

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Siefert, 2017 NSPC 58*

Date: 2017-11-27

Docket: 2955076, 2955077

Registry: Bridgewater

Between:

Her Majesty the Queen

v.

CHRISTOPHER JEROME SIEFERT

Judge: The Honourable Judge Paul Scovil, JPC
Heard: September 6, 2017, in Bridgewater, Nova Scotia
Decision November 27, 2017
Charge: 253(1)(a) and (b) of the Criminal Code of Canada
Counsel: Thomas Feindel, for the Applicant
Nina Johnsen, for the Public Prosecutions

By the Court:

[1] Mr. Siefert was charged under 253(1)(a) and (b) of the **Criminal Code** stemming from an offence date of April 10, 2015. Charges were laid on May 5, 2015. The matter came before this court for trial on September 25, 2017. From the date of the offence to the date of trial a total passage of time of 28.5 months occurred. Mr. Siefert applied for a stay of proceedings, citing a breach of his right to be tried in a reasonable period of time pursuant to the **Charter of Rights and Freedoms** and the decision of the Supreme Court of Canada in *R. v. Jordan, 2016 S.C.C. No. 27*. For the reasons below, I dismiss his application.

[2] This matter requires examination of several delays to determine if the accused rights to a trial within a reasonable time, pursuant to section 11(b) of the **Charter** have been violated.

[3] The Supreme Court of Canada in *Jordan (Supra)* set out the framework to be considered in cases, such as Mr. Siefert, whose matters were already in the court system prior to *Jordan* being decided. The Court recognized their pronouncement to be departure from the earlier framework that applied to delay cases, see p. 93. The Court further recognized that the reasonableness of the delay of those cases already in the system must be examined against the criteria of the preceding

construct, laid in out in *R. v. Morin [1992] 1 S.C.R 401*. These frameworks must be applied flexible and contextually, (*Jorden* p. 105).

Delays

[4] Several delays can be examined which contributed to the length required to get this matter to trial.

[5] There was an initial delay of a month, July 8, 2015 to August 12, 2015, as the defence had been unable to get instructions. This is clearly a delay attributable to Mr. Siefert.

[6] Trial was set to February 11, 2016. On January 13, 2016, Mr. Seifert's council requested an adjournment due to defence council being scheduled for surgery. While Mr. Siefert testified he had no knowledge of the adjournment request, it is clear he made no objection and in his evidence he conceded he had no problem with the adjournment. No inquiries were made as to the nature of the surgery nor should there have been.

[7] Further, on April 27, 2016, Mr. Siefert's council requested an adjournment as she was scheduled to attend a conference in Membertou. Mr. Siefert's counsel, Catherine Benton, has First Nation status and was attending the conference relating

to First Nation matters. Delay was specifically waived by the defence and on the Crown's agreement to the adjournment request was given, based on that waiver.

[8] Trial had been set for October 26, 2016. The Crown appeared on the matter on July 13, 2016, indicating an adjournment would be required due to medical issues relating to the investigating officer. That adjournment request was consented to by the defence. Trial was then set to February 27, 2017.

[9] On February 15, 2017, Mr. Feindel appeared to request an adjournment due to his taking the file over from previous counsel who had been appointed to the Bench. Mr. Siefert was not present for this adjournment request. It should also be noted that counsel for Mr. Siefert asked that the matter be adjourned to set a further date for trial, as opposed to setting a new trial date then and there. The matter was set to March 15, 2017.

[10] On March 15, 2017, the matter was again adjourned at the request of defence because 'other discussions' were going on. The Crown was quite concerned regarding the delay requested by the defence but agreed to March 22, 2017, to set a further date. Mr. Feindel again adjourned the matter to April 12, 2017. On April 12, 2017, the defence again adjourned the matter to April 26, 2017. Only on April 12, 2017, did the defence request a trial date. It was then set over to June 1st to

determine when sufficient court space could be made available. No objection was made to this by Mr. Siefert's lawyer. Mr. Siefert was now being represented by Mr. Feindel.

[11] Suffice to say there were numerous adjournments, predominately at the defence's request. One Crown adjournment was requested for reasons relating to the investigating officer's health.

[12] I find that a majority of adjournment requests were at the bequest of the defence with an implicit waiver of delay. The illness of the officer was a discrete event which is contemplated as occurrence to which the justice system must allow for. At the end of the day, I can not find that Mr. Siefert's section 11(b) rights to trial in a reasonable time have been infringed.

[13] Mr. Siefert argues that delays requested by Ms. Benton were unknown to him. It should be noted that at no time did Mr. Siefert make any personal appearances in court, even after being represented by Mr. Feindel. His evidence showed no efforts to make inquiries as to adjournments nor did he have any issues with them. The letters from Ms. Benton to Mr. Siefert all indicate they were confirming new dates. This implies some prior communications by Ms. Benton to Mr. Siefert. Mr. Siefert obviously waived solicitor client privileges but there is no

indication that any inquiries were made by Mr. Siefert's counsel to Legal Aid or to Ms. Benton regarding file notes or meeting schedules. It should be noted the burden lies with the applicant to prove the **Charter** breach on a balance of probabilities.

To logically follow Mr. Siefert's argument that any adjournment in this case or other are fully inferred, seems to me to import a duty on a trial judge to canvass accused represented by counsel as to their understanding of both the delay requested, as well as their rights under the **Charter**. Ms. Benton was a senior respected counsel who appeared before the Court regularly. If this Court can not assume her client knew of the adjournment requests, the Court also must question why Mr. Feindel did not have his client there when he made adjournment requests. Otherwise, the Court can not allow defence counsel to specifically waive delay, unless the client is present and subject to the court canvassing with an accused if he understands his **Charter of Rights** and is sufficiently informed, thereof, to argue to the delay.

Conclusion

[14] In conclusion, I find that all delays were ones which were implicitly or explicitly waived or were events that were unavailable. I, therefore, deny Mr. Siefert's Stay request.

P. Scovil, JPC