



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

Citation: *R. v. Gardner*, 2021 NLCA 19

Date: April 6, 2021

Docket Number: 201901H0094

BETWEEN:

SHANE GARDNER

APPELLANT

AND:

HER MAJESTY THE QUEEN

RESPONDENT/
APPLICANT

Coram: Welsh J.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador,
General Division 201701G5299

Application Heard: April 6, 2021

Judgment Rendered Orally: April 6, 2021

Memorandum of Disposition Filed: April 7, 2021

Counsel for the Appellant: Appearing on his own behalf

Counsel for the Respondent/Applicant: Sheldon Steeves

Authorities Cited:

STATUTES CONSIDERED: *Criminal Code*, sections 264(1) and 733.1

Welsh J.A.:

[1] On May 23, 2018, Shane Gardner pleaded guilty and was convicted of one count of criminal harassment contrary to section 264(1) of the *Criminal Code* for which he was sentenced on July 27, 2018, to 90 days imprisonment, to be served intermittently, and one count of breach of probation contrary to section 733.1 of the *Code* for which he was sentenced to 15 days imprisonment, concurrent.

[2] By notice of appeal dated August 7, 2018, Mr. Gardner appealed his sentences to the summary conviction appeal court. That appeal was heard and dismissed, in Mr. Gardner's absence, on October 23, 2019. Mr. Gardner says he made a mistake when writing the date in his calendar. Mr. Gardner then filed a notice of appeal and leave to appeal in this Court. The transcript of proceedings was filed on December 6, 2019. The Crown filed the appeal book on February 5, 2020. Mr. Gardner has taken no steps to carry forward his appeal despite being given opportunities to obtain counsel, and being given dates by the Court by which to file his written submissions. Recently, he advised the Court that he would not be filing written submissions, but would rely on making his submissions orally.

[3] On January 27, 2021, the Crown filed an application to have the notice of appeal and leave to appeal struck. At the hearing today, I granted the application. I considered Mr. Gardner's submissions, particularly with respect to the possible basis for an appeal from the sentencing judge's decision, together with the extensive reasons provided by the sentencing judge in which the facts, aggravating and mitigating factors, the pre-sentence report and case law were considered and applied. I was satisfied that there was no reasonable possibility for a successful appeal. While that is a test that would ordinarily apply to determination of an application for leave to appeal, I could see no value in delaying the matter further. The appeal is without merit. To set another date for additional oral submissions from Mr. Gardner would serve no purpose.

[4] Accordingly, at the hearing, I struck the notice of appeal and leave to appeal.

B. G. Welsh J.A.