

 R. v. Mattheos, [2004] O.J. No. 5339

Ontario Judgments

Ontario Court of Justice

Chatham, Ontario

B.G. Thomas J.

Oral judgment: November 8, 2004.

Offence No. 62616139-00

[2004] O.J. No. 5339 | 2004 ONCJ 345 | 64 W.C.B. (2d) 470

Between Her Majesty the Queen, and Victor Mattheos

(25 paras.)

Case Summary

Criminal law — Appeals — Right of — By Crown — Offences — Offences against person and reputation — Motor vehicle offences — Dangerous driving.

Appeal by the Crown from a decision quashing the certificate of offence. Mattheos was involved in an automobile accident and received a notice of offence charging him with careless driving. Three days later, Mattheos received a second notice of offence related to the same accident. The Crown never filed the first notice of offence with the court. Mattheos successfully brought a motion to quash the notice of offence due to abuse of process, as the Crown had not obtained the consent of the Attorney General before serving the second notice of offence, pursuant to section 21 of the Provincial Offences Act.

HELD: Appeal dismissed.

Section 21 of the Provincial Offences Act did not apply. The justice of the peace erroneously concluded that an abuse of process had occurred. As the quashing of the certificate did not amount to an acquittal, an appeal from the decision was not available to the Crown.

Statutes, Regulations and Rules Cited:

Canadian Charter of Rights and Freedoms, 1982, s. 7.

Highway Traffic Act, s. 130.

Provincial Offences Act, ss. 3(1), 21, 21(2), 135.

Counsel

S. Bauman Counsel for the Crown

G. Vandenberg Counsel for Victor Mattheos

RULING

B.G. THOMAS J. (orally)

1 This is an appeal by the Crown from the decision in Regina v. Victor Mattheos. This is a Crown appeal from the decision of Justice of the Peace Hurst, on August the 20th, 2004.

2 At that time the agent for the defendant on the date set for resolution, brought a motion, orally for the certificate of offence to be quashed. The defendant was successful, and it was from that finding, the quashing of the certificate, that the Crown appeals, pursuant to section 135 of the Provincial Offences Act.

3 The history of this matter is of some significance, and is set out, at least in part, in the factum of the prosecution. Mr. Mattheos was involved in a motor vehicle collision on April the 20th, 2004.

4 On April the 21st, 2004 he was served with a part one notice of offence alleging he committed the offence of careless driving, contrary to the Highway Traffic Act, section 130.

5 Mr. Mattheos filed a notice of intention to appear for this matter in order to request a trial, and it was received by the court on April the 26th, 2004.

6 On April the 29th, 2004, Mr. Mattheos was served with a second part one notice of offence, POA number 6267139 for the same charge of careless driving, arising from the same motor vehicle collision, which occurred on April the 20th, 2004. This certificate of offence was received by the court.

7 Mr. Mattheos filed a replacement missing documentation form for this matter in order to request a trial, and it was received by the court on May the 12th, 2004. Mr. Mattheos appeared before His Worship Justice of the Peace Hurst on August the 10th, 2004. He appeared with the assistance of Mr. Vandenberg, as a paralegal from the firm of POINTTS, in Sarnia. Mr. Vandenberg requested that this matter be adjourned for a week to be spoken to. He indicated that he needed to review disclosure with his client, and it was adjourned to August the 20th, 2004 for resolution.

8 On August the 20th, 2004, Mr. Vandenberg appeared on behalf of Mr. Mattheos. He asked His Worship Justice of the Peace Hurst to quash the certificate based on the prosecutor's failure to obtain the consent of the Attorney General to lay the second certificate of offence, and he

relied upon section 21 of the Provincial Offences Act. His Worship Justice of the Peace Hurst, quashed the certificate of offence based on, what he felt, was an abuse of process.

9 I am in agreement with many of the Crown's submissions set out in their factum. Section 21 of the Provincial Offences Act has no application to the matter before Justice of the Peace Hurst. Section 21(2) requires the consent of the Attorney General or his agent only if the proceeding is commenced under part one and then the Crown purports to proceed by way of part three information for the same offence.

10 This is not the matter before the Justice of the Peace here. Here the police officer presumably to correct an erroneous description of where the offence took place, chose to serve a new offence notice, under part one without filing the original certificate of offence with the court. The Justice of the Peace described this procedure as an abuse of process and quashed the certificate.

11 Presumably the more appropriate remedy for an abuse would have been to grant a stay. The Justice of the Peace provided no reasons for determining the abuse, or the quashing of the certificate beyond his mention of section 21 of the Provincial Offences Act. By operation of section 3(1) of the Provincial Offences Act since the original certificate of offence was never filed in the office of the court, no proceeding was in fact commenced, until the second corrected certificate was filed by the officer.

