

COURT OF APPEAL FOR ONTARIO

RE: HER MAJESTY THE QUEEN (Respondent) -and-
ROBERT MEISNER (Appellant)

BEFORE: McMURTRY C.J.O., DOHERTY and LANG JJ.A.

COUNSEL: Douglas R. Lent
for the appellant

Scott C. Hutchison
for the respondent

HEARD: September 17, 2004

RELEASED ORALLY: September 17, 2004

On appeal from the judgment dated May 21, 2003 of Justice S. Casey Hill of the Superior Court of Justice, sitting as a summary conviction appeal court judge, appealing the judgment of Justice Ian B. Cowan of the Ontario Court of Justice dated January 28, 2002.

ENDORSEMENT

[1] Assuming, without deciding, in light of the Crown's position at trial that the trial judge properly held that institutional delay should run from the "set date", we are still satisfied that there was no breach of s. 11(b) of the *Charter*.

[2] The appellant's trial could have proceeded on the first trial date. Prior to the commencement of the trial, however, counsel for the appellant quite properly advised the trial judge of a potential conflict of interest based on some prior connection between the trial judge, when he was a lawyer, and the appellant and/or his family. In the light of the appellant's position, the trial judge – again quite properly – decided that he should not conduct the trial. All other trial courts were engaged and the trial therefore had to be adjourned. December dates were offered to the appellant, however, counsel was only available in January.

[3] The adjournment of the appellant's trial is an example of one of those things that happens from time to time in the criminal process for which no one can be faulted and which almost inevitably requires an adjournment and rescheduling. Just as intake time is

allowed when a case initially comes into the criminal justice system, it is inherent in the process that some time must be allowed to reschedule matters that are adjourned for reasonable and unforeseeable reasons for which no one can be faulted. In this case, the system was ready to accommodate the appellant some three months after the first scheduled trial date. In our view, this was a reasonable accommodation and we would regard that three-month period as neutral for the purposes of the s. 11(b) assessment.

[4] In the result, we are satisfied that the total time elapsed was not such as to take this case outside of the recognized limits. The appeal is dismissed.

Signed: “R. Roy McMurtry C.J.O.”

“Doherty J.A.”

“S.E. Lang J.A.”