Indexed as:

R. v. Salim; R. v. Escobar; R. v. Chung; R. v. Ferlisi

Between
Her Majesty the Queen, applicant and
Layth Salim, respondent
And between
Her Majesty the Queen, applicant, and
Cindy Escobar, respondent
And between
Her Majesty the Queen, applicant, and
Cameron Chung, respondent
And between
Her Majesty the Queen, applicant and
Jack Ferlisi, respondent

[2000] O.J. No. 507
Court File Nos. 4911999005177033500, 4911999005227009200,
4911999005177069900 and 4911999005227008200

Ontario Superior Court of Justice
MacKinnon J.

Heard: February 16, 2000.
Judgment: February 18, 2000.
(8 paras.)

Counsel:

Karen McCleave, for the applicant.
The respondent Layth Salim was an unrepresented party.
The respondent Cindy Escobar was an unrepresented party.
Cameron Chung, on his own behalf.
Jack Ferlisi, on his own behalf and by Ms. T. Ferlisi.

¶ 1 **MacKINNON J.**:— The applicant moves for an order of Certiorari and Mandamus as follows:

(a) As regards Layth Salim, in respect of a Ruling of the Justice of the Peace made September 16, 1999, and
(b) As regards Cindy Escobar in respect of a Ruling of the Justice of the Peace made December 3, 1999, and
(c) As regards Cameron Chung, in respect of a Ruling of the Justice of the Peace made December 10, 1999, and
(d) As regards Jack Ferlisi, in respect of a Ruling of the Justice of the Peace made December 3, 1999,

each of which quashed the Certificate of Offence in relation to the respondent in question.

¶ 2 In each case the charge was set out on a Certificate of Offence pursuant to Part I of the Provincial Offences Act. In the Chung, Ferlisi and Escobar matters, the respective respondents filed the offence notice with the proper court office indicating a wish both to appear in court to enter a plea and either challenge the evidence of the officer or set a date for trial. In the Salim matter the respondent's agent filed a "Notice of Intention to Appear" in Form 7 pursuant to s. 4 of Regulation 950 "Proceedings Commenced by Certificate of Offence". While that notice was only for use in jurisdictions (unlike York Region) which have first attendance procedures, the court office accepted the Salim notice. In response to options exercised by all four respondents, the court office mailed in a notice of trial informing the respondents of the date, time and location of their individual trials.

¶ 3 Before arraignment, the respondents' agents in all four cases brought motions to quash the Certificates of Offence on the basis that there was no indication in the service area on the Certificates as to when the respondents were actually serviced.

¶ 4 The Justices of the Peace quashed the Certificates in all four cases and the applicant appeals. I was satisfied on the Salim and Escobar matters before me that service of the Notice of Application and of the appellant's materials was proper. The respondents personally appeared on the Chung and Ferlisi matters, did not wish legal advice or adjournments to obtain legal representation or to file materials, and I heard their oral submissions.

¶ 5 Justices of the Peace have only those powers expressly conferred by statute or which are necessarily implied for the purpose of carrying out their statutory duties. Section 36 of the Provincial Offences Act confers the only jurisdiction upon a Justice of the Peace at trial to quash a Certificate of Offence based upon a defect apparent on its face. The sections specifically instruct Justices of the Peace not to quash a Certificate of Offence "unless an amendment or particulars under s. 33, 34 or 35 would fail to satisfy the ends of justice". The records before me in all four applications reflect that the Justices of the Peace did not turn their minds to s. 33, 34 and 35 before quashing the Certificates and thereby committed jurisdictional error. For that reason alone the appeals are allowed.

¶ 6 Additionally it is my view that even if the justices had jurisdiction to quash without a consideration of s. 36(2), their jurisdiction was not appropriately exercised. In each case the issuing officer failed to mark the box on the Certificate of Offence that certifies the fact and timing of personal service of the offence notice upon the respondent. The clear intention behind this provision is to ensure that an accused is advised in a timely manner of the offence with which he or she is charged and is given sufficient information to ensure that an informed choice can be made. Failure to check off the service box does not result in a quashing of the Certificate of Offence for the following reasons:

(a) The trial court can be satisfied that the offence notice had in fact been served pursuant to the Act. The respondent/accused filed the offence notice with the court office in each case and there could be no doubt that in each case it had been served upon him/her by the issuing officer. The offence notice number and information matched that on the Certificate of Offence in each case and contained requisite information to enable the respondent to make an informed decision as to which option to choose in his/her response to the charge. A court at all times has the power to look at its own records and take notice of its contents. In failing to consider the offence notice and the significance of its filing by the respondent, the Justice of the Peace committed error in the exercise of his/her jurisdiction under the Act; and

(b) The service box check off omission neither went to the jurisdiction of the court to hear the matter nor rendered the Certificate of Offence a nullity. The statutory authority which gives a Justice of the Peace the power to quash on a failure to respond under s. 9(1) of the Act is not the power of a Justice of the Peace to quash at trial. That trial power is set out in s. 36 of the Act which directs the court that it "shall not" quash the matter unless am amendment or particulars would "fail to satisfy the ends of justice"; and

(c) The respondents in each case attorned to the jurisdiction of the court by filing the offence notice which exercised the trial option and by appearing through an agent on the trial date.

¶ 7 It is clear to this court that the failure to tick off the service box on the Certificate of Offence was a technical deficiency which did not raise a jurisdictional issue and should not have resulted in a quashing order. Because the admission did not nullify the Certificate of Offence or go to the court's jurisdiction it was curable, if necessary, by amendment. In considering whether amendment is appropriate, Justices of the Peace should consider, inter alia, s. 2(1), and 90 of the Act. Appellate case law requires Provincial Offences courts to look at substance and not at procedural irregularities in its adjudications. The overall philosophy is to ensure that technical objections do not impede an impartial verdict on the merits. The transcript in all four cases shows no evidence of any prejudice to any of the respondents because of the issuing officers' failure to check off the service box.

¶ 8 An order will go in each of the four cases before me allowing the applications, quashing the orders of the Justices of the Peace, and directing that the trials proceed.

MacKINNON J.

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