

CANADA / JUDGMENT

R. v. Rose

2012 BCCA 298

COURT

British Columbia Court of Appeal

DECIDED

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2012 BCCA 298 R. v. Rose COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Rose, 2012 BCCA 298 Date: 20120628 Docket: CA039733 Between: Regina Respondent And Cameron James Rose Appellant Before: The Honourable Madam Justice Prowse (In Chambers) On appeal from the Provincial Court of British Columbia (R. v. Rose, Date of Conviction: March 23, 2011, Date of Sentencing: November 24, 2011, Prince George Registry, 5891-28454-1) Oral Reasons for Judgment Appearing on his own behalf via videoconference: C.J. Rose Counsel for the Respondent: W.S.J. Bell Place and Date of Hearing: Vancouver, British Columbia June 26, 2012 Place and Date of Judgment: Vancouver, British Columbia June 28, 2012

- [1] PROWSE J.A.: Mr. Rose attended before me on June 26, 2012 for a case management conference. He was convicted by a provincial court judge of aggravated assault on March 23, 2011, and was sentenced to 18 months' imprisonment, followed by 3 years' probation, on November 24, 2011.
- [2] Because of various delays, relating primarily to his application for legal aid funding for his appeals, Mr. Rose did not file his Notice of Appeal and Notice of Application for Leave to Appeal until February 27, 2012. His Notices were accompanied by an affidavit prepared by a lawyer at the Legal Services Society (the "LSS") setting out the reasons for the delay in filing, and requesting an extension of time for filing until February 27, 2012. The Crown did not oppose the application for an extension of time and I granted the extension during the course of the case management conference.
- [3] Mr. Rose is also applying for bail pending his appeals. During the course of the case management hearing, it became apparent that Mr. Rose had further information relevant to that application, and he agreed to provide that information to the Court and Crown counsel as soon as possible. At that time, he anticipated being able to do so by the end of the day and, on that basis, his application for bail was adjourned to today's date, Thursday June 28 at 11:30 a.m. I made a spring order for him to attend by videoconference for this application. I note that, in the meantime, Mr. Rose has provided further materials with respect to his bail application and I will deal with those in separate reasons relating to bail.

- [4] Mr. Rose is also applying for the appointment of counsel pursuant to s. 684 of the Criminal Code, R.S.C. 1985, c. C-46, (the "Code") with respect to both his conviction and sentence appeals. His application for funding for counsel was refused by the Legal Services Society by letter dated March 27, 2012.
- [5] Section 684(1) of the Code provides that counsel may be appointed by the court where it is desirable in the interests of justice that the applicant have legal assistance and where the applicant does not have sufficient means to obtain legal assistance.
- [6] There is no dispute that Mr. Rose meets the financial requirement for the appointment of counsel. The question is whether it is desirable in the interests of justice that counsel be appointed with respect to either, or both, of his appeals. Some of the factors which the Court has taken into account in that respect are: the points to be argued on appeal; the complexity of the case; any point of general importance in the appeal; the applicant's competency to present the appeal; the need for counsel to marshal facts, research law or make the argument; the nature and extent of the penalty imposed; and the merits of the appeal. (See, for example, *International Forest Products Ltd. v. Wolfe*, 2001 BCCA 632, in chambers.)
- [7] I will begin by addressing these factors in relation to the conviction appeal. The Crown's case against Mr. Rose at trial ultimately turned on the evidence of two Crown witnesses. The complainant, Mr. Lizotte, testified as to events which occurred on September 22, 2008, when he was loading Mr. Rose's truck with logs during the course of his employment. In brief, Mr. Lizotte said that, after a verbal exchange relating to this process, Mr. Rose picked up a rock and threw it at him. The rock hit him in the eye, causing a serious eye injury which resulted in several surgeries.
- [8] The second Crown witness, Mr. McKeown, who was also working on the site that day, testified that he heard Mr. Lizotte calling for assistance over the radio. He drove over to Mr. Lizotte's location where he saw Mr. Lizotte coming down from his loading truck with his hand over his face, which was covered with blood. Mr. McKeown said he saw Mr. Rose sitting in his truck nearby and asked him to get out of the truck, but that Mr. Rose would not do so. Mr. Rose left the scene. Mr. McKeown took Mr. Lizotte to the hospital where Mr. Lizotte received treatment for his injuries.
- [9] Mr. Rose represented himself at trial. He had had two prior lawyers who had withdrawn from the case at different points much earlier in the proceedings. Mr. Rose advised the trial judge that he was prepared to proceed and to represent himself, and the trial judge gave him basic instructions on how to do so. Mr. Rose cross-examined the Crown witnesses but, although invited to do so by the trial judge, he elected to call no evidence or testify on his own behalf.
- [10] Amongst other things, Mr. Rose's cross-examination appeared designed to show that Mr. Lizotte may have injured himself by slipping off the truck, or by debris hitting him other than by it being thrown by Mr. Rose, or otherwise. In his submissions at trial, Mr. Rose also argued that the Crown had not proven its case because it had not produced the rock as

evidence; that the injuries suffered by Mr. Lizotte, if any, were minor; that Mr. Lizotte may be involved in some kind of Workers' Compensation Board fraud in order to obtain compensation; that there were no witnesses aside from Mr. Lizotte that could prove the case; that the passage of time made Mr. Lizotte's evidence unreliable; that the Crown witnesses were not credible, and so on. The trial judge dealt with and gave reasons for rejecting these submissions. He found both Crown witnesses to be credible, and their evidence, reliable.

