

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Benson, 2017 NSSC 301*

Date: 2017-11-23

Docket: PIC No. 466613

Registry: Pictou

George William Benson

Appellant

v

Her Majesty the Queen

Respondent

Judge: The Honourable Justice N. M. Scaravelli

Hearing: November 23, 2017

Decision: November 23, 2017

Counsel: Douglas Lloy for the Appellant

Bronwyn Duffy for the Respondent

Orally by the Court:

[1] This is a summary conviction appeal from an administrative conviction entered by the Provincial Court.

[2] The appellant appeals the administrative conviction that he:

On or about the 7th day of January, 2017, at or near New Glasgow, in the County of Pictou, Nova Scotia, did commit the offence of driving while licenced suspended contrary to section 287 of the *Motor Vehicle Act*.

[3] The respondent crown does not oppose the appeal and, in fact, consents to the remedy requested by the appellant.

Background:

[4] The parties have agreed to the following summary of facts:

1. The Appellant was convicted in 2016 twice before for speeding contrary to section 106(a)(c) and then (b) of the *Motor Vehicle Act*. As a result of two speeding charges in rapid succession, in mid-2016 he was required to take a safe driving course by the Registry of Motor Vehicles (RMV) per a review of the appellant's ability to safely operate a vehicle per section 280(1) of the *Motor Vehicle Act*. The appellant did not respond to this request.
2. As a result of this non-compliance, notification that the appellant's driving license was suspended for failure to take this course was sent by priority courier by the RMV to the appellant on September 12, 2016 per the driving abstract attached to appellant's counsel's affidavit. The appellant claims not to have received the same.

3. The appellant was charged with driving while license suspended contrary to section 287 of the *Motor Vehicle Act* on January 7, 2017. On January 12, 2017, the appellant and his mother arrived at the Access Nova Scotia office in Stellarton to voice their concerns about what they believed was an improper charge, as the appellant was not aware that his driver's license was suspended.
4. The result of this meeting was that the appellant's driver's license was restored effective January 12, 2017 as confirmed in a notice dated the same day. The appellant believed that his section 287 charge was also resolved. He was told by Access Nova Scotia personnel that he must take the safe driving course, which he began and successfully completed on April 28, 2017.
5. As a result of his belief that the charge was withdrawn, the appellant continued with his application to join the Canadian Army. One of the prerequisites for joining the Army was that the applicant must not have any outstanding debts to Her Majesty the Queen. An applicant cannot take up arms in the Queen's name and be a debtor to the Queen at the same time.
6. The appellant's mother, acting out of an abundance of caution, visited the Pictou Justice Centre on April 5, 2017 to ensure that there were no legal obstacles in her son's way in his pursuit of a career in the Canadian Army arising out of his prior speeding convictions.
7. The appellant's mother was advised by court personnel that the section 287 charge was still outstanding. She was also advised that if she paid the fine, the court database and the appellant's abstract would show no pending charges regarding the appellant.
8. Unable to contact her son for instructions while at the courthouse, the appellant's mother paid the fine on April 5, 2017 to have the charge dismissed from the Provincial Court's docket.
9. Unbeknownst to the applicant's mother, payment of the fine had the impact of creating a conviction under the *Motor Vehicle Act* which obligated the RMV to re-suspend the appellant's driving license.

10. This acted as a bar for the Army to process the appellant's enlistment application. The license was to remain suspended until at least April 5, 2018. The applicant was unable to enlist on July 4, 2017 as expected the Captain in charge of recruitment advised the appellant that he would be able to re-initiate the enlistment application should his driver's license be restored.

[5] The appellant originally made an application to Provincial Court seeking an order striking out the conviction arising from the summary offence ticket. The matter came before Judge Del Atwood, who, although sympathetic to the appellant's circumstances, correctly determined that the Provincial Court had no authority to grant the application.

[6] Judge Atwood, in his decision (reported as *R. v. Benson*, 2017 NSPC 37) suggested as obiter, that the appellant seek relief in Supreme Court referencing as precedent the unreported case of *R. v. Decker* (23 November 2003), case 1343640 (NSSC TD).

[7] As a result the appellant and respondent jointly recommend that this court implement sections 683(1)(g) and 822(1) of the *Criminal Code* to amend the original charge by replacing the section 287 *Motor Vehicle Act* conviction with a section 64 *Motor Vehicle Act* conviction and following plea, impose a sentence of \$295.

Section 822(1) reads as follows:

822(1) Where an appeal is taken under section 813 in respect of any conviction, acquittal, sentence, verdict or order, sections 683 to 689, with the exception of subsections 683(3) and 686(5), apply, with such modifications as the circumstances require.

Section 683(1)(g) reads as follows:

683(1) For the purpose of an appeal under this part, the court of appeal may, where it considers it in the interest of justice . . .

(g) amend the indictment, unless it is of the opinion that the accused has been misled or prejudiced in his defence or appeal.

[8] The charge of driving while suspended under section 287 of the *Motor Vehicle Act* attracts a mandatory license revocation unlike the offence of driving without a valid driver's license under section 64 of the *Act*.

[9] Under the unusual circumstances of this case, where there was no wilful misconduct on the part of the appellant the court considers it to be in the interests of justice to allow the appeal, amend the information and grant the relief requested.

[10] As a result, with the consent of the appellant and respondent, the information (SOT) herein regarding the charge of driving a vehicle while license suspended contrary to section 287 of the *Motor Vehicle Act* is amended pursuant to section 683(1)(g) of the *Criminal Code* to read that the appellant did on that date commit

the offence of operating a motor vehicle without a valid driver's license contrary to section 64 of the *Motor Vehicle Act*.

Further, the court imposes a penalty of \$295 for the violation of section 64 of the *Motor Vehicle Act*.

Scaravelli, J.