

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Newman*, 2019 NSCA 74

Date: 20190904

Docket: CAC 478408 / CAC 484585

Registry: Halifax

Between:

Shawn Newman

Appellant

v.

Her Majesty the Queen

Respondent

Judge: Bryson, J.A.

Motion Heard: August 8, 2019, in Halifax, Nova Scotia in Chambers

Held: Motion for appointment of counsel in accordance with s. 684 of the *Criminal Code* dismissed

Counsel: Shawn Newman, appellant in person
Adam Norton, for the Attorney General of Nova Scotia
Mark Scott, Q.C., for the respondent (watching brief only)

Decision:

[1] Shawn Patrick Newman was convicted of robbery and sentenced to five-and-a-half years' incarceration. First he appealed conviction, then sentence. He wanted counsel to represent him on his appeals. Nova Scotia Legal Aid denied him counsel. He now applies for appointment of counsel in accordance with s. 684 of the *Criminal Code*.

[2] To secure an order under s. 684, an applicant must establish: 1) it is in the interest of the administration of justice that the applicant has legal assistance for his appeal; 2) the applicant does not have sufficient means to retain private or public legal assistance.

[3] In preparation for the hearing, the Attorney General filed written submissions opposing appointment of counsel. Mr. Newman filed a lengthy and thoughtfully written response which counsel for the Attorney General had not seen prior to the hearing. For the first time, Mr. Newman argued that he wanted to tender fresh evidence. He blamed his lawyer for not tendering this fresh evidence consisting of a post-robbery recorded phone call from the victim and a trial transcript from the "half day trial" at Provincial Court before the matter was "sent ... to Supreme Court ... without [Mr. Newman's] acknowledgement".

[4] As a result of these submissions, the Attorney General asked for time to make written reply. The request was granted on the basis that the Attorney General's written submissions would be filed by August 19, 2019, with Mr. Newman given until August 30, 2019 to reply. The Attorney General promptly filed written submissions on August 9, 2019; no response has been received from Mr. Newman.

[5] Mr. Newman's new submissions alleging ineffective representation by counsel mean that he cannot establish the second essential requirement of s. 684 because these new grounds of appeal were not considered by Nova Scotia Legal Aid when they refused to provide him with a lawyer.

[6] If Mr. Newman wishes to pursue allegations of ineffectiveness of trial counsel he will have to file an Amended Notice of Appeal to which the Crown would have to consent. If the Crown does not consent, Mr. Newman would have to make an application to the Court to file an Amended Notice of Appeal.

[7] Mr. Newman should apply to amend his Notice of Appeal to allege ineffectiveness of counsel. He may then reapply to Nova Scotia Legal Aid to determine whether he will be afforded legal counsel with respect to the proposed new grounds of appeal in an Amended Notice of Appeal.

[8] If Legal Aid again refuses to provide Mr. Newman with counsel, he may reapply to this Court for appointment of counsel in accordance with s. 684.

[9] The application is dismissed.

Bryson, J.A.