

**NOVA SCOTIA COURT OF APPEAL**

**Citation: *R. v. MacKinnon*, 2006 NSCA 5**

**Date:** 20060110

**Docket:** CAC 243044

**Registry:** Halifax

**Between:**

Donald MacKinnon

Appellant

v.

Her Majesty the Queen

Respondent

**Judges:**

Bateman, Hamilton and Fichaud, JJ.A.

**Appeal Heard:**

December 5, 2005, in Halifax, Nova Scotia

**Held:**

Appeal dismissed per reasons for judgment of Bateman, J.A.; Hamilton and Fichaud, JJ.A. concurring.

**Counsel:**

appellant in person  
James A. Gumpert, Q.C., for the respondent

Reasons for judgment:

[1] This is an appeal by Donald MacKinnon from his November 29, 2004 conviction for assault with a weapon (**Criminal Code of Canada**, R.S.C. 1985, c. C-46, s. 267(a)). The trial was by judge alone with Justice John D. Murphy presiding. At the same time Mr. MacKinnon was acquitted of two charges of uttering death threats (**Criminal Code**, s. 264.1(1)(a)). Mr. MacKinnon was represented by counsel at the trial but is self-represented on this appeal.

[2] Mr. MacKinnon says his conviction should be quashed because his counsel was negligent in preparing him, acted more like a prosecutor than defence counsel and the case took too long to get to trial. In legal terms, he is alleging ineffective assistance of counsel and unreasonable delay.

[3] Having reviewed the record and the submissions of the appellant and the respondent, I would find that there is no merit to either ground of appeal. The only issue at trial was whether Mr. MacKinnon had the requisite mental element for the assault. There was no question that he had poked the victim with a stick which stick also hit the victim above the eye. Defence counsel conducted an appropriate cross-examination of witnesses and made able arguments that Mr. MacKinnon lacked the necessary *mens rea*. However, his submissions regarding the lack of *mens rea* were not supported by the judge's factual findings. The record does not support Mr. MacKinnon's claim that his counsel's acts or omissions constituted incompetence and that a miscarriage of justice resulted, as is the test (see **R. v. G.D.B.**, [2000] 1 S.C.R. 520 at paras. 26 to 29).

[4] As to the alleged "unreasonable delay", the majority of the time taken to get to trial resulted from the defence's many requests for adjournment, as well as further consensual delays. In the circumstances, I am not persuaded that Mr. MacKinnon has established either unreasonable delay or resulting prejudice.

[5] There is absolutely no merit to the appellant's belated allegation of bias on the part of the trial judge.

[6] I would dismiss the appeal.

Bateman, J.A.

Concurred in:

Hamilton, J.A.

Fichaud, J.A.

