

CANADA / JUDGMENT

R. v. Adams

2024 BCCA 115

COURT

British Columbia Court of Appeal

DECIDED

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2024 BCCA 115 R. v. Adams COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Adams, 2024 BCCA 115 Date: 20240328 Docket: CA48305 Between: Rex Respondent And Neil Vernon Adams Appellant Before: The Honourable Madam Justice DeWitt-Van Oosten (In Chambers) On appeal from: An order of the Supreme Court of British Columbia, dated April 27, 2022 (summary conviction appeal) (R. v. Adams, 2022 BCSC 2438, Vancouver Dockets 30647-1 and 30647-3). The Appellant, appearing in person: N.V. Adams Counsel for the Respondent: M. Shah Place and Date of Hearing: Vancouver, British Columbia March 20, 2024 Place and Date of Judgment: Vancouver, British Columbia March 28, 2024 Summary: This is a Crown application to dismiss an application for leave to appeal a summary conviction matter. HELD: The application is granted and the application for leave to appeal is dismissed for want of prosecution. The matter has been outstanding for almost two years. The appellant has not taken the steps required of him to advance his application for leave to appeal and he has another avenue of potential relief. Reasons for Judgment of the Honourable Madam Justice DeWitt-Van Oosten:

- [1] The Crown applies to dismiss an application for leave to appeal under s. 839(1) of the Criminal Code, R.S.C., 1985, c. C-46, for want of prosecution.
- [2] In July 2020, the appellant, Neil Vernon Adams, was found guilty of uttering threats to cause death or bodily harm. The finding was made following a trial in the Provincial Court. Mr. Adams was sentenced to incarceration, plus probation.
- [3] He appealed the conviction to the British Columbia Supreme Court in August 2020. That appeal was dismissed in April 2022 for want of prosecution because among other things, Mr. Adams did not attend court for purposes of the hearing. He had been directed to attend in person.
- [4] Mr. Adams seeks to appeal the latter decision in this Court, taking the position that the dismissal was in error. He filed a notice of application for leave to appeal in May 2022. In the notice, he states he did attempt to appear in person for his summary conviction appeal, but arrived after the appeal had already been dismissed.

- [5] This Court has a practice directive in place specific to applications for leave to appeal a summary conviction matter (dated September 6, 2013). The practice directive stipulates that within 30 days of filing an application for leave to appeal, the appellant must file three copies of: (a) the reasons for judgment (or reasons for sentence if the sentence is appealed) from the original trial judge; (b) the reasons for judgment of the summary conviction appeal judge; (c) the order of the summary conviction appeal judge; and (d) a short outline of argument setting out the question of law proposed to be argued on appeal.
- [6] Mr. Adams has not complied with all requirements under this directive.
- [7] Since the filing of the application for leave to appeal, there has been case management. For two case management conferences, Mr. Adams did not appear.
- [8] In June 2023, a justice made a limited appointment for counsel under s. 684(1) of the Criminal Code to: (a) assess the merits of the proposed application for leave to appeal; (b) if there was sufficient merit, to prepare and argue a full s. 684(1) application; and (c) to consider and provide advice regarding alternative courses of action, including an application to re-open the summary conviction appeal in the Supreme Court. The lawyer who conducted the assessment concluded that the application for leave to appeal lacks merit, in part because Mr. Adams can apply to re-open in the Supreme Court.
- [9] Consequently, the s. 684(1) appointment has run its course and that lawyer is no longer involved.
- [10] At a case management conference held in January 2024, Mr. Adams advised the Court that he wanted to seek a re-opening in the Supreme Court. The Crown's application to dismiss was adjourned for two months to allow him the opportunity to do so.
- [11] On March 20, 2024, Mr. Adams appeared again for case management and advised the Court that on the day prior, he had filed an application to re-open in the Supreme Court. The Crown agrees that because the summary conviction appeal was not dismissed on the merits, this avenue is open to Mr. Adams. He is now scheduled to appear in the Supreme Court on April 9, 2024 for the purpose of fixing a date for a hearing in front of a judge. Whether a judge ultimately agrees to re-open the summary conviction appeal is a matter of discretion. Nothing in these reasons is intended to express an opinion on whether it would be appropriate to do so.
- [12] Given the history of the file before this Court, including Mr. Adams' non-compliance with the practice directive and the fact that he is now back before the Supreme Court, I have concluded it is not in the interests of justice to allow the application for leave to appeal to continue.
- [13] The application has been outstanding for almost two years. Mr. Adams did not take the steps required of him to move the matter forward in a timely way. In any event, he has another avenue for potential relief. I am not prepared to have the application for leave to appeal held in abeyance while waiting for that process to unfold. The Crown accepts that should Mr.

Adams not succeed in having the summary conviction appeal re-opened, he may be able to seek leave to appeal that determination to this Court. He would need to commence a new appeal to do so.

[14] In the circumstances, I grant the Crown's application.

Disposition

[15] Mr. Adams' application for leave to appeal under s. 839(1) of the Criminal Code in file CA48305 is dismissed for want of prosecution. "The Honourable Madam Justice DeWitt-Van Oosten"

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