SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Reddick, 2011 NSSC 95

Date: 20110307
Docket: PIC 336979
Registry: Pictou

Between:

Her Majesty the Queen

Appellant/Crown

v.

Joseph Nolan Reddick

Respondent

Judge:	The Honourable Justice Felix A. Cacchione
On Appeal From:	The Honourable Judge Del W. Atwood
Heard:	February 14, 2011, in Pictou, Nova Scotia
Counsel:	T.W. Gorman, for the Appellant/Crown Douglas Lloy, for the Respondent

By the Court:

[1] This is a summary conviction appeal by the Appellant/Crown (the Crown) against a judicial stay of proceedings entered by Provincial Court Judge Atwood (the trial judge) on September 10th, 2010 in relation to three charges faced by the Accused/Respondent (the accused).

[2] The grounds of appeal, as set out in the Notice of Appeal, are as follows:

1. That the Learned Trial Judge erred in taking judicial notice of a minimum of two weeks notice requirement for transportation of federal inmates to Court in response to a Transport Order issued pursuant to section 527 of the Criminal Code:

2. That the Learned Trial Judge erred in not granting an adjournment of the Respondent's trial as the Respondent was not prejudiced by the granting of the adjournment;

3. That the Learned Trial Judge erred in not seeking enforcement of its own Order;

4. That the Learned Trial Judge erred by making an application for Charter relief of its own motion, notwithstanding the Respondent was represented by competent counsel:

5. That the Learned Trial Judge erred in finding a breach of section 7 of the Charter;

6. That the Learned Trial Judge erred in granting a remedy, specifically a Judicial Stay of Proceedings.

7. Any other ground of appeal which may appear from the record.

[3] The Crown, in its written and oral argument, consolidated grounds (1) and (3), and (5) and (6). Grounds (2) and (4) were argued separately. For purposes of this decision grounds (4), (5), and (6) will be addressed together.

FACTS:

[4] The accused was charged with three summary conviction offences. Before these matters were bought to trial the accused was convicted and sentenced to a federal term of incarceration in relation to other charges. The accused was incarcerated at the federal penitentiary in Springhill Nova Scotia.

[5] Mr. Young, the Crown Attorney who applied for the adjournment which lead to this appeal, was the same Crown Attorney who prosecuted the accused for the charges which resulted in his federal imprisonment and who also applied on a previous occasion for an adjournment of the accused's trial on the subject matter offences.

[6] The Crown was aware that it had to apply for a prisoner-transport order, pursuant to s.527 of the **Criminal Code**, so that the accused could be present at this trial for the summary conviction offences.

[7] The Crown was also aware that Sheriff Services required approximately 14-16 days notice in order to procure and transport an incarcerated accused to court for trial.

History of the Proceedings:

> **May 7th, 2010**: The accused was charged on three separate informations with possession of a knife for a purpose dangerous to the public peace contrary to s.88(2) of the **Criminal Code**; failure to comply with a probation order contrary to s.733.1(1) of the **Criminal Code** and failure to comply with an undertaking given to an officer in charge, contrary to s.145(5.1) of the **Criminal Code**. All three offences were alleged to have been committed on April 24th, 2010. The Crown elected to proceed summarily on the three informations.

May 31st, 2010: The accused's counsel obtained an adjournment to June 21st, 2010 before entering a plea.

June 21st, 2010: The accused appeared in court. He was in custody on other matters and consented to a remand on the subject charges to June 28th, 2010 for plea.

June 28th, 2010: The accused entered not guilty pleas and consented to a remand until July 5th, 2010 for the setting of a trial date.

July 5th, 2010: The date of August 24, 2010 was set for the accused's trial on the three informations. The accused consented to a remand until his trial.

August 16th, 2010: The Crown applied for an adjournment of the accused's trial due to the unavailability of Crown witnesses. The accused was not present but was represented by counsel who opposed the adjournment request. The matter was adjourned to August 19th, 2010 for a hearing of the Crown's adjournment request.

