

NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Cummings*, 2012 NSCA 52

Date: 20120511
Registry: Halifax

Between:

CAC 341990

Wanda Cummings

Appellant

v.

Her Majesty the Queen

Respondent

And Between:

CA 352311

Wanda Cummings

Appellant

v.

Her Majesty the Queen in right of
the Province of Nova Scotia and
The Honourable Judge Robert A. Stroud

Respondents

Judge: The Honourable Justice M. Jill Hamilton

Motion Heard: May 3, 2012, in Halifax, Nova Scotia, In Chambers

Held: The appellant's motion to consolidate both appeals and to have the respondents pay to certify the transcript is dismissed. The appellant's appeals, CAC 341990 and CA 352311, are hereby dismissed for failure to perfect.

Counsel: Wanda Cummings, appellant, in person
William D. Delaney, Q.C., for the Crown
Sheldon Choo, for the Attorney General of Nova Scotia

Decision:

[1] On May 3, 2012 I heard several motions concerning two appeals – CAC 341990, being Ms. Cummings appeal of the November 29, 2010 decision of Justice Douglas L. MacLellan, (“Criminal Appeal”) and CA 352311, being her appeal of the June 29, 2011 decision of Justice Richard Coughlan, (“Civil Appeal”). I heard Ms. Cummings’ motion to (1) consolidate her two appeals, (2) stay all matters in Provincial Court in which she is involved, (3) amend her notice of appeal in the Civil Appeal, (4) seal the court files, issue a non-publication order and grant leave to file materials anonymously in her appeals and (5) require that one of the respondents pay for the preparation of the appeal book and for the certification of the approximately 1,700 pages of transcript that she has typed herself or, in the alternative, allow her to file all required materials electronically, including uncertified transcripts. I also heard the Attorney General of Nova Scotia’s (“AGNS”) motions to dismiss both appeals on the basis Ms. Cummings has failed to perfect them in accordance with the **Nova Scotia Civil Procedure Rules**, and the motion of the Crown to dismiss the Criminal Appeal on the same basis.

Criminal Appeal Background

[2] The background of the Criminal Appeal is that on June 5, 2008, Judge Laurel J. Halfpenny-MacQuarrie of the Provincial Court found that (1) Ms. Cummings had committed the *actus reus* of the offence of public mischief under Section 140 of the **Criminal Code**, R.S.C., 1985, c. C-46, when she reported an offence of assault with a weapon to an RCMP officer, causing him to enter into an investigation, when the alleged offence had not been committed and (2) she was not criminally responsible with respect to this charge. Ms. Cummings was remanded to the Nova Scotia Forensic Hospital for disposition and on July 8, 2008 was granted an absolute discharge with respect to this charge. Approximately two years later, in July 2010, Ms. Cummings applied for an extension of time to appeal these decisions. Justice MacLellan, acting as a summary conviction appeal court judge, refused to grant the extension on November 29, 2010.

[3] Ms. Cummings filed a notice of appeal, appealing his decision to this Court, on December 20, 2010. On January 11, 2011, she filed an amended notice of appeal and, on April 15, filed a motion for date and directions, seeking dates and an order “compelling the Crown to absorb the cost of transcript certification”. On April 18, she filed a motion for fresh evidence. At the hearing of her motion for

date and directions in appeal court Chambers on April 28, Justice Duncan R. Beveridge dismissed her application to have the Crown or the AGNS pay for the transcript certification and set dates. Ms. Cummings was directed to file the appeal book and her fresh evidence by June 22 and her factum by July 22. The respondents were to file their facta, together with their response to the fresh evidence motion, by August 25. The Criminal Appeal was to be heard for one-half day on October 18, 2011.

