

CANADA / JUDGMENT

R. v. H.C.T.T.

2020 BCCA 151

COURT

British Columbia Court of Appeal

DECIDED

13 May 2020

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2020 BCCA 151 R. v. H.C.T.T. COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. H.C.T.T., 2020 BCCA 151 Date: 20200513 Docket: CA45886 Between: Regina Respondent And H.C.T.T. Appellant Restriction on publication: A publication ban has been imposed in this case pursuant to s. 486.4(1) of the Criminal Code prohibiting the publication of any information that could identify the complainant. This publication ban applies indefinitely, unless otherwise ordered. Pursuant to s. 16(4) of the Sex Offender Information and Registration Act, no person shall disclose any information that is collected pursuant to an order under SOIRA or the fact that information relating to a person is collected under SOIRA. Before: The Honourable Madam Justice Newbury The Honourable Madam Justice Stromberg-Stein The Honourable Madam Justice Fenlon On appeal from: An order of the Supreme Court of British Columbia, dated June 14, 2018 (R. v. H.C.T.T., 2018 BCSC 1218, New Westminster Docket X080224). Oral Reasons for Judgment The Appellant, appearing via teleconference: H.C.T.T. Counsel for the Respondent appearing via teleconference: M.G. Scott Place and Date of Hearing: Vancouver, British Columbia May 13, 2020 Place and Date of Judgment: Vancouver, British Columbia May 13, 2020 Summary: The Crown applies under Rule 13(1) of the British Columbia Court of Appeal Criminal Appeal Rules, 1986, for an order dismissing the appellant's appeal against conviction for want of prosecution. Held: Application allowed and appeal dismissed. This conviction appeal has been outstanding for more than a year. The appellant has been given every opportunity to advance the appeal on the merits, but has failed to do so. Despite close case-management and repeated and generous extensions of time, based on the appellant's assurances he was expecting to receive funds from family in order to proceed, the appellant has not ordered the transcripts and appeal books necessary to prosecute the appeal, nor has he provided the Court with evidence that the funds have been received. In addition, the appellant's grounds of appeal are weak, and there is an absence of any demonstrated merit in the appeal. It is in the interest of finality of litigation to bring this appeal to an end.

- [1] FENLON J.A.: The Crown applies under Rule 13(1) of the British Columbia Court of Appeal Criminal Appeal Rules, 1986, B.C. Reg. 145/86, for an order dismissing the appellant's appeal against conviction for want of prosecution.

- [2] The appellant was convicted on June 14, 2018, of sexual offences committed against his biological daughter from the time she was 11 until she disclosed the abuse at age 15. He was sentenced to seven and a half years in prison.
- [3] The appellant filed a notice of appeal from conviction and sentence on February 7, 2019. The appeal has been closely case-managed by Mr. Justice Frankel since May 1, 2019, but, despite that oversight and repeated and generous extensions of time -- based on the appellant's assurances that he was expecting funds and would be in a position to proceed -- the appellant has not ordered the transcripts and appeal books necessary to prosecute the appeal.
- [4] The Crown first applied to a three-justice division to dismiss the appellant's appeal for want of prosecution on February 21, 2020. At that hearing, the appellant informed the Court that he had contacted family in Asia and was waiting for funds to arrive from them -- funds that had been delayed due to the restrictions in place around the COVID-19 outbreak. The division adjourned the application to April 21 to give the appellant "one last chance" to order the transcript and appeal books.
- [5] At a further case-management conference on March 11, the appellant advised that the money would be arriving before April 21, and that the materials would be ordered immediately thereafter. That did not happen.
- [6] The Crown's application to dismiss was not heard on April 21, due to this Court's initial response to the COVID-19 pandemic. The application was eventually reset for May 8, 2020. At that hearing, even with the additional two weeks, no further progress had been made, and we were advised that the transcription service had cancelled the appellant's order for lack of activity. But the appellant assured the Court that the full amount required to secure production of the transcript had been wired from his wife's family in Asia, and was now in her bank account in Canada. The appellant said that he needed only a few days to give his wife time to take a bank draft to the transcription service to pay for the transcripts in full. We accordingly adjourned the Crown's application until today, May 13, at which time the appellant was to provide evidence that the funds had been received and payment made.
- [7] At today's hearing, the appellant did not provide any evidence of either step. He said only that he had contacted the transcription service on May 8 to re-order the transcripts, and had told them to expect the money shortly. He said his wife had mailed a cheque, but was vague about the precise steps -- how and when the money had been sent to the transcription service. I note again that the appellant has not provided proof of receipt of the money or payment to the transcription service from either his wife or the bank.

- [8] This conviction appeal has been outstanding for more than a year. The appellant has been given every opportunity to advance the appeal on the merits, but has failed to do so. His assurance today, without any of the documentary proof he was requested to provide, falls well short of what would be expected in these circumstances, especially given the appellant's past assurances that he had the money when he did not.
- [9] It is also significant that, although the conviction and sentence are serious and significant, the appellant's grounds of appeal are weak. At trial, both his daughter and her mother testified, and the Crown led conclusive DNA evidence as part of its case. The appellant contends the judge erred in convicting him because there were inconsistencies in the evidence of the complainant and her mother which he submits "had to match perfectly". He submits the DNA evidence was planted by the complainant, although the judge found no evidence to support that theory. In denying the appellant's application for appointment of legal counsel in this Court, Mr. Justice Fitch noted an "absence of any demonstrated merit in the appeal". I would agree with that assessment.
- [10] I consider that the criteria for dismissal under Rule 13 are established. The appellant has been granted generous leeway, but has not been able to move the appeal forward. In these circumstances, it is in the interest of finality of litigation to bring this appeal to an end. I would accordingly allow the application and dismiss the appellant's conviction appeal.
- [11] NEWBURY J.A.: I agree.
- [12] STROMBERG-STEIN J.A.: I agree. "The Honourable Madam Justice Fenlon"

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