



Regional Municipality of York v Newhook, 2015 ONSC 6587 (CanLII)

Date: 2015-11-05

Docket: CV-15-124046

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ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

The Regional Municipality of York

Applicant

Chris Bendick, for the Applicant

– and –

Adam Newhook, Kenneth K. Sun, Renee
W. Yip, Marko Zdrale, and Abigail O.
Manicone

No one appearing for the Respondents

Respondents

HEARD: October 6, 2015

REASONS

EDWARDS J.:

Overview

- [1] The vast majority of people who have any contact with our judicial system will likely have seen the inner workings of a Provincial Offences Court. Who amongst us – judges included – have not had a traffic ticket? Provincial Offences Court is a high volume court, designed pursuant to [section 36](#) of the *Provincial Offences Act* to give defendants an efficient and timely system for the resolution of a provincial offence. Presiding in the Provincial Offences Court are justices of the peace. Like judges dealing with more serious criminal offences, justices of the peace are often asked to deal with a plea arrangement worked out between the provincial prosecutor and an accused. Judicial notice can be taken of the fact that a significant percentage of all *Provincial Offences Act* offences are resolved in this fashion.
- [2] The matter before this court deals with a situation where the presiding justice of the peace reserved her decision for approximately one year, with respect to whether she would accept guilty pleas. The application also deals with the question of whether a delay in sentencing of nine months is a reasonable delay.
- [3] The applicant seeks an order in the nature of *mandamus* directing the justice of the peace to render her sentencing decision with respect to one of the accused in a more timely fashion and, as well, an order in the nature of *mandamus* directing the justice of the peace to accept the pleas of guilty.

The Facts

- [4] All of the respondents were charged on different dates with speeding offences. Possibly by coincidence, it would appear that all of the charges for each of the respondents were set for trial on September 3, 2015.
- [5] On September 3, 2015, Paul Andrews, who is a licenced paralegal, appeared on behalf of all five respondents. For the respondents, Newhook, Sun, Yip and Zdrale, the prosecution and defence put forward a joint position for resolution in which the defendant would plead to an amended charge of “disobey sign”, contrary to [section 182\(2\)](#) of the *Highway Traffic Act*, together with a joint position on penalty for a fine of \$200.00.
- [6] For the respondent Manicone, the prosecution and defence put forward a joint position for resolution in which the defendant would plead to an amended charge of “disobey sign”, contrary to [section 182\(2\)](#) of the *Highway Traffic Act*, together with a joint submission with respect to a penalty in the nature of a fine of \$85.00.
- [7] With respect to the joint submissions to the amended charge, Justice of the Peace Romagnoli stated:
- For the same reasons, the court will be reconsidering its position with respect to such a request and I need some time to – to review it and consider it and, as I’ve indicated, the governing section is [section 45](#) of the *Provincial Offences Act*. And the matter will be held – I seize myself in the matter and will be held down to the same day.
- [8] With respect to the guilty plea of the respondent, Newhook, Justice of the Peace Romagnoli

accepted the guilty plea to the amended charge and reserved her ruling on sentence until June 15, 2016, i.e. a period of approximately nine and a half months. It is important to note that with respect to the case of the respondent, Newhook, not only had the parties made a joint submission in penalty, but Justice of the Peace Romagnoli was provided with three decisions of the Ontario Court of Justice where she had been overturned on sentencing decisions in where she did not give effect to a joint submission (see: *R. v. Mirza* [2015] O.J. No. 984, reversing [2014] O.J. No. 6408; *R. v. Wong* [2015] O.J. No. 983, reversing [2014] O.J. No. 6407; and *R. v. Chmiel* (unreported July 17, 2015 – Justice Johnston, Ontario Court of Justice).

[9] Having cited *Mirza*, *Wong* and *Chmiel*, *supra* to Justice of the Peace Romagnoli, the following exchange took place between the prosecutor and the Justice of the Peace:

MS.WHITE: So having just read those in, Your Worship, the joint position that we have to put for you – before you today is based on aggravating factors being that there was a sign that was disobeyed. That sign was the speed limit sign and it was disobeyed at rate of speed of 49 kilometres per hour over the limit. With those aggravating factors put in, the joint position that we have before you is a \$200 penalty.

THE COURT: I'm sorry. This is – you're referring back now to this particular information?

MS. WHITE: Correct, the Newhook matter.

THE COURT: Right. Okay. So the original speed was 149 in a 100?

MS. WHITE: Correct:

THE COURT: Anything else? Mr. Andrews?

MR ANDREWS: Nothing, thank you.

THE COURT: And no other aggravating circumstances? You – are you alleging a record?

MS. WHITE: I don't have a record to allege, Your Worship.

THE COURT: I'm going to reserve my ruling. We need a return date and I don't have my calendar handy. Will you be here for a little bit this afternoon or this morning?

