

ONTARIO



Superior Court of Justice

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TO: Ryan J. Manilla FAX NO. 855-204-6222

AND TO: James A. Nadel FAX NO. 905-456-4780

RE: R. v. Roshan CR 17/580 Reasons for Mandamus Application

FROM: Nancy Allen, Judicial Secretary

DATE: December 11, 2017

NO. OF PAGES, including cover sheet: 7

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CITATION: R. v. Roshan, 2017 ONSC 7382

COURT FILE NO.: 580/17

DATE: 20171121

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

– and –

MOHAMMAD MIR ROSHAN

Applicant

J. Nadel, for the Respondent

R. Manilla, for the Applicant

HEARD: November 21, 2017

MILLER J.

- [1] Mohammad Roshan brings a *mandamus* application for an order compelling the Provincial Offences Court Ontario to permit him to seek extensions of time within which to pay the fines imposed by the said Court.
- [2] The Crown's position is that *mandamus* is not a remedy available to Mr. Rohan because an appeal is the proper means of review.

Background

- [3] Mohammad Roshan was convicted of driving without insurance contrary to s. 2 (1) (a) of the *Compulsory Automobile Insurance Act* and other offences under the *Highway Traffic Act* and *Regulations* on March 5, 2010 for which he was fined \$7,163; on March 12, 2010 for which he was fined \$7,516.69; January 31, 2013 for which he was fined \$3,264.55 and on October 16, 2013 for which he was fined \$14,227.94. These fines included, in each case, the Victim Fine Surcharge.
- [4] Mr. Roshan applied for and received several extensions of time to pay these fines. On May 7, 2015 an order was made that "no further extensions will be considered".
- [5] Mr. Roshan at that time had made no payment toward any of the fines.
- [6] Mr. Roshan, upon receiving notice that no further extensions would be considered, he sought leave to appeal the sentences and an extension of time in which to do so. The appeal was dismissed by Cowan J. at the Ontario Court of Justice May 29, 2015.

- [7] Mr. Roshan was informed of this decision by letter May 2, 2016 also advising that "the only way to address these matters further is by way of an appeal to the Ontario Court of Appeal".
- [8] Mr. Roshan then made payments toward the fines May 17, 2016 (\$600.00) and August 16, 2016 (\$3,500).
- [9] Mr. Roshan sought leave to appeal the decision of Cowan J. and an extension of time to do so from the Ontario Court of Appeal. The motion to extend time was dismissed March 14, 2017.
- [10] Mr. Roshan subsequently made a payment toward the fines May 2, 2017 (\$3,129.55). This cleared the fines for the January 31, 2013 convictions.
- [11] Mr. Roshan submits that because his driver's licence is currently suspended for unpaid fines, this limits his ability to work to earn money to pay off the fines. He seeks an order compelling the Provincial Offences Court to consider his request for extensions of time to pay the outstanding fines.

Law

- [12] Section 66 of the *Provincial Offences Act* provides that:
- (1) A fine becomes due and payable fifteen days after its imposition.
 - (2) Where the court imposes a fine, the court shall ask the defendant if the defendant wishes an extension of the time for payment of the fine.
 - (3) Where the defendant requests an extension of the time for payment of the fine, the court may make such inquiries, on oath or affirmation or otherwise, of and concerning the defendant as the court considers desirable, but the defendant shall not be compelled to answer.
 - (4) Unless the court finds that the request for extension of time is not made in good faith or that the extension would likely be used to evade payment, the court shall extend the time for payment by ordering periodic payments or otherwise.
- ...
- (6) The defendant may, at any time by motion in the prescribed form filed in the office of the court, request an extension or further extension of time for payment of a fine and the motion shall be determined by a justice and the justice has the same powers in respect of the motion as the court has under subsections (3) and (4).
- [13] Section 109 of the *Provincial Offences Act* provides that, in respect of appeals and review, "sentence" includes any order or disposition consequent upon a conviction and an order as to costs.
- [14] Section 116 (1) (d) of the *Provincial Offences Act* provides that a defendant may appeal from a sentence.

[15] Section 140 of the *Provincial Offences Act* provides that:

(1) On application, the Superior Court of Justice may by order grant any relief in respect of matters arising under this Act that the applicant would be entitled to in an application for an order in the nature of *mandamus*, *prohibition* or *certiorari*.

[16] Section 141 (3) of the *Provincial Offences Act* provides that "No application shall be made to quash a conviction, order or ruling from which an appeal is provided by this Act, whether subject to leave or otherwise."

No application shall be made to quash a conviction, order or ruling from which an appeal is provided by this Act, whether subject to leave or otherwise.

Analysis

[17] A helpful summary of the law of extraordinary remedies in relation to the *Provincial Offences Act* is set out by Trotter J. (as he then was) in the Ontario Superior Court decision in *R. v. Lazaridis* [2011] O.J. No. 5215. Paragraph 12 of that decision references the foundational principles concerning extraordinary remedies as follows:

In *R. v. Skogman* (1984), 13 C.C.C. (3d) 161 (S.C.C.), in the context of reviewing the decision of a preliminary inquiry judge to commit the accused for trial, Estey J. placed the following limits on the availability of *certiorari* at p. 167:

It need only be added by way of emphasis that such *certiorari* review does not authorize a superior court to reach inside the functioning of the statutory tribunal for the purpose of challenging a decision reached by that tribunal within its assigned jurisdiction on the ground that the tribunal committed an error of law in reaching that decision, or reached a conclusion different from that which the reviewing tribunal might have reached.

