

SUPREME COURT OF YUKON

Citation: *R. v. Sidhu*, 2012 YKSC 76

Date: 20120917
Docket: S.C. No. 12-AP001
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND:

MANDEEP SIDHU

Before: Mr. Justice. P. McIntyre

Appearances:
Christine Badcock
Mandeep Sidhu

Counsel for the Crown
Appearing on his own behalf

REASONS FOR JUDGMENT DELIVERED FROM THE BENCH

[1] MCINTYRE J. (Oral): This is an application to appeal the decision of Her Worship Justice of the Peace Morrison-Harvey by reasons dated the 5th of June of 2012. She refused to quash a conviction against Mr. Sidhu in relation to using an electronic device while he was driving.

[2] This matter comes by way of appeal to me and I am bound by precedent. Precedent means that Courts of Appeal tell us as trial judges or as appellant judges from decisions of justices of the peace that we can only allow appeals in certain cases. First, if there is an error in law or, second, if there's a palpable and overriding error of

fact. That is my jurisdiction; I am limited to that, and so when I examined the decision of Territorial Court Justice of the Peace Morrison-Harvey, I cannot find an error at law nor can I find a palpable or overriding error of fact.

[3] In this particular circumstance, what happened is that Mr. Sidhu had been served originally with a ticket and then the matter had come to court on a number of occasions and had been adjourned, sometimes at the request of the Crown. The matter had arisen in Watson Lake but by agreement, Mr. Sidhu, and Ms. Badcock, on behalf of the Crown, appeared in court on April 3, 2012. On that date the Court was informed that the trial was to be held in Whitehorse rather than Watson Lake and the date would be May the 15th at 2:00 p.m.

[4] The transcript is very short, I will read it just at least from page 1, lines 8 on:

MS. BADCOCK: . . . We've brought forward this file and we're applying to adjourn the trial. The trial was presently set -- was scheduled for the Watson Lake circuit tomorrow. I have had some discussions with Mr. Sidhu here this morning and I believe we're in a position to come to a consent adjournment ,but I'll --

THE COURT: All right.

MS. BADCOCK: -- get him to put that on the record.

THE COURT: Mr. Sidhu, is that correct, you're willing to adjourn this over?

THE ACCUSED: Yes, Your Honour.

THE COURT: Okay, and what date are we looking at?

MS. BADCOCK: We're proposing to hold the trial in Whitehorse rather than Watson Lake, and the date would be May the 15th, yep, at 2:00 p.m.

THE COURT: So this matter, then, would be adjourned over for trial this Tuesday, May 15th at 2:00 p.m.

THE CLERK: Thank you.

[5] So what happened then is that Mr. Sidhu was in court when this matter was adjourned to May the 15th at 2:00 p.m. He did not appear at 2:00 p.m. and the matter

proceeded by way of ex parte trial. Mr. Sidhu suggests that he didn't get a letter, no confirming letter. I can tell you, Mr. Sidhu, that confirming letters are not sent --

[5] THE ACCUSED: There was no confirmation even that day what if May 15th hadn't worked for me.

[6] THE COURT: Please, don't interrupt me

[7] THE ACCUSED: I thought you were talking to me.

[8] THE COURT: Pardon me?

[9] THE ACCUSED: I thought you were talking to me.

[10] THE COURT: I am talking to you. I don't want you to interrupt me because these are my reasons. Okay? What I am telling you Mr. Sidhu is that confirming letters are not sent to people when they appear in court and matters are set down for trial. Nor is it necessary in the circumstances of this transcript to find some acknowledgement by you in order to pick the trial date. In short, there is no error in law on the part of the Justice of the Peace with respect to whether you had notice and there is no error in facts. So I am dismissing your application, your appeal.

[11] THE ACCUSED: What about understanding, if a person doesn't understand what you're saying to them. [Foreign language spoken]. What I just said to you ,if you don't understand that. The same thing happened with those court dates. I never understood that there was a court date. How can you tell me that I understood something when it wasn't there?

[12] THE COURT: Mr. Sidhu --

[13] THE ACCUSED: The transcript itself shows there was no understanding. There was nothing expressly implied or consented to that I understood that there was a court date on May 15th.

[14] THE COURT: Mr. Sidhu, I do not know whether you heard what I said earlier or listened to what I said, but what I said to you was that I have limited jurisdiction, that my jurisdiction deals with questions of law or questions of fact, where there is been an error in fact that is an egregious error, a palpable and overriding error. If I cannot find either one of those, then I cannot allow your appeal. I cannot find either one of them and I cannot allow your appeal. Your appeal is dismissed. Thank you, Mr. Sidhu.

MCINTYRE J.