



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

Judgment of June 18, 2020 | On appeal from the Court of Appeal for British Columbia
Neutral citation: 2020 SCC 14

To be found guilty of breaching bail conditions, people have to know they are breaching them (or know they are seriously risking it), the Supreme Court has ruled.

When someone is charged with a crime, they are presumed innocent until proven guilty in court. This is why someone who is arrested should normally be freed on bail before their trial. A court can put conditions on bail for limited reasons, including to protect the public. Conditions are rules the person has to follow.

Breaching a bail condition is a crime. This is true even if the person isn't found guilty of the original charges. It's true even if the act that makes up the breach (for example, staying out too late) isn't a crime itself and no one gets hurt.

Mr. Zora was charged with drug crimes and was out on bail. One of his bail conditions was that he had a curfew (he had to be home at certain times). Another was that he had to come to the door within five minutes if someone came to check that he was home. Two times, Mr. Zora didn't come to the door when police checked. He was charged for breaching his bail conditions. Mr. Zora said he was home both times but didn't hear the door.

The trial judge found him guilty of not coming to the door. The summary conviction appeal judge and the Court of Appeal agreed.

This case was about the nature of the crime of breaching a bail condition. To be guilty of a crime, a person must *do* something that is against the (criminal) law. This is called the "*actus reus*," which means "guilty act" in Latin. (In this case, the *actus reus* was not coming to the door.) But something has to make the person *responsible* for what they've done. This is called the "*mens rea*," which means "guilty mind" in Latin. For many crimes, a person is responsible if they intended, knew, or were aware of what might happen. This is "subjective" *mens rea*. But for some crimes, a person can be responsible even if they don't mean to do anything wrong. This is "objective" *mens rea*. That is, courts look at whether the accused person did something very different from what an ordinary, sensible person would have done in the same situation. Courts across Canada disagreed about the *mens rea* for breaching a bail condition.

The Supreme Court of Canada was unanimous. All the judges said the *mens rea* for breaching a bail condition was subjective. Courts had to look at what the person actually knew or was aware might happen when deciding if they were guilty of a breach.

Criminal law is based on the principle that a morally innocent person shouldn't be punished. That's why courts assume the *mens rea* for crimes is subjective. The exception is if Parliament says something different in the *Criminal Code*. Parliament didn't say that here.

The Court said Parliament meant for the *mens rea* for breaching bail conditions to be subjective. Being found guilty of a breach can have serious effects on a person's life. They can go to jail for up to two years for each breach and are more likely to be denied bail in the future. This especially affects vulnerable and marginalized people who can get many charges because they can't follow their conditions. Charging people for breaching conditions isn't the only way to prevent them from doing this. The crime exists to stop people who know they are breaching their conditions, or know they are risking it, and do so anyways. Parliament meant for courts to look at the person's situation when the breach happened.

The Court also said how bail conditions should be set. Normally there shouldn't be any conditions on bail. If there are conditions, there should be as few as possible. They have to be clear, necessary, and match the risk of the situation. Courts should be careful not to set bail conditions that a person can't meet.

In Mr. Zora's case, the Court said there should be a new trial. The new trial would decide if he knew he was breaching his bail conditions, or creating a serious risk he would breach them.

This was the first time the Supreme Court of Canada looked at the *mens rea* for breach of bail conditions. The Court recently looked at bail and pre-trial detention in [*R. v. Myers*](#).

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

More information (case # 38540): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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