



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

Citation: *R. v. Templeman*, 2017 NLCA 27

Date: April 27, 2017

Docket: 201601H0054

BETWEEN:

WILFRED TEMPLEMAN

APPELLANT

AND:

HER MAJESTY THE QUEEN,
AS REPRESENTED BY THE
ATTORNEY GENERAL

RESPONDENT

MEMORANDUM OF DISPOSITION

Coram: Harrington J.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador
Trial Division (G) 201401G7934

Application Heard: April 20, 2017

Judgment Rendered: April 27, 2017

Counsel for the Appellant: Self Represented

Counsel for the Respondent: Sheldon Steeves

Counsel for the Attorney General of Newfoundland and Labrador:
Mark Sheppard

Harrington J.A.:

[1] This is an application for the appointment of legal counsel pursuant to section 684(1) of the *Criminal Code*. The appellant is seeking to appeal his convictions and sentences entered by a judge of the Trial Division pursuant to a written judgment dated June 20, 2016. The sentences imposed on the appellant for each of his convictions, which were to be served consecutively, are as follows:

Count No. 1 – Break and Enter with intent over	18 months
Count No. 2 – Assault of Female No. 1	3 months
Count No. 3 – Assault of Female No. 2	3 months
Count No. 6 – Kidnapping	3 years
Count No. 10 – Driving while disqualified	4 months
Count No. 11 – Breach of Probation	5 months

The total sentence imposed was 5 years and 9 months.

[2] The appellant has been held in custody at the Stephenville Correctional Centre since his convictions and sentences were imposed.

[3] On January 23, 2017, Crown Counsel requested a date to be set for the filing of facta and the hearing of the appeal of the appellant. Notice of appeal had been filed May 16, 2016. A transcript of the proceedings was filed with the Court of Appeal on December 9, 2016 and an appeal book was filed by the Crown on December 22, 2016.

[4] On March 27, 2017, the appellant applied to this Court seeking an order for the appointment of counsel by the Attorney General pursuant to section 684 of the *Criminal Code*. This application followed the denial on two occasions by the Legal Aid Commission of counsel notwithstanding the claim by the appellant that he is unable to read or write, suffers from unspecified disability and contends that there are serious issues to be dealt with on appeal.

[5] It is clear from the pleadings on file in this Court that the appellant is seeking counsel in order to appeal both the convictions and sentences

imposed which in the aggregate have a substantial amount of time yet to be served. He has served three years of a sentence of five years and nine months less credit for time served of 1,117 days.

[6] Section 684(1) of the *Criminal Code* provides that a Court of Appeal or a Judge of that Court may, at any time, assign counsel to act on behalf of an accused who is a party to an appeal or to proceedings preliminary or incidental to an appeal where, in the opinion of the Court or Judge, it appears desirable in the interest of justice that the accused should have legal assistance and where it appears that the accused has not sufficient means to obtain the assistance of counsel. See *R. v. Ryan*, 2008 NLCA 42. In *R. v. Payne*, 2015 NLCA 11, Welsh J.A. of this Court, at paragraph 9, outlined four key issues to be considered in the exercise of the discretion conferred under section 684:

- (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?

[7] I am satisfied that there are serious and not frivolous issues to be dealt with on appeal. I am also satisfied that the appellant does not have the means to engage legal counsel and has already been rejected by the Legal Aid Commission for the appointment of counsel. Further, I am satisfied that the appellant is not capable of presenting his own appeal without the assistance of counsel.

[8] I am satisfied that the appellant will require the assistance and advice of counsel to proceed with the appeal of his convictions and sentences.

[9] I therefore order that:

- (a) Pursuant to s. 684 of the *Criminal Code*, counsel shall be appointed to represent Wildred Templeman on his appeal from conviction and sentence;
- (b) Within two weeks of this order, the appellant shall notify the Registrar of this Court of a name or names of a member of the Bar who is willing to act on his behalf;

(c) If the appellant fails to so notify the Registrar or if the counsel designated by the appellant does not confirm to the Registrar that he or she is willing and able to act, the Registrar shall nominate a member of the private Bar, knowledgeable in criminal law, to act as counsel for the appellant; and

(d) 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 by the Registrar 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. F. Harrington J.A.