THE ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v

GIOVANNI MASTROIANNI

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C O U R T P R O C E E D I N G S

BEFORE THE HONOURABLE, MR. JUSTICE P.A. SHEPPARD
on May 19, 2000 at TORONTO, Ontario.

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APPEARANCES:

Ms. K. Walker Provincial Prosecutor

R E A S O N S   F O R   J U D G E M E N T

FRIDAY, MAY 19, 2000:

THE COURT: Sir, I am prepared to make a ruling now. I don't need to hear from you. I think that, given what my ruling will be, you will be satisfied to hear my ruling.

The offence that the appellant is before this Court for is, as described by Madam Prosecutor on today's date, minor. It is the offence of speeding at a rate of 20 kilometres an hour over the posted speed limit on March 2nd, 1998.

The accused first appeared for a trial, having requested a trial on this matter, on November 19th, 1998. He rose at that time to assert a Charter right to a trial within a reasonable time, pursuant to section 11(b) of the Charter, and the line of cases beginning with R.v. Elijah Askov, continuing on through R.v. Morin and numerous cases from the Ontario Court of Appeal regularly heard in this Court, which received considerable public attention at the time the courts decided them a number of years ago.

The learned justice of the peace on that occasion required the accused to make a written Charter application, and for that purpose permitted an adjournment.

The matter returned to the court docket on January 26th, 1999, approximately two months later. The accused had proof of service upon the Attorney General of Ontario, the Attorney General of Canada and the provincial prosecutions office of a letter, which is produced before me today, which in effect is a combination of a Charter notice application and an affidavit of prejudice that he alleges. Although this form isn't strictly in compliance with the rules of practice, it substantially sets out the same content as an application would, as a form prepared by a qualified barrister and solicitor.

The justice of the peace on this occasion, on the Court's own motion, decided that they would not hear anything beyond an adjournment application, the Court gathers, due to the pressure of the Court's list. This was objected to by the appellant.

The matter then appears on February 16th, 1999. No information is available to this Court as to what occurred on that date, but on the next date which was March 23rd, 1999, again on the justice of the peace's own motion the appellant was required to obtain a transcript of the proceedings of January 26th, 1999 as to why the matter went over from that date.

The matter next appears for trial on April 26th, 1999. The Court again has a transcript has this matter. The motion is argued in the beginning pages of that transcript, and in fairness Madam Prosecutor on today's date quite rightly says that it is unclear on what basis the learned justice of the peace dismisses the motion, and proceeds with the trial in which the accused is found guilty.

In particular, the only inference that might be drawn is that the justice of the peace was not satisfied on the issue of prejudice, but that is really hard to ascertain from the way the transcript reads. In particular, the Court is referred to page 25 of the transcript.

On this date therefore, which is May 19th in the year 2000, some two years and two months have passed since the alleged offence of March 2nd, 1998.

The Court reminds itself, and of course is bound by the decisions of the Supreme Court of Canada in Askov and Morin, but will also remind itself of what the Ontario Court of Appeal has said in the summary conviction Askov application in R.v. Gregory McMillan, 65 CCC (3d), 321. That is to say that summary matters which are to proceed in their entirety in the then Provincial Division (as it then was), ought to be proceeded with within six months of set date. All time runs from the offence date, the appellant courts have said.

So, on the face of it this matter would have just barely made it at approximately the six months guideline, based on the accused's time required to send in his notice requesting trial, it being processed and so on. Had the trial proceeded on the first day of November 19th it might have slightly been outside that guideline, but it would have been close.

The accused ultimately was not tried until April 26th, 1999. The initial delay must be put down to systemic delay. The prosecutor argues nothing to the contrary here, the intake period and the business of traffic courts in this jurisdiction.

But, there are very specific reasons for the delays following November 19th, 1998.

The first reason, which takes us from the November date to the January 26th date is simply that this appellant chose to represent himself, did not bring his application of Constitutional remedy in the appropriate form, and that necessitated an adjournment so that he could bring himself into conformity with the Court's requirements. That obviously lies at his door, and that portion of the delay is his responsibility.

The delay from January 26th until March 23rd, given that nothing is known about February 16th, is strictly a systemic delay. It is initiated by the Court on the basis of its docket and it is the Court, over the objection of the appellant, who does not wish to hear the matter, although proper written notice had been given by well before January 26th, in fact on January 7th.

Again, on March 23rd of 1999 it is the Court, for some reason again not clear in the transcript, who required production of a transcript of the proceeding of January 26th, 1999, before it would hear the motion for Constitutional remedy.

On April 26th of 1999, when the matter is finally heard, there are no clear reasons given in the transcript for the learned justice of the peace's dismissal of the motion.

This Court rules, therefore, that all the delay from January 26th to the ultimate trial date of April 26th lies at the door of the State. It is not the responsibility of the accused. So cumulatively, the some near fourteen months that pass from offence to trial, and I am rounding these numbers, twelve of them are attributable to systemic delay and court initiated delay, not attributable to the accused.

This is well outside the limit suggested in R.v. Gregory McMillan. That of course was a Criminal matter, and this is a Provincial Offence matter, but it is a summary matter. By analogy this Court's view is that the guidelines set out by the Court of Appeal in that matter are applicable here.

Has there been any waiver of this unreasonable delay? None. None is argued and none is demonstrated.

Has there been any prejudice by this unreasonable delay? Yes, there is the prejudice of the potential imposition of three demerit points on your driving record, with the normal financial consequences thereof, vis-a-vis insurance.

It is argued by Madam Prosecutor today that this delay in fact improves the accused's situation, vis-a-vis demerit points, because such points would be retroactively imposed upon him upon the finding of guilt back to the offence date, and therefore they would appear on his driving record for less time the longer the matter went.

As I indicated to her, this Court's view is that that is based on the assumption that there is a presumption that the appellant here is in fact guilty of the offence, whereas in our justice system the presumption is that the onus lies with the State to prove the guilt beyond reasonable doubt, or depending on the offence balance of probability, and the assumption is that the accused is in fact innocent.

The second argument is that this is such a trivial matter of 20 kilometres over the speed limit that this delay could not possibly be prejudicial. The whole structure of penal sanctions, criminal and quasi-criminal sets out different procedures for the level of importance of different offences. In the criminal analogy summary matters are less serious than indictable matters. Thus, the courts have set stricter limits for the more minor matters, which should be easier to prove, and are not as complex. It does not set longer limits for the more minor matters because they are less important, quite to the converse. So, that argument in the view of this Court must fail.

The implied and real prejudice in any of these applications must be scrutinized by the Court, and I am prepared to accept that there is always an implied prejudice in being charged with offences which require your appearance before the courts. There is the loss of time, there is the stress and strain as is argued in the notice served on January 7th, and there is obviously the cost in this case of acquiring a transcript, but that of course is after the fact.

I am satisfied that there is substantial implied prejudice, and I am satisfied that, there being no evidence to the contrary, and my having had the opportunity to view the demeanour and manner of this appellant, that there is a great deal, to use his words, of emotional stress. Therefore there is indeed real prejudice.

Those being the four benchmarks of a section 11(b) application I am satisfied to the standard necessary that the applicant/appellant has made out his case, and there is a violation of his section 11(b) rights to a trial within a reasonable time.

Although not specifically argued in the notice of motion, the only remedy appropriate to that given in excess of 100,000 times now in this province, is one of a stay, and I so grant him a stay.

Appeal is allowed and a stay is entered.

Thank you.

This is to certify that the foregoing is a true and accurate transcript of my recordings to the best of my ability and skill.

N. Clarke

NORMAN CLARKE
OFFICIAL COURT REPORTER