

CANADA / JUDGMENT

R. v. Delill

2006 BCSC 910

COURT

Supreme Court of British Columbia

DECIDED

8 May 2006

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2006 BCSC 910 R. v. Delill IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Delill, 2006 BCSC 910 Date: 20060508 Docket: 24900-1 Registry: Prince Rupert Between: Regina Respondent And: Ralph William Delill Applicant Before: The Honourable Mr. Justice Halfyard Oral Reasons for Judgment May 8, 2006 Counsel for Respondent : T. Mason Appearing on his own behalf: R. Delill Place of Hearing: Prince Rupert, B.C.

- [1] THE COURT: Ralph William Delill is applying for an order that counsel be appointed to represent him in the prosecution of the charge against him, and that the government should fund his legal bill.
- [2] On October 31st, 2005, an Information was sworn out, charging him with having touched, sexual touching is the short form of the offence, under s. 151 of the Criminal Code. The offence is alleged to have been committed on July 19, 2005, at or near Port Edward, which is near Prince Rupert. No trial date has yet been set.
- [3] Mr. Delill applied for legal aid counsel and was refused. He appealed that decision, and his appeal was refused as well. The legal aid policy guideline cut-off figure was \$1,349 per month, and Mr. Delill's monthly income was assessed at about \$1900 per month, and that was the reason why the Legal Services Society turned him down.
- [4] I am persuaded that Mr. Delill cannot afford to pay a lawyer on a private fee basis. He has filed a considerable amount of material, and a further additional amount at the request of counsel for the Attorney General, which set out, in my opinion, very modest expenses. He did have considerable debt at the time these charges were laid, and so while I think Ms. Mason is right, that priority should be given to putting aside money for counsel, I do not think that choice was realistically open to Mr. Delill in this case. It may be that he could afford to pay part of the fees of a lawyer, but not the regular fees.
- [5] The onus of proof, of course, is on the applicant here to prove that he cannot afford to pay a lawyer, and secondly, that the case has sufficient complexity that he could not get a fair trial without counsel.
- [6] So the first essential element I find to be established on the balance of probabilities.

- [7] The second essential element is the complexity element. I think that has to be looked at in relation to the ability of the applicant to handle the case that is facing him. In this case, Ms. Mason has kindly notified the court that the Crown wants counsel appointed for Mr. Delill in order to cross-examine the complainant at the trial, that is, the Crown does not want Mr. Delill cross-examining the complainant in person. To my mind, that is a significant feature of the case.
- [8] Mr. Delill, as well, is 64 years of age. He is retired, after having worked at the pulp mill for many years here at Port Edward. It shut down in 2000 or 2001, and he has not obtained work since then, so his income is by way of pensions.
- [9] As sexual cases go, this may not be a complex case, but credibility appears to be the issue, and expert evidence is not expected. The trial will likely take about one day, and no trial date has yet been set. But again, as I have mentioned, the complexity must be looked at in the light of the applicant's ability to handle the case. Mr. Delill has a grade eight education, I think, and says he cannot read or write very well.
- [10] When I put that together with the request that the Crown is going to make, that counsel be appointed for him to cross-examine the complainant, I find that the second essential element of this application has been established on the balance of probabilities.
- [11] What I have in mind is that Mr. Delill should be able to contribute the sum of \$500 towards the fees of counsel, and that the Attorney General, or whatever government agency via the Attorney General, should pay the legal aid fees of counsel, subject to what I have just said.
- [12] The evidence shows that Mr. Delill has talked to several lawyers, one of whom has agreed to take the case if he can gain eligibility for legal aid funding.
- [13] Ms. Mason for the Attorney General has pointed out that there should not be an order requiring the Attorney General to pay the fees of counsel and, without considering that in detail, it makes sense to me.
- [14] What I am going to do is to order that there be a conditional stay of proceedings for 14 days to permit the Attorney General to determine whether or not to fund counsel for the applicant at the legal aid tariff. If the Attorney General does not agree to do that, then I should ask Ms. Mason what is the usual procedure after that, if it happens?
- [15] MS. MASON: I would submit that if the Attorney General declines to fund, that the conditional stay would become a permanent one.
- [16] THE COURT: All right. Thank you, then, that is all. "D.A. Halfyard, J." The Honourable Mr. Justice D.A. Halfyard

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