



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

**Citation:** *R. v. Normore*, 2019 NLCA 12

**Date:** March 6, 2019

**Docket Number:** 201601H0065

**BETWEEN:**

ALEX NORMORE

APPLICANT

**AND:**

HER MAJESTY THE QUEEN

RESPONDENT

**Coram:** Fry C.J.N.L.

**Court Appealed From:** Supreme Court of Newfoundland and Labrador  
General Division 201504G0027

**Application Heard:** March 5, 2019

**Judgment Rendered:** March 6, 2019

**Counsel for the Applicant:** Self-represented

**Counsel for the Respondent:** Lisa Stead

**Counsel for the Attorney General:** Jessica Pynn

**Fry C.J.N.L.:**

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

[2] Mr. Normore was convicted on March 9, 2016, of attempting to commit murder, uttering a threat to cause death, possession of a weapon for a dangerous purpose, breaking and entering and committing an indictable offence, and theft of a motor vehicle. On May 27, 2016, he was sentenced to nine years' imprisonment less 1228 days for pre-trial custody.

[3] Mr. Normore appealed both his conviction and sentence to this Court, but it was only the conviction appeal that was initially heard by this Court. The conviction appeal was allowed and a new trial ordered on February 15, 2018 (2018 NLCA 10). The Supreme Court of Canada allowed the Crown's appeal and restored the convictions on October 17, 2018 (2018 SCC 42). Mr. Normore was represented by experienced legal counsel throughout.

[4] Mr. Normore now wishes to proceed with his sentence appeal in this Court. He is no longer represented by legal counsel.

[5] The grounds of appeal advanced by Mr. Normore focus on two areas of alleged error by the trial judge. The first area relates to the injuries suffered by the victim. Mr. Normore states: "the injuries as stated by [the victim] were not supported by the facts, by other witnesses who testified under oath at trial".

[6] The second area raised by Mr. Normore is related to the judge's discussion, during the course of the sentencing decision, of Mr. Normore's past mental health issues referenced in the pre-sentence report. Mr. Normore raises two issues in this regard. First, he says: "this was an error in law as mental illness wasn't introduced at trial". Second, if there was a mental illness, then the trial judge erred by considering it "grounds to increase a harsh sentence, instead of grounds to give a reduced sentence".

**THE LAW AND ANALYSIS**

[7] Section 684 of the *Criminal Code* reads (in part):

684 (1) 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 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.

(2) Where counsel is assigned pursuant to subsection (1) and legal aid is not granted to the accused pursuant to a provincial legal aid program, the fees and disbursements of counsel shall be paid by the Attorney General who is the appellant or respondent, as the case may be, in the appeal.

[8] This Court has repeatedly set out the matters to be considered in the exercise of discretion under section 684. White J.A. references a number of the recent decisions in *R. v. O'Keefe*, 2012 NLCA 6, 318 Nfld. & P.E.I.R. 192.

[5] Green C.J.N.L. set out the matters to be considered in the exercise of discretion under section 684 in *R. v. Marshall*, 2011 NLCA 26:

[5] The determination of whether the Court will exercise its discretion to assign counsel to act for an appellant under s. 684 of the *Code* usually involves consideration of four factors: (i) whether the applicant has the means to engage counsel for his appeal; (ii) if not, whether or not legal aid will be made available to assist him; (iii) whether there are serious (not frivolous) issues to be dealt with in the appeal; and (iv) whether the appellant will be able to present his case adequately or whether the Court will be able to decide the case properly without the assistance of counsel. See *R. v. Ryan*, 2008 NLCA 42, per Rowe, J.A. at para. 9; *R. v. White*, 2011 NLCA 14, per Green C.J.N.L. at para. 4.

[9] Applying these factors to Mr. Normore's application, I am satisfied, on the first factor, and the Crown acknowledges, that the applicant does not have the financial resources to engage his own counsel. With respect to the second factor, I am also satisfied that he was refused the assistance of Legal Aid based on their assessment of his appeal, and not for financial reasons.

[10] The third consideration is whether there are serious (i.e. not frivolous) issues to be dealt with on appeal. Frivolousness is a low standard. The Crown takes the view that there is little merit in the grounds of appeal advanced by the applicant. The Crown submits that while the decision of the Legal Aid Board on the merits of the appeal cannot automatically be taken to mean the appeal is frivolous, it is nonetheless a factor to be taken into account by the Court in determining whether to provide the applicant with publicly funded counsel.

[11] Mr. Normore's appeal is on sentence only and therefore leave to appeal is necessary (section 675(1)(b) of the *Code*). This is usually argued at the hearing of the appeal, and requires a determination on whether the appeal is "frivolous in

the sense of having no arguable basis or sufficient merit” (*R. v. Jesso*, 2008 NLCA 30, 276 Nfld. & P.E.I.R. 147, at para. 13).

[12] Delving too deeply into the merits of the sentence appeal at this stage may have the appearance of prejudging the issue of leave to appeal. In light of my conclusions on the fourth consideration below, it is not necessary to make a determination on the merits of this appeal.

[13] The fourth consideration is whether the applicant can adequately present his own case or whether the Court will be able to properly decide the case without the assistance of counsel.

[14] The applicant takes the position that because his mental health status has been raised in the pre-sentence report, and was referred to by the sentencing judge, he is entitled to publicly funded counsel. In fact, Mr. Normore expresses the view that a person is entitled to publicly funded legal counsel in any criminal or civil matter when a mental health issue is raised.

[15] Section 684 of the *Code* does not provide an automatic right to publicly funded counsel under any circumstance. The Court exercises its discretion to appoint counsel where it appears desirable in the interests of justice that the accused should have legal assistance. In all circumstances, even when the issues of mental health or mental competence are raised, the Court is required to consider the four factors previously outlined and exercise its discretion within the context of the circumstances of the applicant and the matter before the Court.

[16] In *R. v. Ikkusek* 2009 NLCA 39, 287 Nfld. & P.E.I.R. 73, Green C.J.N.L., in rejecting an application under section 684, made the following observation at paragraph 9:

...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. ...

[17] The applicant does not argue that he is unable to present his case adequately because of a mental health issue. In fact, he disputes that he has a mental health issue. Mr. Normore is articulate, has completed high school, has a previous work history in Alberta, and has demonstrated the ability to comprehend the legal documents provided by the respondent in this application.

He referred to portions of the sentencing transcript where he felt the trial judge made legal errors.

[18] Furthermore, the issues are not legally complex, the appeal is narrow in scope and there is an adequate transcript of the sentencing decision by the trial judge.

[19] Given the nature of the issues raised on appeal, I am satisfied that Mr. Normore will be able to present his case adequately and the Court will not require the assistance of counsel to properly decide the appeal.

[20] Accordingly, this is not a case where an order should be made for appointment of counsel under section 684 of the *Criminal Code*. Mr. Normore's application for the appointment of publicly funded counsel is dismissed.

[21] The appeal was set down for May 23, 2019.

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D. E. Fry C.J.N.L.