

CANADA / JUDGMENT

R. v. Robinson

2002 BCSC 1062

COURT

Supreme Court of British Columbia

DECIDED

17 July 2002

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2002BCSC1062

Citation: R. v. Robinson

Date: 20020717
2002 BCSC 1062

Docket: 69259
Registry: Kamloops
IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF
HER MAJESTY THE QUEEN
v.
KIMBERLY GENE ROBINSON

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE BLAIR

(IN CHAMBERS)

Counsel for the Crown

J. Oliphant

Kimberly Robinson appearing on his own behalf

Date and Place of Hearing/Trial:

July 2, 2002

Kamloops, BC

- [1] The appellant, Kimberley Gene Robinson, on May 24, 2001, was convicted on two counts of trafficking in bear gall bladders, contrary to s. 2.08(1) British Columbia Regulation 338/82, enacted pursuant to the Wildlife Act, RSBC, c. 488. His Honour Judge Gordon of the Provincial Court of B.C. found the offences occurred in Merritt on June 6 and June 28, 1998, and fined Mr. Robinson a total of \$3,400.
- [2] Mr. Robinson on May 1, 2002, applied for an extension of time to appeal, the time for bringing an appeal having long expired. Mr. Robinson appeared before me on June 10, 2002, advising that his delay in appealing his conviction and sentence resulted from medical problems and in arranging the funds to pay for the trial transcripts, but that he had got some money together and was getting ready to proceed.
- [3] I granted an extension for time to appeal conditional on Mr. Robinson filing with the Court by June 25, 2002, a letter from the transcript transcriber confirming that Mr. Robinson had ordered and arranged for payment of the account anticipated for preparation of the transcript.
- [4] On June 24, 2002, Mr. Robinson appeared before Mr. Justice Hunter of this Court seeking an order that he was indigent, apparently anticipating that if he achieved indigency status he would not then need to pay for the transcripts. Mr. Justice Hunter denied the indigency application on the grounds that Mr. Robinson did not qualify pursuant to Appendix C, Schedule 1, of the Rules of Court, but adjourned the matter over to July 2, 2002, to enable Mr. Robinson to apply for assistance under s. 684 of the Criminal Code, which provides in part:
684. (1) A court of appeal or a judge of that court may, at any time, assign counsel to act on behalf of an accused who is a party to an appeal or to proceedings preliminary or incidental to an appeal where, in the opinion of the court or judge, it appears desirable in the interests of justice that the accused have legal assistance and where it appears that the accused has not sufficient means to obtain that assistance.
- [5] I consider the issues to be whether Mr. Robinson qualifies under s. 684 of the Criminal Code and, although not requested, whether I should extend the time available for Mr. Robinson to meet the terms of my June 10, 2002, order which gave him until June 25, 2002, to file the letter confirming that he had arranged for preparation of the trial transcripts.
- [6] Mr. Robinson filed no affidavit material in support of this application, but did deliver a letter from the Merritt office of the Legal Services Society in which it denied his request for legal aid because his income exceeded the society's eligibility guidelines. Mr. Robinson anticipates that pursuant to s. 684 the court will direct the production of the trial transcripts, the approximate \$3,000 cost to be borne by the court which, in effect, means the British Columbia government.

[7] In *Re. Baig and the Queen* (1990), 58 C.C.C. (3d) 156 (B.C.C.A.) Mr. Justice Hinds, sitting in Chambers, stated the following regarding a s. 684 (1) application:

There are two requirements for the appointment of counsel under s. 684(1). First, that in the opinion of the court or judge it appears desirable in the interests of justice that the accused shall have legal assistance. Secondly, where it appears that the accused has not sufficient means to obtain legal assistance. Both requirements must be met before an order under s. 684(1) may be made.

[8] Mr. Justice Hinds held the relevant considerations in determining whether to grant an application under s. 684(1) are as follows: the accused's financial ability to retain counsel on his own behalf; whether legal aid would be granted; the level of education of the accused and his competency to defend himself; the complexity of the case; whether the case is one where the assistance of counsel is necessary in order to marshal the evidence; and whether the case is one which may result in a term of imprisonment.

[9] I reviewed Mr. Robinson's application under s. 684(1) in light of the foregoing considerations:

1. The accused has some limited financial means;
2. Legal aid has denied the accused assistance because his income exceeds the plan's eligibility guidelines;
3. Mr. Robinson presents as an articulate person who acted on his own behalf at the trial following which he was convicted on just two out of six charges under the Wildlife Act, a success which reflects positively on his competency to act for himself;
4. Neither the case nor the appeal appears to fall within the complex category;
5. Although counsel might be of assistance on Appeal, the evidence is already marshalled; and
6. The sentence imposed involved fines totalling \$3,400, but not imprisonment.

[10] In considering the above factors I have also referred to the decision in *British Columbia (Minister of Forests) v. Okanagan Indian Band* [2001] B.C.J. No. 2279 (Q.L.) (B.C.C.A.), in which at para. 28 Madam Justice Newbury stated in part:

...In some circumstances as well - e.g., where a person is charged with a serious criminal offence and his liberty is at risk - there is statutory recourse such as that provided by s. 684 of the Criminal Code. But I am not aware of any authority for the proposition that the principle of access to justice means more than a duty on the government to make courts of law and judges available to all persons...

[11] In this case the charges against Mr. Robinson are not of a serious criminal nature, nor is Mr. Robinson's liberty threatened, the two concerns expressed by Madam Justice Newbury.

[12] Mr. Robinson needs to show both that it is desirable in the interests of justice that he have legal assistance and that he has insufficient means to obtain such legal assistance. I conclude that he has failed to show that it is in the interests of justice that he be granted assistance under s. 684(1) and his application must be dismissed.

[13] Mr. Robinson in his submission argued, as I understood him, that he had a right to obtain a transcript paid for by the state and in response to that claim I refer to R. v. Robinson, [1989] A.J. No. 950, a decision of the Alberta Court of Appeal, in which Mr. Justice McClung stated at para. 67:

...the foundation of appellate review in Alberta is the printed transcript but unless there is entitlement to it by statute or the payment of the fee for its preparation, that transcript has never been given to a convicted appellant upon his demand. If legal aid (including that available under section 684) is declined, the appellant remains responsible for the cost. To urge otherwise, as a principle of fundamental justice, is not historically supportable.

[14] I concur with the foregoing statement.

[15] Although Mr. Robinson did not seek an extension of my June 10, 2002, order that he file a letter confirming that the trial transcript was being prepared, I note that he applied for indigency status and assistance under s. 684(1) prior to the June 25, 2002, deadline at which time Mr. Justice Hunter adjourned the s. 684(1) application to July 2, 2002.

[16] I conclude that given the circumstances the deadline of June 25, 2002, will be extended for a period of 10 days from the date in which this judgment is filed. Within that time period, Mr. Robinson must file a letter with the Court from the transcriber confirming that arrangements have been made to pay for trial transcripts and that the transcripts are being prepared. If Mr. Robinson fails to file this confirmation within the extended time period, his application for extension of time to appeal is dismissed.

"R.M.L. Blair, J."

The Honourable Mr. Justice R.M.L. Blair

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Prepared on 29 October 2026 · Esheria