COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Apple, 2020 ONCA 65
DATE: 20200130
DOCKET: C51052

Watt, Tulloch and Trotter JJ.A..

BETWEEN

Her Majesty the Queen

Respondent

and

Hugh Trevor Apple

Applicant/Appellant

Paul Calarco, for the applicant/appellant

Philip Perlmutter, for the respondent

Heard and released orally: January 23, 2020

On appeal from the conviction entered on June 24, 2009 and the sentence imposed on September 24, 2009 by Justice Sandra Chapnik of the Superior Court of Justice.

REASONS FOR DECISION

[1] On June 24, 2009, the appellant was convicted of several offences arising out of an armed home invasion during which shots were fired. Among the offences were counts of robbery with a firearm; aggravated assault; discharge of firearm with intent; and break, entry and commit, together with various firearms offences.

[2] About three months later, the trial judge imposed an aggregate sentence of imprisonment for a term of 10 years, together with various ancillary orders. After awarding credit of two years for time spent in pre-sentence custody, the net sentence approximates eight years.

[3] By notice of appeal dated September 28, 2009, the appellant appealed his conviction as well as the sentence imposed upon him.

[4] Several months after the original notice of appeal had been filed, the appellant changed counsel. As the transcript became available for review, current appellate counsel came to the view that the appellant was factually innocent of the charges of which he had been convicted. Thus there had been, as counsel saw it, a miscarriage of justice.

[5] As appellate counsel continued to review the trial transcripts and related materials, it was his view that the appellant's defence consisted of three essential components:

i. a lack of identification, the defence advanced at trial;

ii. an alibi, founded on statements of the appellant and others, as well as records of telecommunications or communications contained in various personal communication devices; and

iii. two alternate suspects arrested by the Toronto Police Service and charged with the same offences as the appellant, but who had their charges subsequently withdrawn.

[6] The appeal was case-managed. Counsel for the appellant vigorously pursued production of various records and other documents in or said to be in the possession of the Toronto Police Service, the investigating police agency. These requests required, ultimately, an order from a panel of this court. However, they did not proceed to a formal hearing.

[7] Subsequent to his conviction and sentence, the appellant, a permanent resident, was found inadmissible to Canada on the ground of serious criminality within the meaning of s. 36(1)(a) of the *Immigration and Refugee Protection Act,* S.C. 2001, c. 27 (*IRPA*). He was ordered deported.

[8] On April 14, 2016, he was served with notice that he would be removed from Canada on April 27, 2016. That order was executed in accordance with its terms.

[9] The appellant is no longer amenable to the jurisdiction of this court. The motion for directions or production of documents in the possession of the Toronto Police Service is withdrawn. The appeal is dismissed as abandoned.

"David Watt J.A."
"M. Tulloch J.A."
"Gary Trotter J.A."