

Date: 20010824
Docket: CAC 148955

NOVA SCOTIA COURT OF APPEAL
[Cite as: R. v. Nutter, 2001 NSCA 119]

BETWEEN:

HARRY LAWRENCE NUTTER

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

DECISION

Counsel: Appellant in person
Kenneth W.F. Fiske, Q.C. for the respondent

Application Heard: August 23, 2001

Decision Delivered: August 24, 2001

BEFORE THE HONOURABLE JUSTICE CROMWELL IN CHAMBERS

CROMWELL, J.A.: (in chambers)

- [1] Mr. Nutter applied in chambers for a “rehearing of the motion to extend time to reinscribe the appeal for hearing.”
- [2] Some background will be helpful. Mr. Nutter was convicted on June 23rd, 1998, by The Honourable Judge F.K. Potts of the Provincial Court on a charge that he did without lawful excuse disobey the lawful order made by Judge Moira C. Legere, a Judge of the Family Court of Nova Scotia, by contacting Betty Nutter contrary to s. 127 of the **Criminal Code of Canada**, R.S.C. 1985, c. C - 46.
- [3] Mr. Nutter’s appeal from that conviction was heard and decided by this Court on January 27th, 1999. Mr. Nutter’s appeal was allowed and the conviction entered by Judge Potts on June 23rd, 1998, was set aside and an acquittal on that charge was entered.
- [4] Both prior to and at the hearing of the appeal, Mr. Nutter requested an adjournment claiming that other matters should be dealt with by the Court at the same time. These other matters appear to relate to other convictions on other offences, some prior to Judge Potts’ decision of June 23rd, 1998, and at least one after it.
- [5] The panel hearing the appeal considered Mr. Nutter’s request but refused to grant it.
- [6] Since then Mr. Nutter has filed voluminous material seeking the same relief that he requested before a panel of this Court in January of 1999 which request was both considered and refused.
- [7] In February of 1999, the Acting Registrar of the Court wrote to Mr. Nutter, in part, as follows:

You filed a Notice of Appeal in the Court of Appeal seeking to appeal a decision of Judge Potts made on June 23, 1998. The charge on which you were convicted was:

That he at Dartmouth, aforesaid, on or about the 16th day of April 1998, did without lawful excuse disobey the lawful order made by Judge Moira C. Legere, a Judge of the Family Court of Nova Scotia by contacting Betty Nutter, contrary to Section 127 of the Criminal Code.

That was the only conviction appealed in your notice of appeal and the only conviction under consideration in C.A.C. 148955. As you know, the Court, on January 27, 1999 had a hearing of that appeal and allowed the appeal, set aside the conviction and entered an acquittal on that charge. The order of the Court finally disposes of all matters which were properly before the Court in that case. Nothing more can be done by the Court with respect to that appeal.

It is not possible to appeal different convictions simply by amending your factum filed in connection with an appeal of some other conviction. I understand from your documents that you feel it would have been more efficient to deal with all matters at once. As you know, the Court considered your submissions in that regard and made its ruling. I refer to the first full paragraph on page 2 of the reasons of the Court.

If you have other convictions that you wish to appeal, you must file notices of the appeal with respect to them. Until you do so, there is no basis for the Court to consider them. Whether such appeals should be in the Supreme Court or the Court of Appeal, I cannot say because I do not know the details of other matters you may wish to appeal. If the notices of appeal are not filed within the time limits for filing a notice of appeal, you must ask a judge of the appropriate Court for an extension of time. Whether to grant such an extension is within the discretion of the Chambers judge. Generally, a person asking for an extension should present evidence explaining why the notice of appeal was filed late and, if such is the case, that there was an intention to appeal during the time period for the filing of the notice of appeal.

Your most recent document, dated February 3, 1999, refers to section 675(1.1) of the Criminal Code. That section appears to me to deal with a right of appeal to the Court of Appeal with respect to a summary conviction matter when the summary conviction matter was tried with an indictable offence which is also under appeal. In your case, there was only one conviction under appeal. The appeal was heard and a final decision in your favour has been given.

[8] In July of 2001 the Registrar of the Court wrote to Mr. Nutter in part as follows:

The appeal file in which you are attempting to file documents was concluded and closed by decision of the Court of Appeal on **January 27, 1999**. This is no longer an active file before the Court of Appeal. The matter raised in the Notice of Appeal filed by you on July 16, 1998 which opened your appeal file was addressed by the court in its decision of January 27, 1999. You will recall that you had appealed the conviction under the following charge:

That he at Dartmouth, aforesaid, on or about the 16th day of April 1998, did without lawful excuse disobey the lawful order made by

Judge Moira C. Legere, a Judge of the Family Court of Nova Scotia by contacting Betty Nutter, contrary to Section 127 of the Criminal Code.

If there are other matters which you wish to appeal to the Nova Scotia Court of Appeal at this time, these must be the subject of a new appeal. ...

- [9] The directions contained in these letters were complete and correct in every respect.
- [10] Mr. Nutter's application is, therefore, dismissed. I will issue an order directing the Registrar that no further material is to be accepted from Mr. Nutter for filing in this file which is completed and closed.

Cromwell, J.A.