Case Name:

R. v. Williams

Between
Her Majesty the Queen, and
Spencer Williams

[1999] O.J. No. 5788

Ontario Court of Justice
Newmarket, Ontario
Weinper J.

Oral judgment: September 30, 1999.
(12 paras.)

Civil rights — Trials, due process, fundamental justice and fair hearings — Speedy trial, accused's right to — What constitutes "within a reasonable time".

Appeal by the Crown from an order granting a stay of proceedings. Williams was charged with failure to stop for a red light. There was a delay of six months and 13 days between the time that Williams filed his notice of intention to defend and the trial date. Williams successfully argued that the delay was excessive and violated his right to be tried within a reasonable period of time. No evidence of actual prejudice or an inability to defend the charge was presented. The Crown argued that the delay was not prima facie unreasonable in the absence of an evidentiary basis.

HELD: Appeal allowed. A systemic or institutional delay of eight to 10 months in the provincial court was a reasonable period in which to bring a matter to trial. There was no evidence of actual prejudice which would have compelled the lowering of the period of time that would be considered a reasonable delay. The delay was therefore not prima facie unreasonable.

Statutes, Regulations and Rules Cited:

Canadian Charter of Rights and Freedoms, 1982, ss. 11(b), 24(1).
Highway Traffic Act, s. 144(18).
Provincial Offences Act, ss. 5(2), 121.

Counsel:

P. Renwick, for the Crown.
S. Altman, for the accused.

¶ 1 **WEINPER J.** (orally):— Notwithstanding my dismissal of a jurisdictional argument raised today, the defence has confirmed that their position, argued the last time the matter was before the court for argument, is still that the defendant's rights, pursuant to s. 11(b) of the Charter, were infringed. The Crown applies to set aside a stay granted by the learned Justice of the Peace pursuant to s. 24(1) of the Charter which was granted on the ground that the respondent's right to a trial within a reasonable time, pursuant to s. 11(b) of the Charter, had been infringed.

¶ 2 On June 19, 1998, the respondent was charged with the offence of failure to stop for a red light, contrary to the Highway Traffic Act, s. 144(18) pursuant to a Part I Certificate of Offence. The Certificate of Offence was filed with the provincial court office on June 22, 1998. On July 15, 1998, the provincial court office received notice of the respondent's intention to seek a trial in this matter. On November 3, 1998, the provincial court office sent notice to the respondent that the trial in this matter would be held on January 28, 1999 at 3:00 p.m., at number "T" two, The Tannery Mall. On the trial date, the respondent brought a motion for a stay of proceedings pursuant to s. 24(1) of the Charter on the ground that the respondent's right to be tried within a reasonable period of time as guaranteed by s. 11(b) of the Charter had been infringed and pursuant to s. 5(2) of the Provincial Offences Act that the respondent's right to be notified of the time and place of the trial as soon as is practicable had been infringed. On January 28, 1999, the learned Justice of the Peace stayed the charge against the respondent, ruling that delay of six months and 13 days was excessive.

¶ 3 Calculation of the length of delay: As noted above, the learned Justice of the Peace considered the operative delay to be six months and 13 days, that is, the time from the date the respondent filed his notice of intention to defend with the provincial court office and the trial date. It appears that no time was allotted for the inherent time requirements involved in the processing of the request for trial. With respect to the issue of inherent time requirements, Mr. Justice Sopinka had this to say in Regina v. Morin (1998), 71 C.C.C. (3d) 1 (S.C.C.) at pages 16 to 17;

> "As well as the complexity of a case, there are inherent requirements which are common to almost all cases. The respondent has described such activities as "intake requirements". Whatever one wishes to call these requirements, they consist of activities such as retention of counsel, bail hearings, police and administration paperwork, disclosure, etc. All of these activities may or may not be necessary in a particular case but each takes some amount of time. As the number and complexity of these activities increase, so does the amount of delay that is reasonable. Equally, the fewer the activities which are necessary and the simpler the form each activity takes, the shorter should be the delay."

¶ 4 It seems to me that a certain amount of time recognizing "intake requirements" should have been considered by the Justice of the Peace in determining whether there had been unreasonable delay in this particular case.

¶ 5 The next issue is whether the delay was prima facie unreasonable. It is well settled that the court must embark upon a s. 11(b) analysis only where the delay under review is prima facie unreasonable. The Crown argues that the delay of six months and 13 days was not prima facie unreasonable in the absence of an evidentiary basis.

¶ 6 The defence argues that a shorter delay should be tolerated for provincial offences. At the hearing of the motion before the Justice of the Peace, no evidence was presented on local demographics and changing circumstance or statistics from other comparable jurisdictions. The learned Justice of the Peace inferred mental anguish from the length of the delay and the possibility of some civil liability that may be involved (and I cite the Ruling, Transcript, pp. 23-24). However, no evidence of actual prejudice or an inability to defend the charge was presented which would compel reduction of the time period that would be prima facie unreasonable.

