



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

Citation: *R. v. Starkes*, 2019 NLCA 4

Date: January 22, 2019

Docket Number: 201801H0071

BETWEEN:

JOHN STARKES

APPLICANT

AND:

HER MAJESTY THE QUEEN

RESPONDENT

Coram: Welsh J.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador
General Division 201703G0185

Application Heard: January 22, 2019

Decision Rendered: January 22, 2019 (Orally)

Written Reasons Filed: January 22, 2019

Reasons for Decision by: Welsh J.A.

Counsel for the Appellant: No One Appearing

Counsel for the Respondent: Lisa Stead

Counsel for the Attorney General: David Rodgers

Welsh J.A.:

[1] John Starkes applies under section 684 of the *Criminal Code* for the appointment of counsel to assist him in the conduct of his appeal against sentence.

[2] By way of background, on July 19, 2018, Mr. Starkes pleaded guilty to and was convicted of several charges: break and enter into a dwelling house and committing an assault therein; uttering threats; and unlawful storage of a firearm. He was sentenced to a total of twenty-four months imprisonment less 419 days for pre-sentence custody. He seeks to appeal the sentence and requires leave of the Court for that purpose.

[3] The test to be applied in assessing an application under section 684 is set out in *R. v. White*, 2011 NLCA 14, 305 Nfld. & P.E.I.R. 262:

[4] To justify the appointment of counsel under s. 684 the Court should generally be satisfied that: (i) the applicant does not have the financial resources to engage private counsel; (ii) the applicant has been denied, or would not qualify for, legal aid; (iii) there are serious (i.e. not frivolous) issues to be dealt with on the appeal; and (iv) the applicant will not be able adequately to present his own case on the appeal or the Court will not be able properly to decide the case without the assistance of counsel

[4] In Mr. Starkes' case, I am satisfied that he does not have the financial resources to engage private counsel. He is sixty-one years of age and unemployed. On November 2, 2018, he was refused the assistance of legal aid based on their assessment of the appeal, and not for financial reasons.

[5] While I would not characterize the appeal as frivolous, I am satisfied that the Court will be able to properly decide the case without the appointment of counsel to assist Mr. Starkes in the conduct of his appeal. The issues are not legally complex, there is relevant case law to provide guidance to the Court for purposes of the appeal, the appeal is narrow in scope, and there is a comprehensive sentencing decision by the trial judge.

[6] Accordingly, Mr. Starkes' application for the appointment of counsel to assist him in the conduct of his appeal is dismissed.

B. G. Welsh J.A.