Similarly, see *R. v. Russell* (2001), 157 C.C.C. (3d) 1 (S.C.C.), at p. 10.

[18] The Crown submits that this Application is barred by statute. The Crown submits that Mr. Roshan could have appealed his sentences, including a dismissal of his application for an extension of time to pay the fines. He did attempt to appeal his sentences, albeit well outside the time limit for appeals, all the way to the Court of Appeal and his applications for leave were dismissed.

[19] The Crown submits that Mr. Roshan is barred by s. 141 (3) of the *Provincial Offences Act* from bringing this Application where he has exhausted or not exercised his right of appeal. The Crown relies on *Lazaridis* at paragraph 15:

...in *R. v. Tucker* (1992), 9 O.R. (3d) 291 (Ont. C.A.), leave to appeal denied (1993), [1992] S.C.C.A. No. 471, 13 O.R. (3d) xvi, at p. 303, Finlayson J.A. said:

Similarly, s. 141(3) of the *Provincial Offences Act* creates a bar to the use of *certiorari* where an appeal is available ... In provincial offence proceedings, the availability of recourse will virtually preclude *certiorari* being used, regardless of the basis upon which it is sought.

See also *R. v. Arcand* (2004), 192 C.C.C. (3d) 57 (Ont. C.A.), at pp. 62-64, leave to appeal denied [2008] S.C.C.A. No. 449 and *May v. Ferndale Institution* (2005), 204 C.C.C. (3d) 1 (S.C.C.), at p. 19 and pp. 21-22.

[20] The *Provincial Offences Act* is silent on whether or how an individual might appeal a decision not to grant an extension of time to pay a fine.

[21] Counsel for the Crown produced no authority in support of his position that an appeal from such a decision is available; he instead relies on the plain meaning of the language in the legislation. He submits that Section 116 (1) (d) of the *Provincial Offences Act* provides that a defendant may appeal from a sentence and Section 109 of the *Provincial Offences Act* provides that, in respect of appeals and review, "sentence" includes any order or disposition consequent upon a conviction and an order as to costs. It is the Crown's position that a decision made pursuant to s. 66 (6) of the *Provincial Offences Act* is part of the "sentence".

[22] Counsel for Mr. Roshan submits that no appeal from a decision not to grant an extension of time to pay a fine is available, although he produced no authority in support of this position. He submits that no one in practice ever appeals such a decision because the legislation permits an unlimited number of applications for extensions of time to pay fines.

[23] In the face of such a dearth of authority I provided counsel for both parties until December 6, 2017 to provide the Court with any further authority on the question of whether a decision pursuant to s. 66(6) of the *Provincial Offences Act* is appealable. I received no additional material from either party.

[24] There is authority for Mr. Roshan's position that the legislation permits an unlimited number of applications for extensions of time to pay fines in *R. v. Baritz* [2006] O.J. No. 2885 (C.J.) at footnote 1:

Section 66(6) allows a defendant, whether or not she or he has been granted an extension of time by the sentencing Justice, to apply at any time to the Court office for an extension with provision for periodic payments. It is a simple and expeditious process. The application must be in writing but the applicant need not necessarily attend before the Justice unless the Justice, after reviewing the written submission, decides that an interview is essential. There is no limit on the number of applications for extension of time that can be brought. The object is to have the offender honestly endeavour to satisfy his/her debt to the community. It is by no means unusual through this process for defendants to receive years, not merely months, to pay large fines.

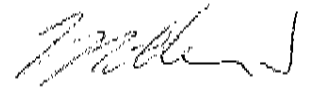
[25] Further, the Ontario Court of Appeal in *London (City) v. Young* [2008] O.J. No. 2118, addressing different sections of the *Provincial Offences Act*, held that "...based on the wording of the Act, as well as its intent to provide an efficient and cost-effective de-fault procedure, expanding the right of appeal beyond what is specifically provided for in the Act would constitute an error in law."

[26] The primary relief Mr. Roshan seeks is an order of *mandamus*, directing the Provincial Offences Court to continue to consider his motions for extensions of time to pay his fines each time one is made.

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[27] Whether or not there is a right of appeal from a decision made pursuant to s. 66 (6) of the *Provincial Offences Act* to grant or refuse a request to extend time to pay a fine, it is clear that the decision which is the subject of this Application, to deny any further extensions without due consideration of the factors enumerated in s. 66 (4) each time a motion is made is a decision made outside the jurisdiction conferred by s. 66 and is therefore properly the subject of this *mandamus* Application.

[28] The Application is granted. There will be an order compelling the Provincial Offences Court Ontario to permit Mohammad Mir Roshan bring motions pursuant to s. 66(6) of the *Provincial Offences Act* to seek extensions of time within which to pay the fines imposed by the said Court, and to consider each motion pursuant to s. 66 (4).



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REASONS FOR JUDGMENT

MILLER J.

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