

Citation: *R. v. Rutley*, 2012 YKTC 82

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Docket: 10-11451

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10-11453

10-11047

11-11010

11-11010A

11-11015

Registry: Dawson City

Heard: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

DARREN TROY RUTLEY

Appearances:

Jennifer Grandy

Christine Badcock

Darren Rutley

Counsel for the Crown

Agent for Territorial Crown

Appearing on his own behalf

**RULING ON APPLICATION
RE ABUSE OF PROCESS**

[1] RUDDY T.C.J. (Oral): Mr. Rutley has filed an application seeking a judicial stay on the basis of an abuse of process. To grant a judicial stay, I would need to be satisfied, firstly, that there has been unfairness amounting to an abuse of process, and, secondly, that the appropriate remedy would be a stay of proceedings.

[2] Mr. Rutley argues that the facts as alleged by the investigating officer in his show cause report and as alleged by the Crown prosecutor at his show cause hearing amount to a fabrication. He further argues that duty counsel acting on his behalf was complicit

in a conspiracy to mislead the Court to his detriment.

[3] Mr. Rutley has referenced a number of instances of what he characterizes as lies or fabrications intended to mislead the Court, as he alleges that the police and Crown knew full well that they could not prove the case against him. While I have considered each of the instances that Mr. Rutley has pointed to, it is unnecessary, in my view, to detail each and every one of them for the purposes of this decision as they are, in my view, similar in nature. In reviewing the instances pointed to by Mr. Rutley, I must disagree with Mr. Rutley's characterization that they are clear instances of fabrication. Yes, there are slight differences in the way things are characterized as between the various documents referred to and submissions made, but they are not so materially different as to satisfy me that there has been a deliberate attempt to fabricate evidence and mislead the Court with respect to this case.

[4] As an example, Mr. Rutley points to the characterization that Mr. McCormick was bleeding heavily from the mouth found in the show cause report authored by Constable McIntyre and relayed to the Court by the Crown prosecutor at show cause as being inconsistent with photograph A and with the patient care record, both of which he suggests indicated that the bleeding had stopped some time before. I fail to see how this amounts to evidence of fabrication. At worst, it might amount to a slight exaggeration or mischaracterization, but when I look at the photo, fresh or dried, there is clear evidence of blood on Mr. McCormick.

[5] Similarly, Mr. Rutley says the fact that the show cause report and Crown said that Mr. McCormick complained of a sharp pain in his arm is contrary to the patient care

record which stated he was only in pain upon movement. These two are not, in my view, in any way contradictory.

[6] The remaining instances are, as I have said, similar in nature, as are my conclusions in terms of how I view them.

[7] I am simply not satisfied that the instances referred to by Mr. Rutley amount to an abuse of process, and even if I had accepted Mr. Rutley's characterization of the events, which I do not, he has failed to satisfy me that there is any connection between the facts alleged at his show cause hearing and his right to a fair trial.

[8] Mr. Rutley's complaint centres on the allegations made at his show cause hearing, a proceeding which does not involve any findings of fact, which would prejudice in any way Mr. Rutley's right to a fair trial. Furthermore, I would note that the law is clear that a stay of proceeding is to be granted in only the very clearest of cases. Even if I were satisfied that there was some mischaracterization of the alleged facts at the show cause hearing, which I am not, this case falls well short of the clearest of cases deserving of a judicial stay.

[9] At the end of the day, Mr. Rutley, having considered your arguments and the information placed before me, I am not satisfied either that there has been an abuse of process or that a judicial stay is appropriate at this point in time, and I would deny your application.

RUDDY T.C.J.