

CANADA / JUDGMENT

Atkinson v. R.

[1978] 1 SCR 1018**COURT**

Supreme Court of Canada

DECIDED

29 November 1977

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Atkinson v. R. Collection Supreme Court Judgments Date 1977-11-29 Report

[1978] 1 SCR 1018 Judges Laskin, Bora; Martland, Ronald; Ritchie, Roland Almon; Spence, Wishart Flett; Pigeon, Louis-Philippe; Dickson, Robert George Brian; Beetz, Jean; Estey, Willard Zebedee; Pratte, Yves On appeal from Manitoba Subjects Criminal law Decision Content Supreme Court of Canada Atkinson v. R., [1978] 1 S.C.R. 1018 Date: 1977-11-29 Joseph John Atkinson Appellant; and Her Majesty The Queen Respondent. 1977: November 29. Present: Laskin C.J. and Martland, Ritchie, Spence, Pigeon, Dickson, Beetz, Estey and Pratte JJ. ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA Criminal law—Trial—Procedure—Charge of trafficking in narcotics—Accused electing trial by judge alone—Matter proceeding before Magistrate as preliminary inquiry—Objection by accused to admission of certificate of analysis on ground no notice given—Objection overruled—Notice not required since preliminary inquiry not a trial—Application to re-elect trial before Magistrate granted—Accused acquitted—Crowns appeal allowed by Court of Appeal—Judgment of Court of Appeal and acquittal by Magistrate set aside by Supreme Court—No legal trial since no plea taken after re-election permitted by Magistrate. APPEAL from a judgment of the Court of Appeal for Manitoba^[1], allowing an appeal by the Crown from the accused's acquittal on a charge of trafficking in narcotics contrary to s. 4(1) of the Narcotic Control Act, R.S.C. 1970, c. N-1. Judgment of the Court of Appeal and acquittal by the Magistrate set aside, Laskin C.J. and Pigeon, Beetz and Pratte JJ. dissenting: R.G. Carbert and M. Werier, for the appellant. S. Froomkin, Q.C., and B.A. MacFarlane, for the respondent. The judgment of the Court was delivered orally by THE CHIEF JUSTICE—This Court, the Chief Justice, Pigeon, Beetz and Pratte JJ. dissenting, is of the opinion that since no plea was taken after the re-election permitted by the Magistrate, there was no legal trial and hence the judgment of the [Page 1019] Manitoba Court of Appeal and the acquittal by the Magistrate are set aside. Judgment accordingly. Solicitors for the appellant: Norton, Schwartz, Weinberg, Winnipeg. Solicitor for the respondent: S.M. Froomkin, Ottawa.

[1] (1976), 32 C.C.C. (2d) 361, 36 C.R.N.S. 255.

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