Date: 20030827
Docket No.: S.C. 02-00541A,
01-00668C
Registry: Whitehorse

R. v. Sharp, 2003 YKSC 46

IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN:

HER MAJESTY THE QUEEN

AND:

THOMAS PAUL SHARP

Edward Horembala, Q.C.
John Phelps — For the Crown

Gordon Coffin — For the Defence

MEMORANDUM OF RULING
DELIVERED FROM THE BENCH

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[1] VEALE J. (Oral): The Crown has made an application for an order that Thomas Paul Sharp be found a dangerous offender, or, alternatively, a long-term offender.

[2] Counsel for Mr. Sharp has brought an application that the sentencing hearing, set to begin September 8, 2003, for two weeks and then a further week in October, be adjourned. The basis for the application is that the conviction for forcible seizure has been appealed, or at least an appeal has been filed. There is no affidavit in support of the application filed by counsel for Mr. Sharp.

[3] On November 7, 2002, Mr. Sharp was convicted of forcible seizure of a woman, contrary to s. 279(2) of the *Criminal Code*.

[4] On November 12, 2002, Mr. Sharp, after a guilty plea, was convicted of sexual assault on a woman while carrying a knife, contrary to s. 272(2)(b) of the *Criminal Code*. Also, on November 12, 2002, Mr. Sharp plead guilty and was convicted of kidnapping a woman with intent to cause her to be confined against her will, contrary to s. 279(1.1)(b) of the *Criminal Code*.

[5] Counsel for Mr. Sharp will be appealing the conviction for forcible seizure and submits that it would be appropriate to adjourn the sentencing hearing until that matter has been heard by the Court of Appeal.

[6] This sentencing hearing has been scheduled to commence on September 8, 2003. It is a continuation of the convictions aforementioned. The fact that the sentencing hearing would involve the dangerous offender and long-term offender application has been known since the trial of the forcible seizure offence in November of 2002.

[7] On December 18, 2002, an application for remand of Mr. Sharp for expert assessment was made and ordered by this Court under s. 752.1, on January 14, 2003.

[8] On January 31, 2003, the assessment order was amended. On April 7, 2003, the time for filing the expert assessment was extended to June 1, 2003.

[9] On May 27, 2003, an application was made to substitute a judge, owing to the

retirement of the trial judge. On the same date, the sentencing hearing was set for the weeks of September 8 and September 15, and the week of October 6, 2003.

[10] On June 10, 2003, an application was made to determine procedure and evidence at the sentencing hearing and an order was made on July 15, 2003.

[11] In all these applications and appearances, the matter of an appeal of the forcible seizure conviction was never raised, nor was an adjournment of the sentencing hearing date applied for.

[12] At the Crown's urging, I questioned the author of the assessment report, Dr. Singh, as to whether his opinion would change if the forcible seizure conviction was not part of the assessment. Dr. Singh was questioned by me and was unable, at this time, to answer the hypothetical question without reviewing the file.

[13] In my view, the sentencing hearing should not be adjourned. I say this for several reasons. Firstly, the sentencing hearing has been set now for four months and there has been no previous indication of an appeal. I am aware that the defence has 30 days from completion of the sentencing hearing to file an appeal. Secondly, the Crown has now proceeded to subpoena some 30 witnesses for the September 8, 2003 sentencing hearing. Thirdly, there is a very large societal or community interest in proceeding to a sentence as promptly as possible. Dangerous offender applications, necessarily, take a longer time then other sentencing hearings. I see no valid reason for further delay. Waiting for an appeal of one of the three predicate convictions would result in intolerable delay in the sentencing process. Fourthly, the British Columbia Court of Appeal has indicated a preference not to have dangerous offender applications adjourned pending conviction appeals. I refer to *R. v. Snow*

(2000), B.C.J. No 350, and *R. v. R.A.D.* (1990), B.C.J. No. 2571. In the latter case, Proudfoot J. quoted from a Criminal Proceedings and Practice in Canada, 2nd edition, by Ewaschuk J. at paragraph 18:3515:

> It is improper for a trial judge to postpone hearing a dangerous offender application in order to commit an accused to appeal his conviction. A dangerous offender application is part of the sentencing process and should not, save in exception circumstances, be deferred pending the outcome at appeal against conviction.

[14] I find no exceptional circumstances. The application to adjourn is dismissed.

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VEALE J.