

CANADA / JUDGMENT

R. v. Creative Transportation Solutions Ltd.

2020 BCSC 965

COURT

Supreme Court of British Columbia

DECIDED

1 June 2020

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2020 BCSC 965 R. v. Creative Transportation Solutions Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Creative Transportation Solutions Ltd.,

2020 BCSC 965

Date: 20200601

Docket: 30603

Registry: Vancouver

Regina

v.

Creative Transportation Solutions Ltd.

Before: The Honourable Justice Edelmann

On application for extension of time to file an appeal from conviction of the Provincial Court of British Columbia, Vancouver Registry ST03786194

Oral Reasons for Judgment

Crown Counsel (Respondent), appearing via teleconference:

J. Horneland

Representative for Creative Transportation Solutions Ltd. (Applicant), appearing via teleconference:

M. Stuart

Place and Dates of Hearing:

Vancouver, B.C.

May 26 and June 1, 2020

Place and Date of Judgment:

Vancouver, B.C.

June 1, 2020

- [1] THE COURT: I am going to provide oral reasons. These may be edited if a transcript or a written version is requested.
- [2] The Applicant, Creative Transportation Solutions Ltd., represented before the court by Michael Stuart, seeks an extension of time to appeal its conviction for an offence under the Motor Vehicle Act, R.S.B.C. 1996, c. 318.
- [3] The Applicant was mailed a violation ticket dated November 1, 2019, for disobeying a red light at an intersection, contrary to s. 129(1) of the Motor Vehicle Act. The prescribed fine was \$167.
- [4] On December 12, 2019, a payment of \$142 was made by the applicant and was processed by Insurance Corporation of British Columbia. As a result of the fine payment, pursuant to s. 14(11) of the Offence Act, R.S.B.C. 1996, c. 338, the applicant was deemed convicted of the offence.
- [5] On March 17, 2020, the applicant filed this notice of application for extension of time to appeal. The test to be applied in granting extension of time to appeal was summarized in *R. v. Roberge*, 2005 SCC 48 at para. 6:
- [6] The power to extend time under special circumstances in s. 59(1) of the Act is a discretionary one. Although the Court has traditionally adopted a generous approach in granting extensions of time, a number of factors guide it in the exercise of its discretion, including:
1. Whether the applicant formed a bona fide intention to seek leave to appeal and communicated that intention to the opposing party within the prescribed time;
 2. Whether counsel moved diligently;
 3. Whether a proper explanation for the delay has been offered;
 4. The extent of the delay;
 5. Whether granting or denying the extension of time will unduly prejudice one or the other of the parties; and
 6. The merits of the application for leave to appeal.

The ultimate question is always whether, in all the circumstances and considering the factors referred to above, the justice of the case requires that an extension of time be granted.

- [6] The applicant has not filed any evidence or materials related to the reasons for the delay or other factors set out in Roberge, although he did make oral submissions providing some explanation with respect to his attempts to file an appeal in the Provincial Court. I do not intend to address those submissions both because it is my view that this case can be decided on the legal merits and it is possible the questions of delay will be before another decision maker.
- [7] The relevant process for striking a deemed conviction is set out in s. 16(3)(b) of the Offence Act which provides that where a person, who is deemed to have pleaded guilty to an alleged contravention in the circumstances of the applicant, wishes to later dispute an allegation, the person must apply by affidavit in a prescribed form to a Provincial Court justice.
- [8] Mr. Justice Rogers addressed a similar issue in the context of *R. v. Lindsay*, 2009 BCSC 482 and at para. 4 said:
- [4] The difficulty with Mr. Lindsay's appeal is that it is premature. That is because Mr. Lindsay has not yet exhausted the remedies available to him in the Provincial Court system. More specifically, Mr. Lindsay has not availed himself of the relevant provisions of the Offence Act.
- [9] He went on to set out s. 16 and then concluded at paras. 5 and 6:
- [5] I note that s. 16(2) employs mandatory language. The subsection stipulates that in order to dispute deemed convictions such as those in issue here, a person "must" apply to a justice for relief.
- [6] Given the narrow and precise focus of s. 16(2), and given that the grounds Mr. Lindsay cites on this appeal are precisely the grounds that section stipulates as relevant, and given the Provincial Court's greater degree of familiarity with problems of this nature, it is clear to me that Mr. Lindsay must first make application under that section before coming to this court on an appeal.
- [10] Although in the present case, the applicant appears to fall within the ambit of s. 16(3) of the Offence Act rather than 16(2), little turns on the distinction as the reasoning in *Lindsay* clearly applies with equal force to the wording of s. 16(3). The appeal is at the very least premature.
- [11] The Crown argues in addition to being premature, this appeal would also be statute barred by operation of s. 16(6), relying on *R. v. Rudowski*, 2013 BCSC 471 at para. 14:

[14] In the circumstances, Mr. Rudowski would have no appeal by virtue of subsection 16(6) which provides that there is no appeal by a person to whom subsection 16(2) or 16(3) applies. In other words, the statutory provisions provide that a person has a limited right to dispute a deemed conviction for non-appearance, but that right is limited to a review by a justice of whether the circumstances under s. 16(2.1) are made out.

[12] I agree that on the face of materials before me that s. 16(6) of the Offence Act is applicable in the circumstances and the appeal would, therefore, be barred by operation of statute.

[13] Given my finding with respect to the merits of the appeal, I do not find it to be in the interests of justice to allow the extension of time to appeal. As stated by Mr. Justice Frankel in *R. v. Gendreau*, 2016 BCCA 141 at para. 34, "it is not in the interests of justice to allow a matter devoid of merit to move forward towards a hearing before a division of this Court".

[14] The application is dismissed.

"Edelmann J."

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