

In the Court of Appeal of Alberta

Citation: R v Geick, 2022 ABCA 150

Date: 20220426
Docket: 2201-0046A
Registry: Calgary

Between:

Her Majesty the Queen

Respondent

- and -

John Richard Geick

Applicant

**Oral Reasons for Decision of
The Honourable Justice Anne Kirker**

Application for s. 684 Appeal Funding

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Background

[1] Mr. Geick applies under s. 684 of the *Criminal Code*, RSC 1985, c C-46, for appeal funding paid for by the Attorney General, who is the respondent in Mr. Geick's appeal. Mr. Geick appeals his conviction on two counts of animal cruelty. Legal Aid declined to provide coverage on the basis that the likelihood of success on the grounds set out in Mr. Geick's Notice of Appeal is remote.

[2] I pause here to note that on April 8, 2022, Mr. Geick's counsel wrote to the court indicating that he anticipated further grounds of appeal being pleaded. I asked both counsel to address whether an adjournment of this application ought to be considered so that the anticipated amendments to the Notice of Appeal could be made first in accordance with Rule 14.86 of the *Alberta Rules of Court*, Alta Reg 124/2010. The court would then have argument on all grounds of appeal to determine whether public funding should be ordered. Counsel conferred with his client and advised that Mr. Geick sought to have his application heard, at least with respect to funding for transcripts. We therefore proceeded.

Issue

[3] Mr. Geick argues it is not fair that his current counsel, or another lawyer I am told has agreed to take over the appeal, be required to provide legal assistance or cover disbursements on a *pro bono* basis.

[4] However, as noted by counsel for the respondent, that is not the test. Rather, as stated by this Court in *R v McKechnie*, 2021 ABCA 257 at para 4:

There are several discretionary criteria to be considered in an application for appointment of publicly funded counsel:

- a) whether the appellant demonstrates insufficient means to obtain representation;
- b) whether there is sufficient arguable merit to the appeal to justify public funding of counsel;
- c) whether the issues transcend the interests of this particular appellant and engage broader societal concerns; and

d) whether the submissions to be made are sufficiently complex that the appellant would be unable to advance them without assistance.

See *R v Morehouse*, 2005 ABCA 336, para 2; *R v Ewanchuk*, 2008 ABCA 78, paras 2-3, 429 AR 254; *R v Shaw*, 2013 ABCA 361, para 4; *R v McKechnie*, 2020 ABCA 247, para 5; *R v Diab*, 2020 ABCA 240, para 16.

[5] Mr. Geick’s counsel also argued that I should, in effect, bifurcate Mr. Geick’s request for transcript funding from his request for publicly funded counsel. I am not satisfied I can do that: See *R v Verma*, 2017 BCCA 273 at para 14.

[6] The only question before me, then, is whether the criteria for publicly funded legal assistance under s. 684 is met.

Analysis

[7] There was no evidence in the application materials originally filed to demonstrate that Mr. Geick has insufficient means to obtain representation. However, enclosed with his counsel’s April 8th letter was an affidavit sworn that day in which Mr. Geick states, “I am impecunious. My income for the last 8 months of 2021 was \$1,800 per month from Employment Insurance, which I stopped receiving at the end of 2021”. I am prepared to accept that Mr. Geick has insufficient means to obtain representation.

[8] The difficulty I have with this application is that I am not satisfied there is sufficient arguable merit to the appeal on the grounds pleaded to justify public funding; that the issues transcend Mr. Geick’s particular interests and engage broader societal concerns; or that, the submissions to be made are sufficiently complex that Mr. Geick will be unable to explain his concerns to the court without assistance.

[9] As currently framed, Mr. Geick’s appeal effectively takes issue with the trial judge’s assessment of credibility – her assessment of Mr. Geick’s credibility and her assessment of the credibility of another witness, Ms. Smith. The central issue at trial was who inflicted the injuries on the dogs. Mr. Geick agrees there were only two people who could have done it: him or Ms. Smith. Mr. Geick denied it was him.

[10] Deference is owed to the credibility assessment of the trier of fact. Mr. Geick’s grounds of appeal are described as including unreasonable verdict, impermissible introduction of bad character evidence, misapprehension of evidence, and uneven scrutiny of evidence. To justify appellate court intervention on the basis of an unreasonable verdict, the verdict must be one that a properly instructed trier of fact could not reasonably have rendered: *R v RP*, 2012 SCC 22 at para 9. This is a challenging argument for Mr. Geick to make on this record. The argument, here and in relation to the other appeal grounds I have just mentioned, is, fundamentally, that Mr. Geick’s evidence, considered in the context of the evidence as a whole, ought to have raised a reasonable

doubt as to his guilt. He points to various reasons why that is so; for example, urging the court to consider certain answers given during the cross-examination of Ms. Smith and to interpret the evidence in his favour. However, Mr. Geick's arguments as laid out in the written submissions and in counsel's oral argument amount to a request that this Court re-weigh the evidence.

[11] With respect to Mr. Geick's other grounds of appeal related to the trial judge's reasons addressing the Crown's exclusive opportunity argument, and her denial of Mr. Geick's mistrial and fresh evidence applications, counsel has identified no error that does not come back to the fundamental assertion that the trial judge should have believed what Mr. Geick said.

[12] At the end of the day, I am not prepared to accept that there is sufficient merit to the appeal arguments to justify publicly funded legal assistance.

[13] Further, the issues here are not issues of broader societal concern. They are specific to the evidence and issues in Mr. Geick's case.

[14] Finally, the facts and issues are not so complex that Mr. Geick cannot make the arguments he wishes to make on his own for the purposes of his appeal.

Disposition

[15] I have concluded I must dismiss Mr. Geick's application.

Application heard on April 14, 2022

Reasons filed at Calgary, Alberta
this 26th day of April, 2022

Kirker J.A.

Appearances:

S.E. Clive
for the Respondent

E. Moldofsky
for the Applicant