

CR 03009

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

WILLIAM PAUL BEAVERHO



Application for an extension of time for filing a notice of appeal. Application denied.

Heard at Yellowknife on 2 October 1995

Judgment filed: 30 October 1995

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE J.E. RICHARD

Counsel for Applicant: J. Brydon

Counsel for Respondent Crown: U. Arvanetes

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REASONS FOR JUDGMENT

1 Mr. Beaverho was convicted in Territorial Court in his home community of
Lac La Martre on May 26, 1995 of an offence of impaired driving which occurred in
December, 1994. He wishes to appeal that conviction. On the present application, he
seeks, firstly, an extension of time within which to file his notice of appeal and, further,
he requests that his appeal be determined by the holding of a trial *de novo* in this Court.

2 It is Mr. Beaverho's diligence, or lack thereof, which is at the core of these
proceedings.

3 By Mr. Beaverho's own admission, he is no stranger to the Courts. His
criminal record, a copy of which was filed on this application, indicates he has a dozen
convictions under the Criminal Code, including four for drinking and driving offences (i.e.
other than the current one). His main complaint about his latest trial in the Territorial
Court is that the circuit judge did not give him a third adjournment to obtain a lawyer.

Yet on each of his first and second appearances in Court in Lac La Martre he was told by the judge to retain a lawyer before the next scheduled court date. It is for him to show that he had acted diligently in his attempts to obtain counsel.

4 An appeal to this Court from a summary conviction matter must ordinarily be taken within thirty days of the date of conviction: see s.815 C.C. and Rule 3 of the Summary Conviction Appeal Rules. A judge of this Court has power to extend this time period, by virtue of s.815(2) C.C.:

s.815(2). The appeal court or a judge thereof may at any time extend the time within which notice of appeal may be given.

An extension of time is not granted as a matter of course. In exercising its discretion, the Court takes into consideration a number of factors, *inter alia*:

- a) whether the applicant had shown, within the appeal period, a *bona fide* intention to appeal,
- b) whether the applicant has accounted for the delay,
- c) whether the appeal has a reasonable chance of success if allowed to proceed.

R. v. Mohammed (1989) 52 C.C.C. (3d) 470 (Man. C.A.)

6 Mr. Beaverho was convicted on May 26, 1995 following his trial (at which he was represented by legal aid counsel) and sentenced to six months imprisonment and, in addition, prohibited from driving a motor vehicle for three years. On the same day he was transported to the Yellowknife Correctional Centre to commence serving his sentence. His appeal period continued until June 26. In early June, he contacted a

lawyer, Hugh Latimer, about appealing his conviction. He says Mr. Latimer requested a retainer. There is no further information provided about the consequences of his discussion with Mr. Latimer. Next, on July 4, Mr. Beaverho spoke to his classification officer at the correctional centre about seeing a representative of the legal aid office. On July 6 his classification officer referred his request for legal aid assistance for his appeal to MacKenzie Court Workers. On July 20 he met with a court worker at the correctional centre and made application for legal aid assistance. Subsequently, he talked with a legal aid lawyer and met with the lawyer, Mr. Brydon, on August 29. The within application for an extension of time was filed in this Court on September 15. Insufficient information is provided for the time period between July 6 and September 15 - a period in excess of two months. No explanation is offered for the delay between July 20 and September 15.

7 I am satisfied that Mr. Beaverho had a *bona fide* intention to appeal his conviction within the appeal period.

8 I am not satisfied, on the material presented in support of his application, that he has accounted for the delay in carrying out that intention. There is no apparent explanation for the lack of diligence in pursuing the intended appeal on a timely basis.

9 Further, upon consideration of the material presented on this application and the submissions of counsel, I am not persuaded that there is arguable merit in the proposed appeal. The decision to grant or refuse a request for an adjournment is within the discretion of the presiding trial judge, s.645(2) C.C.; *R. v. Barrette* (1976), 29 C.C.C. (2d) 189 (S.C.C.); *R. v. Manhas*, [1980] 1 S.C.R. 591; *R. v. Underwood*, Alta. C.A.,

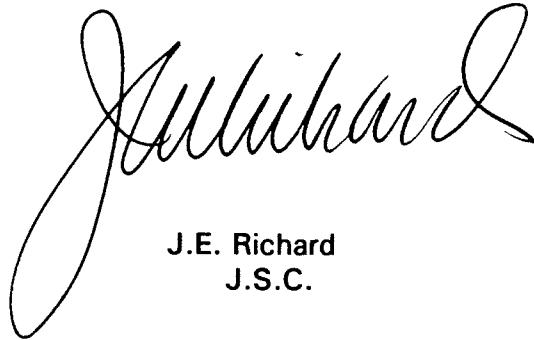
unreported, October 5, 1995. In the present case, the record does not indicate that the presiding judge - one experienced with circuit court in the communities - made any error of law in refusing the adjournment.

10 Mr. Beaverho in his affidavit states that he told the Territorial Court judge that he had an important witness who was unavailable to come to court on the trial date. He explains in his affidavit who this witness is, and why the witness was unavailable on May 26. In the proposed Notice of Appeal, it is submitted in the first ground of appeal that the trial judge erred in refusing to grant an adjournment to accommodate the attendance of this important witness. However, the record of the trial proceedings is not in accord with Mr. Beaverho's assertion in his affidavit nor with the submission in this ground of appeal. The request (if any) by Mr. Beaverho for an adjournment on May 26 was for the purpose of retaining counsel. No request was made at any time for an adjournment because of the absence of a key witness. The trial proceeded at a later time on May 26 with Mr. Beaverho represented by a legal aid lawyer. No effort was made to call the "key" witness during the presentation of the defence evidence.

11 No arguable case is shown on this application that Mr. Beaverho's entitlement to make full answer and defence was compromised at the time of his trial (as opposed to him now stating that he had a key witness who could have helped his defence and whom he wishes to be a witness at the proposed trial *de novo*). In my respectful view, the proposed appeal does not have a reasonable chance of success.

For the foregoing reasons, the application for an extension of time to give

notice of appeal is denied. It is not necessary for me to consider the balance of the relief sought by Mr. Beaverho.



J.E. Richard
J.S.C.

Yellowknife, Northwest Territories
30 October 1995

Counsel for Applicant: J. Brydon

Counsel for Respondent Crown: U. Arvanetes

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