COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Reyes, 2018 ONCA 156
DATE: 20180214
DOCKET: M48751 (C64769)

Watt J.A. (In Chambers)

BETWEEN

Her Majesty the Queen

Respondent

and

Althea Reyes

Moving Party

Althea Reyes, in person

Andrea Baiasu, for the respondent

Heard: In writing

Motion for directions.

Watt J.A.:

[1] Althea Reyes is self-represented. Sometimes, she has a lawyer. She still may have a lawyer. At least for the time being. I say this because this is one of those cases where lawyers come and lawyers go. Discharged. Or removed from the record at their own request.

The Background

[2] Althea Reyes is charged with failure to comply with a term of a recognizance on which she was released from custody on various charges. The breach alleged is that she failed to reside with her surety as the recognizance required her to do.

[3] It seems that the Crown elected to proceed summarily[1]. The trial was scheduled for February 2, 2017 but was not completed on that day. To this day, the trial remains a work in progress.

[4] The evidence portion of the trial has been completed but no submissions have been made or decision rendered. Several dates have been fixed for submissions. On each date, Ms. Reyes has failed to appear. Two counsel, who previously represented her, have asked to be removed from the record. In both instances, the trial judge acceded to their request.

[5] On September 8, 2017, after several occasions on which Ms. Reyes failed to appear, the presiding judge issued a bench warrant with discretion returnable

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[1] I use the term “seems” because of a passage in the motion judge’s reasons which refers to s. 800(2) of the *Criminal Code*. The motion record does not contain a copy of the information.

on September 12, 2017. Ms. Reyes did not appear. Another counsel appeared on her behalf with a designation under s. 650.01(1) of the *Criminal Code*. The trial judge refused to accept the designation because another lawyer was already counsel of record. Ms. Reyes did not appear. After having extended the bench warrant with discretion on several occasions, the trial judge finally ordered that the warrant be executed on December 15, 2017.

The Motion to Quash the Bench Warrant

[6] On December 18, 2017 Ms. Reyes, represented by yet another counsel, moved to quash the bench warrant issued by the trial judge to compel her appearance for the completion of the trial. The motion was dismissed.

The Appeal

[7] Ms. Reyes has filed a notice of appeal in this court from the order of the judge of the Superior Court of Justice who dismissed her motion to quash the bench warrant. The appeal has not been perfected.

The Motion

[8] By this motion in writing, Ms. Reyes seeks an order:

i. directing the trial judge to hear motions filed with the trial court and previously scheduled for hearing, in advance of the hearing of the outstanding appeal from the dismissal of the motion to quash; and

ii. expediting the hearing of the motions and permitting counsel for Ms. Reyes to set a trial date.

[9] According to the notice of motion filed in this court, styled as a Motion for Directions, the motions outstanding before the trial judge seek:

i. a mistrial based on the erroneous reception of inadmissible evidence;

ii. dismissal of the charges for lack of evidence; and

iii. any other remedy under ss. 24(1) and/or 52(1) of the *Charter* for breach of the right to full and timely disclosure or the unconstitutionality of s. 145(3) of the *Criminal Code*.

Discussion

[10] As I will briefly explain, the orders sought on this motion are unavailable.

[11] To begin, it is beyond controversy that appellate courts are creatures of statute. Their jurisdiction is defined and circumscribed by the enabling statutory authority. Likewise, rights of appeal are entirely statutory. So to, the remedies available from panels and single judges of appellate courts, on appeals properly before the court.

[12] In this, a criminal case, an appellant's rights of appeal and the authority of a panel or single judges of this court to dispose or otherwise deal with the appeal are defined and limited by the *Criminal Code*. It follows that any remedy sought or

relief claimed on a Motion for Directions to a single judge must fall within the remedies or relief authorized by the *Criminal Code.*

[13] The only appeal that Althea Reyes has in this court is one, authorized by s. 784(1) of the *Criminal Code,* from the decision refusing to quash the bench warrant issued for her arrest by the trial judge. That appeal is her only gateway to this court. Any remedy she seeks from a panel or single judge of this court must have its origins in that appeal.

[14] Recall the relief sought here. To repeat:

i. directing the trial judge to hear motions filed with the trial court and previously scheduled for hearing, in advance of the hearing of the outstanding appeal from the dismissal of the motion to quash; and

ii. expediting the hearing of the motions and permitting counsel for Ms. Reyes to set a trial date.

[15] Keep in mind the issue on the outstanding appeal from the motion to quash the bench warrant: the jurisdiction of the trial judge to issue a bench warrant to compel the personal attendance of the accused in summary conviction proceedings. In other words, the issue is whether the trial judge exceeded her discretionary authority under s. 800(2) of the *Criminal Code* in issuing the warrant.

[16] The directions sought by this motion have nothing to do with the outstanding appeal under s. 784(1) of the *Criminal Code* or with the perfection, hearing or

determination of that appeal to this court. The absence of any such nexus puts paid to the relief claimed.

[17] Second, Ms. Reyes has no stand-alone right to the relief sought in the absence of a link to her appeal from the dismissal of her motion to quash. The Crown elected to proceed by summary conviction. The appellant forum in such cases is the "appeal court" as defined in s. 812(1)(a) of the *Criminal Code*, that is to say, the Superior Court of Justice sitting in the region where the adjudication is made. That is not this court. And that appeal must await final disposition, not be advanced *in limine litis*.

[18] Third, the provisions of the *Courts of Justice Act*, RSO 1990, C. 43, in particular s. 134(2), is of no assistance to Ms. Reyes. These proceedings are not governed by provincial legislation, rather controlled by the *Criminal Code* and the enabling rules of court passed pursuant to s. 482(1) of the *Criminal Code*. As we have seen, the cupboard of authority under those provisions is bare.

[19] Finally, the authority of this court to review proceedings taking in courts of first instance does not extend to our superintendence of ongoing proceedings. We are not entitled to reach in to the conduct of trial proceedings to dictate to trial judge's when and how to hear and determine motions advanced by the parties, whether they seek exclusion of evidence, provision of disclosure, a stay of

proceedings or simply matters of scheduling. We await the conclusion of the trial proceedings to review their conduct.

Conclusion

[20] The motion is dismissed, the relief sought refused.

"David Watt J.A."