August 19th, 2010: The Crown's adjournment request was granted and the trial was adjourned to September 10th, 2010.

August 24th, 2010: The accused was sentenced to a federal term of incarceration on an unrelated matter. The prosecution of that matter was handled by the same Crown Attorney's Office as the one handling the prosecution of the accused in the matters under appeal.

September 2nd, 2010: An affidavit in support of a request for an order procuring the attendance of the accused for his trial on September 10th, 2010 pursuant to s.527 of the **Criminal Code** was prepared by Mr. Gorman. He was not the Crown counsel who dealt with previous court appearances in relation to the accused.

September 6th, 2010: Labour Day Monday, the trial judge signed the s.527 order.

September 7th, 2010: The s.527 order was received by the Sheriff Services Department in the afternoon.

September 9th, 2010: Mr. Young for the Crown applied for a further adjournment of the accused's trial. The adjournment request was opposed.

[8] The Crown, in support of the request for an adjournment, advised the trial judge of the following: that it became cognizant the previous week of the need to make transportation arrangements for the accused who had, on August 24th, been sentenced to a federal term of incarceration prosecuted by the same Crown Attorney's office; that an order pursuant to s. 527 of the **Criminal Code** was signed on September 6th requiring the accused's attendance for his trial on September 10th; and that it had been advised by the Sheriff's Office of the two week notice required by federal institutions for the transport of a prisoner to court for trial.

[9] Counsel for the accused opposed the adjournment request by simply stating that the respondent was anxious to deal with the outstanding matters on the date set for trial.

[10] No cases or other authorities were cited by either the Crown in support of its request for an adjournment or the defence in opposition to that request.

[11] After hearing both Crown and defence counsel, the trial judge brought to their attention two cases: **R. v. MacDonald ,** [1989] N.S.J. No. 582 and **R. v. Fuhrer**, [2007] A.J. No. 102 dealing with Crown adjournment requests brought as a result of prisoner transportation issues, more particularly the Crown's responsibility to have an accused present for his/her trial where the Crown is aware of the accused's detention due to a denial of bail or incarceration while serving a sentence. The trial judge adjourned the matter to the morning of September 10th to allow both counsel the opportunity to review those cases and make further submissions.

[12] On September 10th Mr. Gorman appeared for the Crown and presented evidence from Deputy Sheriff Ehler concerning the notice requirements for the transportation of prisoners serving federal terms of incarceration and the efforts made by his office to comply with the s.527 order signed on September 6th.

[13] Deputy Sheriff Ehler's evidence disclosed that the order was received by his office in the afternoon of September 7th and immediately faxed to the Sheriff Services office in Halifax which handles the transportation of federal inmates for the entire province. He was advised that the transport section of Sheriff Services could not comply with the order because the transport vehicle had already departed

and was in fact returning to Halifax from its run to the federal institutions and also that the next run to those institutions would be on Friday.

[14] Sheriff Ehler testified that the departmental policy regarding the transportation of prisoners housed in federal institutions required 16 days notice. He also indicated that he had been aware of this policy for the six years of his employment with the Sheriff Services office. He referred to the policy which had been updated in 2005. His evidence was that this practice requiring two weeks notice for federal inmates was long standing and well known in his office.

[15] The trial judge heard argument from both Crown and defence.

[16] The Crown argued, without citing any authorities: that the Sheriff Services office was in contempt of court by flouting the court order because of its polices and procedures; that the Crown had taken steps to ensure the accused's presence for his trial; that in the period from August 24th to September 2nd there were only a few days when a Provincial Court Judge was sitting in New Glasgow; that the accused suffered no prejudice by an adjournment of his trial because he was serving a federal term of imprisonment and that the Crown had acted with diligence in seeking and obtaining a s.527 order.

[17] Counsel for the accused argued that this was the second Crown request for an adjournment of the accused's trial; that the policy regarding the transportation of federal prisoners was longstanding and well known; that the Crown was aware of the accused's incarceration and that the Crown's request for a s.527 order was made very, very late in the day.

