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R. v. Regalado

Between
Her Majesty the Queen, and
Victor Regalado

[1999] O.J. No. 5309

Ontario Court of Justice
Brampton, Ontario
Blacklock J.

Oral judgment: November 1, 1999.
(17 paras.)

Counsel:

R. Craig, Provincial Prosecutor.
R. Burd, for the accused.

¶ 1 **BLACKLOCK J.** (orally): I have before me an appeal before me by Mr. Burd on behalf of Mr. Victor Regalado. Mr. Burd argues that I ought to allow this appeal and quash the certificate of offence. The defect in the certificate is said to stem from the use of a new form of certificate which contains two boxes differentiating between service of the offence notice on the day of the offence, and a further box which is provided which notes service of this document on another day and provides a spot to write in the date.

¶ 2 The Provincial Offences Act indicates that a certificate is to be filed as soon as practicable following the service of the offence notice or the summons. Section 11 of the rules with respect to filing directs the clerk not to accept the filing of any certificate that's not been served within seven days of service of the offence notice.

¶ 3 The current certificate also provides a box for the issuing officer to sign and this box appears immediately under the box which certifies that the offence notice has been served.

¶ 4 The box which I have referred to which contains the two options with respect to the date upon which service was affected are off to the right.

¶ 5 In my view, I do not need in this appeal to deal with the question of whether or not the certificate, a certificate in the form of the one that is currently before me ought to be quashed if it appeared on a fail to respond docket. That is not the issue squarely before me. As in this case, the matter appealed on a trial docket, the defendant has requested a trial and appeared through the agent, Mr. Burd.

¶ 6 I would observed, however, that there is authority which suggests that on a failure to respond docket, this certificate all to be quashed. See in that regard, R. v. Rose, a decision on appeal of the Ontario Court of Justice, October 5, 1999. It certainly can be argued, in light of the language in Section 3(5), such a certificate is not, "complete and regular on its face."

¶ 7 Once a trial is requested, which I would add, in itself is strong evidence that service of the offence notice had occurred, and the matter appears on the trial docket, other considerations in my view come to bear. There certainly is authority that suggests that with respect to other types of defects, the fact that an offence notice may

be quashable on a fail to respond docket, does not necessarily lead to the same result in a trial forum. And see in that regard, R. v. Lamb, March 18, 1996, a decision by His Honour, Judge Silverman; and R. v. Elliot dated September 5, 1995.

¶ 8 Section 90 of the Provincial Offences Act, indicates that any defect in the substance or form in the process used to bring the accused before the Court, does not invalidate any proceeding. Furthermore, the Court is specifically directed not to quash any certificate by the provisions of this legislation, for any defect in the form or substance where an amendment to the certificate would satisfy the ends of justice.

¶ 9 On its face, when an officer signs a certificate of offence, he is certifying two things. He's certifying the information he's setting out with respect to the offence he describes, and he is also certifying that the offence notice has been served. On it's face, this certificate would appear to be a certification by the officer of both those thing although it does not indicate precisely when the offence notice was served.

¶ 10 It is obvious, in light of the record before me, that the defendant was, in fact, served. He requested a trial date and he appeared. Looking at the face of this particular certificate, in my view, in addition, the only reasonable conclusion that could be drawn from the information on the face of the certificate, is also that the certificate was filed as soon as practicable after the service of the offence notice.

¶ 11 With respect to this offence, the offence date was set out and was certified as being April 7th, 7:20 p.m. The certificate was filed with the court April 8th, 1999. The officer had certified that the offence notice was served using the past tense.

¶ 12 However one twists and turns, in my view, given the information on the face of this certificate, the only reasonable conclusion to draw is that, indeed, service was affected sometime between April 7th, 7:20 and the filing date, April 8th, 1999. And on any view of what the proper interpretation of what, "As soon as practicable" is, that time frame satisfies it.

¶ 13 As it turned out, on the evidence heard at the trial of this matter, it did confirm that the certificate had in, in fact, been served on the offence date.

¶ 14 Mr. Burd argues in the alternative that even if the defect that I have discussed in the reasons, is amendable, I ought to quash the conviction in any event as no amendment was, in fact, ever made of the certificate.

¶ 15 I remain to be convince that any formal amendment had to be made to the certificate in a trial context and in the context of the particular case that I am dealing with.

¶ 16 However, even if one ought to be made, I do not see how, in the circumstances of this case, that the interest of justice require me to set aside the conviction and order a new trial on that basis. The circumstances were such that the factors dealing with the amendment to the certificate in my view, could of only lead to one result.

¶ 17 Certainly the views of the justice of the peace with respect to the propriety of that course is reflected in the transcript. In all the circumstances, I have come the conclusion that this appeal must be dismissed.

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