

Date: 19971127

Docket: C.A.C. 142926

NOVA SCOTIA COURT OF APPEAL
Cite as R. v. Tziolas , 1997 NSCA 12

BETWEEN:

DIMITRIOS TZIOLAS

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

) Thomas J. Singleton
) for the Appellant

) Denise Smith
) for the Respondent

) Application Heard:
) November 26, 1997

) Decision Delivered:
) November 27, 1997

BEFORE THE HONOURABLE JUSTICE FLINN, IN CHAMBERS

FLINN, J.A.: (in Chambers)

On May 1st, 1997, the appellant pleaded guilty before Judge Claudine MacDonald, of the Provincial Court of Nova Scotia, to the offence of assault causing bodily harm, contrary to **s. 267(b)** of the **Criminal Code of Canada**, R.S.C. 1985, c. C-46. The Crown proceeded by way of summary conviction. The appellant was sentenced to three months' custody, together with probation for a period of 18 months. There were conditions attached to the probation.

The appellant appealed his sentence. The appeal was heard on October 9th, 1997, by Chief Justice Glube, of the Supreme Court of Nova Scotia, acting as a summary conviction appeal court judge. Chief Justice Glube decided that the failure of the trial judge to consider an intermittent sentence in this particular case was excessive. She reduced the sentence to a sentence of 90 days intermittent of which the appellant had already served 27 days. She confirmed all of the other conditions of the probation imposed by the trial judge.

The appellant has applied for leave to appeal, and, if granted, appeals the sentence imposed by Chief Justice Glube.

The appellant appeared before me in Chambers on November 20th, 1997, seeking interim judicial release pending the hearing of the appeal. It was apparent that the appellant was not prepared to present his application. He indicated to me that he was retaining counsel. I, therefore, adjourned the matter to November 26th, 1997.

On November 26th, 1997, the appellant did not appear. His counsel, Thomas J. Singleton, appeared and made application to me for leave to withdraw as the appellant's counsel. Mr. Singleton has filed an affidavit setting out the difficulties which he has encountered in taking instructions from the appellant, and in advising the appellant. I am satisfied upon reviewing Mr. Singleton's affidavit that there is a fundamental breakdown in the solicitor and client relationship between he and the appellant; and I will, therefore, issue an order permitting Mr. Singleton to withdraw as the appellant's counsel.

There was reference, in Mr. Singleton's representations to me, that the appellant may have been ill, and that his illness may have prevented him from appearing today. Because of that, I considered adjourning the matter for another week. After hearing representations from Ms. Smith, on behalf of the Crown, I have decided to dismiss the appellant's application, without prejudice to him starting fresh, with new counsel, and making a new application.

I indicated to the appellant when he appeared before me on November 20th, and I will repeat it here, that his application must take into account the following:

1. the appellant must establish the conditions set out in **s. 679(4)** of the **Criminal Code**;
2. the appellant must file an affidavit to comply with the provisions of **Civil Procedure Rule 65.18(2)**;
3. the application must address the concerns expressed in **R. v. J.D.** (1996), 150 N.S.R. (2d) 384 with respect to an application of this nature.

Flinn, J.A.