MR. ANDREWS: Yes. Do you want to do it at 1:30? Is that – would that be agreeable?

THE COURT: To set a return date? Yes, absolutely.

MR. ANDREWS: Is – is that...

THE COURT: Yes.

MS. WHITE: a date...

THE COURT: Thank you. We'll hold it down till 1:30.

....

THE COURT: Yes. I'm reserving – I'm reserving my ruling on this matter and – for sentencing and I'm going to order a transcript of this matter. And it's – I'm not available until the summer of next year.

MR. ANDREWS: Okay.

THE COURT: So we're looking, perhaps June or July.

MR. ANDREWS: Do have the '16 calendar? Is that – I see it's changed there on the board. Looks like June's available.

THE COURT: Yes, I believe June has the 16th – perhaps around the middle of the month? I don't believe that there's vacation scheduled, so – you're here every day, Mr. Andrews?

- [10] For the other four respondents, Sun, Yip, Zdrle and Manicone, Justice of the Peace Romagnoli reserved her decision on whether she would accept the guilty plea of these defendants until August 11, 2016, i.e. a period of approximately eleven months.

The Issues

- [11] The first issue raised by the delay in imposing sentence for the respondent, Newhook, is whether a delay of nine and a half months is so unreasonable that an order for *mandamus* should be issued directing Justice of the Peace Romagnoli to render her decision in a more timely fashion.

- [12] The second issue, raised by the conduct of Justice of the Peace Romagnoli in deferring her decision with respect to the acceptance of the guilty plea of the remaining four respondents, is what the test is for the exercise of judicial discretion to refuse to accept a guilty plea. Flowing from this issue is whether the proposed resolution for a guilty plea by the respondents Sun,

Yip, Zdrle and Manicone to the amended charge of “disobey sign”, contrary to [section 182\(2\)](#) of the *Highway Traffic Act*, is one that the court should have accepted.

Position of the Applicant and the Respondent

[13] The applicant takes the position that Justice of the Peace Romagnoli is required to give a decision on sentence within a reasonable period of time. It is suggested that a reasonable period of time is no later than three months from the date the guilty plea is entered, and submissions on penalty have been made by the parties.

[14] With respect to the acceptance of the guilty pleas by the respondents Sun, Yip, Zdrle and Manicone, the applicant takes the position that Justice of the Peace Romagnoli should have accepted the proposed resolution by way of a guilty plea to the lesser offence of “disobey sign”, and that there was no reason to reject such a plea unless one of two scenarios existed, i.e.:

- (a) the facts do not fit the section to which the defendant is pleading guilty; or,
- (b) the guilty plea does not satisfy the plea comprehension enquiry mandated by [section 45\(3\)](#) of the *Provincial Offences Act*.

[15] No one appeared for any of the respondent, and, as such, no position was asserted on their behalf.

Analysis

Timelines for Sentencing Decision

[16] It is beyond dispute that [section 11\(b\)](#) of the *Canadian Charter of Rights and Freedoms* ensures that everyone has the right to be tried within a reasonable period of time. The right to be tried within a reasonable period of time also includes the right to be sentenced within a reasonable period of time. This is made clear by the decision of the Supreme Court of Canada in *R. v. MacDougall*, [1998 CanLII 763 \(SCC\)](#), [1998] 3 S.C.R. 45, at para. 49 where the court stated, amongst other things:

On the basis of the wording and purpose of [section 11\(b\)](#), I conclude that [section 11\(b\)](#) of the *Charter* extends to sentence delay.

[17] Justices of the peace, like judges of this court, are given guidance in terms of when their decisions are to be made and released to litigants. The *Justice of the Peace Act*, [R.S.O. 1990 c. 4](#), requires that a justice of the peace is to give a decision within three months, and in the case of a judgment within six months. These time limits can be extended by the Chief Justice of the Ontario Court of Justice by [section 13.1\(3\)](#) of the *Act*.

[18] The Ontario Courts website contains a document entitled “Principles of Judicial Office”, which pursuant to [section 2.3](#) provides that reasons for judgment should be delivered in a “timely manner”.