¶ 7 I do not believe that a s. 11(b) inquiry was warranted by the delay of six months and 13 days in this case. The Supreme Court of Canada and the Ontario Court of Appeal have accepted that a systemic or institutional delay of eight to 10 months in the provincial court is a reasonable period in which to bring a matter to trial, subject to deviations by reason of the presence or absence of prejudice: Regina v. Morin, supra, at pages 21-22 and 28; also Regina v. Bennett (1991), 64 C.C.C. (3d) 449, at page 474; Regina v. Sharma (1992), 71 C.C.C. (3d) 184 (S.C.C.) at page 194. There was no evidence of actual prejudice presented to the Justice of the Peace which would compel reduction of the acceptable delay below six months and 13 days.

¶ 8 The offence of failure to stop at a red light is a provincial charge under the Highway Traffic Act and not a criminal charge. I note that counsel for the respondent argued before the Justice of the Peace that he was not required to present evidence of prejudice: Transcript, page 20. However, it is clear that the onus is on the

defendant to demonstrate prejudice. See, for example, Regina v. Salkeld, unreported, March 24, 1993, Justice J.R. MacKinnon, at page two. Further, I agree with the comments of Justice Lampkin in Regina v. Cheung, [1992] O.J. No. 4016, Provincial Offences Appeal, August 13, 1992 regarding prejudice in a provincial offences matter, where he states:

> "Even if I were to hold, which I don't, that the time here, five days short of four months, was unreasonable, there is really no prejudice to the accused that I can see. The usual prejudice of someone being charged with a criminal offence of theft, robbery, sexual assault, fraud, really cannot be said to apply to a person charged with an offence under the Provincial Offences Act, certainly not one of failing to yield from a private road or speeding. There is no social stigma that is attached to that type of offence. In criminal offences when a person is charged, all sorts of things are imagined against them that he is a criminal as the case may be; that he is an incestuous person; a thief; and so on. But you speed on the highway, as so many people are wont to do, where really, is the "disgrace" to be visited upon that person by family and friends, because of an infraction of that nature?"

¶ 9 In the present case, there was no evidence of actual prejudice in the context of a provincial offence presented to the Justice of the Peace which would compel lowering the period of time that would be considered reasonable delay.

¶ 10 Application of limitation period: Even if I am incorrect in holding that the delay of six months and 13 days is not prima facie unreasonable, my view is that the learned Justice of the Peace failed to balance the principles articulated in Morin. The Justice of the Peace appeared to apply a limitation period when he commented on the prejudice in the six month and 13 day delay at page 24 of the Transcript:

> "Now, let's look at the prejudice. The gentleman before the Court has had a charge hanging over his head now, if I can use that terminology, for almost seven months, on a charge that, under the Provincial Offences Act, should be heard within a reasonable period of time. The Provincial Offences Act is designed to be a speedy process for relatively minor regulatory matters. By proceeding quickly, everybody involved, and if there was an accident, then the victims, if I can use that term, as well as the defendant deserve some sort of - of closure, put an end to it. Certainly, with something hanging over the head of the defendant, I believe that there can certainly be some mental anguish involved, if nothing else. Perhaps a lot more than that if there is a possibility of some civil liability involved. But I believe that prejudice can be taken from what we have heard. The basic reason is systemic delay. The total time of just under seven months, in my view is excessive. I can refer back to the bottom line, as describe in Judge Bogusky's decision - Regina v. Marc E. Caruso, unreported, November 7, 1991 - where he says five and a half months is pretty shabby. I agree with that and I think that something just shy of seven months is even shabbier. This charge will be stayed."

¶ 11 The Caruso decision was decided in this region in 1991. I agree with the Crown that this decision is distinguishable on a factual basis. The demographics and conditions of York Region in 1991 cannot be compared to the current situation in the absence of expert evidence. Further, the appellate courts have made it abundantly clear that the determination of what is reasonable delay is not to be determined on the basis of the formulaic application of a limitation period - Regina v. Morin, supra, at pages 19 to 20 - and, in my view, the learned Justice of the Peace erred in applying a limitation period to the s. 11(b) analysis in this case. Further, the learned Justice of the Peace further erred in presuming that mental anguish would automatically flow from "having a charge hanging over his head ...": Reasons for Judgment, Transcript, page 23 - in the absence of evidence of prejudice suffered as a result of the delay. The prejudice which factored into the decision of the Learned Justice of the Peace was speculative and made in the absence of any evidence of prejudice suffered as a result of the delay.

¶ 12 For the above reasons, the appeal is allowed, the stay is lifted and a new trial is ordered pursuant to s. 121 of the Provincial Offences Act.

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