

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Reddick*, 2016 NSPC 55

Date: 2016-09-29

Docket: 2983812, 2983813

Registry: Pictou

Between:

Her Majesty the Queen

v.

Joseph Nolan Reddick

DECISION REGARDING BAIL

Judge: The Honourable Judge Del W. Atwood

Heard: 29 September 2016 in Pictou, Nova Scotia

Charge: Paras. 145(3)(a) and 264.1(1)(a) of the Criminal Code of Canada

Counsel: Patrick Young for the Nova Scotia Public Prosecution Service
Douglas Lloy Q.C. for Joseph Nolan Reddick

By the Court:

[1] Joseph Nolan Reddick is before the court for trial on charges of uttering a threat to cause death and breach of recognizance. The court heard the case for the prosecution today; defence counsel elected to call evidence, and there is one more defence witness to go, as Mr. Reddick intends testifying. I have adjourned the trial to 11 October 2016 at 1:30 p.m.

[2] A problem arose at the conclusion of proceedings today.

[3] On 9 May 2016, I admitted Mr. Reddick to bail on these charges following a contested bail hearing, and placed Mr. Reddick on a recognizance, order number 1862729.

[4] The prosecution sought judicial review of my decision in accordance with the provisions of s. 521 of the *Criminal Code*.

[5] The result of that review is set out in *R. v. Reddick* 2016 NSSC 228.

Scaravelli J.—who was the reviewing judge—found that the prosecution had shown cause, vacated the recognizance upon which I bound Mr. Reddick on 9 May 2016, and remanded Mr. Reddick into custody.

[6] I have that remand warrant in front of me now. It is order number 1898555.

The order states as follows: “The accused is remanded into custody pending a hearing pursuant to s. 515.”

[7] Defence counsel advocates that this means Mr. Reddick would be entitled now to a bail hearing under s. 515 of the *Code* as that is the plain meaning of the remand warrant which the reviewing judge issued as a result of the s. 521 hearing.

[8] In *Geophysical Services Inc. v. Sable Mary Seismic Inc.* 2012 NSCA 57, Beveridge J.A. stated the following regarding the interpretation of court orders:

15 The appellants rely on three decisions for its submission of strict interpretation of court orders: *Brosseau v. Berthiaume*, 1993 CarswellOnt 3118 (Ont. C.J. Gen. Div.); *New Era Cap Co. v. Capish? Hip Hop Inc.*, 2006 FCA 66; *Tatarenko v. Tatarenko*, 2005 ABQB 325. All of these cases dealt with applications by an aggrieved party to seek to hold the responding party guilty of contempt of court orders that either required them to do something or to refrain from certain conduct.

16 The principles extracted by the appellants from these cases include the comments by Valin J. in *Brosseau v. Berthiaume*, [1993] O.J. No. 532 :

9 In accordance with the general rules of interpretation, the language used in a judgment or order must be construed according to its ordinary meaning and not in some unnatural or obscure sense. Upon reading the entire order as a whole, it is clear that the intention of S.D. Loukidelis J. was to create a restraining order. ...

17 In addition, they rely on the reasons of Sharlow J.A. in *New Era Cap Co. v. Capish? Hip Hop Inc.* where she wrote at para. 11:

11 ... I cannot accept that submission. In my view, in the context of contempt proceedings that are based on an alleged failure or refusal to comply with a court order, the words of the order must be read strictly. That is how the judge interpreted the Anton Piller order, and in my view his interpretation was correct. The contempt allegations in this case must be understood in the light of that narrow interpretation.

18 As already noted earlier, these cases involved contempt proceedings. Contempt proceedings are quasi criminal in nature. Individuals face possible deprivation of their liberty and/or other significant penalties. Such proceedings dictate precision and care in how orders are interpreted (see, for example, *Godin v. Godin* (2012 NSCA 54)).

[9] The proceedings before this court are criminal in nature; accordingly, I must interpret the order of the s. 521 reviewing court with care, as Mr. Reddick's liberty is at stake.

