Werner v. The Queen, 2000 NWTSC 2

Date: 2000 01 04
Docket: CR 03753/54

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HARVEY RONALD WERNER

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

Appeals from conviction and sentence. Conviction appeals allege a) error by trial judge in denying adjournment request, and b) error by trial judge in interference with unrepresented accused's conduct of his defence. Appeals dismissed.

Appeals heard: December 16, 1999

Reasons filed: January 4, 2000

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

Counsel for the Appellant: Katherine R. Peterson, Q.C.

Counsel for the Respondent: Louise Charbonneau

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REASONS FOR JUDGMENT

[1] The appellant before the Court was charged with causing a disturbance at the town hall in Hay River on two occasions in early 1999. After four appearances in summary conviction court, the appellant pleaded not guilty to the charges and on February 22, 1999, the charges were set for trial in Hay River on April 15, 1999. At the conclusion of the trial on April 15, the summary conviction court convicted the unrepresented appellant and sentenced him to three days' imprisonment followed by eighteen months' probation. He appeals both conviction and sentence.

[2] The conviction appeal essentially rests on two grounds:

a) that the trial judge erred in denying the appellant's request for an adjournment of the trial, and
b) that the trial judge unduly interfered with the appellant's conduct of his defence.

[3] The record indicates that there was, in the background to these criminal charges, an acrimonious relationship between the appellant and officials at the Hay River town hall. On each of the occasions in question, it was alleged that the appellant attended at the town hall offices seeking certain information and in doing so caused a public

disturbance. Each disturbance resulted in the RCMP being called, and to the appellant being charged.

[4] The record also shows that the resident judge in Hay River had a conflict of interest with respect to presiding at the trial. The resident judge, upon setting the trial date, arranged for a Yellowknife-based judge to preside at the trial on April 15 in Hay River. Further, the record shows that the Crown, in March 1999, subpoenaed eleven witnesses (primarily town hall officials) to testify at the April 15 trial.

[5] On Monday, April 12, 1999, the appellant was before the Hay River resident judge on some other matters. The judge took this opportunity to speak to the appellant about the upcoming scheduled trial on the disturbance charges on Thursday, April 15, 1999, with a view to confirming that the trial would indeed proceed, given the special arrangements which were being made. A transcript of the April 12 dialogue between the appellant and the Hay River judge was provided for purposes of this appeal.

[6] When asked whether he had counsel for Thursday, the appellant stated that his request to Legal Aid for trial counsel was denied (he did not say when this request and denial took place). He stated that he had appealed Legal Aid's denial, and that Legal Aid's appeal committee would not be considering his appeal until May 15. Since he was obviously not going to have counsel for Thursday the trial judge asked if he was going to be ready to proceed without counsel on Thursday. The appellant responded: "If I do not have a lawyer on Thursday, I'm ready to go, providing that the Crown witnesses are all here, because I have also subpoenaed the same ones." Later in the same transcript when the judge again explicitly asked if the appellant was ready to proceed with the trial on Thursday morning, the response was "if the Crown witnesses will be here and the ones I subpoenaed, yes."

[7] On Thursday morning, April 15, 1999, when the appellant appeared before the trial judge he sought an adjournment of the trial, pending a decision of Legal Aid's appeal committee on his request. The trial judge refused an adjournment on that ground, referring to the appellant's statements three days earlier that he was ready for trial.

[8] The appellant also sought an adjournment by reason of the fact that he had been unable to locate three witnesses he wished to subpoena as defence witnesses. These were three RCMP officers. In fact, two of them were on duty in Hay River and available to testify (however, as it happened, the appellant did not call them as witnesses at the trial). The third, Corporal Asels, was out of Hay River on holidays. After inquiring of the appellant of the anticipated evidence of Corporal Asels and of the appellant's timely

efforts to serve a subpoena on Corporal Asels, the trial judge refused the adjournment on this ground as well.

[9] I cannot find any error by the trial judge in denying the adjournment request. To grant or deny a request for adjournment of a trial is entirely within the discretion of the presiding trial judge. That discretion must be exercised judiciously and appropriately. I am not convinced that the trial judge did otherwise in this case. From the time that the trial date was set on February 22, 1999, the appellant had more than seven weeks to retain counsel to represent him on relatively minor criminal charges (if indeed counsel was to be retained at all). The courts do not automatically wait upon the schedule of the Legal Aid offices. The trial judge took note of the fact that the appellant had confirmed his readiness for trial three days earlier. The trial judge also took note of the fact that the subpoena for Corporal Asels was only issued on April 8, that the appellant had not made timely efforts to issue and serve the subpoena, and that Corporal Asels' anticipated evidence was "after-the-fact" of, or incidental to, the actual causing disturbance allegations. I also infer from the record that the appellant's credibility or *bona fides* in requesting adjournment was a concern to the trial judge, given the discrepancies in the appellant's statements to the summary conviction court on April 12, *vis-a-vis* April 15.

