The Court looked at the text, context, and purpose of parts of the *Criminal Code* dealing with peace bonds, arrest, and bail.

The Court said that judges can get people to appear in court to answer to peace bonds in two ways. The usual way is by an order to come to court, called a “summons.” Sometimes, though, an arrest warrant is appropriate. If the person is arrested, a judge can order a bail hearing. At the bail hearing, the judge can put conditions on them while they wait for their peace-bond hearing. The conditions should only deal with making sure the person shows up for court and protecting the public before the hearing. If the person is not arrested (for example, if they get a summons), the judge can’t put conditions on them before the peace-bond hearing.

Mr. Penunsi wasn’t arrested according to the law. When someone is arrested, they have to be told why and have a chance to get a lawyer. This didn’t happen for Mr. Penunsi. Since he wasn’t arrested, the bail rules didn’t apply. That meant the judge couldn’t put conditions on him before his peace-bond hearing.

The Court also said judges had to be careful not to set peace-bond defendants up to fail. Often, judges order people to stay away from drugs and alcohol as a bail condition. This can be very hard for people with addictions. Like a peace bond, being on bail is not a crime. But breaking a bail condition is. Judges should be very careful not to turn people into criminals for something they can’t control.

Keeping someone in jail should be a last resort. When a person isn’t charged with a crime, it should only happen if they refuse to promise to follow conditions while waiting for their peace-bond hearing. The Supreme Court of Canada recently dealt with bail in *R. v. Myers*.

Breakdown of the decision: *Unanimous*: Justice Malcolm [Rowe](#) allowed the appeal (Chief Justice [Wagner](#) and Justices [Abella](#), [Moldaver](#), [Karakatsanis](#), [Gascon](#), [Côté](#), [Brown](#), and [Martin](#) agreed)

More information (case # 38004): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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