



**IN THE COURT OF APPEAL
OF NEWFOUNDLAND AND LABRADOR**

Citation: *R. v. Clarke*, 2025 NLCA 21

Date: May 26, 2025

Docket Number: 202401H0015

BETWEEN:

JAYDE ALBERT CLARKE

APPLICANT/APPELLANT

AND:

HIS MAJESTY THE KING

RESPONDENT

Coram: D.M. Boone, J.A.

Court Appealed From: Provincial Court of Newfoundland and Labrador,
St. John's 0122A00119

Application Heard:| May 20, 2025

Judgment Rendered: May 26, 2025

Reasons for Judgment by: D.M. Boone, J.A.

Counsel for the Applicant/Appellant: Self-Represented

Counsel for the Respondent: Jeffrey A. Summers

Counsel for the Attorney General: David L. Hearn

Authorities Cited:

CASES CITED: *R. v. Genge*, 1992 CanLII 7118 (NL CA); *R. v. Rideout*, 1990 CanLII 6512 (NL CA); *R. v. W.(D)*, [1991] 1 S.C.R. 742; *R. v. Ikkusek*, 2009 NLCA 39; *R. v. Murphy*, 2011 NLCA 16.

STATUTES CONSIDERED: *Criminal Code*, R.S.C. 1985, c. C-46, s. 684(1), 684(2).

D.M. Boone, J.A.:

[1] After a trial in the Provincial Court, Jayde Clarke was convicted of several offenses. He is appealing his conviction, and the sentence subsequently imposed. In this application, taken pursuant to section 684(1) of the *Criminal Code*, R.S.C. 1985, c. C-46, he is seeking an order for the appointment of appellate counsel funded by the Attorney General.

[2] Under section 684(1), a court of appeal may assign appellate counsel for an accused when, in the opinion of the court, “it appears desirable in the interests of justice that the accused should have legal assistance and where it appears that the accused has not sufficient means to obtain that assistance”. Subsection 684(2) provides that if the court appoints counsel and the accused is not granted legal aid then the Attorney General must pay counsel’s fees.

[3] In practice, two things flow from section 684(2). First, the accused is expected to seek legal aid prior to the application being heard (*R. v. Genge*, 1992 CanLII 7118 (NL CA), at para. 10; *R. v. Rideout*, 1990 CanLII 6512 (NL CA), at para. 12). Second, the Attorney General has standing on a section 684 application.

[4] The Attorney General opposes Mr. Clarke’s application.

[5] There are four factors that should be considered in the exercise of discretion under section 684(1) (*R. v. Ryan*, 2008 NLCA 42, at para. 9):

- (a) does the applicant have the means to engage legal counsel for his appeal;
- (b) if not, will Legal Aid provide counsel for the appeal;

(c) are there serious (i.e. not frivolous) issues to be dealt with in the appeal;

(d) will the appellant adequately be able to present his case and will the court be able properly to decide the case without the assistance of counsel.

[6] Mr. Clarke was denied Legal Aid assistance with his appeal.

[7] On the hearing of this application, Mr. Clarke advised the Court that he is now earning approximately \$35,000 from a full-time job as an apprentice carpenter. He has attempted to retain private counsel for this appeal. However, all the lawyers he has contacted so far have told him that they are unable to represent him because doing so would constitute a conflict of interest.

[8] Mr. Clarke filed this application in December 2024. At that time, he asserted that he would suffer financial hardship if he were required to pay for a lawyer because he was just getting back to work after being released from prison and he would not have “the means to be approved for a loan.” He now has been working for almost six months and his job is full-time. He did not present any other financial information in support of his application. His efforts to retain private counsel were unsuccessful for other than financial reasons. It appears, therefore, that Mr. Clarke believes that he now has the financial means to retain counsel.

[9] As the only financial information that the Court had regarding financial means was Mr. Clarke’s salary and employment status, I would have considered postponing his application pending the production of more certain information. However, because of my findings regarding the other criteria, there was no need to do so.

[10] The offences in this case arose from an incident at the complainant’s home. She alleged that Mr. Clarke threatened to kill her and discharged a shotgun inside her home. Aside from police officers, the witnesses at trial included Mr. Clarke, the complainant, her father (who heard some of the incident because Mr. Clarke “pocket-dialed” him) and a firearms expert.

[11] Mr. Clarke was convicted of assault with a weapon, possession of a weapon for a dangerous purpose, uttering threats, resisting arrest, pointing a firearm and careless use of a firearm. He was acquitted of other offences. He was sentenced to 33 months imprisonment. He served a portion of that sentence and is currently on parole.

[12] Mr. Clarke's grounds of appeal are that the trial judge:

- failed to properly apply the applicable case law (*R. v. W.(D)*, [1991] 1 S.C.R. 742) in assessing his evidence;
- failed to consider the lack of evidence (the gun was not entered into evidence and the police testified it was never found);
- failed to address discrepancies between the evidence of the complainant (who testified that Mr. Clarke was five to six feet away from the wall of her house when he fired the gun) and the firearms expert (who testified that the forensic evidence was consistent with the shot being fired from ten to twelve feet away);
- failed to provide sufficient reasons for the sentence imposed; and
- imposed a sentence disproportionate to that imposed in other similar cases.

[13] One of the factors that the Court will usually consider on a section 684 application is whether the issues presented by the appeal are serious. Serious issues are issues that are not frivolous. However, because this consideration involves the merits of the appeal, the Court will only consider this factor when it is necessary to do so. This is especially so when the appeal is to sentence; leave will be required on a sentence appeal and one of the issues on the application for leave will also be whether the appeal raises a serious issue (*R. v. Ikkusek*, 2009 NLCA 39, at para. 7; *R. v. Murphy*, 2011 NLCA 16, at para. 8.). It is not necessary to decide whether this appeal raises a serious issue because this application can be decided on consideration of the other factors.

[14] I find that Mr. Clarke will adequately present his case without the assistance of counsel. Mr. Clarke completed high school and the academic college requirements of his carpentry course. He presented his arguments on this application in an articulate and organized manner. He demonstrated a good understanding of his grounds for appeal and what he must show to succeed on the appeal from both his conviction and sentence. Although he was convicted of numerous charges, the evidence that will be in controversy on his appeal is limited in scope.

[15] I also find that the Court will not need the assistance of counsel to effectively adjudicate a fair and just result in this case. The issues raised on the appeal from conviction involve reviewing the trial judge's assessment of the credibility of the evidence and the significance of the expert evidence related to a narrow, relatively unscientific, point. The case law governing appellate review in those circumstances is well-known to this Court. The same can be said for the appeal from sentence because this Court is well aware of the applicable sentencing principles and, especially, the law governing the comparative use of precedent in sentencing.

[16] In concluding its decision in *Ikkusek*, at para. 9, this Court said:

While in a perfect world it would usually be better to have competent and properly prepared counsel make an argument on behalf of a party, the provisions of the *Code* make it clear that the Court ought not to exercise its jurisdiction to appoint counsel as a matter of course; hence the overriding consideration should be whether, without counsel, a fair and just result is still likely to be obtainable. In my view it is in this case.

[17] The same can be said about Mr. Clarke's case. Mr. Clarke has not demonstrated that it is desirable in the interests of justice for the Court to order the appointment of counsel under section 684.

[18] The application is therefore dismissed.

D.M. Boone J.A.