

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Reyes, 2018 ONCA 607

DATE: 20180629

DOCKET: M49090 (C64769)

Sharpe, Brown and Paciocco JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Althea Reyes

Appellant

Althea Reyes, acting in person and appearing by teleconference

Andrew Hotke, for the respondent

Heard: June 28, 2018

REASONS FOR DECISION

[1] On December 29, 2017 the appellant, Althea Reyes, filed a notice of appeal from the order of Forestell J. dated December 22, 2017.

[2] On January 12, 2018 the appellant filed a motion in this appeal, in writing, seeking relief in respect of motions scheduled to be heard in the Ontario Court of Justice.

[3] Watt J.A dismissed that motion by reasons dated February 14, 2018: 2018 ONCA 156. Those reasons describe the history of this matter. At para. 15, Watt J.A. described the issue raised by the appeal to this court pursuant to s. 784(1) of the *Criminal Code*: “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.”

[4] On February 16, 2018 the Superior Court of Justice transferred to this court the materials from the proceeding before Forestell J.

[5] Yet, the appellant did not perfect her appeal.

[6] Instead, on April 18, 2018 the appellant filed a further motion in writing. That motion was placed before this panel for an oral hearing.

[7] In the motion, the appellant seeks an order compelling the attendance of three individuals “to attend discovery and provide testimony” because they failed to comply with summons to attend the hearing of the appellant’s application before Forestell J. Two of the individuals are employees of the Ontario Court of Justice. The third, Ms. Altamira, allegedly shared a taxi with the appellant on September 15, 2017, the date the appellant was required to attend in the proceedings before the Ontario Court of Justice.

[8] According to the appellant, the three individuals can offer evidence on the issue of whether the appellant appeared in the proceeding before the Ontario Court of Justice on September 15, 2017 around 3:00 p.m.

[9] Although under s. 683(1)(b) of the *Criminal Code* an appellate court can order the examination of a witness, it may do so only in respect of evidence that may be relevant to an issue on a pending appeal: *R. v. Sihota*, 2009 ONCA 770, 249 C.C.C. (3d) 22, at paras. 13-14.

[10] On the present motion, the evidence the appellant seeks by way of examination of the three individuals has no relevance to the issue raised on this appeal concerning the jurisdiction of the Ontario Court of Justice trial judge to issue the bench warrant. The evidence concerns events that took place after the trial judge issued the bench warrant and therefore cannot assist in determining whether the trial judge had the jurisdiction to issue the bench warrant. As well, we observe that the materials before us, which include the appellant's application record in the Superior Court of Justice, do not include any sworn statement from the appellant that she attended the Ontario Court of Justice on the afternoon of September 15, 2017. Accordingly, we dismiss the appellant's motion.

[11] The respondent Crown requests an order that the appellant not be permitted to bring further motions or applications in this appeal without the permission in writing of a member of this court. We are not persuaded that would be the most

effective way to manage this appeal. Instead, we shall give directions concerning the perfection of the appeal.

[12] On May 8, 2018, the appellant filed the transcript of the proceeding before Forestell J. On the most generous reading of *Criminal Appeal Rules*, the time for perfecting this appeal has long passed. We see no reason why the appellant cannot perfect her appeal. Accordingly, we order her to do so no later than Friday, August 31, 2018.

[13] The appellant shall not be entitled to any extensions of that date. The appeal file shows that instead of pursuing her appeal, the appellant has brought two motions seeking relief that has no relevance to the appeal.

[14] Consequently, if the appellant does not perfect her appeal by Friday, August 31, 2018, her appeal shall be dismissed, without further notice to her.

“Robert J. Sharpe J.A.”

“David Brown J.A.”

“David M. Paciocco J.A.”