

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Marriott*, 2013 NSCA 12

Date: 20130129

Docket: CAC 352265

Registry: Halifax

Between:

AARON GREGORY MARRIOTT

Appellant

v.

HER MAJESTY THE QUEEN

Respondent

Judge: The Honourable Justice Joel E. Fichaud

Motion Heard: December 13, 2012, in Halifax, Nova Scotia

Subject: Sentencing - Joint Submissions - Waiver of Solicitor Client Privilege

Summary: Mr. Marriott fired several gunshots at another individual, who survived. Mr. Marriott was charged with various offences, including attempted murder. The Crown and Mr. Marriott, through counsel, presented the judge of the Supreme Court with a joint submission, that included a guilty plea to attempted murder, the Crown's withdrawal of the other charges and a sentence of fifteen years incarceration. The judge accepted the joint recommendation and sentenced Mr. Marriott to fifteen years. Mr. Marriott appealed his sentence. In the Court of Appeal, he sought to withdraw from the joint submission on sentence. Mr. Marriott alleged that, before the sentencing, he was insufficiently informed of the implications of the proposed sentence. His allegations involved communications between

Mr. Marriott and his sentencing counsel. The Crown sought a declaration that Mr. Marriott's allegations impliedly waived his solicitor client privilege with his sentencing counsel. The Crown also sought a ruling that Mr. Marriott could not proceed with his grounds of appeal, based on the *Charter of Rights*, that had not been advanced in the Supreme Court of Nova Scotia.

Issue: Did Mr. Marriott waive solicitor client privilege? Should the Court decline to entertain Mr. Marriott's newly fashioned grounds of appeal that are based on the *Charter*?

Result: The Court of Appeal declared that Mr. Marriott had impliedly waived solicitor client privilege to the limited extent that would enable the Crown and Court to explore his sentencing counsel's evidence as to what transpired between Mr. Marriott and his counsel respecting the allegations that Mr. Marriott has advanced to support his withdrawal from the joint submission on sentence. The Court held that the Crown's motion for a ruling that Mr. Marriott's *Charter* based grounds of appeal, not advanced in the lower court, should be dismissed as premature. Mr. Marriott was entitled to have his fresh evidence motion determined before the Court would decide whether to dismiss his grounds of appeal.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 33 pages.