SUPREME COURT OF YUKON

R v Knapp, 2016 YKSC 28

Date: 20160712
S.C. No. 15-AP019
Registry: Whitehorse

Between:

REGINA

Respondent

And

ANGELIKA KNAPP

Appellant

Before Mr. Justice J.Z. Vertes

Appearances:
Angelika Knapp — Appearing on her own behalf
Kelly McGill — Counsel for the Respondent

REASONS FOR JUDGMENT

[1] This is a summary conviction appeal with respect to a parking ticket issued under s. 181 of the *Motor Vehicles Act*, R.S.Y. 2002, c. 153.

[2] A parking ticket was issued on July 26, 2013. It identified the vehicle by licence number and the ticket was placed on the vehicle, all as permitted by ss. 10(4) and 14(1) of the *Summary Conviction Act*, R.S.Y. 2002, c. 210 (hereinafter referred to as "the *Act*"). Subsection 14(2) of the *Act* deems the attachment of the ticket to the vehicle to be personal service of the ticket on the owner of the vehicle. The ticket in this case also has written on it the name of the appellant but there is no evidence as to whether the name was printed there at the time the ticket was issued or afterward.

[3] The ticket required the appellant to appear in court on September 3, 2013. It also provided the option to pay a voluntary fine. The ticket contained, on its reverse side, a notice specifying, among other things, that if the person named does not appear in court, and has not been excused from appearing by payment of the voluntary fine, then that person may be convicted in her absence and a fine may be imposed. Subsection 21(2) of the *Act* provides that, if a person who has been served with a ticket containing these notices does not appear in court, a justice may enter a plea of guilty on behalf of that person. Upon entry of the plea of guilty, the justice shall examine the ticket and, if everything is complete and regular, may convict the person in her absence and impose a fine (s. 22(1) of the *Act*).

[4] That is what happened in this case. The appellant did not pay the voluntary fine nor did she appear in court on September 3, 2013. A conviction was entered and a fine of $75, plus a fine surcharge of $11, and costs of $5, were imposed.

[5] On September 10, 2013, the Territorial Court Registry in Whitehorse sent a letter to the appellant informing her of her conviction and fine. The letter, which appears to be a form letter, was sent to the appellant at her address in Faro. The specific address was the appellant's address on file with the Registrar of Motor Vehicles. Subsection 15(1) of the *Act* deems an address on file in any records maintained by the Government of Yukon as the last known address of the individual. The letter was sent by ordinary mail. It was not returned to the Court Registry.

[6] The significant point about the letter is that there is no requirement in the *Act* for it. No provision for notification of the conviction exists in the *Act*. It seems to be a step

undertaken by the Territorial Court as a way of prompting payment of fines so that the recovery provision of the *Act* need not be invoked.

[7] The appellant claims that she first learned of the conviction and fine in December 2015, when she tried to renew her driver's licence. She then filed an application to have the conviction and fine set aside for lack of notice. Section 23 of the *Act* provides:

> 23(1) Despite section 22, if a plea of guilty is entered on behalf of a person under section 21 and the person was served with the ticket otherwise than under paragraph 13(1)(a), the person may appear before a justice and apply to have their conviction and fine set aside, and if it appears to the justice that the person in fact did not receive notice of their obligation to pay the specified fine or to appear in court to answer to the charge at the time stated in the notice to appear, the justice may
>
> > (a) set aside the conviction and fine, and permit the person to enter a plea of guilty or not guilty;
> >
> > (b) refuse to set aside the conviction and fine; or
> >
> > (c) confirm the conviction, hear any submissions as to penalty that the justice may desire to hear, and confirm the fine or impose any lesser fine that the justice considers appropriate.
>
> (2) The justice may require submissions under paragraph (1)(c) to be made under oath, orally, or by affidavit.
>
> (3) An application under subsection (1) shall not be made after the expiration of 15 days after the day on which the person receives notice of their conviction or fine.
>
> (4) An appeal lies to the Supreme Court in respect of the refusal of a justice to set aside a conviction and fine under subsection (1).
>
> (Emphasis added)

[8] A Justice of the Peace heard the application on January 5, 2016. No formal evidence under oath was submitted by the appellant. She claimed, however, that she "had no recollection of the ticket" and that she first learned about the conviction and fine when she tried to renew her licence. She acknowledged, however, that the address to which the letter was sent was her postal address, and remains as her address, but she also claimed that she never received it.

