

2012 CarswellOnt 1129

Ontario Court of Justice

R. v. Monrad

2012 CarswellOnt 1129, [2012] O.J. No. 398, 99 W.C.B. (2d) 281

His Majesty the Queen v. Jason Monrad

J. Nadel J.

Heard: January 9,

2012

Judgment: January 9,

2012

Docket: None given.

Counsel: S. McCarten, for Crown

F. Alfano (Agent), for Mr. Monrad

Subject: Criminal

Table of Authorities

Cases considered by J. Nadel J.:

R. v. Price (2010), 266 O.A.C. 97, 2010 CarswellOnt 5563, 2010 ONCA 541 (Ont. C.A. [In Chambers]) — followed

APPLICATION by accused for leave for extension of time to appeal from fine imposed.

J. Nadel J., (Orally):

1 Sit, sit, sit. I think, generally speaking, Ms. McCarten is right and liable to be found right, and that your man is going to suffer the same penalty in due course. I've enjoyed hearing you, Mr. Alfano. You are at least as articulate as most of the lawyers who appear in front of me, clearly as prepared, probably better so. And I'm impressed by the fact that your man has a very modest prior record, and has three kids he's trying to support. I probably am stretching the test. Mr. Justice Watt in chambers in a case called *R. v. Price*, not terribly long ago in 2010 ONCA 541 (Ont. C.A. [In Chambers]). It's not the Quicklaw citation, but you could find it. *R. v. Price*. Mr. Breen was for the applicant. Ms. Joyal was for the respondent. In that particular case, Justice Watt went through the principles governing the extension of time. And he said at paragraph 19, halfway through that paragraph,

In the final analysis, the principal consideration is whether the applicant has demonstrated that justice requires that the time be extended.

2 That's the principle, and there are factors that inform that principle, or they inform that decision and they include whether he's demonstrated a bona fide intention to pay within the prescribed time. He hasn't here. Whether the applicant has accounted for the delay. He really hasn't. Whether the proposed appeal has merit. I think it's slight. But he goes on to say at paragraph 20,

In some circumstances, other factors may exert an influence on the decision about an extension of time; whether the consequences of the conviction are all out of proportion to the penalty imposed.

3 Some of that applies here. Given that the precipitating fact was, as Mr. Alfano has said, a very modest \$40 fine or something in that range. Whether the Crown would be prejudiced. The Crown won't be because you concede the Crown's case, do you not?

MR. ALFANO: I would, yes.

THE COURT: So the Crown doesn't have to call a witness. The Crown could rely upon the transcript for all that matters. Whether the applicant has taken the benefit of the judgment. He clearly hasn't done that. I think, Ms. McCarten, that if I was more hard hearted, I wouldn't grant leave, but someone should be entitled to hear Mr. Alfano weave his magic. I think that it's arguable. I can't say it's frivolous. I don't think it will succeed. I mean, I can see a tremendously enjoyable cross-examination by a Crown Attorney of Mr. Alfano's client. And for a man who never gets tickets or gets small tickets, having got stopped by a police officer and given tickets that have a court date, I just think that the fact that he's not contesting the other count, I think he can get beaten up pretty well, but I am sympathetic to the client receiving this tremendously drastic punishment for a relatively modest debit; that is to say, paying a very small fine. I don't Mr. Alfano will be successful, but I will give him that shot. And you're more than welcome, Ms. McCarten, to appeal my decision and demonstrate to me that I ought to be tougher and less generous. It strikes me, though, that I shelter under the comment made by Mr. Justice Watt that justice requires it to be extended. What Mr. Alfano has convinced me of is this; payment of a very modest fine shouldn't result, it seems to me, in this potential domino of horrible consequences, where he says I have an arguable, not completely laughable, defence, in my view. So I'm going to let him have the shot. And you don't have to do anything, other than show up on the trial list and say, "On consent, the case against the accused is admitted. It is one of the basis upon which the extension of time was granted." Let him argue the appeal and see if he gets his appeal. If he does get his appeal, there will be no further costs to the community in terms of running a trial. So that's what I'm going to do, having exacted that undertaking. And all this means is you have got to argue it on the merits...

MR. ALFANO: I understand.

THE COURT: ...and demonstrate that the appeal should be granted. So sit down. I'll do an endorsement and....

MR. ALFANO: If I might, he's also asking to waive payment of the fine for recognizance.

THE COURT: I understand that. I'll let him do all of that, and you'll have to send the documents to the Ministry to get the prohibition - all right. So let me just -this will take me a moment. We don't have much left, do we?

MS. MCCARTEN: Just a short amount of people who aren't here.

THE COURT: Good, good, all right. So I'm going to do an endorsement, so be patient with me, please. What's the amount of the fine, and costs, and surcharge? Do you know all in?

MR. ALFANO: The fine is \$1,000, and it's 25%, the surcharge.

MS. MCCARTEN: \$1,160.

THE COURT: All right, and presumably the appeal is ready to be filed, more or less, forthwith. Do you need 30 days? How long do you need?

MR. ALFANO: Ten days will be fine, Your Honour.

THE COURT: You're entitled to more. It's 30 days now, isn't that what they say now?

MR. ALFANO: It's, by statute, 30 days following conviction.

THE COURT: Yes, that's fine, that's fine, right. All right. "January the 9th, 2012. Mr. Alfano for the proposed appellant. Ms. McCarten for the Province. Over objections of Ms. McCarten, I find that the defendant should be given opportunity

to argue his appeal on the drive suspended only, for reasons given in a meandering stream on the record. Therefore, time extended. Recognizance \$1,160 without surety or deposit. Thirty days to file appeal and sign recog. All right. And there's no guarantee, Mr. Alfano, that you'll succeed, but as I say - and it won't be in front of me, that's for certain. All right. So just make sure that on the day that you are to argue your appeal, I want you to make sure you ask, to make sure - it shouldn't be me, all right?

MR. ALFANO: Yes, sir.

THE COURT: I'll fill out the forms - your man is not here now, is he?

MR. ALFANO: He's not.

THE COURT: So I'll fill out the forms, leave them in the file, he can come in within the 30 days and launch the appeal and sign the various documents.

MR. ALFANO: Thank you, Your Honour. Thank you, my friend.

THE COURT: Yes, it was a pleasure. I enjoyed it. And, Ms. McCarten, it's only because you have broad shoulders, that I might do this to you apparently time and again. It is not personal. Actually, I quite enjoy your appearances in front of me. All right.

Application granted.