

NOVA SCOTIA COURT OF APPEAL
Cite as: R. v. Caine, 1996 NSCA 258

Freeman, Roscoe and Pugsley, JJ.A.

BETWEEN:

HER MAJESTY THE QUEEN

)
Kenneth W.F. Fiske, Q.C.
) for the Appellant

)
Appellant

- and -

)
) no one appeared
) for the Respondent

MICHAEL LESLIE CAINE

)
) Respondent

)
) Appeal Heard:
) December 10, 1996

)
) Judgment Delivered:
) December 10, 1996

THE COURT: Appeals allowed per oral reasons for judgment of Freeman, J.A.; Roscoe and Pugsley, JJ.A. concurring.

The reasons for judgment of the Court were delivered orally by:

FREEMAN, J.A.:

The respondent was charged on December 13, 1995, with attempting to procure two women as prostitutes, and with an assault on one of them and a sexual assault on the other. He was arraigned on January 9, 1996, and after a number of adjournments for election and plea his counsel informed the court that the Crown had failed to make disclosure despite repeated requests by the defence. He could not therefore make an informed election and plea.

Counsel for the Crown, who was substituting for the prosecution having carriage of the case, could offer no explanation. The Provincial Court judge dismissed the informations in the presence of the respondent, his counsel, and the prosecutor. No plea had been taken.

Later that day in open court the trial judge gave an oral decision in which he stated that:

"...I dismissed the charges, when actually I should have stayed the charges, and the information was so endorsed.

As a result of further consideration of this matter on this date, I am instructing the Clerk to strike out the "Dismissed" on both Informations, and replace it with the following:

Stayed by the Court for the lack of disclosure is a violation of the Charter of Rights and Freedoms.

These comments are made in the absence of the accused and his counsel with copies of the same to be forwarded to both Mr. Beveridge and Mr. Botterill.

The Crown has appealed both the stay and the dismissal. Both appeals are allowed.

The trial judge had jurisdiction over the matters before him when he dismissed them. Thereupon his jurisdiction ceased and he became *functus*. He had no

jurisdiction to strike out the dismissals nor to replace them with a stay. Following **R. v. Atkinson** (1977), 37 C.C.C.(2d) 416, since there was no plea and therefore no legal trial, the dismissal of the informations and any legal effects flowing from them are set aside.

Freeman, J.A.

Concurred in:

Roscoe, J.A.

Pugsley, J.A.

C.A.C. No.127401-127402

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -

MICHAEL LESLIE CAINE)

)
)
)
)
)

REASONS FOR
JUDGMENT BY:

FREEMAN,

Respondent) J.A.
)
)
)
)
)
)
)