12 Interestingly enough, the second certificate of offence, which is the subject of this appeal, does not bear the usual 'filed' stamp, and I am unable, sitting as an appeal judge, to determine when in fact that proceeding commenced. This was not, however, the reason used by the court to quash the certificate. The court called it an abuse of process. The court chose not to call upon, either the defence or the Crown, to comment upon whether the proceeding amounted to an abuse. No written motion was before the court, and no mention was ever made of the Canadian Charter of Rights and Freedoms, so I presume the court did not find a breach of section 7 as the foundation for the abuse.

13 I am, as well content that there was no abuse of process here that would satisfy the common-law test confirmed by Justice Sopinka in *Regina v. Potvin*. That decision is reported in (1993), 83 C.C.C. (3d) 97, and at page 110 Justice Sopinka said the following:

The general principle was expressed in *R. v. Jewitt* ... [by] Dickson C.J.C. [where he] adopted the [a] ... passage from ... [Justice] Dubin ... in *R. v. Young*, 46 O.R. (2d) 520 ...

... there is a residual discretion in a trial court ... to stay proceeding where compelling an accused to stand trial would violate those fundamental principles of justice which underlie the community's sense of fair play and decency and to prevent the abuse of a court's process through oppressive or vexatious proceedings.

14 It was clear in both *Young* and *Jewitt*, and in *Potvin*, that a stay was only to be granted for cases by abuse of process in the clearest of cases. The facts to justify that common-law stay are not present in the matter before this court.

15 Having agreed with the Crown on these points, it remains to determine if the Crown has a right of appeal in this matter pursuant to the Provincial Offences Act. Put directly, does the quashing of this certificate of offence amount to an acquittal?

16 I am aware of the decisions on both sides of the issue. I acknowledge the Crown's reliance upon favourable decisions in Regina v. Alves, [1994] O.J. No. 966, Regina v. Elliott, and now as cited Regina v. Miller. I believe, however, they can be distinguished from the case at bar, and I prefer the reasoning of Justice Payne of this court in the decision of Regina v. Naalabandian, cited at [2003] O.J. No. 3667. Justice Payne relied upon the decision in Regina v. West, and the comments made there by Madam Justice Van Camp. That decision is cited at (1981), 35 O.R. (2d) 179, and Madam Justice Van Camp in that case said the following:

In the matter before me, there was no plea. There was no consideration of the issue raised in the information on the merits. There was no dismissal. The matter came before the provincial judge on a motion to quash, and his order was one quashing the information. From that, there is no appeal, and the matter is properly before me in that case, under section 124 as an application. That application being for prerogative relief.

17 Justice Payne in Naalabandian distinguished Alves and a decision from the Supreme Court of Canada, called Regina v. Moore, [1988] 1 S.C.R. 1097, as the accused in those cases had been arraigned and a plea had been taken in both those matters. In Naalabandian Justice Payne found that since the defendant had not been in jeopardy, and that there was a substantial time period left in the six month limitation period, the Crown would have been free to relay the proceeding. Since, therefore, the matter was not finally determined there was no right of appeal and the Crown's only remedy was an application for mandamus.

18 Justice Payne, as well, referred to the decision of Regina v. Jewitt (1985), 21 C.C.C. (3d) 7, a decision of the Supreme Court of Canada. Justice Dickson held at page 18:

From this review, it can be concluded that [the] quashing [of] an indictment is tantamount to an acquittal where (a) the decision to quash is not based on defects in the indictment or technical procedural irregularities, and (b) the decision is a final decision resting on a question of law alone, such that if the accused were charged subsequently with the same offence he or she could plead autrefois acquit.

19 I have considered the law on autrefois. The majority of the Supreme Court of Canada in Regina v. Moore, concluded that if a trial judge quashed an information after arraignment and plea, it was tantamount to a verdict of acquittal entitling the accused to plead autrefois acquit, if required to face the same charge again.

20 In our matter, Mr. Mattheos was never arraigned. He never entered a plea. This matter was set for resolution, and an oral motion by the defendant was brought. He was never in jeopardy. The special plea of autrefois acquit would not have been available to him. The quashing of this certificate of offence did not amount to an acquittal. The Crown, at the time, still had two months left, within which to relay the proceedings, and therefore, an appeal in this matter is not available to the Crown.

21 I acknowledge the fact that an appeal is much more expeditious. It is certainly easier for the Crown, pursuant to section 135 than a prerogative writ remedy to the Superior Court, however, easier does not always carry the day, and I find in law that it is not available.

22 For those reasons, the Crown's appeal herein will be dismissed.

23 MR. VANDENBERG: Thank you, Your Honour

24 MS. BAUMAN: Thank you, Your Honour.

25 THE COURT: Thank you.

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