Citation: R v Reimer, 2022 MBCA 55
Date: 20220607
Docket: AR22-30-09753

IN THE COURT OF APPEAL OF MANITOBA

Coram: Chief Justice Richard J. Chartier
Madam Justice Freda M. Steel
Madam Justice Jennifer A. Pfuetzner

B E T W E E N :

HER MAJESTY THE QUEEN	)	***L. J. W. Tailleur*** *and*
	)	***B. J. Hoyt***
(Respondent) Respondent	)	*for the Appellant*
	)	
- and -	)	***R. N. Malaviya***
	)	*for the Respondent*
KARLTON DEAN REIMER	)	
	)	*Appeal heard and*
(Accused) Appellant	)	*Decision pronounced:*
	)	***June 7, 2022***

CHARTIER CJM (for the Court):

[1] This is an appeal of a decision of an application judge dismissing the accused's application for an order of *habeas corpus* and *mandamus*.

[2] The accused is charged with two counts of murder in the second degree. He intends to assert a defence of not criminally responsible by reason of mental disorder. The Crown sought and obtained an order for an assessment pursuant to section 672.12 of the *Criminal Code* (the *Code*). Section 672.14 provides that such orders cannot be in force for more than 30 days.

[3] When it became apparent that the assessment would not be completed within the 30-day time frame, the accused filed a *habeas corpus* and *mandamus* application seeking an order to release him from the Headingley Correctional Centre (HCC); to deliver him to the Health Sciences Centre (HSC); to compel HSC to complete the assessment before the order expired; and to return him to HCC once the assessment was completed.

[4] When the matter came for hearing before the application judge, the 30-day assessment order had lapsed. He therefore found the issues before him to be moot and dismissed the application.

[5] The accused appeals pursuant to section 784(3) of the *Code*. He also moves for the admission of fresh evidence.

[6] The accused argues that, because the Crown intentionally allowed the assessment order to lapse, this Court should make a pre-emptive order preventing the Crown from seeking another assessment order in the future. For its part, the Crown submits that this Court is not the proper venue to address an issue that has not been properly canvassed in the Court below.

[7] In our view, the appeal should be dismissed for two reasons.

[8] First, an appellate court reviews decisions to correct errors. The application judge dismissed the *habeas corpus* and *mandamus* application because of mootness as the 30-day assessment order had expired. The accused has been unable to identify any error in the application judge's decision on mootness. Moreover, he has not made out a case for departing from the general rule that courts do not hear moot matters.

[9] Second, an appellate court is not a forum for first-instance argument. The accused is essentially raising a new issue on appeal. The remedy the accused is seeking from this Court (an order preventing the Crown from making a further section 672.12 application) requires determinations on questions of abuse of process or *Charter* violations (see *Canadian Charter of Rights and Freedoms*). We are aware that both the accused and the Crown acknowledge that there is an ongoing problem with completing assessments in the time allotted in the *Code*. However, the fact remains that these issues have not been decided in the Court below and a proper appeal foundation has not been laid. Once that is done, this Court will be able to consider the matter.

[10] We must add that this appeal appears to contain some procedural irregularities or inconsistencies. We note that the *habeas corpus* and *mandamus* application, which seeks to obtain the assessment within the 30-day period, is incongruous with the remedy the accused is now seeking in this Court, which is an order preventing the Crown from requesting a further assessment order. In addition, and without deciding the issue, we question whether the *habeas corpus* application, which was twinned with the *mandamus* application, was procedurally correct in the circumstances of this case.

[11] Lastly, we turn to the fresh evidence motions. We are all of the view that the proffered evidence is not admissible given that it could not reasonably be expected to have affected the result (see *Palmer v The Queen*, [1980] 1 SCR 759). The application judge held that there was no live issue before him as the assessment order had expired. Since the fresh evidence pertains to information relating to the expired order, it could not have affected his decision that the issues before him were moot.

[12] Accordingly, the fresh evidence motions are denied and the appeal is dismissed.

Chartier CJM

Steel JA

Pfuetzner JA