NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. LeRoy*, 2025 NSCA 34

Date: 20250521
Docket: CAC 521675
Registry: Halifax

Between:

Raymond S. D. LeRoy

Appellant

v.

His Majesty the King

Respondent

Judge:	Derrick, J.A.
Motion Heard:	May 15, 2025, in Halifax, Nova Scotia in Chambers
Written Decision:	May 21, 2025
Held:	Motion dismissed
Counsel:	Raymond S. D. LeRoy, appellant in person Erica Koresawa, for the respondent (watching brief) Matthew Ryder, for the Attorney General of Nova Scotia

Decision:

Introduction

[1] Raymond LeRoy brought a motion seeking the appointment of state-funded counsel for his appeal—CAC 521675—pursuant to s. 684(1) of the *Criminal Code*. The Attorney General of Nova Scotia ("Attorney General") filed a written submission and appeared by counsel at the motion. The respondent Crown appeared on a watching brief, taking no position. After hearing the parties I reserved my decision. For the reasons that follow, I am dismissing the motion.

Background Facts

[2] Mr. LeRoy appeals from convictions on September 16, 2022 for aggravated assault (x2), break and enter, possession of a shotgun for a purpose dangerous to the public peace, and a breach of a recognizance. He was acquitted of seven other charges in the twelve-count Indictment, including two counts of attempted murder. The Crown has not appealed those acquittals.

[3] All the charges related to the shooting of three victims on December 22, 2019—Edward O'Brien, Robert MacDonald, and Carolyn Dermody. The trial judge, Justice Patrick Murray of the Supreme Court of Nova Scotia who sat without a jury, accepted as credible and reliable the evidence from victims Edward O'Brien and Carolyn Dermody who knew Mr. LeRoy very well and testified to recognizing him as the shooter. Robert MacDonald did not testify at the trial. Justice Murray also took into account evidence from police investigators and forensic evidence.

[4] Mr. LeRoy did not testify. No witnesses testified for the defence.

[5] Justice Murray convicted Mr. LeRoy of aggravated assault for the wounding of Mr. O'Brien and Mr. MacDonald. He was not satisfied the Crown had proven the essential elements of the offence of aggravated assault in relation to Ms. Dermody and acquitted Mr. LeRoy of that charge.

[6] On January 30, 2023 Justice Murray imposed a sentence totalling ten years. With four years credited for time spent on remand, Mr. LeRoy's "go-forward" sentence was six years.

[7] Justice Murray's conviction and sentencing decisions are reported at 2022 NSSC 272 and 2023 NSSC 37.

Mr. LeRoy's Grounds of Appeal

[8] Mr. LeRoy has advanced twelve grounds of appeal:

1. Ineffective assistance of counsel, conflict of interest, my lawyer represented the complainant.
2. Verdict not supported by the evidence and was unreasonable.
3. Judge made error of law.
4. Undue influence to have witness testify.
5. Contradictory evidence.
6. Improper exclusion and/or admission of evidence.
7. Serious misunderstanding of evidence.
8. Perjury.
9. Abuse of discretion.
10. Miscarriage of justice on all grounds.
11. *Charter* violation (s. 11(b)).
12. Forced to judge alone, when I picked Judge & Jury.

The Issue to be Decided

[9] Section 684(1) of the *Criminal Code* provides:

> **Legal assistance for appellant**
>
> **684(1)** A court of appeal or a judge of that court may, at any time, assign counsel to act on behalf of an accused who is a party to an appeal or to proceedings preliminary or incidental to an appeal where, in the opinion of the court or judge, it appears desirable in the interests of justice that the accused should have legal assistance and where it appears that the accused has not sufficient means to obtain that assistance.

[10] The issue to be decided in Mr. LeRoy's motion is whether it "appears desirable in the interests of justice" that he should have legal representation for his appeal. There is no dispute that Mr. LeRoy does not have "sufficient means" to retain a lawyer to represent him for his appeal. The Attorney General concedes

this. Mr. LeRoy was on remand prior to being sentenced to a lengthy term of federal incarceration. He is currently serving that sentence.