[18] The trial judge found as fact the following: that the Sheriff Services office, in particular Deputy Sheriff Ehler, acted diligently, expeditiously and conscientiously in attempting to implement the s.527 order dated September 6th; that the requirement for significant advance notice regarding the transportation of federal prisoners was not new and that it was well known within the criminal justice system; that the Crown's explanation for the accused's absence was inadequate given that the Crown knew or ought to have known, as of August 24th, that it would be necessary, on an expeditious basis, to obtain a s.527 order to procure the accused's attendance for his trial on September 10th, 2010; and that the Sheriff Services office was not flouting the court order. He noted that this office did not have unlimited resources and that the requirement for advance notice was a

demand of the federal authorities which was so well known within the criminal justice system in Nova Scotia as to be notorious.

[19] The trial judge also found as fact that the Crown, being aware that no judge would be sitting in New Glasgow for a portion of the time between August 24th and September 2nd, could have made its application to a judge sitting in another judicial centre or to the Supreme Court Justice sitting in Pictou.

[20] The trial judge, after denying the Crown's application for an adjournment, then went on to find that proceeding with the trial in the accused's absence would constitute an abuse of process and an infringement of the accused's s.7 **Charter** rights. He found that this violation was not saved by s.1 of the **Charter** and entered a stay of proceedings with respect to the three informations before him.

[21] A Summary Conviction Appeal Court's standard of review for findings of fact was set out in **R. v. Nickerson**, 1999 NSCA 168 at para.6 where Cromwell J.A. (as he was then) stated:

> ...Absent an error of law or a miscarriage of justice, the test to be applied by the Summary Conviction Appeal Court is whether the findings of the trial judge are unreasonable or cannot be supported by the evidence. ..

[22] The standard of review for errors of law is correctness.

Grounds of Appeal

[23] Grounds (1) and (3) allege that the judge erred in taking judicial notice of a minimum of two weeks notice requirement for transportation of federal inmates to court in response to an order pursuant to s.527 of the **Criminal Code** and that he erred in not seeking enforcement of his own order.

[24] The Appellant's written argument on grounds (1) and (3) is disingenuous. It is argued that the trial judge relied on his own personal experience based on his previous employment as a Crown Attorney in finding that two weeks notice was required in order to obtain the attendance of an accused who was incarcerated. The Crown argues that in doing so the trial judge "descended into the arena".

[25] It is further argued that the trial judge erred in not enforcing the s.527 order which he himself had signed on September 6th. A review of the transcript shows that the Crown urged the trial judge to consider his previous experience as a Crown Attorney. At page 25 of the transcript Mr. Gorman stated, "Your Honour is only too aware of the volume of work that would go through the Crown office. Your Honour is only too aware of the practice in terms of obtaining transport orders and how that entire matter would work."

[26] To suggest to the trial judge that his knowledge with regards to the obtaining of s.527 orders and the practice involved in executing s. 527 orders, gained as a former Crown Attorney, should be used in assessing the Crown's request for an adjournment and to then argue on appeal that the judge erred by considering this previous knowledge and thus "descended into the arena" is an argument which lacks candour and is without merit.

[27] The Crown argues that the trial judge committed an error in not enforcing his own order. At the hearing of its adjournment request, the Crown argued that the Sheriff Services was flouting a court order and was "almost akin to contempt" (transcript p.23). This proposition was rejected by the trial judge. He noted that the Sheriff Services acted diligently, expeditiously and conscientiously. He referred to the Sheriff Services office as not having unlimited resources to transport persons and that the requirement for advance notice respecting the transportation of federal inmates was a requirement of the federal institutions. He recognized that the Sheriff Services policy of 16 days notice was an attempt to reconcile the needs of the various stake holders in the criminal justice system, and he also considered that according to the Crown, in its fax of September 8th asking that the matter be docketed for September 9th for an adjournment application that the order was received by the Sheriff Services "too late to make the Springhill bus run to Burnside".

[28] It should be noted that at no time did the Crown, in argument before the trial judge, ever refer to its responsibility for procuring the attendance of an incarcerated accused and its failure to procure the accused's attendance for his trial.

