

NOVA SCOTIA COURT OF APPEAL

Citation: *R. v. Barrett*, 2020 NSCA 76

Date: 20201126

Docket: CAC 451442

Registry: Halifax

Between:

Thomas Barrett

Appellant

v.

Her Majesty the Queen

Respondent

Judges: The Court (Wood C.J.N.S, Bourgeois and Beaton JJ.A.)

Motion Heard: Motion by Correspondence—last submissions received
November 13, 2020

Held: Motion to discharge counsel granted and motion to cease
panel deliberations dismissed, per reasons for judgment of the
Court

Counsel: Thomas Barrett, on his own behalf
Timothy O’Leary, for the respondent

By the Court:

[1] After a trial by judge alone in the Supreme Court of Nova Scotia, Thomas Barrett was convicted of second degree murder. Mr. Barrett filed a Notice of Appeal as a self-represented litigant. Later, his counsel Mathieu Boutet filed an amended Notice of Appeal that added to the grounds originally set out by Mr. Barrett.

[2] Through the course of case management, it was directed Mr. Barrett's appeal would be bifurcated. That is, three specific grounds of appeal would be argued first, with the remaining ones only to be addressed if the conviction were not set aside as a result of those concerns. The remaining grounds included an allegation of ineffective assistance of counsel.

[3] The first half of the appeal was heard on October 26, 2020. At the hearing, Mr. Boutet advised one of the three grounds, that involving an allegation of delay, was being withdrawn. Arguments proceeded on the remaining two grounds and the panel subsequently reserved its decision.

[4] On November 13, 2020, Mr. Barrett filed a Notice of Motion in which he sought to represent himself and, further, that the panel cease its deliberations and "disregard" Mr. Boutet's earlier submissions. The panel will treat Mr. Barrett's request as a Motion by Correspondence.

[5] The first aspect of Mr. Barrett's request is straightforward. He no longer wants to have Mr. Boutet represent him, and he has expressed a desire to represent himself. That is his right. Should the appeal continue, Mr. Barrett will be responsible for advancing his appeal. Like all other self-represented litigants, he will be expected to comply with the *Nova Scotia Civil Procedure Rules*, any relevant Court protocols, and any directions provided to him by the Court either directly, or through its administrative staff.

[6] The second aspect of Mr. Barrett's motion requires more consideration. Asking a panel to cease its deliberations, including disregarding the submissions of counsel and permitting the re-opening of argument, is an extraordinary request. It is a remedy which ought to be granted only in the clearest and most compelling of circumstances. A careful review of Mr. Barrett's reasons for making such a request is necessary.

[7] Mr. Barrett's justification for asking the panel to stop its deliberations is his view that Mr. Boutet failed to present evidence, as directed, which "implicates a lawyer (member of the court) in wrongdoing". In providing further explanation, it is clear Mr. Barrett is very concerned the various allegations regarding the conduct of his trial counsel have not been put before this Court. He is afraid something is being covered up and insinuates Mr. Boutet may have purposely decided to protect another lawyer.

[8] Mr. Barrett's materials do not identify any other concern with the nature of the submissions made by Mr. Boutet and which are presently being deliberated upon. His concerns all related to Mr. Boutet's alleged failure to present evidence regarding the ineffectiveness of his trial counsel. That is a ground of appeal that has not yet been argued and, as such, the panel is not deliberating on that issue at this time.

[9] The panel will continue to deliberate upon the grounds of appeal argued on October 26, 2020. If the appeal is not allowed on the basis of those grounds, then Mr. Barrett will have the opportunity to present his evidence and arguments regarding the conduct of his trial counsel.

Wood C.J.N.S

Bourgeois J.A.

Beaton J.A.