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Citation: *R. v. McDiarmid*, 2012 YKTC 114

Date: 20121123  
Docket: 11-11030  
Registry: Dawson City  
Heard: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**  
Before: His Honour Judge Faulkner

REGINA

v.

MARK LEE MCDIARMID

Appearances:  
Jennifer Grandy  
Mark McDiarmid

Counsel for the Crown  
Appearing on his own behalf

**REASONS FOR JUDGMENT  
ON APPLICATION FOR ADJOURNMENT**

[1] FAULKNER T.C.J. (Oral): Mark Lee McDiarmid is set to stand trial in Dawson City on January 7, 2013 on an Information containing a number of counts, the most serious of which is a charge of attempted murder of a police officer. Today Mr. McDiarmid applied for an adjournment of that trial. He made that application primarily on the basis that he lacks legal counsel. He also made a number of other allegations in support of the adjournment application, including an allegation regarding police fabrication of evidence. This allegation appears to be unsupported by anything other than Mr. McDiarmid's bald claim of fabrication, and he has suggested that he needs to get to the bottom of this before he can even appoint counsel. This submission, in my

view, forms no basis upon which to grant an adjournment of the trial.

[2] Mr. McDiarmid further alleged that he is now seeking his own psychiatric assessment and provided some documentary evidence suggesting that Dr. Heredia, who is a local psychiatrist, has been engaged for that purpose. That assessment may well be of importance; however, this matter has been going on for well over a year and Mr. McDiarmid has not been, in any respect, diligent in attempting to seek such an assessment and announces it more or less on the eve of trial. I would not be prepared to grant an adjournment on that basis either.

[3] Now, that leaves us with the allegation that Mr. McDiarmid will be forced into trial without legal counsel. It is clear, given the serious nature of the charges that Mr. McDiarmid faces, that it would be preferable if he was to be represented. The trouble is that Mr. McDiarmid has had two lawyers, both of whom have either been discharged or withdrawn and, subsequently, Mr. McDiarmid has neglected or refused, over many, many months, to complete the Legal Aid appeal process, which would be a necessary pre-condition to him making an application for state-funded counsel. It may be that he has not done this because, as he said today, any Yukon counsel would be biased against him because they "work with the police". In any event, he has done nothing, as I say, over many months to bring that matter on.

[4] Today he alleges that a Mr. Bozic of British Columbia may be prepared to act for him. But there is, in my view, no air of reality to this. It turns out that he has not even spoken to Mr. Bozic. I assume the Mr. Bozic being referred to is Michael Bozic of Vancouver. So far as I am aware, Mr. Bozic is not a member of the Yukon Bar, nor am

I am aware that he has made any application for a practice certificate. Essentially, the claim that Mr. McDiarmid is looking into retaining Mr. Bozic is simply more of what has been going on for all of the past year. In my view, it will never lead anywhere. Mr. McDiarmid has never taken steps to complete the retainer of private counsel, despite repeatedly insisting that he intended to do so and despite Herculean efforts by Chief Judge Cozens to attempt to keep that process moving forward. So the result of all that, of course, is that Mr. McDiarmid, through lack of effort and diligence on his own part, faces trial in January on serious charges without counsel.

[5] Now, there have been numerous appearances by Mr. McDiarmid before the Court on this Information and other Informations. These appearances reveal clearly that although Mr. McDiarmid is fit to stand trial, and indeed capable of examining witnesses, making submissions, and exhibiting some familiarity with the law, nevertheless, in my view, he has demonstrated he is utterly incapable of acting in his own best interests or effectively distinguishing the relevant from the ridiculous during the conduct of his defence. It is highly unlikely that the trial judge, no matter how patient or how skilled, will be able to keep the proceedings from generating into a farce when this Information proceeds to trial. As I have already indicated, it is simply idle to wait for the defendant to either perfect his *Rowbotham* application or to complete the retainer of private counsel. I should add, as well, that even if counsel were to be appointed or retained, it is a virtual certainty that counsel will find him or herself discharged or seeking to withdraw.

[6] In my view, and having regard to all that has occurred on this and other matters involving Mr. McDiarmid, but particularly with respect to this file, in view of the

seriousness of the charges, it is necessary that an *amicus* be appointed to help ensure that Mr. McDiarmid can receive a fair trial, and I so direct. Upon such an appointment being made, the *amicus* will be at liberty to bring the matter forward to be spoken to further. For the moment, the matter will be returned to the trial date already fixed.

[7] So there will be a lawyer appointed, Mr. McDiarmid, as an *amicus*. When --

[8] THE ACCUSED: Yeah.

[9] THE COURT: -- that has been completed, the *amicus* may, if he or she sees fit, seek to adjourn the trial. The matter can be brought forward --

[10] THE ACCUSED: Can I speak for myself?

[11] THE COURT: -- and we will deal with it at that time.

[12] THE ACCUSED: Okay.

[13] THE COURT: For the moment we will adjourn.

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FAULKNER T.C.J.