[29] On the totality of the circumstances it cannot be said that the trial judge erred in not enforcing his own order, or that he erred in taking notice of the requirement of two weeks notice for the procurement of federal inmates to attend their trial.

[30] Accordingly grounds (1) and (3) are dismissed.

[31] The Crown also argues that the trial judge erred in not granting an adjournment as the accused was not prejudiced by the granting of the adjournment. The Crown's position is that when it learned that the accused could not be transported because of the Sheriff Services "inability or unwillingness" it made application in a timely fashion for an adjournment.

[32] The record shows that as early as June 21st, 2010 the Crown was aware that the accused was in custody on other matters and that as of June 21st he was consenting to his remand on those other charges. On July 5th the trial date of August 24th was set for the present matters. The accused was still on remand on that date.

[33] The record also discloses that the Crown, on August 19th, applied for an adjournment of the accused's August 24th trial due to the unavailability of witnesses. This adjournment was granted and the trial was adjourned to September 10th.

[34] On August 24th the accused was sentenced, on unrelated charges, to a federal term of incarceration. The accused had consented to his remand on these charges. The prosecution of these charges was conducted by the same Crown Attorney's office as that which handled the present matter.

[35] Inquiries made of Crown counsel during the hearing of this appeal provided the following information: that the New Glasgow Crown Attorney's office was aware as early as June 21st, 2010 that the accused was on remand; that there are three full time Crown Attorneys in that office; that one of those three, Mr. Young, was the one who applied on August 19th for the initial adjournment of the accused's trial and who appeared for the Crown when the accused was sentenced to a federal term of incarceration; that Mr. Young applied again on September 9th for a further adjournment of the accused's trial.

[36] The Crown argued that the judge erred in not granting the second adjournment request because it was a "transportation issue" and that the Crown had been diligent in attempting to procure the accused's attendance.

[37] The record shows that the "transportation issue" was entirely the making of the Crown's lack of diligence in obtaining a s.527 order in a timely fashion. The Crown was aware as far back as June 21st that the accused was on remand on other charges and had an upcoming trial in the present matter. The Crown was also aware as of August 24th that the accused had been sentenced to a federal term of incarceration. Instead of preparing an affidavit and draft order under s.527 at that time, the Crown waited until late in the day on September 2nd to prepare these documents.

[38] The Crown was also cognizant that no Provincial Court Judge would be sitting in New Glasgow on August 25th, 26th, 27th, September 1st, 2nd and 3rd. It knew that a Provincial Court Judge would be sitting on August 30th and 31st. No attempt was made to obtain the s.527 order on either August 30th or 31st.

[39] The Crown, despite knowing that no Provincial Court Judge would be sitting on aforementioned dates, did not attempt to obtain a s.527 order from a Provincial Court Judge sitting in Truro or Antigonish or from the Supreme Court Judge sitting in Pictou.

[40] Attempting to obtain a s.527 order late in the day on the Thursday before Labour Day weekend from the office of a Provincial Court Judge knowing that no Provincial Court Judge would be available in that office to sign the order cannot be viewed as acting diligently or in a timely fashion. The trial judge, quite rightly, rejected the Crown's explanation. Implicit in that rejection is a finding that the Crown did not act diligently or in a timely fashion.

[41] The granting of an adjournment, whether in a trial proceeded with by indictment or in a summary conviction trial is a discretionary matter: Section 571 and 803(1) of the **Criminal Code**. The exercise of discretion must be judicious: **R. v. Smith** (1989), 52 C.C.C. (3d) 90 (Ont.C.A.); **R. v. Hazelwood** (1994), 67 W.A.C. 44 (B.C.C.A.).

