

NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Cummings*, 2013 NSCA 112

Date: 20131008
Docket: CAC 416755
Registry: Halifax

Between:

Wanda Cummings

Appellant

v.

Her Majesty The Queen in right of Nova Scotia,
The Provincial Court of Nova Scotia, The Attorney General of Nova Scotia
representing Her Majesty the Queen in Right of the Province of Nova Scotia, and
The Nova Scotia Department of Justice

Respondents

Judge: The Honourable Justice Joel E. Fichaud

Motion Heard: September 26, 2013, in Halifax, Nova Scotia, in Chambers

Written Release: October 8, 2013

Held: Motions by the Appellant dismissed.

Counsel: Wanda Cummings, Appellant, in Person

Kenneth W.F. Fiske, Q.C. and Sheldon Choo, for the
Respondents

Reasons:

[1] Ms. Cummings moves to amend her Notice of Appeal, seeks production of information from the Provincial Court and requests direction on filing the record.

[2] The background is this.

[3] In April 2008, Ms. Cummings was charged with public mischief and assaulting a police officer, contrary to ss. 140(1)(c) and 270(1)(a) of the *Criminal Code*.

[4] On June 5, 2008, Ms. Cummings was found Not Criminally Responsible (NCR) for the mischief charge. In July 2008, Ms. Cummings was granted an absolute discharge from the East Coast Forensic Hospital. The assault charge was adjourned, then later dismissed on April 13, 2010 when the Crown offered no evidence.

[5] Ms. Cummings sought to appeal the NCR finding. On November 29, 2010, Justice Douglas MacLellan of the Supreme Court of Nova Scotia denied an extension of time for Ms. Cummings to appeal (oral decision - Port Hawkesbury Registry # 332182). Ms. Cummings appealed to this Court (CAC 341990).

[6] Meanwhile, other charges against Ms. Cummings accumulated, and have awaited trial by the Provincial Court. These included charges for failure to comply, assault and public mischief [*Criminal Code*, ss. 145(3), 266 and 140(1)(a)] and misuse of the 911 number [*Emergency "911" Act*, S.N.S. 1992, c. 4]. Provincial Court Judge Stroud directed that the matters be tried in June, 2011. Ms. Cummings filed a Notice of Judicial Review of that direction. On June 29, 2011, Justice Coughlan of the Supreme Court struck the Notice of Judicial Review (2011 NSSC 324). He said that the matter should follow the process set out in the *Criminal Code*, which did not prescribe Ms. Cummings' pre-emptive challenge in the Supreme Court. Ms. Cummings appealed to this Court (CA 352311).

[7] On May 11, 2012, Justice Hamilton of this Court, in chambers, dismissed both Ms. Cummings' appeals (CAC 341990 and CA 352311) for failure to perfect (2012 NSCA 52). Ms. Cummings sought leave to appeal, which was denied by the Supreme Court of Canada on February 21, 2013 (SCC 34962).

[8] After the conclusion of the judicial review litigation, Judge Stroud rescheduled the matters that were awaiting trial in Provincial Court.

[9] On June 11, 2013, Ms. Cummings then sought to file a new Notice of Judicial Review in the Supreme Court of Nova Scotia. This basically repeated the claim for relief that had been rejected by Justice Coughlan. Justice Robertson of the Supreme Court directed the Prothonotary to reject Ms. Cummings documents “for want of jurisdiction”. The documents were returned to Ms. Cummings.

[10] On June 13, 2013, Ms. Cummings appeared at Crownside before Justice Robertson. Justice Robertson informed Ms. Cummings that the matter was within the jurisdiction of the Provincial Court, not the Supreme Court.

[11] On June 17, 2013, Ms. Cummings filed a Notice of Appeal to this Court. Her Notice says that Justice Robertson’s refusal to issue a stay of the Provincial Court proceedings, pending the proceeding on her motion for judicial review, was an error of law and jurisdiction and a denial of natural justice.

[12] On August 22, 2013, Ms. Cummings moved in chambers of this Court for a stay of the decision under appeal, and for permission to amend her Notice of Appeal. Justice Beveridge denied the motions (2013 NSCA 96). As to the stay, Justice Beveridge noted (para 25) that Ms. Cummings’ earlier attempt to stay the Provincial Court charges had been rejected by Justice Coughlan.

[13] On September 5, 2013, Ms. Cummings filed a Notice of Motion that sought an order that the Respondents provide the complete Provincial Court record, permission to file her appeal record in the form of a DVD, instead of appeal books, and permission to file a “Notice of Constitutional Issue”. The Notice of Constitutional Issue challenges the validity of *Civil Procedure Rule* 82.12, the entire *Court Officials Act*, R.S.N.S. 1989, c. 373, as amended, and ss. 29(1)(b) through (f) of the *Public Service Act*, R.S.N.S. 1989, c. 376, as amended.

