

R. v. Gray, [2019] O.J. No. 2402

Ontario Judgments

Ontario Court of Justice

Toronto, Ontario

S. Ng J.P.

Heard: February 7, 2019.

Oral judgment: February 7, 2019.

Case No. 4860 999 17 17103088-00

[2019] O.J. No. 2402

Between Her Majesty the Queen, and Gray

(29 paras.)

Counsel

J. MacPherson, Provincial Prosecutor.

G. Condello, Agent for the Defendant.

REASONS FOR RULING

S. NG J.P. (orally)

1 I heard both sides in this matter. I reviewed the materials and submissions provided. The application is to quash the Part III information dated October the 3rd, 2017, as it was signed without the consent of the Attorney General.

2 The question and the issue here is that -- does the prosecutor have the consent to relay information, the Part III information when a Part I information exists?

3 The Court understands that the intention of the officer was to proceed by Part III information. Instead, the data that it was inputted for Part I was triggered. Further, the administration processed the Part I, Mr. Gray was fined and convicted. This was judicially deemed to be regular on its face. It is also worthy to note that the summons issued at roadside on the day of the accident to the corporate lawyer was for a Part III. That was the intention of the officer and that was the intention I believe for the prosecution.

4 The Part I information was subsequently reopened and in court it was subsequently Withdrawn. Despite its imperfection the Part I was active. The Court cannot deny its existence at the time when the Part III was laid on October 3rd, 2017.

5 This Court takes guidance from the cases provided, in particular to *R. v. Gurdeep Saini*, S-A-I-N-I, the judgment was rendered by Judge Martin. In this case, clear consent was needed. In the case -- in that case also inquiries were made as to who the Attorney General was. The names were asked and it was clear that clear consent was required on that matter.

6 Two other cases that was rendered by my colleagues, Justice of the Peace Napier in *R. v. Gulkan*, G-U-L-K-A-N, that matter was stayed. In *R. v. Jordan*, by Justice of the Peace Squires, S-Q-U-I-R-E-S, that information was deemed a nullity. The common theme and the common thread for both of those matters was a consent was not satisfied or obtained.

7 The concern in this matter is whether the prosecutor is able to consent. The answer is no. Consent must be provided by the Attorney General or his delegate. Prosecutors have the authority to prosecute but not provide consent. This must be clear at the time the Part III is signed.

8 Furthermore, the judicial officer on October 3rd, 2017, should have been notified that a Part I exists and proper inquiries be made at that time.

9 At the same time when that was signed, consent must be also present by the Attorney General or his delegate. It should be endorsed as such. The Court understands that at that time the officer and the prosecutor assumed that a Part I did not exist. Also, the Part I was not cancelled properly at the station with the necessary authorizations.

10 Prosecutors do not have the automatic right to consent but can prosecute under Section 6(4) of the *Crown Attorneys Act*. Prosecutors are agents under the *Criminal Code* but not for provincial offences matters. Consent must be obtained from the Attorney General or their delegates as a reading of Section 21(2) of the *Provincial Offences Act* that must be obtained when Part I exists in order to lay a Part III information.

11 Without proper consent and alerting the judicial officer when the Part III information was laid on October 3rd, 2017, this Court finds that the information is a nullity and therefore the document number 6-0-6-4-1-8-7-T, as in Tom, A, as in apple, Part III is thereby quashed.

12 MS. MACPHERSON: Thank you. Just...

13 THE COURT: Thank you.

14 MS. MACPHERSON: ...for one piece of clarification.

15 THE COURT: Yes.

16 MS. MACPHERSON: My friend repeatedly relied on that as the information number. That is not the information number. That is the summons. The actual court information...

17 THE COURT: Yes.

18 MS. MACPHERSON: ...bears the number 4860-999-17-1-7-1-0-3-0-8-8.

19 THE COURT: That's the actual -- that's a Part III information number?

20 MS. MACPHERSON: Yes, sir.

21 THE COURT: Okay. Okay. Any comments?

22 MS. CONDELLO: My apologies.

23 THE COURT: Okay. So...

24 MS. CONDELLO: Thank you, Your Worship.

25 THE COURT: Okay. Thank you.

26 MS. MACPHERSON: Thank you. If I can be excused?

27 THE COURT: Yes. Thank you.

28 MS. CONDELLO: Thank you, Your Worship.

29 THE COURT: Thank you.

MATTER CONCLUDED

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