

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Spencer*, 2018 NSCA 3

Date: 20180109

Docket: CAC 470957

Registry: Halifax

Between:

Rita Mary Spencer

Applicant

v.

Her Majesty the Queen

Respondent

Judge: Derrick, J.A.

Motion Heard: January 4, 2018, in Halifax, Nova Scotia in Chambers

Held: Motion dismissed

Counsel: Rita Spencer, in person
Mark Scott, Q.C., for the respondent

Decision:

Introduction

[1] Ms. Spencer has missed the deadline for filing an appeal against a determination that she was not criminally responsible for arson on account of mental disorder (NCRMD). Her motion for an extension of time is opposed by the Crown. This is my decision on the motion.

Background – Ms. Spencer’s Trial

[2] On July 29, 2017, Ms. Spencer deliberately set fire to her apartment in Dartmouth. She lit a pile of papers on her sofa and left the apartment. She had waited until there was no one in the building to ensure no one was hurt. The police responded and she was charged with arson. After a trial on September 20 and 21, 2017 in Provincial Court before Judge Alanna Murphy she was found to be NCRMD in accordance with section 16(1) of the *Criminal Code*. The matter of disposition was referred by Judge Murphy to the *Criminal Code* Review Board.

[3] Ms. Spencer sought to avoid a NCRMD finding at trial. She admitted the facts of the arson. Trial counsel argued on her behalf that she had appreciated the nature and quality of the act of setting the fire and knew it was morally wrong. Judge Murphy, taking into account the expert opinion of Dr. Aileen Brunet, a forensic psychiatrist, found that Ms. Spencer experienced delusions and acted on them. She held that Ms. Spencer:

...is not in a position of knowing that it was not wrong to do it, for her it was the right thing to do; for her own reasons because of these delusions, setting the fire was the right thing to do. The choice was made on delusional beliefs and she acted on delusions...(Trial Transcript, September 20, 2017, page 9)

Ms. Spencer’s Proposed Notice of Appeal

[4] Ms. Spencer objects to the NCRMD finding and being subject to the *Criminal Code* Review Board. She wants to be released from the East Coast Forensic Hospital and a new trial ordered. In her proposed Notice of Appeal she stated her grounds of appeal as: (1) error of law; and (2) error of mixed fact and law. When asked to elaborate in a tele-Chambers call, Ms. Spencer said the

following: she is not mentally ill; the doctor (Dr. Brunet) lied on the stand; and the judge made a mistake by going along with the doctor's opinion.

The Test for Obtaining an Extension of Time to File an Appeal

[5] Pursuant to section 678(2) of the *Criminal Code* and *Civil Procedure Rule* 91.04, a judge of the Court of Appeal has the discretion to extend the time for filing a Notice of Appeal. The discretion must be exercised in accordance with the interests of justice and is structured by such factors as a genuine intention to appeal, a reasonable excuse for the delay, whether any prejudice will arise, and the merits of the proposed appeal. (*R. v. R.E.M.*, 2011 NSCA 8, para. 39)

[6] In *R.E.M.*, Beveridge, J.A. held that, "It cannot be in the interests of justice to extend time in order for a prospective appellant to pursue an appeal that has no merit." He found that providing an extension of time to file an unmeritorious appeal,

...wastes prosecutorial and judicial resources and reflects negatively on the administration of justice. (para. 45)

[7] In addressing the "merits" issue in *R.E.M.*, Beveridge, J.A. applied the "arguable issue" standard and noted, with approval, what Cromwell, J.A. had said in *MacCulloch v. McInnes Cooper & Robertson*, 2000 NSCA 92 (Chambers):

4 The appellants must show there is an arguable issue raised on appeal. This is not a difficult threshold to meet. What is required is a notice of appeal which contains realistic grounds which, if established, appear of sufficient substance to be capable of convincing a panel of the court to allow the appeal...

