

CANADA / JUDGMENT

R. v. Burke

2017 BCCA 5

COURT

British Columbia Court of Appeal

DECIDED

5 January 2017

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2017 BCCA 5 R. v. Burke COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Burke, 2017 BCCA 5 Date: 20170105 Docket: CA42263 Between: Regina Respondent And Jody Matthew Burke Appellant Before: The Honourable Madam Justice Newbury The Honourable Madam Justice Kirkpatrick The Honourable Mr. Justice Savage On appeal from: orders of the Supreme Court of British Columbia, dated April 4, 2014 (conviction) and October 8, 2014 (sentence) (R. v. Burke, 2014 BCSC 2082, New Westminster Docket 76626) Oral Reasons for Judgment Counsel appearing In Person with Probation Officer via teleconference: J. Burke Counsel for the Respondent: M. Street Place and Date of Hearing: Vancouver, British Columbia January 5, 2017 Place and Date of Judgment: Vancouver, British Columbia January 5, 2017 Summary: Crown application for dismissal of appeal for want of prosecution to Rule 13(3) granted.

- [1] KIRKPATRICK J.A.: This is the third Rule 13(3) application for an order that Mr. Burke's conviction appeal be dismissed for want of prosecution.
- [2] At the first application on May 7, 2016, the Court noted that Mr. Burke had been given generous opportunities to perfect his appeal. The problem throughout has been lack of money so that he can obtain transcripts and move the appeal along. At the May hearing Mr. Burke was given one last opportunity which would permit him to sell a valuable vehicle and use the proceeds to move the case along.
- [3] On October 21, 2016, the Rule 13(3) application was again adjourned to facilitate Mr. Burke's efforts to sell the vehicle.
- [4] Today, 33 months after his conviction and 23 months after his first case management conference following the filing of his notice of appeal on October 17, 2014, the appeal has not advanced.
- [5] Today Mr. Burke acknowledges that there is no reasonable prospect that he will be able to prosecute his appeal. I would grant the Crown's application and dismiss the appeal for want of prosecution.
- [6] NEWBURY J.A.: I agree.
- [7] SAVAGE J.A.: I agree.

[8] NEWBURY J.A.: The Crown's application is allowed. "The Honourable Madam Justice Kirkpatrick"

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