[10] I turn now to the second ground for the appeal from conviction.

[11] At the conclusion of the Crown's evidence, the trial judge inquired whether the defence was calling evidence. The appellant responded that he wished to call the same witnesses as the Crown had called (each of whom he had cross-examined). The trial judge's response:

> THE COURT: Now, why would you be calling the same witnesses? Think about it for a minute, Mr. Werner. I do not think these witnesses are supportive of your cause, number one. So I do not think they are going to give evidence to help you, number two. Number three, you have already questioned each one of them, what more are you going to get from them? Think about it.
>
> MR. WERNER: Your Honour, I've got statements where they are calling me crazy, I'm a nut, I'm a basket case, and when I went --
>
> THE COURT: -- Then why would you want to put them on the stand as your witnesses to have them call you crazy?

MR. WERNER: They will call -- That will be on the record, plus the fact that they will be contradicting themselves when they are on the stand.

THE COURT: Well, they have been on the stand and you have examined them thoroughly.

MR. WERNER: I haven't got -- I believe that Your Honour, may I just make a statement here?

The reason that I have subpoenaed each one of the witnesses in the past, at this time, I've got other -- That's not this case, but other cases where the Town has called witnesses and I've observed them sitting outside, and they decided not to call two or three that would benefit me, I believe, if they would testify.

THE COURT: Well, if you have any new witnesses you want to call by all means do so, but I am really suggesting to you that there is no point in calling the witnesses that you have already examined.

[12] The appellant then proceeded to call two new witnesses who testified. He then indicated he wished to call a third witness, Constable Harvey. The following exchange took place:

MR. WERNER: I believe I'll call Mike Harvey.

THE COURT: Who is he?

MR. WERNER: He was subpoenaed by the Crown and I subpoenaed him just to make sure that he will be here.

THE COURT: And what is the nature of his evidence?

MR. WERNER: On the -- at the end of the -- on the night, on the 19th night.

THE COURT: At night.

MR. WERNER: On the 19th he was one of the ones that came to arrest me.

THE COURT: Well, Mr. Werner, I have already told you about that. It does not help me on deciding whether or not you were causing a disturbance. The fact is clear, you were arrested, it shows on the document, you spent sometime in jail until you were released by a Justice of the Peace.

MR. WERNER: I was not arrested on the 19th, Sir.

THE COURT: None of those things have anything to do with whether or not you were causing a disturbance.

MR. WERNER: I was not arrested on the 19th.

THE COURT: Then he was not there, it does not help me.

MR. WERNER: He was there. Okay, I'm sorry, Your Honour, I have nothing further.

[13] It is the appellant's contention on this appeal that these interferences by the trial judge were in error, and infringed his right to make full answer and defence.

[14] With respect, I disagree. I view the trial judge's first intervention as merely an effort to assist the unrepresented accused in his conduct of the trial. Although it is a delicate task, a trial judge has indeed a duty to assist an unrepresented accused in presenting a defence.

[15] With respect to the second intervention complained of, a trial judge is entitled to question the relevance of defence evidence in order to conduct an orderly trial and to control the introduction of inadmissible evidence. The accused's entitlement to control the conduct of the defence is subject to the rules of evidence and procedure.

[16] I do not find that the subject interventions by the trial judge constitute error or an interference with the appellant's right at trial to make full answer and defence.

[17] Finally, I turn to the appeal from sentence.

[18] The trial judge had the opportunity of viewing and assessing the demeanour not only of the offender but also of those witnesses from the town hall office who, the trial judge found, were negatively affected by the disturbance offences. The trial judge noted the offender's lack of appreciation or insight into the impact his crimes had on these other people. The trial judge was concerned by what he perceived as the intensity of some of the offender's convictions about his "rights" at town hall, which appeared to the trial judge to be irrational and unreasonable. In imposing sentence, the trial judge's primary concern was the protection of the public. In my view, in the circumstances he quite appropriately inserted conditions in the probation order which prohibited the offender from contact with town hall officials, and from attending at the town hall premises except for the purpose of attending a public meeting.

[19] The Supreme Court of Canada has stated that an appeal court should not interfere with a sentence imposed by a trial judge unless the appeal court is convinced the sentence is not fit in the sense that the sentence is clearly unreasonable. *R v. Shropshire*, [1995] 4 S.C.R. 227. This is a high standard of review.

[20] Upon consideration, I cannot say that the sentence imposed is demonstrably unfit.

[21] For these reasons, the appeals in court files CR 03753 and CR 03754 are dismissed. The appeal in court file CR 03752 (a duplicate appeal) was abandoned by the appellant.

J.E. Richard, J.S.C.

Dated at Yellowknife, NT, this
4th day of January 2000

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