[9] The only evidence before the Justice of the Peace was what appeared on the record of the conviction and the unsworn assertions by the appellant.

[10] The Justice of the Peace dismissed the application on the basis of a lack of jurisdiction. She stated (at pp. 4 and 5 of the transcript of the hearing):

> THE COURT: I am satisfied that the ticket was served in accordance with the *Act* on the 26th day of July. It was left on the face of the vehicle. The notice to appear portion of that ticket was that you attend court on the 3rd of September.
>
> On the 3rd of September, there was no appearance by yourself in court. The matter proceeded ex parte. There was a conviction entered on the 3rd day of September.
>
> On the 10th of September, a letter was sent to your address registered with Motor Vehicle advising you of the conviction.
>
> It is now two years later.
>
> In my view, this Court has no jurisdiction to reopen the matter and quash the conviction.
>
> That concludes the matter.
>
> You can go to the Supreme Court, Ms. Knapp, if you wish to have an application there.

[11] The appellant then appealed to this Court and now seeks to have the conviction set aside and the alleged parking violation remitted for trial or, in the alternative, quashed due to the passage of time. On this appeal, the appellant filed no evidence so

all this Court is left with are the unsworn representations made before the Justice of the Peace.

[12] The appellant does not take issue with the fact that the *Act* permits the placement of a parking ticket on the vehicle windshield. She does not take issue with the provisions in the *Act* that allow for an *ex parte* hearing and a conviction in the absence of the accused. What she maintains, as I understand it, is that the letter sent by the Territorial Court Registry office should be served personally, otherwise a convicted person does not have the opportunity to invoke her or his appeal right under s. 23 within the 15-day limit. This, in her submission, violates a person's rights under the *Charter of Rights and Freedoms* to have a fair trial.

[13] The first difficulty I have with this argument is that I fail to see how specific service requirements can be imposed on some procedure that is not required by the *Act* (or any Regulations passed pursuant to the *Act*). The liability of a convicted person does not change whether such a letter is sent or not. Having said that, proof of receipt of such a letter would certainly serve as evidence of notice in fact of the conviction but lack of such proof does not alter the position of the convicted person. Alternatively, evidence of lack of receipt would support a claim of lack of notice. But that is far different from saying that there must be personal service. And it does not solve the question of whether or not the convicted person actually received the ticket in the first place.

[14] The second difficulty I have is with the lack of evidence. The appellant claims she did not receive the letter. But she does not claim that she never received the ticket. The best she can say is that she has no present recollection of it. This is significant because, as the respondent's counsel pointed out, the right to re-open a conviction under s. 23 is

premised on satisfactory evidence (evidence that satisfies the justice hearing the application) that the convicted person did not receive notice of "their obligation to pay the specified fine or to appear in court to answer to the charge". This can only refer to the notice on the back of the ticket. It cannot refer to the letter sent by the Court Registry notifying people that their failure to appear resulted in a conviction and a fine.

[15] Granted, the 15-day time limitation for an application to re-open runs from the day on which the convicted person receives notice of their conviction or fine. But that notice can come in many forms, most likely once enforcement proceedings are taken under the *Act*. The limitation period does not affect the fact that the *Act* requires evidence that the convicted person did not in fact receive the ticket in order to set aside the conviction. Here, the best that can be said is, as she told the Justice of the Peace, she did not recollect receiving the ticket. This obviously did not satisfy the Justice of the Peace and it does not satisfy me.

[16] In this case, the Justice of the Peace found that the ticket was served in accordance with the *Act*; that the appellant failed to appear as required; that a conviction was duly entered; that a letter was sent to the appellant advising her of the conviction; and, that two years have elapsed.

[17] The reference by the Justice of the Peace to a lack of jurisdiction can only be taken as a reference to the time limit in ss. 23(3) that an application to set aside a conviction must be made within 15 days after the day on which the convicted person receives notice of their conviction. That reference must mean that the Justice of the Peace was not satisfied that the appellant only received notice in fact of the conviction

in December. This is a finding of fact. Similarly, the finding of the Justice of the Peace that the ticket was served is also a finding of fact.

