

NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. McPherson*, 2019 NSCA 13

Date: 20190221
Docket: CAC 441393
Registry: Halifax

Between:

Drew William McPherson

Appellant

v.

Her Majesty the Queen

Respondent

Judge: Beveridge, J.A.

Motion Heard: February 20, 2019, in Halifax, Nova Scotia in Chambers

Written Decision: February 21, 2019

Held: Motion to adjourn the hearing date of March 14, 2019 is dismissed

Counsel: Drew William McPherson, appellant in person via
videoconference
Mark Scott, Q.C., for the respondent

Decision:

[1] Mr. McPherson has been in custody since 2011. At one time, he was found unfit to stand trial. Fitness returned, and he stood his trial before judge and jury in June 2015. The jury convicted him of criminal negligence causing death and bodily harm.

[2] Mr. McPherson appealed. The Appeal Books were filed by the respondent Crown on January 26, 2016. No date was set to hear his appeal as the appellant repeatedly requested lengthy adjournments. He said he needed time to bring an application under s. 684 of the *Criminal Code* for state funded counsel.

[3] No application was forthcoming. As Case Management Judge, on September 6, 2018, I set the appeal down for hearing for a full day for Thursday March 14, 2019, to ensure that the appellant had sufficient time to bring motions, including a s.684 application and file his factum. Directions were given for the filing of facta. Mr. McPherson has filed his factum, as has the Crown.

[4] In the meantime, on November 1, 2018, the appellant applied to adjourn this appeal. I dismissed the application (2018 NSCA 87). Mr. McPherson has brought a s. 684 application on another outstanding criminal appeal (CAC 472589). At his request, it has repeatedly been adjourned. It remains outstanding.

[5] On February 14, 2019, the Court received an email from a Correctional Services Canada (CSC) official. It attached a three paragraph letter of the same date from Dr. Étienne Marquis, Consultant Psychiatrist.

[6] The email suggested that Dr. Marquis's letter was essentially a request for a postponement of the "appeal processes". I immediately arranged for a case management conference with the parties on the two outstanding appeals scheduled to be heard on March 13 and 14, 2019.

[7] The March 13th appeal is a civil case (CA 470083). Mr. McPherson did not seek to have that appeal postponed. However, rather than appear in person, or by videoconference, he was content for that appeal to be heard solely on the parties' written materials.

[8] With respect to this appeal, Mr. McPherson expressed his wish that it be adjourned. He referred to the assessment process in Dr. Marquis' February 14th

letter. He said it “could impact the outcome of the appeal”. He could not say how. Mr. McPherson had no information when the assessment process would begin or end.

[9] Dr. Marquis’s letter referred to the presence of strong evidence that Mr. McPherson’s condition is related to an autism spectrum disorder; and, the management of his emotions and capacity to relate to others and his ability to understand others and make himself understood are severely deficient. He endorsed therapeutic interventions to assist along with evaluation and adjustment of medication.

[10] Dr. Marquis also recommended that the court procedures be postponed until “a stability is reached regarding his mental health”.

[11] The Crown, while empathetic with CSC’s efforts to address Mr. McPherson’s behaviours and assist in his rehabilitation, opposed an adjournment. It was Mr. McPherson’s repeated desire to put off the hearing of this appeal until after his Warrant Expiry Date. Dr. Marquis’s letter simply did not provide a sufficient basis to put off the appeal for some indeterminate time.

[12] Mr. McPherson insisted that the pending assessment was very important to a s. 684 application. He needs a lawyer appointed so that he can bring a s. 683 application to have this Court order an investigation into the 2011 accident. An appellate court has no authority to order such an investigation.

[13] At the conclusion of the hearing, I directed that the appeal proceed as scheduled on March 14, 2019, but at Mr. McPherson’s request, it be done by videoconferencing.

[14] It is laudable and appropriate that CSC is concerned about the disorganizing anxiety the appeal process may be causing Mr. McPherson and his consequent behavioural difficulties. But this Court has a responsibility to society and to an appellant to hear an appeal in a timely fashion. The request to postpone the hearing is dismissed.

Beveridge, J.A.