

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Graham, 2008 NSSC 423

Date: 20081219

Docket: CRAT. 300548

Registry: Antigonish

Between:

Stevie Graham

Appellant

v.

Her Majesty the Queen

Respondent

DECISION

Judge: The Honourable Justice Douglas L. MacLellan.

Heard: December 19, 2008 in Antigonish, Nova Scotia

Written Decision: June 17, 2009

Counsel: Daniel J. MacIsaac, Esq., for the appellant
Allen Murray, Esq., for the respondent

By the Court: (Orally)

[1] Well, in the circumstances, instead of making a formal decision, I've had an opportunity to review the documents and receiving the factums. I've had an opportunity to review the Sections, the **Code**.

[2] I do believe that under Section 683 of the **Code**, I have the power to deal with the matter in the manner I have proposed which basically is that I am going to order, before deciding the issue on the appeal, I'm going to order that the **Charter** motion be heard before this Court, and I do so because I am not convinced that the trial judge did consider the merits of the **Charter** motion in deciding not to proceed with the **Charter** motion by either hearing it on the day scheduled or by adjourning it so he could hear it, and in these circumstances, and on the principle that the interest of justice is significant because it would be my interpretation that if Mr. Graham was successful on his **Charter** motion, as advanced by his counsel to the trial judge, the matter would not have proceeded to trial. In other words, a stay of proceeding would have been entered, and it would have, in effect, resolved the entire issue and this is as opposed to a situation where a **Charter** motion is made during the course of a trial in

regard to a piece of evidence that could or could not have affected the actual outcome of the trial.

[3] So what I am doing at this point is ordering that we adjourn this appeal hearing to permit the accused to prosecute his **Charter** motion. I intend to set a date for the hearing of that matter and set time lines by which the accused can submit any supplementary information that he wishes to submit and then for the Crown to submit their evidence and have a hearing date based on the merits.

[4] I do note that there are some—I've had a very brief opportunity to review the issue of people leaving the jurisdiction and therefore not being available to be served. There are some cases on that point. I don't think it's clear cut one way or the other as to what the law is about if a person is outside the jurisdiction and what the obligations are of the authorities to attempt to execute a warrant. I would anticipate that counsel will have significant briefs on that point. So, I would suggest that this hearing will take at least half a day, hopefully, and therefore, we should set that time.

J.