[18] The Supreme Court of Canada has repeatedly said that, absent an express legislative instruction to the contrary, appellate courts may not disregard the governing principles of appellate review on questions of fact. This is so whether sitting on an appeal arising from a parking ticket or an appeal on a very serious crime. An appellate court may make its own findings and draw its own inferences but only if the trial judge (or as here the Justice of the Peace) is shown to have committed a palpable and over-riding error or made findings of fact that are clearly wrong, unreasonable or unsupported by the evidence. Here there is no such error.

[19] The appellant also made reference to the *Charter of Rights and Freedoms* and the various protections afforded to accused persons in criminal cases. It is important to note the distinction recognized by the Supreme Court of Canada between true criminal offences and quasi-criminal or regulatory offence. A *Charter* right may have different scope and application in a regulatory context than in a truly criminal case and constitutional standards developed in a criminal context cannot be applied automatically to regulatory offences.

[20] In *R. v. Richard*, [1996] 3 S.C.R. 546, the Supreme Court of Canada held that, where a regulatory statutory scheme does not provide for imprisonment, the legislature may infer that defendants who fail to act, by not appearing in court or not paying a voluntary fine, have waived their right to be presumed innocent and their right to a hearing, and have consented to a conviction being entered against them, provided that

they are fully informed of the consequences of failing to act and there are sufficient safeguards to prevent injustices from occurring.

[21] That case dealt with a motor vehicle ticket scheme similar to that in this jurisdiction. Granted that the scheme under review in the *Richard* case had a requirement for personal service of the ticket. But in that case the offence was speeding. Here the offence is illegal parking. The motorist is present in the first case. The motorist is rarely present in the second. And, the provision for simply leaving the ticket on the windshield and deeming that to be personal service on the owner applies only to parking tickets. In my view, therefore, the observations in *Richard* are equally applicable in this case. The provisions of the *Act* are meant to be an inexpensive and efficient way of dealing with minor offences.

[22] For these reasons, the appeal is dismissed.

[23] Finally, I wish to address an issue that arose after the conclusion of the hearing of this appeal.

[24] Four days after the hearing, the appellant wrote to ask that she be allowed to supplement her oral submissions with further written submissions. No written brief had been filed on her behalf prior to the hearing. Her request was based on (a) her contention that the issues on this appeal are of a public interest; (b) her concern that she was unable to clearly articulate her argument since English is not her first language; (c) that she did not have enough time to properly review case law due to, as she put it, her “personal circumstances” (without elaborating on what those circumstances might have been); and (d) the fact that a previous judge had recommended that she be allowed to file written materials after the hearing of her appeal.

[25] It is accurate to say that a judge of this Court had, on a prior occasion, recommended that the appellant be given an opportunity to make a written submission after the oral arguments on the appeal. That was 8 days earlier on a previously scheduled date for this hearing when the appellant asked for and obtained an adjournment. This was also after an even earlier scheduled date for the hearing in April had been adjourned at the appellant's request.

[26] There had been no mention of further written submissions at the hearing before me and the respondent's counsel opposed this request when she learned of it. She pointed out that the appellant had on three previous occasions missed court deadlines for filing materials and that the appellant had said to the judge, at the hearing 8 days earlier, that she did not intend to file a written argument.

[27] I decided that I would not re-open this appeal to permit further written submissions. The judge who made the earlier recommendation may have thought that the appellant would not be able to fully articulate her position. That was a commendable concern but I listened to the appellant argue for over one hour in the hearing before me. She made cogent and articulate submissions and replied to the Crown's submissions. She presented case law at the hearing. She put her case in a forceful manner. I do not think further submissions would make any difference to the outcome of this case.

[28] I recognize that self-represented litigants should be given considerable assistance and even leeway by the court so as to prevent injustice due to their lack of knowledge of legal complexities. But this was a straight-forward case. Also, there comes a time when even self-represented litigants must recognize that the resources of the courts are not endless and that litigants cannot continue to call on those resources

simply in the hope that some better argument will come along to sway their case. Some sense of proportionality must apply. The facts are not going to change. There is merit in finality. In this case strong arguments have been presented and my decision has been made.

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VERTES J.