[42] In the present case it cannot be said that the trial judge did not act judiciously. He heard both parties and referred them to relevant cases which neither party appeared to be aware of and invited their further submissions. He noted that this was the second application by the Crown for an adjournment and that the Crown had not presented a satisfactory explanation for its lack of diligence in securing the attendance of the accused whom it knew was incarcerated in a

federal institution. He also took into consideration that the Crown could have applied to a Provincial Court Judge in another judicial centre or to the presiding Supreme Court Justice sitting in Pictou for the s.527 order but did not do so. Rather, the Crown waited until late in the day on Thursday before the statutory long weekend to make its application to a judge it knew would not be sitting.

[43] Stating that the accused would not have been prejudiced by the granting of the adjournment because he was already in custody serving a sentence is simply an attempt to deflect attention from the Crown's responsibility to ensure the accused's attendance in these circumstances and its failure to discharge that responsibility. Such statement also ignores the realities faced by an incarcerated accused in procuring his own attendance at trial and in preparation of his or her defence. The passage of time and its affect on the memory of witnesses and the reduced ability to consult with counsel in preparation of an accused's defence are some examples of the prejudice suffered by an incarcerated accused whose trial has to be adjourned because the Crown has not discharged its obligations.

[44] On the totality of the record it cannot be said that the trial judge erred in refusing the Crown's request for an adjournment. Accordingly this ground of appeal is dismissed.

[45] The Appellant's fourth ground of appeal is that the trial judge erred by making an application for **Charter** relief on its own motion notwithstanding that the accused was represented by counsel. This ground of appeal can be dealt with in conjunction with the fifth and sixth grounds of appeal which allege that the judge erred in finding a breach of s.7 of the **Charter** and by staying the proceedings as a remedy for the **Charter** breach.

[46] In considering whether the trial judge erred by making an application on his own motion for **Charter** relief it should be noted that courts are the legal guardians of the Constitution and of the rights of citizens contained in the **Charter of Rights and Freedoms**.

[47] The authorities are clear that in a proceeding where the accused is self-represented there is an obligation on a trial judge to raise a **Charter** issue if there is admissible uncontroverted evidence indicating a **Charter** breach: **R. v. Arbour**

1990 Carswell Ont. 892 at para.9 (Ont.C.A.); **R. v. Travers** (2001), 193 N.S.R. (2d) 263 (N.S.C.A.).

[48] In cases where the accused is represented by counsel some authorities question the appropriateness of this type of intervention: **R. v. Boron** (1983), 8 C.C.C. (3d) 25 at p.33 (Ont.H.C.J.); **R. v. Braun** 2003 ABQB 273 at para.18. However, the Ontario Court of Appeal in **R. v. Arbour** (supra) allowed an appeal where the trial judge failed to consider a s.10(b) breach of the **Charter** even though the accused was represented by counsel.

[49] In **R. v. Travers** (supra) Oland, J.A., speaking for the Court, stated at p.272:

> I do not suggest that the merest intimation of a possible **Charter** infringement will found a duty upon a trial judge to enter immediately upon an inquiry where none of the parties before him has raised this argument. However, and without attempting to fully delineate the point at which the duty arises, where there is strong evidence of a prima facie case of breach of a **Charter** right relevant to the proceeding, a judge has a responsibility to raise the issue, invite submissions and, if appropriate, to conduct an exclusionary hearing in order to protect the integrity of the judicial process.

[50] In **R. v. Fuhrer**, [2007] A.J. No. 102, a case with some similarities to the present one in that the accused was, as here, under state control and a court order had been obtained for his attendance in court, but the accused was not brought to court. Veit, J. sitting as a Summary Conviction Appeal Court judge dismissed the Crown's appeal from a stay of proceedings entered by the Commissioner. In doing so she stated at para. 29:

> The Crown's failure to ensure that the accused who was under its direct control was present at his trial constitutes, in the circumstances here, an apparent breach of the accused's s. 7 rights under the Charter. The Commissioner was entitled, on his own motion, to raise that breach of a constitutional right, especially in circumstances where the breach involves the breach of a court order.

[51] In light of the forgoing authorities, this Court cannot conclude that the trial judge erred by raising on his own motion an application for **Charter** relief.

