

Panaktalok v. H.M.T.Q., 2003 NWTCA 9

A-1-AP2002000018

IN THE COURT OF APPEAL OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

DARCY JOSEPH PANAKTALOK

(Applicant/Appellant)

- vs. -

HER MAJESTY THE QUEEN

(Respondent)



Transcript of the Ruling on the Application and the Order of The Honourable Justice J.E. Richard, at Yellowknife in the Northwest Territories, on June 5th A.D., 2003.

APPEARANCES:

Mr. R. Gorin: Counsel for the Applicant/Appellant
Darcy Joseph Panaktalok

Mr. S. Niblock: Counsel for the Respondent
Her Majesty the Queen

1 THE COURT: I will firstly deal with the
2 application for an extension of time to file the
3 conviction appeal.

4 Mr. Panaktalok was convicted of sexual assault by
5 a jury in his home community of Tuktoyaktuk on October
6 9th, 2002. He was sentenced to three years'
7 imprisonment.

8 On November 18th, 2002, he filed a form of Notice
9 of Appeal in this Court. His Notice of Appeal is on a
10 preprinted form and on that form, he clearly indicated
11 that he wished to appeal the sentence imposed on him.
12 His grounds of appeal stated in that document are as
13 follows:

14 1. I was not allowed to call up a
15 couple of witnesses to help
explain my case.

16 2. I believe what I did, did not
17 deserve three years as I did not
18 have a criminal history previous
to this.

19 On November 21st, 2002, the Court registry wrote
20 to Mr. Panaktalok, advising him that it was his
21 responsibility to take all steps necessary to advance
22 his appeal towards a hearing date and also advising
23 him of how to contact the Legal Aid office if he
24 wished to get the assistance of a lawyer. He was also
25 advised that the appeal list would be spoken to in
26 this Court on December 5th.

27 No one appeared for him on December 5th, and the

1 matter remained on the pending appeal list.

2 At the next speaking to the appeal list in this
3 Court on March 20th, again no one appeared on behalf
4 of Mr. Panaktalok. On that date, the Court set
5 Mr. Panaktalok's sentence appeal to be heard by a
6 panel of this Court at its regular sitting on April
7 22nd, 2003.

8 On April 17th, Mr. Gorin appeared before a Judge
9 of this Court and requested that Mr. Panaktalok's
10 sentence appeal scheduled for April 22nd be adjourned.
11 That request was granted, and the appeal was removed
12 from the April 22nd docket.

13 On April 25th, Mr. Gorin filed an Amended Notice
14 of Appeal. On May 22nd, Mr. Gorin filed a further
15 Amended Notice of Appeal. The gist of the amendment is
16 that Mr. Panaktalok now wishes to appeal his
17 conviction and not his sentence.

18 In making the present application,
19 Mr. Panaktalok's counsel does not concede that the
20 conviction appeal is out of time but makes the
21 application, he says, out of an abundance of caution.
22 However, I am of the view that a conviction appeal is
23 quite different from a sentence appeal under the
24 *Criminal Code* and that if Mr. Panaktalok's conviction
25 appeal is to be entertained by this Court,
26 Mr. Panaktalok needs to obtain an order of this Court
27 extending the time within which to file a conviction

1 appeal.

2 The *Criminal Code* and the Rules of Court set the
3 appeal period as 60 days. Accordingly,
4 Mr. Panaktalok's appeal period for filing his
5 conviction appeal expired on December 9th, 2002.
6 However Section 678(2) of the *Criminal Code* gives the
7 Court a judicial discretion to grant an extension of
8 time for filing a conviction appeal in an appropriate
9 case.

10 An extension of time is not granted as a matter
11 of course. There are valid, practical reasons for
12 having finality in the criminal process. Appeals are
13 by nature exceptional and there ought to be good
14 reason to grant an extension of time for appealing a
15 Court's decision. The Court must consider whether
16 justice requires the extension.

17 As stated in previous cases in this jurisdiction,
18 in exercising its judicial discretion on this kind of
19 application the Court takes into consideration a
20 number of factors, including; one, whether the
21 applicant had shown within the appeal period a bona
22 fide intention to appeal; two, whether the applicant
23 acted with reasonable diligence or has accounted for
24 the delay; three, whether the appeal has a reasonable
25 chance of success if allowed to proceed.

26 In his affidavit filed in support of this
27 application, Mr. Panaktalok now says that he had

1 initially intended to appeal his conviction at the
2 time that he filed his sentence appeal. However a
3 reading of the first Notice of Appeal belies that
4 assertion. Mr. Panaktalok says that he was confused,
5 however the wording of the preprinted form is quite
6 straightforward.

7 On the evidence before me, I am not satisfied
8 that Mr. Panaktalok displayed, during the currency of
9 the appeal period, an intention to appeal his
10 conviction.

