

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Delorey*, 2015 NSCA 77

Date: 20150804

Docket: CAC 441498

Registry: Halifax

Between:

Kyle Anthony Delorey

Appellant

v.

Her Majesty The Queen

Respondent

Judges: Farrar, Bryson and Scanlan, JJ.A.

Written Decision: August 4, 2015

Held: Appeal dismissed.

Counsel: Kyle Delorey, self-represented
No one on record for the respondent

Decision:

[1] On July 20, 2015, Mr. Kyle Delorey filed a Notice of Appeal from the July 7, 2015 decision of Justice Robert W. Wright denying him bail pending the hearing of his summary conviction appeal.

[2] The procedural chronology is set out in the oral decision of Wright J. and is, very briefly, that on April 30, 2015 in Provincial Court, Mr. Delorey entered guilty pleas on two charges: uttering a threat to cause death under s. 264.1(1)(a) of the *Criminal Code*; and a related count under s. 733, breach of a probationary order to keep the peace and be of good behaviour. Mr. Delorey was represented by counsel at the time he entered the pleas.

[3] The court immediately moved to sentencing. Mr. Delorey was sentenced to seven months incarceration on the uttering a threat charge and four months concurrent on the breach of probation. He also received probation of 18 months following his incarceration with specific conditions.

[4] On May 20, 2015, Mr. Delorey, unrepresented, filed a Notice of Summary Conviction Appeal against the convictions only. As was noted by Wright J., the grounds of appeal are vague but in substance allege ineffective representation by counsel.

[5] On May 27, 2015, Mr. Delorey filed an application under s. 679 returnable before the Summary Conviction Appeal Court on June 2, 2015. On June 2nd, Scaravelli J. set the matter over to July 7th, to allow Mr. Delorey time to obtain legal counsel. Unfortunately, that did not occur and the bail application went forward on July 7th with Mr. Delorey self-represented.

[6] After hearing submissions of the parties, Wright J. dismissed the bail application on the bases that Mr. Delorey's proposed plan of release was inadequate.

[7] It is from this decision that Mr. Delorey seeks to appeal to this Court.

[8] In his Notice of Appeal, Mr. Delorey does not allege an error on the part of Justice Wright but rather rehashes the grounds of appeal which he has before the Summary Conviction Appeal Court. In particular, he alleges conflicts of interest

on behalf of the Crown, ineffective assistance of counsel and failure to grant him proper credit for remand time.

[9] The issue to be addressed in this decision is whether or not his appeal is properly before this Court. For the reasons that follow, it is my view that it is not and ought to be dismissed summarily.

[10] Although Justice Wright refers to the bail pending appeal application being made under s. 679, interim release of an appellant in a summary conviction matter is governed by s. 816(1) of the *Criminal Code* which provides as follows:

Undertaking or recognizance of appellant – A person who was the defendant in proceedings before a summary conviction court and by whom an appeal is taken under section 813 shall, if he is in custody, remain in custody unless the appeal court at which the appeal is to be heard orders that the appellant be released.

[11] However the error is of no consequence as he applied the proper principles when considering Mr. Delorey's application.

[12] Appeals to this Court are governed by s. 839(1) of the *Criminal Code*:

Appeal on question of law

839. (1) Subject to subsection (1.1), an appeal to the court of appeal as defined in section 673 may, with leave of that court or a judge thereof, be taken on any ground that involves a question of law alone, against

(a) a decision of a court in respect of an appeal under section 822; or

(b) a decision of an appeal court under section 834, except where that court is the court of appeal.

[13] There is no statutory right of appeal from a denial of bail by the Summary Conviction Appeal Court found in the *Criminal Code*.

[14] Section 685 of the *Criminal Code* provides as follows:

Summary determination of frivolous appeals

685. (1) Where it appears to the registrar that a notice of appeal, which purports to be on a ground of appeal that involves a question of law alone, does not show a substantial ground of appeal, the registrar may refer the appeal to the court of appeal for summary determination, and, where an appeal is referred under this section, the court of appeal may, if it considers that the appeal is frivolous or vexatious and can be determined without being adjourned for a full hearing,

dismiss the appeal summarily, without calling on any person to attend the hearing or to appear for the respondent on the hearing.

[15] *Black's Law Dictionary*, defines a frivolous appeal as:

A "frivolous appeal" is one presenting no justiciable question and so readily recognizable as devoid of merit on face of record that there is little prospect that it can ever succeed.

[16] I have no difficulty in concluding that Mr. Delorey's appeal from the decision of Wright J. denying him bail is frivolous, it presents no justiciable question. For those reasons, I would dismiss the appeal summarily pursuant to s. 685(1) of the *Criminal Code*.

[17] Even if I were to assume without having to decide, that Wright J.'s dismissal of an interim release pending appeal to the Summary Conviction Appeal Court is "a decision of a court in respect of an appeal" as required by s. 839(1)(a), this Court's jurisdiction is still limited by the requirement set out in s. 839(1) that the appeal "be taken on any ground that involves a question of law alone". (*R. v. West*, 2007 NSCA 5, para. 6).

[18] Wright J. dismissed Mr. Delorey's application for interim release based on Mr. Delorey failing to put forward a sufficient plan for release.

[19] I can see no point that could possibly be raised on an appeal that would arguably be said to be a question of law alone. It follows, that there is no arguable issue to be put forward before this Court. I would also dismiss the appeal on this basis.

Farrar, J.A.

Concurred in:

Bryson, J.A.

Scanlan, J.A.