[52] The final issue to be determined is whether the trial judge erred by finding a breach of s.7 of the **Charter** and entering a judicial stay of proceedings.

[53] Decisions made by a trial judge in granting or refusing an adjournment request and staying a proceeding are discretionary and attract a high level of deference on appellate review. In **Canada (Minister of Immigration and Citizenship) v. Tobiass**, [1997] 3 S.C.R. 391 the Court stated at para.87:

> A stay of proceedings is a discretionary remedy. Accordingly, an appellate court may not lightly interfere with a trial judge's decision to grant or not to grant a stay...

[54] The Nova Scotia Court of Appeal in **R. v. Spinney**, 2010 NSCA 4 at para.19 held that such discretionary decisions of a trial judge "could only be set aside if the trial judge did not exercise his discretion judicially."

[55] For the following two reasons I am of the view that the trial judge did not exercise his discretion judicially. Firstly, the trial judge incorrectly concluded that the distinction between the present case and the **MacDonald** and **Fuhrer** cases were "distinctions without a difference" (para.14). Secondly, the trial judge failed to adequately consider the jurisprudence for the granting of a stay of proceedings under s.24(1) of the **Charter**.

[56] In **R. v. MacDonald** (supra) the judge refused to grant an adjournment and dismissed the charges for want of prosecution. There is no question that the judge in the **MacDonald** case considered the **Charter** in determining whether to grant an adjournment. However, he did not stay the proceedings, but rather dismissed the charges for want of prosecution. It follows that the **MacDonald** case does not stand for the proposition that a stay of proceedings is an appropriate remedy (let alone an automatic remedy) where the Crown fails to have an incarcerated accused transported to court for his or her trial.

[57] The **Fuhrer** case (supra) is distinguishable because in that case "the Crown witnesses were present and the Crown was ready to proceed to trial". (**Fuhrer** at para.12). As well, the Crown in **Fuhrer** was insistent on proceeding to trial despite its failure to procure the accused's attendance. In the **Fuhrer** case the Crown refused to provide an explanation for its failure to discharge its obligation of procuring the attendance of an accused whom it knew was incarcerated.

[58] The Alberta Court of Queen's Bench sitting as a Summary Conviction Appeal Court upheld a stay of proceedings in **Fuhrer**. Veit J. stated at para.28:

> ...Although it is not necessary for the purposes of this appeal to hold that the Crown is one and indivisible and that the actions of the prosecutors, the police, the sheriffs, and all other state employees having responsibilities in the criminal justice system are therefore all treated alike, it is fair to state that, in the situation here, it was incumbent on the prosecutor to explain Mr. Fuhrer's absence. That obligation is based on the order that was issued to the State to deliver Mr. Fuhrer to the court. The court would, presumably, have given the Crown an adjournment either to procure Mr. Fuhrer's attendance or to produce an explanation for the failure to have produced Mr. Fuhrer. However, the prosecutor who was in attendance at trial, who is not the prosecutor representing the Crown on this appeal, resolutely declined to do anything but to press on with the trial in Mr. Fuhrer's absence.
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> ...
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> ...In the absence of the tendering of any such proof, and, indeed in the absence the Crown's willingness to adopt any such responsibility, the Commissioner was entitled to grant a stay for abuse of process.

[59] In the present case the Crown was not attempting to proceed with the trial in the absence of the accused. In fact, the Crown would have been unable to proceed to trial on the date set because, as was learned at the hearing of this appeal, it had called off its witnesses before even making application for an adjournment and before knowing whether or not the adjournment would be granted.

[60] The law with respect to the granting of a stay of proceedings is clear. A stay of proceedings is to be granted only as a last resort and only in the clearest of cases: **R. v. O'Connor**, [1995] 4 S.C.R. 411; **R. v. Tobiass** (supra); **R. v. Regan**, [2002] 1 S.C.R. 297.

[61] In the present case the trial judge simply stated that "this constitutes one of those clearest of cases where the appropriate remedy is...a judicial stay of proceedings of all of Mr. Reddick's matters before the Court today." (para.26) Simply stating that this is one of those clearest of cases is insufficient. There must be an explanation of why a lesser remedy is not appropriate: **R. v. Boutin** (1998), 170 Sask.R. 245 (SaskQ.B.).