[8] What is to be scrutinized in Ms. Spencer's motion for an extension of time is whether she has articulated any grounds of appeal that satisfy the "arguable issue" standard. The Crown has acknowledged that Ms. Spencer had a *bona fide* intention to appeal and has satisfactorily explained the reason for missing the deadline. There is also no issue of prejudice if Ms. Spencer was permitted to file a late Notice of Appeal. The reason these issues are not in contention is because Ms. Spencer's affidavit, sworn in support of her motion, explains that her Notice of Appeal, prepared in a timely fashion, was filed in error in the Supreme Court of Nova Scotia. After the appeal-filing deadline had passed Ms. Spencer learned from her trial lawyer that the Crown had proceeded by way of Indictment. Her Notice of Appeal should have been filed with the Court of Appeal. (*Affidavit of Rita Spencer sworn November 15, 2017, paragraph g*)

Application of the “Arguable Issue” Test to Ms. Spencer’s Motion

[9] Ms. Spencer’s submissions at the Chambers hearing for her motion elaborated on her proposed grounds for an appeal. She accused Dr. Brunet of lying at trial and trying to make her look mentally ill “when I am not.” She said “there are no facts that I am mentally ill.” She complained that Dr. Brunet “twisted everything around”, made things up, and “went along with hearsay.” She took issue with Dr. Brunet’s testimony about the basis for her opinion: “Most of what she said we didn’t even talk about. She also relied on what others said, which isn’t true.” It is Ms. Spencer’s view that Dr. Brunet’s opinion was wrong and therefore Judge Murphy’s reliance on it was in error.

[10] Ms. Spencer submits that a critical pillar supporting her NCRMD verdict – whether she knew setting the fire was morally wrong - is unsound. She says she knew lighting the fire was morally wrong: “The fact that it was a crime made it morally wrong” is how she explained her state of mind, saying she knew what she was doing was a crime.

[11] Ms. Spencer had more to say about her state of mind at the time she set the fire. She was expecting to be arrested. She told me: “My reason was to get to trial so the truth of why I did what I did would come out.” She talked about the “need to get the truth here” and explained that “truth” as relating to “years of lies” she had endured because of “botched surgery.” In making final submissions about her reasons for wanting to appeal Ms. Spencer said:

I have been working with a psychic who is a police officer...I do not have delusions...I believe there is a psychic working for the other side...

[12] Despite Ms. Spencer claiming that Dr. Brunet fabricated information about her in court, the content of Dr. Brunet’s testimony before Judge Murphy was strikingly similar to what Ms. Spencer said before me. Dr. Brunet testified that Ms. Spencer had talked about being prevented from

...revealing information about other people and in particular things that happened to her at a hospital following the surgery or during and following the surgery she had a number of years ago. (*Trial Transcript, September 20, 2017, page 11*)

[13] Dr. Brunet indicated that Ms. Spencer also

...told us that she experiences what we call thought insertion, so thoughts appearing in her mind that are from [an] external source, that arrive there via telepathy, from both what she called a psychic policeman who was a good psychic policeman, someone on her side and then there is a bad or evil, I don't remember [the] exact term she used, psychic policeman who is also trying to influence her or communicate with her through telepathy...*(Trial Transcript, September 20, 2017, pages 12 – 13)*

[14] Dr. Brunet went on to explain that Ms. Spencer had said the idea for setting the fire had been,

“...essentially put into her mind, via telepathy that she should set a fire in order to draw attention to her plight, her cause.” *(Trial Transcript, September 20, 2017, page 13)*

[15] It was Dr. Brunet's opinion, accepted by Judge Murphy, that Ms. Spencer has a delusional disorder. She testified to finding evidence of Ms. Spencer's delusions not only in conversations with her but also in her cautioned statement to police. Those delusions included Ms. Spencer telling police about the “botched surgery” and that there was a Halifax police officer who is psychic and communicating with her. *(Trial Transcript, September 20, 2017, pages 16 and 17)*

[16] In Dr. Brunet's opinion, Ms. Spencer's delusions ultimately impaired her ability to “rationally determine what her course of action should be” and “determine its wrongfulness.” Dr. Brunet testified that Ms. Spencer's ability to appreciate the morally wrongfulness of setting the fire “was entirely clouded by delusional thinking.” *(Trial Transcript, September 20, 2017, page 17)* She told Judge Murphy that:

...in a way all the decisions she's making are related to her delusional beliefs and some of that is through, because of what she believes and some of that is because of what she is told by the psychic policeman. And in my opinion that pervasiveness of her delusional thinking, where everything is interconnected and her motivation being entirely delusional to bring attention to her circumstances, does put her in a position of not being able to know that it was wrong to do so. *(Trial Transcript, September 20, 2017, page 29)*

[17] This is of course the opinion that Ms. Spencer disputes and wishes to appeal. But it is not an opinion based solely on what Ms. Spencer says are statements she never made to Dr. Brunet. It is an opinion that also relied on what Ms. Spencer said to the police in a statement that was not disputed at trial or used to contradict Dr.

