

**NOVA SCOTIA COURT OF APPEAL**

**Citation: *R. v. Ayadi*, 2012 NSCA 113**

**Date:** 20121107

**Docket:** CAC 405451

**Registry:** Halifax

**Between:**

Mohammed Adel Ayadi

Applicant/Appellant

v.

Her Majesty the Queen

Respondent

**Judge:** The Honourable Justice David P.S. Farrar

**Motion Heard:** November 1, 2012, in Halifax, Nova Scotia, in Chambers

**Held:** Motion for bail pending appeal dismissed.

**Counsel:** Applicant/Appellant in person  
Mark Scott and Timothy O'Leary, for the respondent

## **Decision:**

[1] Mr. Ayadi applied in Chambers for interim release (bail) pending appeal on his convictions for assault, assault with a weapon, uttering threats to cause death or bodily harm, uttering threats, mischief and failure to comply with conditions of a Recognizance or Undertaking. Mr. Aydi pled guilty to these offences on June 5<sup>th</sup>, 2012. He was sentenced for the offences on July 13<sup>th</sup>, 2012. The Crown opposed his release.

[2] After hearing submissions from Mr. Ayadi (who was self-represented) and Mr. Scott, I dismissed the motion with reasons to follow. These are my reasons.

## **Legal Principles**

[3] This motion is brought pursuant to s. 679(1)(a) of the **Criminal Code of Canada**, R.S.C. 1985, c. C-46 and **Nova Scotia Civil Procedure Rule 91.24**. The relevant statutory provisions are:

**679.** (1) A judge of the court of appeal may, in accordance with this section, release an appellant from custody pending the determination of his appeal if,

(a) in the case of an appeal to the court of appeal against conviction, the appellant has given notice of appeal or, where leave is required, notice of his application for leave to appeal pursuant to section 678;

...

(c) in the case of an appeal or an application for leave to appeal to the Supreme Court of Canada, the appellant has filed and served his notice of appeal or, where leave is required, his application for leave to appeal.

...

(3) In the case of an appeal referred to in paragraph (1)(a) or (c), the judge of the court of appeal may order that the appellant be released pending the determination of his appeal if the appellant establishes that

(a) the appeal or application for leave to appeal is not frivolous;

(b) he will surrender himself into custody in accordance with the terms of the order; and

(c) his detention is not necessary in the public interest.

[4] The onus was on Mr. Ayadi to satisfy each of these criteria on the balance of probabilities. Before turning to consideration of the criteria, I will briefly outline the circumstances that led to this motion.

[5] Mr. Ayadi is 49 years of age and the father of three children who, at the time of these offences were ages 14, 8 and 6. On December 13, 2011, Mr. Ayadi entered into a peace bond. One of the conditions of the peace bond was to refrain from having any contact or communication with Oxana Salkova, his former common law partner and the mother of his two youngest children, at any time directly or indirectly, except through legal counsel.

[6] Mr. Ayadi breached that Recognizance on December 19, 2011, by contacting Ms. Salkova.

[7] On May 6<sup>th</sup>, 2012, Mr. Ayadi again had contact with Ms. Salkova. As a result of that encounter he was charged with uttering threats to cause death or bodily injury to Ms. Salkova and her children, assault on Ms. Salkova and mischief by damaging her car door. He was arrested at that time and released on May 9<sup>th</sup>, 2012 on a \$5,000 Recognizance. Again, one of the conditions of that Recognizance was to have no direct or indirect communication with Ms. Salkova. On May 11<sup>th</sup>, 2012, Mr. Ayadi was charged with uttering a threat against his 14 year old daughter to cause bodily injury to her. He was also charged with physically assaulting her and hitting her with a horse whip. He was again arrested and on May 14, 2012, he was released on a \$10,000 Recognizance.

[8] Mr. Ayadi breached the conditions of that Recognizance on May 17<sup>th</sup>, 2012, when he attempted to contact Ms. Salkova by telephone. He was again arrested and at a show cause hearing on May 23<sup>rd</sup>, 2012, his release conditions were revoked and he was remanded.

[9] On June 5, 2012, he attended court, with his counsel, and pled guilty to the offences noted earlier. His sentencing was set over to July 13, 2012 to allow a pre-

sentence report to be prepared. I will have more to say about the pre-sentence report later in these reasons.

[10] On July 13, 2012, Mr. Ayadi attended court, again with counsel. Following submissions by the Crown and his counsel, Mr. Ayadi was sentenced to one year in custody.

[11] At the sentencing hearing, Mr. Ayadi had his counsel read a letter to the court apologizing to his children for the pain he had caused them. He also had this to say to the court:

Your Honour, I take full responsibility for all the charges today, and I am very sorry, again, ... I'll tell you how serious I am and how honest I am with my, my willing to correct myself. ...

[12] It is with this background that I will now turn to three criteria on which I must be satisfied:

**a) Appeal is not frivolous**

[13] Mr. Ayadi pled guilty to these charges and accepted responsibility for the charges in open court. It now appears that he has regrets about pleading guilty because the sentence he received was longer than he had anticipated. In his Notice of Appeal he suggested there was a joint recommendation for six months and what he received was longer than that. A review of the record reveals that there was no joint recommendation or any suggestion of one. The Crown and Mr. Ayadi's counsel put forward their respective positions in sentencing. The sentencing judge made her decision after hearing the submissions of counsel and hearing from Mr. Ayadi. Mr. Ayadi's assertion that there was a joint recommendation is simply not supported by the record. I have no hesitancy in saying to the extent that Mr. Ayadi relies upon the sentencing judge not following a joint recommendation as a ground of appeal, the ground of appeal is frivolous.

[14] Mr. Ayadi's other ground of appeal was that he was under duress when he pled guilty.

[15] In his submissions before me he says that his lawyer “kind of pushed me to plead guilty”.

[16] In my view, this ground of appeal is also frivolous. Mr. Ayadi through both his letter read by his counsel and his remarks to the court accepted responsibility for these crimes. He also expressed remorse to the court. The record does not reveal any reticence on his part in pleading to these offences. There is nothing in his materials or in his submissions before me that indicates he was in any undue pressure from counsel to plead guilty. The guilty plea and the court appearances occurred over time. Following the bail revocation hearing there were court appearances on May 29, June 1<sup>st</sup>, and June 5<sup>th</sup>. As noted earlier, it was at the June 5<sup>th</sup> hearing that Mr. Ayadi pled guilty. The matter was set over to July 13<sup>th</sup>, 2012 for sentencing. In this five week period there was absolutely no suggestion by Mr. Ayadi that he had any regrets about pleading guilty.

[17] As well, Mr. Ayadi was extensively interviewed for the purpose of preparing the pre-sentence report. At no time during that lengthy interview, as detailed in the report, does he express any concern about the fact that he had pled guilty or the circumstances surrounding his guilty plea. To the contrary, Mr. Ayadi in both the pre-sentence report and before the Court accepted responsibility for his actions.

[18] I can come to no other conclusion, on the information before me, that this ground of appeal is also frivolous.

[19] In finding that the grounds of appeal are frivolous I am cognizant that this aspect of the test has a very low threshold. However, on a review of the record, Mr. Ayadi’s submissions and his arguments (both in writing and orally), I am satisfied he has not crossed that threshold.

[20] Having determined that Mr. Ayadi has failed to satisfy the first criteria it is not necessary for me to review the other two criteria. For these reasons I dismissed Mr. Ayadi’s motion for bail pending appeal.

Farrar, J.A.