The Submissions of Mr. LeRoy and the Attorney General

[11] In support of his motion, Mr. LeRoy submitted an affidavit sworn March 4, 2024 and a written submission filed with the Court on April 3, 2025. He says the appeal is "too complex and overwhelming" for him. When asked to address how the appointment of state-funded counsel would be in the interests of justice, he said the charges are serious, the issues are complex, and appeals require specialized knowledge and skill. He believes his appeal should be successful as his conviction "was based on the credibility of a jailhouse informant". He is referring to Edward O'Brien. In written submissions he indicates an intention to subpoena Mr. O'Brien for the appeal. As I noted earlier, Mr. O'Brien was called as a Crown witness at the trial. He identified Mr. LeRoy as the person who shot him in the leg. I indicated to Mr. LeRoy that if he intended to ask for evidence to be considered at his appeal, he would have to file a motion for fresh evidence.

[12] Mr. LeRoy also said he wants the appeal panel to hear from the lawyer who represented him at trial. It is not clear what he thinks his former lawyer could contribute at the appeal. He acknowledged exploring that with her could be a challenge as they have had a falling out. I reminded him there could be risks if he opened the door to conversations that are protected by solicitor-client privilege. I did not invite Mr. LeRoy to talk about conversations with his trial lawyer because they are privileged.

[13] The written submissions of the Attorney General address the legal principles relevant to a s.684 motion but state no position on Mr. LeRoy's motion. At the hearing of the motion counsel for the Attorney General confirmed he was taking no position. He then elaborated to say the issue of solicitor-client communications could create complexity and that Mr. LeRoy might require some assistance assessing the consequences of advancing such evidence.

Analysis

[14] I must decide Mr. LeRoy's motion in accordance with the legal principles that govern the appointment of state-funded counsel at appeal. In Mr. LeRoy's case, I must be satisfied it is in the interests of justice that he has a lawyer for his

appeal. As this Court has noted on numerous occasions[1], the interests of justice question under s. 684 is assessed through the following considerations:

i) The merits of the appeal;

ii) The complexity of the appeal;

iii) The appellant's ability to effectively present his arguments;

iv) The appeal panel's ability to address the issues on appeal without the assistance of counsel for the appellant; and

v) The responsibility of the Crown to ensure the appellant is treated fairly in the appeal.

[15] These considerations speak to the interests of justice including, but not limited to, the interests of the appellant. They encompass broad considerations related to ensuring the appeal is fair.

[16] Mr. LeRoy's well-written submission in support of his motion largely concentrates on why legal representation is needed at trial. For example, he says: "a realistic assessment of the modern criminal trial reveals an inherent complexity beyond this lay litigant's abilities". He quotes from several cases and heavily references *R. v. Rowbotham*. He is articulate and compelling in his arguments about the disadvantages faced by unrepresented accused at trial. Although Mr. LeRoy claims only a Grade 8 education, it is apparent from what he prepared for this motion that he has literacy skills well advanced above Grade 8. His presentence report indicates he earned his GED while incarcerated previously. He said at the hearing he is proud of that accomplishment, as he should be. It is obvious he is an intelligent and resourceful person.

[17] Towards its conclusion, Mr. LeRoy's submission does shed some light into what presumably is a primary focus of his appeal—the reliance by the trial judge on the evidence of Edward O'Brien who gave recognition evidence identifying Mr. LeRoy as the shooter. Mr. LeRoy refers to an accused's right "to rely on a broad array of misconduct evidence relating to Crown witnesses in order to challenge their credibility, including uncharged offences and details of criminal convictions". He refers to Edward O'Brien specifically and says a letter written by Mr. O'Brien

[1] See, for example: *R. v. Keats*, 2017 NSCA 7; *R. v. McPherson*, 2019 NSCA 70; *R. v. Publicover*, 2020 NSCA 67.

and entered as evidence at trial denying that Mr. LeRoy was the shooter "should have been enough to cause "reasonable doubt"." He goes on to say: "Furthermore O'Brien has subsequently written another letter to exempt me of all blame" and says Mr. O'Brien "has made contact several times with Crown counsel…". In this subsequent letter to Mr. LeRoy and attached to his submission, Mr. O'Brien says he has been calling Crown counsel to tell him "it wasn't you and to grant you your appeal…".

[18] At the trial during cross-examination Mr. LeRoy's counsel presented Mr. O'Brien with the handwritten letter Mr. LeRoy refers to as being enough to have raised reasonable doubt. Mr. O'Brien acknowledged authorship and testified he had been forced to write the letter while incarcerated. In his decision convicting Mr. LeRoy, the trial judge gave the letter no weight, stating:

> [125] I reject the letter in Exhibit 19 both as to its authenticity and as an exculpatory statement in regard to the Accused. I am satisfied it was obtained in circumstances that were coercive, and that its contents cannot be relied on.