[62] In **R. v. O'Connor** (supra) at para.68 Justice L'Heureux-Dubé stated:

> ... It is important to remember, however, that even if a violation of s. 7 is proved on a balance of probabilities, the court must still determine what remedy is just and appropriate under s. 24(1). The power granted in s. 24(1) is in terms discretionary, and it is by no means automatic that a stay of proceedings should be granted for a violation of s. 7. On the contrary, I would think that the remedy of a judicial stay of proceedings would be appropriate under s. 24(1) only in the clearest of cases...

[63] Justice L'Heureux-Dubé also commented on what constitutes the "clearest of cases". At para.82 of **O'Connor** (supra) she stated:

> ...where the prejudice to the accused's right to make full answer and defence cannot be remedied or where irreparable prejudice would be caused to the integrity of the judicial system if the prosecution were continued.

[64] In the case at bar the trial judge failed to provide any explanation as to why a lesser remedy was not appropriate or what irreparable prejudice would be caused to the judicial system. It is inconsistent with the established jurisprudence to refuse an adjournment and then automatically enter a stay of proceedings without an analysis of the various factors present and their impact on prejudice and on the justice system. As such, the trial judge committed a reviewable error. Accordingly, the Crown's appeal is allowed.

DISPOSITION

[65] The Notice of Appeal filed in these proceedings was silent as to whether the appeal was brought under s.813 or 830 of the **Criminal Code**. At the hearing of this appeal, the Crown in response to a question from the Court, indicated that s.830 was the governing section.

[66] Section 830(1) reads as follows:

> A party to proceedings to which this Part applies or the Attorney General may appeal against a conviction, judgment, verdict of acquittal or verdict of not criminally responsible on account of mental disorder or of unfit to stand trial or other final order or determination of a summary conviction court on the ground that

> (a) it is erroneous in point of law;
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> (b) it is in excess of jurisdiction; or
>
> (c) it constitutes a refusal or failure to exercise jurisdiction.

[67] The powers of a Court of Appeal acting under s.830 of the **Criminal Code** are set out in s.834(1) which reads as follows:

> When a notice of appeal is filed pursuant to section 830, the appeal court shall hear and determine the grounds of appeal and may
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> (a) affirm, reverse or modify the conviction, judgment, verdict or other final order or determination, or
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> (b) remit the matter to the summary conviction court with the opinion of the appeal court,
>
> and may make any other order in relation to the matter or with respect to costs that it considers proper.

[68] A stay of proceedings is a final order. It brings to an end the proceedings against the accused. Having allowed the appeal, the final order is reversed.

[69] The Summary Conviction Appeal Court under s.834(1)(a) may make any other order in relation to the matter that it considers proper.

[70] Considering that the Crown was aware as of June 21st, 2010 that the accused was on remand and knew on August 24th that he had been sentenced to a federal term of incarceration; that it knew of the unavailability of a Provincial Court Judge in New Glasgow on August 25th, 26th, 27th, September 1st, 2nd, and 3rd; that it knew a Supreme Court Judge was present in Pictou and that the Provincial Court was sitting in nearby Truro and Antigonish; that the affidavit in support of the application for an order under s.527 of the **Criminal Code** was not sworn until September 2nd; that no attempt was made to obtain a s.527 order from other judicial centres prior to September 2nd; that the order signed on September 6th was not delivered to the Sheriff's office until late September 7th; that the Crown knew that "bus runs" to the penitentiaries were Tuesdays and Fridays; that it released its witnesses for the trial scheduled for September 10th before making application for

an adjournment; that the trial judge, in the proper exercise of his discretion, denied the adjournment request; that the Crown would have been unable to proceed if asked to do so on the date set for trial and that the proper course would have been to dismiss the charges, the order of this Court is that the charges against the accused be dismissed for want of prosecution.

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Cacchione, J.