

Date: 20110518
Docket: 10/134
Citation: *R. v. Bambrick*, 2011 NLCA 31

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

BETWEEN:

RODNEY BAMBRICK

APPELLANT

AND:

HER MAJESTY THE QUEEN

RESPONDENT

Coram: Rowe, J.A.

Application Heard: May 18, 2011
Decision Rendered: May 18, 2011

Counsel for the Appellant/Applicant: Self Represented
Counsel for the Respondent: Sheldon Steeves

Rowe, J.A.:

[1] This is an application pursuant to s. 684 of the *Criminal Code* for the assignment of legal counsel to be paid by the Attorney General.

[2] In 2008, Rodney Bambrick was convicted of assault and uttering threats against Bobbie Jean Bowers. He was sentenced to 25 months imprisonment.

[3] While serving his sentence, he expressed an intention to harm Ms. Bowers. Thus, upon his release, Mr. Bambrick was subjected to an order under s. 810.2 of the *Criminal Code* with a view to protecting Ms. Bowers from “serious personal injury”. One provision of the order prohibited Mr. Bambrick from coming within 200 metres of Ms. Bowers’ residence. Another prohibited Mr. Bambrick from consuming alcohol.

[4] On October 27, 28 and November 1, 2010, Mr. Bambrick purchased alcohol and was in a club consuming alcohol, all within 200 metres of Ms. Bowers’ residence. (The police confirmed with Ms. Bowers that while he was subject to the s. 810.2 recognizance Mr. Bambrick did not contact her.)

[5] Mr. Bambrick was arrested and charged with breaches of his s. 810.2 recognizance. Mr. Bambrick pleaded guilty. In light of a lengthy record of breaching court orders, the Crown sought two years concurrent for each of three offences. Mr. Bambrick agreed and was so sentenced. He was not represented by counsel.

[6] Now in prison, he has formed the view that his sentence was excessive. He sought and was denied Legal Aid.

[7] His application for assignment of counsel pursuant to s. 684 was opposed by Crown counsel on the basis that there is no serious issue and, in any case, the matter is sufficiently straight forward that Mr. Bambrick can adequately represent himself. I cannot agree.

[8] A sentence of two years imprisonment on the facts of the case appears harsh. At the very least, there is a serious issue to be dealt with on appeal. There is no realistic prospect that Mr. Bambrick could adequately present his case. Mr. Bambrick is without means to engage counsel and (as noted) has been denied Legal Aid. Thus, the four conditions for assigning counsel under s. 684 are present. See **R. v. Marshall**, 2011 NLCA 26 and **R. v. Ryan**, 2008 NLCA 42.

[9] Accordingly, Mr. Bambrick’s application is granted. I order as follows:

1. Pursuant to s. 684 of the *Criminal Code*, counsel shall be appointed to represent Mr. Bambrick on his appeal;

2. Within twenty-one (21) days of this order, the appellant shall notify the Deputy Registrar of the name of a member of the Bar who is willing to act on his behalf;
3. If the appellant fails to so notify the Deputy Registrar or if the counsel designated by the appellant does not confirm to the Deputy Registrar that he or she is willing to act, the Deputy Registrar shall nominate a member of the private Bar, knowledgeable in criminal law, to act as counsel for the appellant; and
4. The fees and expenses of the counsel so designated or nominated shall be agreed between counsel and the Attorney General and, failing agreement, shall be taxed on the basis of the standard fee schedule for outside counsel retained by the Government of Newfoundland and Labrador and shall be paid by the Attorney General.

M. H. Rowe, J.A.