COURT OF APPEAL OF YUKON

Citation: *R. v. Larue,*
2020 YKCA 1

Date: 20200127
Docket: 13-YU727

Between:

Regina

Respondent

And

Norman Eli Larue

Appellant

Before: The Honourable Madam Justice Bennett
The Honourable Madam Justice Dickson
The Honourable Madam Justice Charbonneau

Reasons for Judgment on the application made in writing to re-open the appeal.

The Appellant, acting on his own behalf: (written submissions):	N.E. Larue
Counsel for the Respondent:	N. Sinclair
Written Submissions Received:	December 20, 2019
Place and Date of Judgment:	Vancouver, British Columbia January 27, 2020

Written Reasons of the Court

Summary:

Application to re-open appeal. Held: Dismissed for lack of jurisdiction.

Reasons for Judgment of the Court:

[1] Norman Larue was convicted of first degree murder on July 3, 2013. His appeal to this Court was dismissed on June 13, 2018. The reasons are indexed at 2018 YKCA 9. The formal order was entered on August 22, 2018. His appeal to the SCC was dismissed on April 25, 2019.

[2] He has filed an application in writing seeking to have his appeal in this Court re-opened, and wishes to raise grounds of appeal that were not argued in the first appeal.

[3] Mr. Larue filed a similar application for a rehearing with the Supreme Court of Canada, which was dismissed on October 1, 2019.

[4] He notified the registry in Yukon that he has additional material to file, however, given our decision on the jurisdictional point, we have concluded that there is nothing further to be considered that would alter the outcome.

[5] In our view this Court does not have jurisdiction to re-open the appeal. For the reasons that follow, we would refuse the application.

[6] If an appeal has been determined on its merits and the order has been entered, the Court is *functus officio*: *R. v. Garcha*, 2000 BCCA 550 at para. 9; *R. v. Hummel*, 2003 YKCA 4 at para. 15; *R. v. Purdy*, 2010 BCCA 413. Appellate courts across Canada are unified in this regard: see, for example *R. v. H. (E.F.)*(1997), 115 C.C.C. (3d) 89 (Ont. C.A.) at para. 33 [*Rhingo*]; *R. v. Akinbiyi*, 2008 SKCA 92 at para. 9; *R. c. Balafrej* (2005), 197 C.C.C. (3d) 88 (Que. C.A.) at paras. 25–27.

[7] The reason the Court of Appeal lacks jurisdiction to entertain a re-hearing flows from the exceptional nature of an appeal as a creature of statute. In criminal cases, appeal rights exist by virtue of statutory authority only—an appellate tribunal has no inherent or ancillary jurisdiction to hear a criminal appeal.

[8] In exceptional circumstances, this Court has jurisdiction to entertain a request to re-open an appeal when the formal order has not yet been entered. Such an extraordinary power is to be exercised rarely, and only if the applicant can demonstrate a clear and compelling case that a miscarriage of justice will result if the proposed arguments are not considered: *Hummel* at para. 29. However, that is not the case here. As noted, the order was entered.

[9] There are sound policy reasons supporting the reticence towards re-opening appeals that have already been heard on the merits. In *Rhingo*, Charron J.A. (as she then was) had this to say:

> 34 …An unlimited discretion to reopen appeals that have been heard on their merits is not only unjustifiable as an ancillary power of the court, but would do significant harm to the criminal justice system. Finality is an important goal of the criminal process. Statutory rights of appeal provide a carefully crafted exception to the general rule that trial decisions are final. By providing broad fights of appellate review in criminal matters, Parliament recognizes that fairness and justice interests require that the accused have a full opportunity to challenge a conviction even though that opportunity will prolong the process. Once those broad appellate rights have been exercised and the merits of the appeal decided, then absent an appeal to a higher court, finality concerns must become paramount. Those affected by the process should be entitled to rely on the appellate decision and conduct themselves accordingly. The appellate process cannot become or even appear to become a never closing revolving door through with appellants come and go whenever they propose to argue a new ground of appeal.
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> [Emphasis added.]

[10] Mr. Larue was convicted of first degree murder, which is an indictable offence. Sections 675(1) and 691(1) of the *Criminal Code* provide an accused's substantive rights of appeal against a conviction in proceedings by indictment. However, s. 674 explicitly limits appeal rights in relation to indictable offences to the parameters set out in Parts XXI and XXVI:

> No proceedings other than those authorized by this Part and Part XXVI shall be taken by way of appeal in proceedings in respect of indictable offences.

[11] Accordingly, once Mr. Larue's conviction appeal was dismissed on its merits and an order was entered, his statutory rights in this Court became exhausted. Any remaining appeal rights anchored in the *Criminal Code* were extinguished when the Supreme Court of Canada pronounced judgment on April 25, 2019. In effect, a subsequent "reopening of the same proceeding would involve the creation of further substantive or procedural rights, which only Parliament can enact": *Rhingo* at para. 33.

[12] Mr. Larue may nonetheless apply for Ministerial review under Part XXI.1 of the *Criminal Code*. These provisions allow for an application to be made to the Minister of Justice for a review of the case on the basis of a miscarriage of justice, once a person's appeal rights have been exhausted. Mr. Larue's letter indicates that he has in fact initiated this process.

[13] The application is refused.

"The Honourable Madam Justice Bennett"

"The Honourable Madam Justice Dickson"

"The Honourable Madam Justice Charbonneau"