

Nilaulak v. H.M.T.Q., 2003 NWTCA 10

Date: 2003 11 10
Docket: AP 2000 000857

IN THE COURT OF APPEAL OF THE NORTHWEST TERRITORIES

THE COURT:

THE HONOURABLE MR. JUSTICE J.E. CÔTÉ
THE HONOURABLE MADAM JUSTICE E.A. McFADYEN
THE HONOURABLE MADAM JUSTICE V.A. SCHULER

BETWEEN:

ALEX NILAULAK

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

MEMORANDUM OF ORAL DECISION
DELIVERED FROM THE BENCH

Counsel for the Appellant: Adrian Wright
Counsel for the Respondent: Andrew Fox

CÔTÉ J.A. (orally for the Court):

[1] This is an application by the Crown to dismiss the appeal for want of prosecution.

[2] This appeal has been delayed a long time and ordinarily the Crown's motion to dismiss for want of prosecution would have been decided one way or the other a long time ago.

[3] However this is the first time that Mr. Nilaulak has personally been before the Court of Appeal. On all the other occasions, he was represented by counsel. Furthermore there is some doubt as to precisely what communications Mr. Nilaulak had with his counsel or with the Legal Aid authorities.

[4] Therefore, with some regret we are going to adjourn the Crown's motion to dismiss for want of prosecution. We will adjourn it to the regular sittings in January.

[5] The Criminal Code allows us to appoint counsel for an appellant who does not have a lawyer. We are willing to make an order to appoint a lawyer for the purposes only of the Crown's motion to dismiss for want of prosecution. The lawyer will be paid at Legal Aid rates.

[6] Now Mr. Wright, I suppose you are not able to accept that appointment?

MR WRIGHT:

[7] In the circumstances, I do not think it would be appropriate for me to take that appointment.

CÔTÉ J.A.:

[8] Given the logistics, would you be willing to assist Mr. Nilaulak in finding a lawyer, presumably in Yellowknife, who could take that limited appointment?

MR. WRIGHT:

[9] Yes, I would.

CÔTÉ J.A.:

[10] Now of course it is the Attorney General who is paying for this lawyer; it is not the Legal Aid authorities.

[11] Mr. Nilaulak, the Crown's motion to dismiss your appeal will be heard in January. Your chance of getting another adjournment is small.

[12] You can have a new lawyer to represent you on that motion. The Government will pay for that lawyer. You have to select the lawyer. If you wish, Mr. Wright is willing to help you find that lawyer.

[13] And finally, Mr. Wright's motion to be taken off the record and cease to be the lawyer of record for Mr. Nilaulak is granted.

[14] If any more letters or pieces of paper are mailed to you Mr. Nilaulak, you had better find someone in the prison to read them to you.

[15] The Registrar will remind the resident judges in Yellowknife well before the January sittings that there should be an order to bring Mr. Nilaulak personally before the Court in January.

[16] If the Crown wishes, they can take out such an order for transport.

SCHULER J.A.:

[17] The standard removal order.

MR. FOX:

[18] I suppose the Crown could do it although the Court did issue the order this time.

SCHULER J.A.:

[19] I think it was Mr. Wright who actually applied for the removal order.

MR. FOX:

[20] Our office can attend to that.

CÔTÉ J.A.:

[21] We told Mr. Fox that he could be the one who would have the formal order drawn up to have Mr. Nilaulak brought in from Ontario in January, and he wondered about that and then he said yes that he could do it.

[22] The transcript of the April 23 proceedings should go on the Court of Appeal file.

MR. FOX:

[23] We are nearing the conclusion, the appeal itself is still . . .

CÔTÉ J.A.:

[24] The appeal should also be adjourned to January.

MR. FOX:

[25] I might make one final comment. Obviously it is up to Mr. Nilaulak, and he is free to do so, to obtain counsel to assist him with the appeal itself.

CÔTÉ J.A.:

[26] That is entirely up to Mr. Nilaulak.

[27] I believe that is everything.

APPEAL HEARD October 16, 2003
at YELLOWKNIFE, NT

Memorandum filed at Yellowknife, NT,
this 10th day of November 2003.

___Authorized to sign for Côté J.A.

I hereby certify the foregoing to be a true
and accurate transcript of proceedings
recorded on a sound recording apparatus,
transcribed to the best of my skill and ability.

Maryse J. Good
Judicial Assistant

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