[4] On June 20, 2011 Ms. Cummings filed a motion seeking a sealing order, a publication ban and the right to file all materials anonymously with respect to the Criminal Appeal and all Provincial Court matters relating to her. On June 22 she filed an appeal book and a factum “in support of Motion for Fresh Evidence”. Her “confidentiality” motion, heard in appeal court Chambers on June 30, was dismissed by Justice Peter M. S. Bryson. Subsequently, the Registrar extended the filing dates with Ms. Cummings to file on August 5 and the respondent on September 19.

[5] Nothing was filed by Ms. Cummings and on September 21, she made a motion to adjourn the hearing of her appeal, to file her materials electronically, including her fresh evidence material which she estimated would be approximately 300 to 400 pages, to seal the court file, to order a non-publication ban and to permit her to file anonymously. Justice Jamie W.S. Saunders in appeal court Chambers on September 28, granted the adjournment without day and gave Ms. Cummings until October 28 to file electronically everything she intended to file with respect to the Criminal Appeal – specifically her fresh evidence, her factum on the merits and a supplementary factum on her fresh evidence motion. He directed the parties to reappear before him on November 3 for the purpose of setting dates for the respondents to file their facta and for the hearing of the Criminal Appeal. With respect to the “confidentiality” motion, he reminded Ms. Cummings that that issue had been determined by Justice Bryson. No material was filed by Ms. Cummings prior to the October 28 deadline.

[6] At the November 3 appearance, Ms. Cummings requested a further adjournment. After attempting to ascertain from Ms. Cummings a reliable date certain by which she could file her material, Justice Saunders adjourned the matter to December 8 requesting that Ms. Cummings be prepared at that time to provide the Court with a definite time-line that she could meet. He noted the demand on the Court’s and the respondents’ resources occasioned by Ms. Cummings’ delays,

ordered that a transcript of the appearance be produced and be provided to the parties, and stated that it would be open to the respondents on December 8 to move to dismiss the Criminal Appeal in the event Ms. Cummings did not provide an acceptable proposal with respect to filing and hearing dates.

[7] On December 8 Ms. Cummings appeared before Justice Linda L. Oland in appeal court Chambers and indicated she could file everything by February 13, 2012. Counsel for the respondents did not move for dismissal, but declared their intention to bring motions to dismiss the Criminal Appeal if Ms. Cummings failed to file on February 13. Justice Oland directed Ms. Cummings to file everything by the “drop-dead date” of February 13, and restated that the respondents could apply to dismiss the Criminal Appeal if she did not do so.

[8] Ms. Cummings did not file her materials by February 13. Instead she sent a letter to the Registrar inquiring about dates when she could make a motion similar to the one presently before me, which she indicated she intended to make. I will now outline the background of the Civil Appeal, before setting out what happened after February 13, 2012.

Civil Appeal Background

[9] The background of the Civil Appeal begins on June 9, 2011 when Judge Robert A. Stroud of the Provincial Court ordered that Ms. Cummings’ trial with respect to a number of charges (resisting arrest, assault, failure to comply with an undertaking, public mischief and false, frivolous and vexatious calls), relating to the period from September 2007 to April 2009, proceed on June 14, 2011. On June 13, Ms. Cummings filed in the Supreme Court of Nova Scotia, a notice of judicial review of Judge Stroud’s decision, claiming the Provincial Court had lost jurisdiction. Orally, on June 29, 2011, Justice Coughlan (1) struck Ms. Cummings’ notice of judicial review and (2) refused to order all materials filed in that proceeding be sealed, a publication ban or leave to file all materials anonymously. His written decision is dated August 24, 2011.

[10] Ms. Cummings filed her notice of appeal from Justice Coughlan’s decision in this Court on July 13, 2011. In appeal court Chambers on July 28, Justice Beveridge directed Ms. Cummings to file an amended notice of appeal naming only Her Majesty the Queen and Judge Stroud as respondents, to make a motion for date and directions once Justice Coughlan’s order was issued and to give notice

of any further proceedings to the AGNS and the Public Prosecution Service. Counsel for the AGNS subsequently obtained the order from Justice Coughlan and filed it with the court. On September 27, Ms. Cummings made a motion for date and directions to be heard on October 13 and notified the court that a supporting affidavit and brief would be filed by October 4. On October 12, her motion was removed from the docket as she had not amended her notice of appeal as directed by Justice Beveridge and had not provided the supporting affidavit and brief referenced in her motion documents.