[19] The subsequent letter written by Mr. O'Brien and attached to Mr. LeRoy's submission does not refer to his trial testimony about the involuntary nature of Exhibit 19.

[20] As for Mr. LeRoy's complaints about the trial judge (verdict not supported by the evidence and unreasonable, trial judge made an error of law, there was contradictory evidence, improper exclusion and/or admission of evidence, serious misunderstanding of evidence, abuse of discretion, and miscarriage of justice on all grounds), Mr. LeRoy has provided no particulars.

[21] He also did not provide particulars for the grounds of appeal that include allegations of: undue influence on a witness to testify, perjury, denial of a judge and jury trial, and the violation of his right to a trial within a reasonable time (s. 11(b) of the *Charter*).

[22] The Attorney General noted in written submissions that Mr. LeRoy did not provide particulars of his complaints about his trial counsel (ineffective assistance of counsel, conflict of interest) other than what Mr. LeRoy said in his March 4, 2024 affidavit that his lawyer "did not call any of my defence witnesses and…represented the complainant in the past, which is a conflict".

[23] I have reviewed the trial judge's written decisions—conviction and sentencing—and portions of the trial testimony in the appeal book. The trial judge appears to have carefully reviewed the evidence and the relevant law and made reasoned assessments of the credibility and reliability of the Crown's witnesses. I have not discerned an arguable issue as is required by the "interests of justice" criterion on a s.684 motion.

[24] The appeal is not complex. The trial was heard over five days and did not produce a voluminous record. The central issue at trial was identification and the credibility and reliability of Mr. O'Brien and Ms. Dermody. The trial judge described the cross-examination of Mr. O'Brien as "rigorous and thorough".

[25] Mr. LeRoy's grounds of appeal also allege a s. 11(b) *Charter* violation, ineffectiveness of trial counsel, and that he was "forced" to accept a trial by judge alone when he had wanted to be tried by a judge and jury. None of these grounds as set out clear the "arguable issue" requirement, even accepting that it is a low threshold.[2] Not only are these grounds of appeal not particularized, they do not appear likely to succeed although the ultimate determination of their merits will be for the panel hearing Mr. LeRoy's appeal.[3]

[26] Mr. LeRoy has raised trial delay only after his conviction. The Supreme Court of Canada has held that raising the unreasonableness of delay post-conviction is generally not recognized as timely.[4]

[27] According to the copy of the Information in the Appeal Book, on July 20, 2020, Mr. LeRoy elected to be tried by a judge without a jury. As for defence counsel being ineffective and failing to call any defence witnesses, the trial transcript indicates defence counsel requested, and was allowed, time to speak to Mr. LeRoy about calling evidence. She returned to advise the judge: "Thank you for allowing the time for additional discussion with Mr. LeRoy. And after discussing with him I can advise the Court that the Defence will not be calling evidence".

[28] It is not obvious to me from my review of the trial judge's decision and portions of the trial transcript what Mr. LeRoy's defence counsel could contribute to his appeal. Mr. LeRoy alluded to waiving privilege and allowing his lawyer to

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[2] *R. v. Snow*, 2023 NSCA 71 at para. 13.
[3] *R. v. A.B.C.*, 2023 NSCA 39 at para. 20.
[4] *R. v. J.F.*, 2022 SCC 17 at para. 35.

speak freely but, given the facts of this case and the grounds of appeal, I do not see any relevance.

[29] At the hearing of the motion Mr. LeRoy identified the requirement for the appeal to be fair. Both the panel hearing the appeal and Crown counsel responding to it will be vigilant about fairness. The panel members will comprehensively review the record and be in a position to identify concerns in relation to the conviction, should they note any. Likewise, the Crown also has an obligation to ensure the appeal is conducted fairly and raise issues, if any, that are not addressed by Mr. LeRoy.

[30] Mr. LeRoy demonstrated in the materials he filed on the motion a clear ability to effectively express himself. His written submission shows him to be capable of addressing legal issues. I am satisfied he has the capability in his factum to elaborate on his grounds of appeal.

[31] In conclusion, I am not persuaded it is in the interests of justice to order that Mr. LeRoy be provided with state-funded counsel for his appeal.

Disposition

[32] The s. 684 motion for state-funded counsel for the appeal is dismissed. I direct the Crown to have the matter set down in Chambers for the scheduling of filing dates and the hearing of the appeal.

Derrick, J.A.