

NOVA SCOTIA COURT OF APPEAL

Citation: R. v. West, 2007 NSCA 5

Date: 20070112

Docket: CAC 265819

Registry: Halifax

Between:

William Fenwick West

Appellant

v.

Her Majesty the Queen

Respondent

Judges:

The Honourable Justice Thomas Cromwell in Chambers

Application Heard:

January 11, 2007, in Halifax, Nova Scotia

Held:

Notice of Appeal quashed and appeal dismissed.

Counsel:

appellant in person

James Gumpert, Q.C., for the respondent

Reasons for judgment:

[1] This matter was before me in chambers on December 14th to set a new date for the hearing of the appeal. In reviewing the file, I became concerned that the Court did not have jurisdiction to hear this appeal and I directed that that issue be brought back to chambers before me yesterday morning. Mr. West was given the notice required by **Rule 62.11(e)**.

[2] The background is this. Mr. West was convicted of assault on February 2nd, 2005 and sentenced to one day in jail which was deemed to be served by Mr. West's presence in court on the day the conviction was entered. The Crown having proceeded summarily on the assault charge, Mr. West then filed a notice of appeal to the Summary Conviction Appeal Court. His notice of appeal is dated February 28th, 2006, over a year after the conviction and 11 months out of time. The application for extension of time which he also filed as part of the notice of appeal is dated March 1st, 2006.

[3] Mr. West then appeared before Wright, J. in Supreme Court chambers on April 20, 2006, in order to apply for an extension of time within which to file his appeal. Wright, J. dismissed the application.

[4] Mr. West now seeks leave to appeal to this Court from Wright, J.'s dismissal of his application for an extension of time.

[5] The application for leave to appeal to this Court is governed by s. 839(1) of the **Criminal Code of Canada**, R.S.C. 1985, c. C-46 which provides:

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.

[6] I will assume, without having to finally decide, that Wright, J.'s dismissal of an application for an extension of time to 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): **Re: Belaroui and The Queen** (2004), 186 C.C.C. (3d) 386 (Que. C.A. Chambers). However, the appeal, and therefore this Court’s jurisdiction, is 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.”

[7] Having reviewed the file and heard from Mr. West on his own behalf and Mr. Gumpert for the Crown, I am of the view that this appeal does not arguably raise any question of law alone. I am, therefore, of the view that this is an appropriate case for me to exercise the authority conferred by **Rule 62.11(e)** (which applies by virtue of **Rule 65.03**) to quash the notice of appeal on the ground that no appeal lies to the Court.

[8] In my view, none of the points raised in Mr. West’s affidavit dated May 3, 2006, which he has filed in support of his application for leave to appeal to this Court, or any of the points which he raised before Wright, J. or before me in chambers give rise to a ground of appeal that involves a question of law alone within the meaning of s. 839(1). I have also reviewed Wright, J.’s reasons for refusing the extension of time and I am unable to see that they give rise to any arguable ground of appeal that involves a question of law alone.

[9] Before Wright, J., Mr. West explained his long delay in filing the appeal to the summary conviction appeal court on two bases: first, that there had been a delay in his receiving the written reasons of the provincial court judge which had been delivered orally in court on February 2nd, 2005; and, second, that by the time he received those reasons he was extremely busy representing himself in other court matters and could not attend to filing a notice of appeal.

[10] The facts which were before Wright, J. were these. The written reasons of the provincial court judge were released to Mr. West in July of 2005. Mr. West’s notice of appeal to the summary conviction appeal court was dated February 28, 2006, some eight months later. Mr. West indicated to Wright, J. that by the time he received the provincial court judge’s reasons, he was, as he put it in submissions to Wright, J., “totally involved in a south shore matter, so there was actually nothing I could do to try to get those forms or to do whatever, because I said my sole purpose was the matter on the south shore.”

[11] In dismissing the application, Wright, J. found that the delay had been inordinate. He noted that filing a notice of appeal would take a matter of minutes and that it was some eight months after receiving the provincial court judge's decision that Mr. West finally filed his notice of the summary conviction appeal. Wright, J. also took into account the nature of the matter, that is, a summary conviction for a common assault in which the sentence had been served by the day spent in court on the day the conviction was entered.

[12] In his affidavit filed in this Court in support of his application for leave to appeal Wright, J.'s decision, the appellant makes essentially the same points that were raised before Wright, J. Mr. West also submitted before me that he was not properly prepared for his appearance before Wright, J. and that, in fact, he arrived at court not knowing why he was appearing in court that day. I note, however, that he made no such objection before Wright, J., did not ask for an adjournment and did not indicate that he had been unable to properly present his arguments to the judge. (The transcript of the proceedings before Wright, J. is in the appeal book which has been filed.)

[13] A chambers judge must be extremely cautious in quashing an appeal on the basis that the court has no jurisdiction to hear it. However, in the present case, I do not see in this matter any point raised which could arguably be said to be a question of law alone. It follows that it is clear that the court has no jurisdiction to hear this appeal. The notice of appeal is accordingly quashed and the appeal is dismissed.

Cromwell J.A.