[11] Ms. Cummings did nothing further on the Civil Appeal until February 13, 2012. On that date, as referred to in paragraph 8 above, she sent a letter to the Registrar inquiring about dates for a motion, similar to her motion now before me, which she indicated she intended to make. The Registrar provided this information. On March 26, Ms. Cummings attempted to file her motion. I declined to hear it until Ms. Cummings complied with Justice Beveridge's July 28, 2011 direction to correct the named respondents. On April 4, she filed an amended notice of appeal naming the correct respondents and also making substantive changes.

[12] On April 11 counsel for the AGNS filed his motions seeking the dismissal of both appeals. On April 12 the Crown filed its motion for the dismissal of the Criminal Appeal. Ms. Cummings sent numerous emails to and left numerous telephone messages for the Registrar during April in connection with the motions before me. I directed the parties to appear before me in Chambers on April 26, at which time I asked Ms. Cummings when she could file electronically everything she wanted me to consider in connection with her motion and in response to the dismissal motions. She indicated she could do this by May 1, and on that date she filed a CD containing her brief and approximately 3,500 pages of historical motions, applications, affidavits, briefs, case authority, materials from court files, emails and letters dating back to 2006. Included were approximately 1,700 pages of transcript that Ms. Cummings typed and which have not been certified by a certified court reporter as required by the **Rules**. These pages represent the transcripts of 82 court appearances involving Ms. Cummings from 2006 to the present, in Provincial Court, Supreme Court and this Court. Only two, comprising less than one hundred pages in total, are required by the **Rules** for her appeals. She feels, however, that she must provide all of these transcripts for her appeals, so that the issues she wishes this Court to deal with on her appeals can be dealt with.

Ms. Cummings' Motion

[13] It is not necessary that I respond to everything sought by Ms. Cummings in her motion, given my decision to dismiss both of her appeals for failure to perfect. I will, however, deal with two.

[14] First, with respect to Ms. Cummings' motion to consolidate both appeals, I do not accept Ms. Cummings' argument that the appeals concern the same matters. If this Court's function was to conduct an inquiry into and adjudicate her many allegations of miscarriage of justice, abuse of process, violation of the **Code** and the **Canadian Charter of Rights and Freedoms** and the general wrongdoing of participants in the justice system with whom she has been involved from 2006 to the present, which have not been previously adjudicated and were not dealt with in the decisions under appeal, there may be some interrelationship between her two appeals. However, as has been pointed out to her, that is not the function of this Court. This Court's function is generally to review a specific decision of a specific judge or tribunal for error. Ms. Cummings has not satisfied me that these appeals raise a common question of fact or law, involve the same ground of appeal, involve the same or similar decision-makers, involve the same occurrences or are in the interests of the parties. To the contrary, one appeal is civil, the other criminal. The legal issues raised in each are distinct. The facts from which they arise are different. They are decisions of different judges given at different times. I dismiss Ms. Cummings' motion to consolidate.

[15] Second, I dismiss Ms. Cummings' motion to have the respondents pay the cost of certifying the 1,700 pages of transcript she wants to put before this Court on her appeals. First, less than 100 of these pages are required to be included in the appeal books. Second, Justice Beveridge dismissed a similar motion on April 28, 2011. Third, there is no authority under the **Rules** for me to order the respondents to pay the cost of transcripts for the appellant; **R. v. MacDonald**, 2003 NSCA 27, para. 6; **LeBrun v. Woodward**, 2001 NSCA 9, para. 5.

