

In the Court of Appeal of Alberta

Citation: R. v. Ellis, 1995 ABCA 480

Date: 19951207
Docket: 9503-0732-A
Registry: Edmonton

Between:

Her Majesty The Queen

Respondent

- and -

Craig Ellis

Appellant

Oral Reasons for Decision of The Honourable Madam Justice Russell

Application for Leave to Appeal and an Order Extending Time to File Appeal

COUNSEL:

P.L. Moreau, for the Respondent

M.L. Furman, for the Appellant

TRANSCRIPT OF THE ORAL REASONS FOR DECISION OF THE HONOURABLE MADAM JUSTICE RUSSELL DELIVERED THE 6TH DAY OF DECEMBER, 1995

[1] The appellant was convicted in his absence for being the owner of and having an uninsured and unregistered motor vehicle on a highway, contrary to the *Motor Vehicle Administration Act*. He appealed that decision to the Court of Queen's Bench. He encountered delays in obtaining a copy of the transcript which he claims prevented him from preparing and filing his memorandum of

argument. Other delays were not explained. He applied for a fiat to permit him late filing or, in the alternative, an adjournment to file further material. That application was refused by the summary conviction appeal justice even though the Crown counsel indicated it was prepared to deal with the appeal if the fiat were granted.

[2] The appellant now seeks a certificate of importance pursuant to Section 18(1) of the **Provincial Offences Procedure Act** leave to file a notice of appeal on a question of law alone, and an order extending time to file the appeal. He contends that there was no evidence before the summary conviction appeal justice on which he could properly exercise his discretion to refuse the fiat or adjournment. He claims the matter is important because there is no definitive case specifying the proper test for determining whether to extend time under Rule 860.8 of the Alberta Rules of Court governing summary conviction appeals and, because of the alleged error made by the Commissioner in making certain inferences on the evidence, and the magnitude of the penalty the appellant faces in respect of a conviction for having an uninsured vehicle on a highway.

[3] While the matter is undoubtedly of importance to the appellant, I am not persuaded that the matter is so important as to warrant leave to appeal. It is clear that the summary conviction judge was properly exercising discretion in refusing the fiat or adjournment. In my view supervision of the exercise of that discretion dealing with what is essentially a matter of court administration is not required in response to this case. The summary conviction appeal judge heard the submissions on the reasons for the delay and was apparently not persuaded by them. His discretion was not exercised improperly, nor based on any improper self-direction on the law.

[4] The Commissioner, whose decision was under appeal, made an inference on the facts he was entitled to draw. There was no other evidence before him upon which any other reasonable inference could be drawn. Accordingly, I decline to issue a certificate of importance and the applications for leave to appeal and to extend time are denied.

TRANSCRIBED at EDMONTON, Alberta,
this 6th day of December,
1995