Brunet. Furthermore, Ms. Spencer did not testify at trial nor did she call any evidence to challenge Dr. Brunet's evidence and opinion.

[18] In submissions before me the Crown noted that Ms. Spencer's trial counsel put on the record her position that she was not mentally ill and made the following submissions in support of the argument that Ms. Spencer knew it was morally wrong to set the fire:

I would submit that the evidence shows that Ms. Spencer was capable of appreciating the nature and quality of the act and notwithstanding Dr. Brunet's opinion as it relates to the delusions influencing that behaviour, that the evidence shows that Ms. Spencer was capable of knowing that it was wrong in the circumstances, with the precautions she took to ensure no risks to any other individuals in the house, that she took steps to ensure the fire was a small one and that her goal was to get arrested, realizing that she was committing a crime and therefore that what she was doing was wrong on the standards of society...(*Trial Transcript, September 20, 2017, page 54*)

[19] This is essentially the same submission Ms. Spencer made to me as the basis for her proposed appeal. As the Crown has pointed out, it is not the law. The law is well-settled. Knowledge that an act is legally wrong does not determine the issue of whether the individual was capable of knowing that the act was morally wrong. As the Supreme Court of Canada held in *R. v. Oommen*, [1994] S.C.J. No. 60:

20 This appeal poses the following legal issue. What is meant by the phrase "knowing that [the act] was wrong" in s. 16(1)? Does it refer only to abstract knowledge that the act of killing would be viewed as wrong by society? Or does it extend to the inability to rationally apply knowledge of right and wrong and hence to conclude that the act in question is one which one ought not to do?

21 A review of the history of our insanity provision and the cases indicates that the inquiry focuses not on general capacity to know right from wrong, but rather on the ability to know that a particular act was wrong in the circumstances. The accused must possess the intellectual ability to know right from wrong in an abstract sense. But he or she must also possess the ability to apply that knowledge in a rational way to the alleged criminal act.

[20] As I mentioned earlier in these reasons, Judge Murphy concluded that Ms. Spencer committed the arson under the influence of her delusions, that "for her it was the right thing to do; for her own reasons because of these delusions, setting the fire was the right thing to do..." (*Trial Transcript, September 21, 2017, page 9*)

[21] Ms. Spencer has said in effect that she wants to appeal the NCRMD verdict because she does not qualify for it. The “arguable issue” she has put forward in support of her proposed appeal – that on the basis of misrepresentations by Dr. Brunet she was wrongly characterized as not criminally responsible for the fire in her apartment – is without any foundation. I have found nothing in Ms. Spencer’s submissions or the record before me that appears remotely capable of convincing a panel of this Court that Judge Murphy’s decision to find Ms. Spencer NCRMD should be overturned.

Conclusion

[22] I know Ms. Spencer will be very frustrated by my decision and disappointed to learn that I have been unable to identify any basis for challenging the reasonableness of Judge Murphy’s decision. There is nothing whatsoever in the record to indicate that the verdict was based on unreliable evidence. Judge Murphy was entitled to accept Dr. Brunet’s uncontradicted opinion that Ms. Spencer’s delusional disorder drove her decision to light the fire and led her to believe it was a justifiable act.

[23] To succeed in obtaining an extension of time to file her Notice of Appeal Ms. Spencer had to show that her proposed appeal had merit. I find she has advanced no grounds that constitute an arguable issue for an appeal of the NCRMD verdict she objects to. The interests of justice will not be served by allowing Ms. Spencer an extension of time to file her Notice of Appeal. Her motion is dismissed.

Derrick, J.A.