

ONTARIO COURT OF Justice

Central West Region

Her Majesty the Queen (City of Brantford)

-and-

Gordon Robinson

Proceedings conducted April, 2015, at Brantford, Ontario

Decision and Reasons issued 19 May, 2015

Appearances:

Hawkes, V.
self

for the Prosecutor
for the Defendant

Statutes Considered or Cited:

Criminal Code, R.S.C., 1985, c. C-46, as amended ("CCC")

Highway Traffic Act, R.S.O. 1990, c.H.8, as amended ("HTA")

Provincial Offences Act, R.S.O. 1990, c. P.33, as amended ("POA")

Memorandum of Understanding Between Her Majesty the Queen in Right of Ontario as represented by the Attorney General and The Corporation of the City of Brantford ("MoU")

Cases Considered

R. v. Kienapple, [1975] 1 S.C.R. 729

Decision

1. For the reasons set out below, I am striking the conviction that I entered and the underlying plea. I am directing that the matter be marked returnable to the same court, date and time when the related CCC charge is to be considered. A copy of this decision is to be made available to that Court for its information.

Background

2. Mr. Robinson appeared before me to enter of plea of guilty to the offence of driving while his license was suspended, pursuant to s.53 of the HTA. After the arraignment, plea and plea inquiry, the conviction was entered. In the course of joint submissions on penalty, the fact that Mr. Robinson was also facing a CCC charge of "drive disqualified", arising out of the same circumstances, crystalized for the Court.
3. Upon that realization, in the context of direction in 164(2) of the *POU*¹ that I am required to take judicial notice of the terms of the *MoU*, I inquired as to why this matter was being addressed in the municipal partner court, given that "criminal proceedings have been commenced in relation to the same circumstances".
4. By way of background, the authority to enter into *MoU*'s with municipalities is set out in s.162 of the *POA*².

5. The MoU entered into with the City of Brantford, includes the following provision:

Exception court
administration and
court support

- 1.4 Notwithstanding anything else in the Transfer Agreement, court administration and court support functions relating to proceedings commenced under the Act shall not be transferred in respect of proceedings where any of the following conditions exist:

1.4.1 the proceeding is against a young person as defined in Part VI of the Act;

1.4.2 criminal proceedings have also been commenced in relation to the same circumstances; or

1.4.3 the defendant who is charged with a criminal offence pleads guilty to a substituted provincial offence or a substituted offence that has been designated as a contravention under the *Contraventions Act* (Canada).

6. On its face, this expressly prohibits administration and court support functions of certain matters being undertaken by any Court operated by a municipal partner. S.162(2) references functions assigned to the clerk of the Court, and I understand that the result of the framework of the transfer agreement, the clerk functions cannot be conducted by a clerk in a municipal partner court, "criminal proceedings have been commenced in relation to the same circumstances". Among other things, the clerk reads the arraignment of the charge, and maintains the court record. Without these functions, a Court cannot conduct its activities.
7. For certainty, this does nothing to suggest that as a judicial officer I could not deal with the matter, and I accept that I have appropriate jurisdiction with respect to the offence and the defendant. Likewise, this does nothing to suggest that the prosecutor does not have prosecutorial jurisdiction and I likewise accept that she is properly vested with carriage of the matter.
8. The sole issue is whether the Court where the matter was being heard had or has or administrative or court support responsibility or authority with respect to the matter, and what is the import of any limitation on administrative authority. I believe that the MoU is unambiguous with regard to excluding administrative authority from the municipal partner court. I also see nothing in the MoU that entitles anyone to over-ride its express terms, including the Prosecutor.
9. I have raised that concern with the Prosecutor (Agent for the Provincial Crown), who expressed the view that, as Prosecutor, acting under the authority of the local Crown, she has a discretion to determine the court in which a matter such as this is addressed. She expresses the view that she properly has carriage of these matters, and that as a presiding justice, I am able to deal with them. I do not recall any arguments that go to the (lack of) administrative authority of the municipal partner court over these matters, and it appears that this is the only issue in question.
10. Setting aside for a moment the interpretation of the MoU, brief reflection suggests good and sound policy reasons for keeping matters together, when they involve an accused/defendant who is charged with a number of offences (criminal and regulatory) that arise out of the same circumstances.

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11. These include:

- a. reducing the number of appearances that the accused/defendant must make and thereby the related inconvenience and cost¹,
- b. reducing the instances of defendants become confused, thinking that all their matters (criminal and regulatory) were addressed as part of the CCC proceedings, and then failing to show up to address their matters in the municipal partner Court²
- c. enhancing judicial efficiency,
- d. improving the efficiency of steps in the process, such as disclosure
- e. affording a sentencing justice knowledge of all aspects of a case against an accused, and having all appropriate information available for the determination of a just sentence, and
- f. reducing the risk that there be two pre-sentence reports ordered, potentially with different outcomes,
- g. allowing a sentencing judge to consider the totality principle as well as the principles set out in *R. v. Kienapple*.

12. I can also indicate from experience in this Court that defendants often retain counsel for appearances in the separate proceedings. Where applications for legal aid may be available, separate retainers may also increase costs to the legal aid system which is notoriously challenged financially.

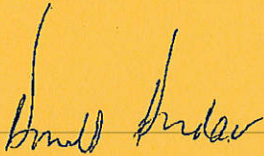
13. This case is perhaps one of the clearest instances of the matters of this type that have arisen in this Court from time to time. The individual is charged with "drive disqualified" under the CCC, and "drive suspended" under the HTA. It is my understanding that the suspension of the defendant's driving privileges flowed from the same conviction that lead to his being disqualified from driving.

14. There was only a singular act by the defendant charged in the matter before me, although triggering proceedings under different statutes.

¹ I am aware of instances when the defendant or the defendant and/or legal representative appear in the municipal; partner court only to ask for the matter(s) to be put over, while the defendant and Crown work through issues related to CCC proceedings

² Likewise, I am aware of cases for which the defendant has not appeared but the Crown explained that the defendant was dealing with related matters in the MAG court, and invited me to put the matter in the municipal partner court so that she could contact the defendant and/or the legal representative to remind them of the required appearance to deal with the regulatory matter

15. In this case, were I to proceed, I am concerned that I expose the defendant to a possible injustice (if, indeed, one has not already occurred by having had to make multiple appearances in different courts arising from the same circumstance. I acknowledge that the Crown argued that the penalty sought for this discrete proceeding would be the same sought even if the matter were being addressed together with the related CCC charge. While that may be, it presumes that the justice hearing and deciding on sentence agrees, in all the circumstances, with the position, even if it is put before the Court as a joint submission.



His Worship Donald Dudar
Justice of the Peace

" 162. (1) The Attorney General and a municipality may enter into an agreement with respect to a specified area, authorizing the municipality to,

- (a) perform courts administration and court support functions, including the functions of the clerk of the court, for the purposes of this Act and the Contraventions Act (Canada); and
- (b) conduct prosecutions,
 - (i) in proceedings under Parts I and II, and
 - (ii) in proceedings under the Contraventions Act (Canada) that are commenced by ticket under Part I or II of this Act.

(2) Clause (1) (a) also applies to the functions assigned to the clerk of the court by any other Act.