1997 Docket: CAC 137732

NOVA SCOTIA COURT OF APPEAL

Cite as: R. v. Rafuse, 1997 NSCA 141

BETWEEN:

CHRISTOPHER RAFUSE	)	Mark A. Scott,
	)	for the Appellant
Applicant/Appellant	)	
	)	
	)	
- and -	)	
	)	
	)	Kenneth W. Fiske,
HER MAJESTY THE QUEEN	)	for the Respondent
	)	
	)	
	)	
Respondent	)	
	)	
	)	Application Heard:
	)	June 12, 1997
	)	
	)	Decision Delivered:
	)	June 13, 1997
	)	
	)	
	)	

BEFORE THE HONOURABLE JUSTICE RONALD N. PUGSLEY
IN CHAMBERS

PUGSLEY, J.A (in Chambers)

Christopher Rafuse applies to be released from custody pursuant to s. 679(3) of the **Criminal Code of Canada**, R.S.C. 1985, c. C-46 pending the determination of his appeal following his conviction before Justice Nathanson of the Supreme Court. Mr. Rafuse was convicted of the offence of exercising control over the movements of a female for the purposes of prostitution, and for living on the avails of the prostitution of the female, contrary to ss. 212(1)(h) and 212(1)(j) of the **Criminal Code**. He was sentenced to 16 months' imprisonment on each count, to run concurrently, to be served in jail.

The hearing of the appeal from conviction has been set down for September 15th, 1997, at 2 p.m.

Section 679(3) provides that:

> ...The judge of the Court of Appeal may order that the appellant be released pending the determination of his appeal if the appellant establishes that
>
> (a) the appeal or application for leave to appeal is not frivolous;
>
> (b) he will surrender himself into custody in accordance with the terms of the order;
>
> (c) his detention is not necessary in the public interest.

The Crown is opposed to Mr. Rafuse's release based on all three subsections of s. 679(3). The burden of proof rests on Mr. Rafuse to establish all three grounds. The proof that is required is on a "preponderance of the evidence or on the balance of

probabilities" (**R. v. F.F.B.** (1992), 112 N.S.R. (2d) 423 (N.S.C.A.)).

With respect to s. 679(3)(a), the issue is whether there is some arguable point to be made, or, put another way, that the grounds are not "paltry, trifling or lacking seriousness" (***Concise Oxford Dictionary***, 8th edition, 1990).

The Crown called two witnesses, the complainant and a female friend. Mr. Rafuse did not testify and did not call any evidence. The position of the defence at trial was that the complainant was not truthful and her evidence should not be accepted.

It is clear from the reasons given by Justice Nathanson that he accepted the evidence of the complainant. In fact, on four separate occasions the trial judge mentioned that he accepted her evidence. The thrust of the appeal is that the trial judge's verdicts are unreasonable or cannot be supported by the evidence. While I recognize that issues of credibility can arise, even in cases where no evidence is offered on behalf of the defendant, there is no information in the materials placed before me to suggest that the determination made by the trial judge respecting the issue of credibility was perverse or unsupported.

The grounds of appeal in the light of the information before me do not convince me that there is an arguable point to be made.

With respect to s. 679(3)(b), Mr. Rafuse, who is presently 31, has an extensive

criminal record including a conviction in 1986 for failing to comply with a probation order, and a conviction in 1988 for breaching a probation order. He has, in addition, at least ten other convictions which range from theft under $200, to theft under $1,000, fraud, possession of narcotics, break and enter with intent and false pretences.

His past record, particularly the conviction for failing to comply with the probation order, brings into question his undertaking to comply with subsection (b) of s. 679(3).

With respect to s. 679(3)(c), this Court is not only concerned with the safety of the community, but also the public's perception of, and confidence in, the administration of justice. The circumstances surrounding the commission of these crimes is, therefore, a relevant factor in dealing with this application.

The following comments of Justice Nathanson are relevant to this inquiry:

> The essential facts are that he asked her, some time after she moved in with him, to return to work as a prostitute. When she refused, he persisted, then got angry....He pushed her and slapped her. .... She went back to being a prostitute for three nights. She characterized what he was doing with respect to her as both mental and physical abuse..... His actions may not amount to direction or control over her movements, but I find that he did exercise influence over them. ... I found that he was aiding or abetting her, maybe even compelling her, to engage in prostitution. ... I have no doubt that he influenced her to return to prostitution for the purpose of gain. ... In my view the evidence of the relationship of these persons led me to conclude that, at and after the point that he influenced her to return to prostitution, that the relationship became more than a normal one of companionship. It became parasitical. He then had an economic stake in her earnings as a prostitute. ... After he influenced her to return to prostitution, there is no evidence that he made any contribution to the support of their mutual household.

The appellant is not a first offender. He has a lengthy record of prior convictions. The trial judge rightly characterized his activities as "parasitic". He exploited his companion in a most despicable manner. I am not convinced that his release pending appeal is in the public interest.

In my opinion, Mr. Rafuse has not established under subsections (a) or (b) or (c) of s. 679(3) that he should be released pending his appeal.

The application is accordingly dismissed.

Pugsley, J.A.