[10] I observe right away that the remand warrant that issued out of Supreme Court as a result of the s. 521 hearing is unclear. What is meant by the phrase: "The accused is remanded into custody pending a hearing pursuant to s. 515"?

[11] I have two interpretive aids that assist me. The first is the written decision of the reviewing court itself. At para. 55 of his judgment, Scaravelli J. stated:

Accordingly, I allow the crown's application for review and vacate the Bail order of 9th May 2016 pursuant to section 521 of the Criminal Code. As a result the accused would be remanded until his trial in September 2016 in Provincial Court. Further, the recognizance of 28th September 2015 is revoked pursuant to section 524(8) of the Criminal Code resulting in a remand of the accused until his trial in December 2016 in Supreme Court.

[12] Defence counsel today urges that the wording of the judgment supports the proposition that Mr. Reddick's remand runs to today only, because of the reviewing judge's phraseology: "remanded until his trial in September 2016 in Provincial Court".

[13] This leads me to the second interpretive aid, which is the governing statute. Scaravelli J. found that the prosecution had shown cause under sub-s. 521(8) of the *Code* and revoked the bail order which I made on 9 May 2016. What else did the reviewing judge have jurisdiction to do? It is useful at this point to set out sub-s. 521(8) in its entirety:

- (8) On the hearing of an application under this section, the judge may consider
 - (a) the transcript, if any, of the proceedings heard by the justice and by any judge who previously reviewed the order made by the justice,
 - (b) the exhibits, if any, filed in the proceedings before the justice, and
 - (c) such additional evidence or exhibits as may be tendered by the prosecutor or the accused,and shall either
 - (d) dismiss the application, or
 - (e) if the prosecutor shows cause, allow the application, vacate the order previously made by the justice and make any other order provided for in section 515 that he considers to be warranted.

[14] Clearly, sub-s. 521(8) creates a mandatory jurisdiction for a reviewing court: the court shall either dismiss an application, or, should cause have been shown by the prosecutor applicant, it shall vacate the order made in the court of originating

jurisdiction and shall make any other order provided for in s. 515 as might be warranted.

[15] Following through with this algorithm, Scaravelli J. found that the prosecution had shown cause, and he vacated the recognizance which I ordered on 9 May. What remained was for the reviewing court to make “any other order provided for in s. 515 that he considers to be warranted”. The orders that might be made under s. 515 in relation to a detained accused are as follows:

- Unconditional release under sub-s. 515(1);
- Conditional release under sub-ss. 515(2), (4), (4.1), (4.11), (4.2), (7), and (8); or,
- Detention in custody until dealt with according to law under sub-s. 515(5), with or without non-communication conditions under sub-s. 515(12).

[16] Having vacated the 9 May recognizance, and not ordering Mr. Reddick released, the only other order available legally to the reviewing court was to have remanded Mr. Reddick into custody “until dealt with according to law”. The fact that the remand warrant or the reviewing judge’s decision might not have stated this precisely does not alter the fact that I have no doubt that this is what the reviewing court meant to do—the court meant to follow the law. As a result, Mr.

Reddick continues to be remanded into custody on these charges until dealt with according to law. This would not foreclose Mr. Reddick from applying to this court under sub-s. 523(2)(a) for a bail hearing based on a change of circumstances; however, no such application is before me.

[17] Even if my analysis were wrong, a favourable outcome for Mr. Reddick on a bail hearing pertaining to the charges before me today would have offered an illusory benefit only, as Mr. Reddick remains remanded on charges pending for trial in Supreme Court later this year. Defence counsel stated that he was a little less confident in advancing a case that I would be able to deal with admitting Mr. Reddick to bail on charges before the Supreme Court. In fact, I am completely confident that I would have no jurisdiction to do so whatever, given sub-s. 523(2) of the *Code*, as interpreted judicially in *R. v. Mukpo* 2012 NSSC 107.

[18] Mr. Reddick continues to be remanded into custody until dealt with according to law, in accordance with the order of the Supreme Court.

JPC