Dismissal Motions

[16] **Rule 91.20** authorizes me, as a single judge of this court in Chambers, to dismiss a criminal appeal if the appellant fails to perfect it in compliance with **Rule 91**. This may occur if an appellant fails to apply, within 80 days of filing the notice of appeal, for dates for filing the appeal book and facts and the hearing of the

appeal (91.12(1), (2)). It may also occur if an appellant fails to comply with directions given for filing the appeal book and facta.

[17] **Rule 90.40(2)** provides me with similar authority to dismiss a civil appeal. For civil appeals, **Rule 90.43(1)** provides that a perfected appeal is one where the appellant has complied with the **Rules** with regards to the form and service of the notice of appeal, has applied for date and directions in conformity with Rule 90.25 (80 days after filing the notice of appeal in this case), has filed the certificate of readiness in conformity with **Rule 90.26**, has ordered copies of the transcripts in compliance with **Rule 90.26** and has filed and delivered the appeal book and the appellant's factum.

Criminal Appeal

[18] With respect to her Criminal Appeal, Ms. Cummings has repeatedly failed to file the material necessary for her to proceed with her appeal and has failed to comply with directions given to her by various judges of this Court over many months with respect to filing these materials. She repeatedly blames the respondents for her delay. Her logic is that the respondents are representatives of the Crown, and are thus responsible for the actions of the police and the RCMP in arresting and charging her from time to time (which in one case she alleges caused her to lose records she feels are relevant to her appeals) and for the actions of the "Provincial Court" in continuing to try to conduct trials involving her. I am not satisfied the respondents are responsible for any delay in connection with her Criminal Appeal. Rather, recognizing that Ms. Cummings is self-represented, they delayed bringing their motions for dismissal until they felt there was no chance she would perfect her Criminal Appeal.

[19] The Criminal Appeal has dragged on for almost a year. Ms. Cummings has known since at least November, 2011 that if she did not file her materials as required her Criminal Appeal may be dismissed. Despite this, we are no closer, six months later, to having the required materials filed and the appeal set down and heard.

[20] Given that a dismissal of her Criminal Appeal prevents Ms. Cummings from having the merits of her Criminal Appeal determined, which she makes clear are of vital importance to her personally and which she believes are also of great public importance because they involve a finding that she was not criminally responsible

with respect to the public mischief charge, I carefully considered whether it would be just to give her one last chance to file her materials by setting new drop-dead dates and providing that, if she doesn't comply, the respondents could apply to me on an *ex parte* basis for dismissal. I am convinced there is no merit to this, given Ms. Cummings' position that she cannot provide certified transcripts, unless I order the respondents to pay, which I have indicated I am not prepared to do. As argued by the AGNS, it would be unsafe to rely on uncertified transcripts. Ms. Cummings' suggestion at the end of the hearing, when she saw the handwriting on the wall, that perhaps she could ask legal aid to pay for this, is not realistic.

[21] Ms. Cummings has fully and often explained why she has not filed her material on time. The personal circumstances she describes are difficult. But there is no suggestion they will change, so as to permit her to comply with the filing she is required to do in order to get her appeal to the point where it can be dealt with by this Court.

[22] I dismiss her Criminal Appeal for failure to perfect.

Civil Appeal

[23] I also dismiss Ms. Cummings' Civil Appeal for failure to perfect. Ten months after she filed her notice of appeal in her Civil Appeal, no dates have been set for the filing of the required materials or the hearing of the appeal because of Ms. Cummings' seeming inability to comply on a timely basis with the **Rules**. She has not ordered a transcript in compliance with **Rule 90.26**, filed a properly completed certificate of readiness or made a proper motion for date and directions.

[24] In summary, Ms. Cummings' motions to consolidate her two appeals and to have the respondents pay to certify the transcripts are dismissed. The respondents' motions to dismiss her Criminal and Civil Appeals are granted.

Hamilton, J.A.