



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

Citation: *R. v. Penney*, 2019 NLCA 3

Date: January 15, 2019

Docket Number: 201701H0003

BETWEEN:

HER MAJESTY THE QUEEN

APPELLANT

AND:

CODY PENNEY

RESPONDENT

Coram: Fry C.J.N.L., Welsh and Goodridge JJ.A.

Court Appealed From: Provincial Court of Newfoundland and Labrador
Harbour Grace

Appeal Heard: January 14, 2019

Judgment Rendered: January 14, 2019 (Orally)

Memorandum of Disposition Filed: January 15, 2019

Counsel for the Appellant: Lloyd M. Strickland

Counsel for the Respondent: Rosellen Sullivan

MEMORANDUM OF DISPOSITION

Welsh J.A.:

[1] This is an appeal of a decision by the trial judge granting a stay of proceedings based on a breach of section 11(b) of the *Canadian Charter of Rights and Freedoms*, the right to be tried within a reasonable time.

[2] The Court's decision was given at the conclusion of the hearing of the appeal. The panel concluded:

We have considered the written and oral submissions of counsel for the Crown and the written submissions of counsel for Mr. Penney.

We are satisfied that the appeal should be dismissed, generally for the reasons of the trial judge (2016 NLPC 0116PA00924).

[3] The Court added a caution regarding consideration of the unavailability of a witness for purposes of the analysis under section 11(b) of the *Charter*. While the Court did not find error by the trial judge in the circumstances of this case, we wish to reiterate that this issue involves a fact-specific determination.

Decisions that may be of assistance in subsequent appeals include: *R. v. Gopie*, 2017 ONCA 728; *R. v. Elmpak-Mackie*, 2018 ONCJ 869; and *R. v. Bragg*, 2016 CarswellNfld 420 (NL P.v. Ct.).

[4] In the result, the appeal was dismissed.

B. G. Welsh J.A.