11 I also find that the evidence is unsatisfactory
12 in explanation of the delay before the proposed
13 conviction appeal was filed on April 25th. Although he
14 was given advice by the registry on how to contact
15 Legal Aid for assistance with his appeal, there is no
16 evidence that he did so. He says in paragraph 7 of his
17 affidavit that after filing his sentence appeal he
18 retained counsel yet there is no evidence of when he
19 did so.

20 There is simply an absence of evidence of
21 anything done by Mr. Panaktalok to advance a proposed
22 conviction appeal in the time frame between the expiry
23 of the appeal period on December 9th, 2002 until the
24 filing of an Amended Notice of Appeal by Mr. Gorin on
25 April 25th, 2003. In the result, Mr. Panaktalok has
26 not satisfied me that he acted with reasonable
27 diligence or that he has accounted for the delay.

1 On the hearing of this application today,
2 Mr. Panaktalok's counsel, Mr. Gorin, makes strong and
3 able arguments regarding the grounds of appeal which
4 Mr. Panaktalok now wishes to advance with a view to
5 having his conviction set aside. I have not reviewed
6 the transcript of the trial or the appeal books but
7 for purposes of this application, I accept Mr. Gorin's
8 statements of what evidence went before the jury and
9 what the trial Judge's charge did and did not contain.

10 The proposed grounds of appeal which are now
11 contained in the latest Amended Notice of Appeal filed
12 May 2nd 22nd, 2003 are stated as follows:

13 1. The learned trial Judge erred
14 by failing to instruct the jury on
 the mens rea of sexual assault.

15 2. A hearsay statement of the
16 complainant was entered as
17 evidence without a voir dire. The
18 hearsay statement of the
 complainant should not have been
 before the jury.

19 3. The learned Judge erred by not
20 instructing the jury on how to
 treat the hearsay statement of the
 complainant.

21 Having heard Mr. Gorin's submissions, I find that
22 these grounds of appeal are at least arguable so this
23 factor must be decided in Mr. Panaktalok's favour.
24 However that factor is not determinative, nor is any
25 other factor.

26 On balance, and after careful consideration, I
27 find that I cannot exercise discretion in favour of an

1 extension of time in this case. As I have mentioned,
2 in order for our legal system or the criminal law
3 process to function effectively in our society, there
4 has to be some finality to criminal proceedings.

5 Mr. Panaktalok has had two jury trials on this
6 charge in his home community of Tuktoyaktuk. On the
7 face of it, he was properly convicted by a jury of his
8 peers in the community last October. The law gave him
9 a reasonable period of time to appeal that
10 conviction - 60 days. He did not do so and there is no
11 reliable evidence that he intended to do so.

12 Although it was recommended to him that he seek
13 legal advice, it seems that he did not do so until
14 after this Court scheduled his sentence appeal; i.e.,
15 on or after March 20th. This is more than 90 days
16 after the expiry of the appeal period. It is
17 subsequent to that that his newly retained counsel
18 does a careful review of the trial transcript and
19 uncovers what are now said to be legal errors
20 committed during the course of the jury trial, matters
21 which I note were not raised during the trial although
22 that is not determinative of course.

23 Our society requires a properly functioning legal
24 system and any such system has rules and exceptions to
25 the rules. When I consider carefully the circumstances
26 of this case, I am not persuaded that justice requires
27 that this applicant be granted an extension of time

1 beyond that which normally applies to persons in his
2 situation. In my view, he is not entitled to the
3 benefit of an exception to the general rule. He has
4 not shown that there is anything exceptional about his
5 case or his circumstances. To grant an extension in
6 this case, which I find to be unexceptional and
7 ordinary, is in effect to say that any person
8 convicted has an appeal period of six months rather
9 than 60 days. For these reasons, I deny the
10 application for an extension of time.

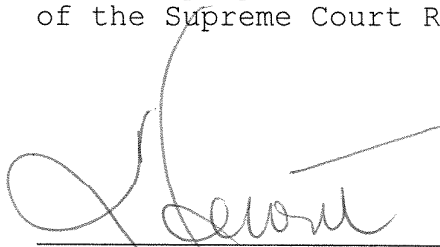
11 As Mr. Panaktalok has now abandoned his sentence
12 appeal as indicated in paragraph 7 of one of his
13 recent affidavits, there is no need to consider
14 further his application for bail pending appeal.

15 So in summary, the application for an extension
16 of time is denied. The application for bail pending
17 appeal is denied as there there is no pending appeal;
18 the sentence appeal has been abandoned.

19 So if there is nothing further, counsel, we will
20 close court.

21 **(AT WHICH TIME THE PROCEEDINGS CONCLUDED)**

22 Certified to be a true and accurate
23 transcript pursuant to Rules 723 and 724
24 of the Supreme Court Rules.

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Lois Hewitt,
Court Reporter