

ONTARIO COURT (PROVINCIAL DIVISION)

HER MAJESTY THE QUEEN

against

JOHN THORBURN

PROCEEDINGS ON APPEAL

BEFORE THE HONOURABLE JUDGE W. RICHARDS
July 2, 1993, held at BRAMPTON, Ontario

CHARGE: LEFT TURN VIOLATION

APPEARANCES:

A. Stevenson, Ms.

G. Parker, Esq.

Counsel on behalf of the Crown

Agent on behalf of the accused

FRIDAY, JULY 2, 1993

(10:30 a.m.)

THE CROWN: Twenty-five, John Thorburn.

MR. PARKER: Good morning again, Your Honour.
For the record - Parker, initial G - agent to
Mr. Thorburn who is before the court.

THE CROWN: Your Honour, this is a Crown
appeal. The respondent was charged with left
turn fail to afford a reasonable opportunity to
avoid a collision. At the date of trial his
agent brought a motion under Section 11(b) of
the Charter and Her Worship Justice of the
Peace Carol Starr stayed the proceedings
pursuant to 11(b) and the Crown has appealed
the stay. There should be a factum attached to
those documents as well.

THE COURT: What was the length of time?

THE CROWN: Your Honour, from the offence date
to the date of trial it was eight months and 20
days. However, according to the case of G.C.M.
in the Ontario Court of Appeal, the intake part
of that is not to be attributed against the
Crown. That's to be neutral time so the actual
delay would have been eight months and six
days.

THE COURT: Instead of eight months and 10
days?

THE CROWN: Eight months and 20 days - it's
eight months and six days, and the Crown's
position is that the Supreme Court of Canada
has said that eight to 10 months is an
administrative guideline for provincial court
and while appeal may be required to be in the

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lower end of the administrative guideline, eight months and six days is certainly in the lower end of eight to 10 months and there was no evidence called on the motion by the respondent, and no evidence of prejudice, Your Honour, and our submission is that the stay should not have been entered.

THE COURT: Yes?

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MR. PARKER: Thank you, sir. Even if we were to have taken into consideration the intake period of 14 days to make it eight months and six (sic) days, although I'm not agreeing - even if we were to take that, it still takes us outside of the guideline. My friend suggested it's eight months to 10 months as our guideline. However, in relying on *Regina vs. Moran* - I have some cases for Your Honour.

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THE COURT: I've seen them. *Dion* is still going up to the Supreme Court of Canada. I've read the *Moran* decision a dozen times. What other one?

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MR. PARKER: Yes, thank you. In brief then, *Moran* simply tells us that the provincial courts of appeal are generally in a better position than the Supreme Court to determine exactly what is reasonable in each province's realm, and for that, then, we refer to *Regina vs. MacMillan*. I'm not sure if Your Honour happens to be familiar with *MacMillan*, unreported decision, released 8th of July, 1991, Ontario Court of Appeal.

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On page 8, very briefly - the first paragraph

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really - "I agree with the provincial division Judge and with counsel on both sides that the provincial division should be expected to administer justice more rapidly than can be accomplished in the General Division". And of course, that's the court we're in. And further down in that paragraph, I quote, "On a summary conviction offence, moreover, it is not unreasonable to say that an accused who cannot be charged more than six months after the offence should be provided with a trial within six months of being ready".

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THE COURT: Well, I've used seven months as a guideline for a long time and the Crown brought a case in front of me in this court a week ago that had been ordered stayed by Provincial Court Judge Bonkalo. It went to the Court of Appeal, and the Court of Appeal, whose reasons I could not read, and which didn't make any sense, sent it back down for a new trial, and I ordered it stayed again. So that was just last week.

MR. PARKER: Very well, then.

THE COURT: What do you say?

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THE CROWN: Your Honour, my submissions are as in the factum and that's the Crown's position, that there was no evidence called on the motion. There was no prejudice shown and the jeopardy that the appellant was facing was on the face of the ticket, \$78.75.

THE COURT: Well, even deducting those number of days, I still think eight months and six

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days, or whatever it is - and counsel for the prosecution in a case earlier stated that the delay would prejudice any appeal and I dismissed the applicant's appeal on those grounds - I agree that this is not a criminal offence. As I say, I've used seven months even on a criminal offence. So that I'm going to dismiss the Crown's appeal.

MR. PARKER: Thank you very much, Your Honour.

THE CROWN: Thank you, Your Honour.

THIS IS TO CERTIFY that the foregoing is a true and accurate transcription from the record made by sound recording apparatus, to the best of my skill and ability.

Janet Peev
Janet Peev
Court Reporter