- [19] As it relates to the decision of Justice of the Peace Romagnoli to take the plea of Adam Newhook but to reserve her decision on sentence for in excess of nine months, a review of the transcript establishes no justifiable reason for a delay in sentencing of nine months. Justices of the peace are responsible for one of the busiest courts in this province and understandably, on occasion, may, like many judges, need extra time to prepare reasons for sentence. On the facts of this case, however, where there was a joint submission on sentence, one might speculate that the reasons for sentence would be relatively brief and perhaps delivered orally at the time of accepting the plea. Recognizing the volume of cases in the Provincial Offences Court and the stresses that go with presiding in the Provincial Offences Court there will always be occasions where a justice of the peace needs to reserve his or her decision on sentence. This was not one of those cases.
- [20] The Supreme Court of Canada has commented on the delays in sentencing. In *MacDougall*, *supra*, at paragraph 36, McLachlin J. (as she then was) makes clear that delays in sentencing can impact on societal interests and that society has a “keen interest in ensuring that those guilty of committing crimes receive an appropriate sentence *promptly*” (my emphasis). A delay in sentencing of nine and a half months is not a prompt sentence.
- [21] It is made clear by McLachlin J. in *MacDougall* at paragraph 49, that the onus is on the Crown to bring accused persons to trial without undue delay and that this applies to sentencing. It is clear from my review of the analysis of McLachlin J. in *MacDougall* that there is an onus on the Crown in appropriate circumstances to bring an application to a higher court where there has been an inappropriate delay in a trial judge’s decision on sentence. In my view, this is one of those cases. The intervention of the Crown in this case was entirely appropriate, given the length of delay in the justice of the peace’s decision to reserve on Mr. Newhook’s sentence in the face of a joint submission.
- [22] Mr. Newhook’s right to be tried within a reasonable period of time includes the right to be sentenced within a reasonable period of time and that right potentially would be infringed with a nine and a half month delay contemplated by the decision of the justice of the peace to reserve a decision on sentence. As such, an order of *mandamus* ordering Her Worship Romagnoli to release her decision in writing to the prosecution and the defendant Adam Newhook on sentence with respect to Certificate of Offence number 4960-3238360B within thirty days of this order shall issue.

Judicial Discretion to Accept a Guilty Plea

- [23] The procedure with respect to the taking of a plea in the Provincial Offences Court is set forth at [section 45](#) of the *Provincial Offences Act*. In the case of the respondents Sun, Yip, Zdrle and Manicone, each of these individuals were represented by the same legal representative (a paralegal) who indicated that he had instructions to enter a plea of guilty to an amended charge of disobey sign, contrary to [section 182\(2\)](#) of the *Highway Traffic Act*.
- [24] The discretion of the court as to whether it will accept or reject the guilty plea is a discretion that has to be exercised judicially. It is not a discretion that can be exercised on an arbitrary whim (see: *R. v. Barrette* [1976 CanLII 180 \(SCC\)](#), [1977] 2 S.C.R. 121 and *R. v. Adgey* [1973 CanLII 37 \(SCC\)](#), [1975] 2 S.C.R. 426). In situations where it is evident on the face of the

record that the discretion has not been exercised judicially, such a discretion amounts to an error of law.

[25] All of the accused, on the facts before this court, were charged with speeding offences, contrary to [section 128](#) of the *Highway Traffic Act*. It is beyond dispute that each of these accused were charged with a speeding offence ranging between forty-seven and forty-nine kilometres per hour in excess of the posted speed limit. The Crown chose to offer a plea to a charge under [section 182\(2\)](#) of the *Highway Traffic Act*. The facts presented by the charges faced by each of the five accused fell within [section 182\(2\)](#) of the *Highway Traffic Act*.

[26] Justice of the Peace Romagnoli indicated she was reserving her decision on whether to accept the plea and that [s.45](#) of the *Provincial Offences Act* was the governing section. The transcript of the proceedings, however, establishes that she made no inquiries of either the prosecution or the defendant with respect to the reasonableness of the proposed plea.

[27] There was no reason in law why Her Worship, Justice of the Peace Romagnoli, should reject the guilty plea that was being proposed by the prosecutor and the defence. Even if there was some legal basis in law for Her Worship to consider the appropriateness of the guilty plea, I can see no reason why it should take nearly a year for Her Worship to consider whether the guilty pleas should be accepted.

[28] It is also worth noting that Justice of the Peace Romagnoli had accepted the identical guilty plea to an amended charge of disobey sign earlier in the day with respect to the matter involving Adam Newhook.

[29] The plea arrangement offered to the various accused by the Crown would result in a substantially reduced fine and fewer demerit points. The resolution clearly was a resolution that would benefit all of the respondents.

[30] There was no reason in law for Justice of the Peace Romagnoli to refuse the proposed resolution and the guilty pleas to the amended defence under [section 182\(2\)](#) of the *Highway Traffic Act*. An order of *mandamus* shall therefore issue ordering Her Worship, Justice of the Peace Romagnoli, to accept a plea of guilty to an amended offence of disobey sign, contrary to [section 182\(2\)](#) of the *Highway Traffic Act* and to enter a conviction for this amended offence against Kenneth K. Sun, for Certificate of Offence number 4960-4541100B, Renee W. Yip, for Certificate of Offence number 4960-3241498B, Marko Zdrale, for Certificate of Offence number 4960-9382688Z and Abigail O. Manicone, for Certificate of Offence number 4960-5998896Z, within thirty days of

the date of this order and to thereafter render her decision on sentence at the time the guilty pleas and convictions are entered.

Justice M.L. Edwards

Released: November 5, 2015

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