- [11] On this application, Mr. Rose has raised some of the same arguments he raised at trial, but has also added several more. He says, for example, that he was acting in self-defence and that he was the one who was initially assaulted by Mr. Lizotte. He alleges some kind of conspiracy between various individuals, including Mr. Lizotte, to fabricate a case against him. He says that the trial judge denied him counsel and refused an adjournment to enable him to obtain the assistance of counsel such that he felt pressured to proceed. He says that his Charter rights were breached because of the delay in bringing the matter to trial.
- [12] Mr. Rose referred to many matters which, in my view, have little, if anything, to do with the merits of the appeal, but appear to relate to grievances he has against the RCMP, his former wife, and others, whom he feels have wronged him. Many of his allegations are raised for the first time on this application. This includes proposed new evidence, which I need not itemize, which he submits would assist in showing that the trial judge erred in finding him guilty of aggravated assault. In my view, all of this proposed evidence would fail one or more of the tests for the admission of new evidence on appeal, not the least because of its lack of relevancy.
- [13] Mr. Rose also relies on the fact that he has only a grade 10 education and says that he does not have the legal training to enable him to properly conduct either the trial in the first instance, or an appeal.
- [14] I note that the Legal Services Society considered many possible grounds of appeal in rejecting Mr. Rose's application for funding. Those grounds are set out at para. 3 of their letter of March 27, 2012, as follows:
- a. Whether the Reasons for Judgment disclose any reversible errors of law;
 - b. Whether the verdict is unreasonable;
 - c. Whether the unrepresented accused was unreasonably denied the assistance of counsel at trial and sentencing;
 - d. Whether the trial judge gave the unrepresented accused reasonable assistance at trial;
 - e. Whether the unrepresented accused was denied the opportunity to make full answer and defence;

- f. Whether there is any viable basis for making a fresh evidence application regarding a proposed defence.
- [15] In declining to provide funding, the Legal Services Society considered the following materials:
- a. Transcripts of selected pre-trial appearances;
 - b. Trial transcripts (including closing submissions);
 - c. Reasons for Judgment;
 - d. Proceedings at Sentence;
 - e. Reasons for Sentence.
- [16] I have considered the grounds of appeal and the materials considered by the LSS, which include substantial portions of the transcript from the trial. I have also considered Mr. Rose's additional submissions on this application, together with those of the Crown. In my view, the interests of justice do not require the appointment of counsel for this appeal. There was nothing complex about the trial or the issues at trial. The evidence was limited and straightforward. Mr. Rose was given the option of presenting evidence, including his own evidence, and he chose not to do so. I see nothing in the transcript to support his proposed grounds of appeal to the effect that he was forced on to trial and refused the assistance of counsel. I can find no arguable ground of appeal. Accepting that Mr. Rose has only a grade 10 education, it is clear from the transcripts, and from his submissions before me, that he is an intelligent individual. Although he tends to wander into areas of irrelevancy, my perception is that he does so intentionally in some cases, in order to deflect attention from the merits, or lack thereof. In any event, he indicated an ability to get back to the point when requested to do so. It is apparent he has many grievances against the system and others which he views as wrapped up in these proceedings, but I am satisfied the Court will have no difficulty in honing in on the key issues to be resolved without the assistance of counsel. Most of the relevant transcripts are available to the Court, although they will have to be reproduced in appropriate numbers. As is clear from my remarks, there is no point of general importance raised by the appeal.
- [17] I am also satisfied that there is no compelling basis for appointing counsel to represent Mr. Rose with respect to his sentence appeal. As I understand his submission, Mr. Rose says, amongst other things, that the trial judge erred in imposing a sentence which was excessive, and in failing to impose a conditional sentence which Mr. Rose could serve in the community. He also suggests that the trial judge placed undue weight on the submissions of Crown counsel and on the authorities to which he was referred. To the extent the trial judge relied on Mr. Rose's rather substantial criminal record, Mr. Rose endeavoured to suggest that he was not guilty of many of those offences, or tendered explanations to downplay his culpability with respect to them. It is fair to say I made it clear that argument was misconceived, which it is.

- [18] While I would not go so far as to say there is no arguable ground of appeal with respect to the sentence appeal, I am satisfied that Mr. Rose is well able to argue his own appeal and that the interests of justice do not require that he have counsel in order to do so. As was the case with the conviction appeal, the grounds of appeal are straightforward; the appeal is not complex, and it does not raise any issues of general importance.
- [19] In the result, I dismiss Mr. Rose's application for the appointment of counsel for both his conviction and his sentence appeals.
- [20] That leaves the outstanding question of bail pending appeal. "The Honourable Madam Justice Prowse"
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