[14] In chambers, on September 12, 2013, I told Ms. Cummings that, under Rule 90.18, a Notice of Constitutional Question must be served on the Attorney General, but need not be filed with the Registrar of the Court of Appeal. I also informed Ms. Cummings that, to raise an additional issue, not mentioned in her Notice of Appeal, she must seek and obtain leave to amend her Notice of Appeal.

I adjourned Ms. Cummings' motion to September 26, 2013, so she could file a motion to amend her Notice of Appeal.

[15] Ms. Cummings then filed further documents, for the September 26, 2013 chambers hearing, under the style of cause of a related appeal by Ms. Cummings (CA # 415797). I am issuing another decision, concurrently with this one, on that matter (*Cummings v. Nova Scotia (Attorney General)*, 2013 NSCA 113). Notwithstanding my direction on September 12, Ms. Cummings did not file a Notice of Motion to amend her Notice of Appeal in the instant proceeding (CAC 416755). In chambers on September 26, 2013, Ms. Cummings appeared and sought an amendment. On September 26, the Respondents were prepared to speak to Ms. Cummings' request to amend. So I will treat Ms. Cummings oral submissions on September 26, 2013 as a motion to amend her Notice of Appeal.

[16] Accordingly, the issues I will address in this decision are: (1) whether I should order the Respondents to provide to Ms. Cummings a complete record of all the Provincial Court proceedings, (2) whether Ms. Cummings may file the DVD in lieu of Appeal Books, and (3) whether Ms. Cummings may amend her Notice of Appeal to challenge the validity of the statutory instruments cited in her Notice of Constitutional Issue mentioned above (para 13).

[17] On the first point, I reject Ms. Cummings' request that I order the respondents to provide a complete copy of the Provincial Court record. The Provincial Court record covers over five years of proceedings. Several of these are concluded. Ms. Cummings has sought to stay, prohibit or restrain those proceedings in her earlier motion for judicial review. That motion was struck by Justice Coughlan, Ms. Cummings' appeal was dismissed by this Court, and Ms. Cummings' motion for leave to appeal was denied by the Supreme Court of Canada. Those matters are *res judicata* or subject to issue estoppel. The only issue on this appeal is whether Justice Robertson erred in the ruling that is under appeal. The proper record for that appeal includes the material that was before Justice Robertson. It does not include five years of Provincial Court transcripts on other proceedings and material that was not before Justice Robertson.

[18] On the second point, I reject Ms. Cummings' request that she may file a DVD of the Provincial Court proceedings instead of the normal documentary appeal book. The record is the appeal book that is prescribed by Rule 90.30, or

Rule 91.15 in a criminal appeal. It would include the material, respecting the Provincial Court proceedings, that was before Justice Robertson. It would not include extraneous material. The DVD that Ms. Cummings proposes to file would chronicle, in the equivalent of over 2000 transcribed pages, virtually every interaction over five years between Ms. Cummings and the Provincial Court. There would be no transcripts, no certification of accuracy by a court reporter, and no isolation of the material that may have been before the judge whose decision is under appeal. The courts have already rejected Ms. Cummings' attempt to forestall the Provincial Court litigation. The use of a DVD of all Provincial Court proceedings since 2008, as the record for the limited purpose of this appeal, would invite a chaotic broadening of the issues beyond those that are permitted for this appeal. I direct that Ms. Cummings file appeal books, in the normal documentary form, that comply with the *Rules*.

[19] Thirdly, there is Ms. Cummings' request that the appeal be expanded to encompass her constitutional challenge to Rule 82.12, the entire *Court Officials Act*, and s. 29(1)(b) through (f) of the *Public Service Act*. Rule 82.12 says that the Prothonotary may not accept electronic filing "unless the court issues a general order approving a system for electronic filing that is securely in the control of the court", but a "judge may authorize delivery in electronic form of a document that is to be delivered to the judge". The *Court Officials Act* prescribes the authority for the appointment of administrators, officers and employees for the administration of the courts in Nova Scotia. Sections 29(1)(b) through (f) of the *Public Service Act* say that the provincial Minister of Justice has the "superintendence of all matters connected with the administration of justice in the Province not within the jurisdiction of the Dominion of Canada", and that the provincial Attorney General is to advise provincial Departments respecting instruments issued by the Province and has conduct of litigation for the Province.

[20] I deny Ms. Cummings' request to amend her Notice of Appeal. The proposed constitutional issues have no relevance to the ruling of Justice Roberston that is under appeal. This appeal is limited to the question of whether Justice Roberston committed an appealable error, under the appropriate standard of review, in her ruling not to accept jurisdiction over Ms. Cummings' second notice of judicial review. It isn't a royal commission on the administration of justice.

[21] I dismiss Ms. Cummings' motions. As the Respondents did not request costs, the costs of this motion will be in the cause of the appeal.

Fichaud, J.A.