

CANADA / JUDGMENT

R. v. Brown

2023 BCSC 610

COURT

Supreme Court of British Columbia

DECIDED

24 February 2023

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2023 BCSC 610 R. v. Brown IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Brown, 2023 BCSC 610 Date: 20230224 Docket: 183236-5 Registry: Victoria Rex v. Robin Andrew Brown Before: The Honourable Madam Justice V. Jackson Oral Reasons for Judgment In Chambers Counsel for the Crown: T.A. Mason Appearing on his own behalf: R.A. Brown Place and Date of Hearing: Victoria, B.C. February 24, 2023 Place and Date of Judgment: Victoria, B.C. February 24, 2023

- [1] THE COURT: These are my oral reasons for judgment with respect to Mr. Brown's application. If a transcript is ordered, I may make changes for style or grammar, but the substance of my reasons will not change.
- [2] Before me for determination is Mr. Brown's notice of application seeking an order that the Attorney General of British Columbia pay for the transcript required for him to pursue his summary conviction appeal. In his notice of application, he sets out that he relies upon "the following evidence" in support of his application, and proceeds to list that evidence, however no evidence was filed. The Attorney General of British Columbia filed some evidence regarding the proceeding. I understand Mr. Brown has previously made two applications for appointment of counsel under s. 684 of the Criminal Code, both of which were dismissed. I am also aware Mr. Brown has made one previous application to have the Attorney General of British Columbia pay for his transcripts. That application was also dismissed.
- [3] As a starting principle, there is no specific statutory authority for the order Mr. Brown seeks. As the basis for the order he seeks, Mr. Brown relies on various provisions of the Constitution as well as the Human Rights Code at large.
- [4] It is a foundational constitutional principle that public funds cannot be expended unless the expenditure is authorized by the Legislature: J.E.S.D. v. Y.E.P., 2018 BCCA 286 at para. 75. There is an exception where it is established, on evidence, that an expenditure of public funds is required where it is the only practical solution to avoid a violation of a person's constitutional rights: J.E.S.D. at para. 80.

- [5] In this case, Mr. Brown relies on ss. 7 and 15 of the Canadian Charter of Rights and Freedoms as well as s. 96 of the Constitution Act, 1867, and the Human Rights Code. With respect to the material he has filed, however, there is no evidence which allows me to find that any of his rights under the Charter have been violated or that s. 96 requires the order which he seeks. Likewise, I am not satisfied that there is any basis for this Court to grant the order under the Human Rights Code based on the complete lack of evidence supporting the application.
- [6] I note that several times counsel for the Attorney General advised Mr. Brown what was required for him for to pursue the relief that he sought. Despite that, there was very little provided in terms of a Notice of Constitutional Question. Mr. Brown's written submissions, which he handed up today at the hearing and which had been provided to counsel for the Attorney General earlier, do not provide much in the way of assistance in determining what right of Mr. Brown's is in peril.
- [7] Mr. Brown was convicted of two counts of common assault by Provincial Court Judge Gouge on August 18, 2021 and sentenced in November 2021 to 18 months' probation as a conditional discharge. The Legal Aid Appeal Section was of the opinion that there was no reasonable prospect of success with respect to Mr. Brown's appeal and did not approve legal aid for that purpose. Mr. Brown pursued a review of the decision denying him Legal Aid, but the reviewer was of the same opinion. Legal Aid's view is not determinative with respect to the merits of Mr. Brown's appeal, but it is a relevant consideration. I note from a review of Judge Gouge's reasons for judgment, that the case turned on the reliability and credibility of the witnesses and that Judge Gouge found that the version of events provided by the other witnesses, not Mr. Brown, was to be accepted. Credibility and reliability determinations are entitled to deference and difficult to successfully appeal.
- [8] In the circumstances of this case, there is no statutory basis for the order that has been sought. I am not satisfied the order sought is necessary to avoid the violation of Mr. Brown's constitutional rights and therefore there is no constitutional basis for the order being sought. The application is dismissed. "Jackson J."

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