NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. McIntosh*, 2018 NSCA 39

Date: 20180517
Docket: CAC 471726
Registry: Halifax

Between:

Robyn Lorraine McIntosh

Appellant

v.

Her Majesty the Queen

Respondent

Judges:	Beveridge, Saunders and Derrick, JJ.A.
Appeal Heard:	May 14, 2018, in Halifax, Nova Scotia
Held:	Application for leave dismissed, per reasons for judgment of the Court
Counsel:	Donald C. Murray, Q.C., for the appellant Edward J. Murphy, for the respondent

By the Court:

INTRODUCTION

[1] Robyn McIntosh seeks leave to appeal from a decision by the Honourable Justice Timothy Gabriel, sitting as the Summary Conviction Appeal Court (SCAC).

[2] At the conclusion of the appeal hearing on May 14, 2018, we announced that the Court was unanimously of the view that leave be denied, with reasons to follow. These are our reasons.

[3] A Justice of the Peace convicted the appellant of driving on April 9, 2016 while her license was suspended, contrary to s. 287(2) of the *Motor Vehicle Act*. The appellant admitted at trial that her licence was indeed suspended, but she just did not know it.

[4] The adjudicator accepted the evidence that the appellant had been convicted of driving without insurance in May of 2015. The Registrar sent a letter by priority courier to the appellant on May 25, 2015 that effective June 8, 2015 her licence and all permits were suspended.

[5] The appellant testified that she travels a lot and did not in fact receive the Registrar's letter. Despite accepting the truthfulness of the appellant's evidence that she had not received the notification of her suspension, the Justice of the Peace convicted because she ought to have known.

[6] In other words, Ms. McIntosh did not exercise reasonable care in avoiding the commission of the offence. The Justice of the Peace mentioned twin routes to reject her defence. The first was that the law (the *MVA*) mandates licence suspension to be forthwith for driving without insurance, and the appellant had made no inquiries to determine her licence status. The second was that the appellant had the responsibility to ensure she received her mail, and her evidence about how her roommate or landlord handled her mail did not satisfy the Justice of the Peace.

[7] The appellant appealed, as of right, to the SCAC. She argued the Justice of the Peace had treated the s. 287(2) offence as an absolute rather than a strict

liability offence and had misapplied the burden of proof. The SCAC judge dismissed the appeal (2017 NSSC 326).

[8] The appellant now seeks leave to appeal to this Court pursuant to s. 839 of the *Criminal Code*. Such appeals are limited to questions of law. She advances two grounds: that the SCAC lost jurisdiction to decide the appeal because the judge made the decision more than six months after the appeal hearing, contrary to s. 34(d) of the *Judicature Act*, R.S.N.S. 1989, c. 240; and the SCAC judge erred in law because he failed to recognize that the Justice of the Peace misapplied the appropriate burden of proof.

[9] Leave to appeal from the SCAC will be granted where the questions of law raised transcend the borders of the specific case and are significant to the general administration of justice or where a "clear" error is apparent, especially if the convictions are serious and the appellant faces a significant deprivation of liberty (see *R. v. R.R.*, 2008 ONCA 497; *R. v. MacNeil*, 2009 NSCA 46; *R. v. Pottie*, 2013 NSCA 68).

[10] An appeal involving well-settled areas of the law will not usually raise issues that have significance to the administration of justice beyond a particular case (*R. v. Zaky*, 2010 ABCA 95 at para.10).

[11] The SCAC hearing was on May 31, 2017. The judge released his decision on December 15, 2017, two weeks beyond six months. Section 34(d) gives to judges of the Supreme Court the express power to reserve judgment for up to six months, but whenever judgment is given, it shall be considered as given at the time of the hearing. It provides as follows:

> 34 Subject to rules of Court, the trials and procedure in all cases, whether of a legal or equitable nature, shall be as nearly as possible the same and the following provisions shall apply:
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> …
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> (d) upon the hearing of any proceeding, the presiding judge may, of his own motion or by consent of the parties, reserve judgment until a future day, not later than six months from the day of reserving judgment, and his judgment whenever given shall be considered as if given at the time of the hearing and shall be filed with the prothonotary of the Supreme Court for the county in which the hearing was tried, who shall immediately give notice in writing to the parties to the cause or their respective solicitors that such judgment has been filed, and each of the parties shall have and exercise, within twenty days, or within such further time as the Supreme Court may order, from the service of such notice, all such rights as

> he possessed or might have exercised if judgment had been given on the hearing of the proceeding;

[12] Judges have gone past six months. In a variety of civil proceedings, this Court has consistently held that s. 34(d) is strongly directory, but not mandatory. While unfortunate, the delay does not cause a loss of jurisdiction (see: *Langille v. Midway Motors Ltd.*, 2002 NSCA 39; *Tingley v. Wellington Insurance*, 2010 NSCA 86 at para. 17; *Geophysical Services Inc. v. Sable Mary Seismic Inc.*, 2012 NSCA 33 at para. 71).

[13] Judicial delay in appellate proceedings does not engage a s. 11(b) analysis regarding the right to trial within a reasonable period of time (*R. v. Potvin*, [1993] 2 S.C.R. 880). Furthermore, at the hearing of this appeal, the appellant eschewed any constitutional implications from the delay. We also observe that the appellant could not identify any prejudice caused by the passage of two weeks post the six month direction to render judgment.

[14] It was up to the appellant to establish that she took all reasonable steps to avoid the commission of the offence. The Justice of the Peace was not satisfied she had done so. We see no error by the SCAC when he found that the Justice of the Peace had not misapplied the burden of proof (see: *R. v. Wile*, 2001 NSCA 183). Even if we were satisfied that legal error was arguable, we are not convinced that the putative error sought to be re-argued by the appellant presents any issues significant to the administration of justice.

[15] The application for leave to appeal is dismissed.

Beveridge, J.A.

Saunders, J.A.

Derrick, J.A.