

NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Henneberry*, 2017 NSCA 71

Date: 20170803
Docket: CAC 441343
Registry: Halifax

Between:

Victoria Lea Henneberry

Appellant

v.

Her Majesty the Queen

Respondent

Judge: The Honourable Justice Duncan R. Beveridge

Appeal Heard: April 12 and 13, 2017, in Halifax, Nova Scotia

Subject: Criminal law: withdrawal of guilty plea on appeal

Summary: The appellant and her co-accused were charged with first degree murder. After jury selection, the co-accused pled guilty as charged. The appellant, with the assistance of counsel, negotiated a plea to the lesser and included offence of second degree murder, with a joint recommendation of the minimum 10 year period of parole ineligibility. The appellant and her counsel signed an Agreed Statement of Facts describing her involvement as a party to the murder. The trial judge conducted a thorough plea inquiry with the appellant about the consequences of the plea. Sentence was adjourned for one week. At the sentence hearing, the appellant apologized for her role in the homicide. She appeals, claiming her plea is invalid because of her mental health at the time and she is not guilty of the offence. In support, the appellant brought a motion to adduce fresh evidence.

Issue: Has the appellant established on a balance of probabilities that

her plea was invalid?

Result:

The appellant disavowed any suggestion that her trial counsel was incompetent or had in any way failed her. She declined to waive solicitor/client privilege. There is nothing in the record to suggest the appellant was rushed, panicked or suffered from any mental disorder that impaired the voluntariness or understanding of her guilty plea. It was plainly unequivocal.

The appellant filed an affidavit in support of her motion to adduce fresh evidence. She claimed she suffered from a panic attack, caused by being deprived of Clonazepam. The Crown filed affidavits from Crown trial counsel, a Sheriff, and a forensic psychologist. The appellant's affidavit is internally inconsistent and contradicted by the record, and by the Crown materials.

There is no credible evidence that the appellant lacked the requisite cognitive capacity to instruct counsel, enter into the Agreed Statement of Facts and plead guilty to second degree murder. The motion to adduce fresh evidence and the appeal are dismissed.

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 26 pages.