



Court of Appeal
for BC

Notice of Appeal or Application for Leave to Appeal

VANCOUVER
MAR 08 2022
COURT OF APPEAL
REGISTRY

(Where appellant not represented by a solicitor)

CA 48145

Lower Court Registry Number 244068-8-B

Lower Court Registry Location Vancouver

To the Registrar:

Name of appellant: Patrick Fox

Place of trial: Vancouver

Name of court: Provincial Court

Name of judge: Kathryn Denshoff

Was this a jury trial? No

Offence(s) of which convicted: s. 733.1 (breach of
probation)

Plea at trial: Not guilty

Sentence imposed: 12 months jail; 3 years probation

Date of conviction: 2022-02-25

Date of imposition of sentence: 2022-02-25

Name and address of place at which appellant is in custody: North
Fraser Pretrial Centre

Or if not in custody, appellant's address: _____

If in custody, address other than institution: NFA

I, the above named appellant, hereby give you notice that I desire to appeal to the Court of Appeal against my conviction and sentence on the grounds set out on this notice.

I desire to present my case and argument whether it be for leave to appeal or by way of appeal where leave is not necessary,

~~(a) in writing~~

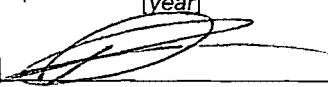
(b) in person

If a new trial is ordered and you have a right to trial by jury, do you wish trial by jury?

Yes

Dated this 28th day of February, 20 22.
[1st, etc.] [month] [year]

[Signed]



Appellant

Notes

1. (a) If your appeal against conviction involves a question of law alone, you have a right of appeal.
(b) If your appeal against conviction is upon any other ground than a question of law, then you have no right of appeal unless leave to appeal is first granted. Your Notice of Appeal includes an application for leave to appeal where leave is necessary.
(c) You have no right to appeal against sentence unless leave to appeal is first granted by the Court of Appeal or a justice. Your Notice of Appeal includes an application for leave to appeal.
2. Further take notice that if you appeal from sentence the Court of Appeal may increase your sentence.
3. (a) If your appeal is against conviction or sentence alone, or against both conviction and sentence, this notice must be filed within 30 days of the date of imposition of the sentence.
(b) If this notice is filed beyond this time, then you must apply for an extension of time by completing Form 7 [Notice of Application for Extension of Time to Appeal].

Grounds of Appeal

These must be filled in before notice is sent to the Registrar. The appellant must here set out the grounds or reasons he or she alleges why his or her conviction should be quashed or his or her sentence reduced. If one of the grounds set out is "misdirection" by the judge, particulars of the alleged misdirection must be set out in this notice.

[Use additional separate sheet if necessary]

Please see attached pages.

Grounds of Appeal

1. The trial judge erroneously believed/assumed I had access to the internet and to my email from within NORC and/or PRCC. Due to that erroneous belief the judge did not accept my testimony regarding my inability to obtain and present as evidence an email I had sent the site administrator upon my release from custody; and my testimony that I could not possibly be the person who kept the current website online and who has been updating it over the past 3 years (while I have been in custody).
2. I believe the trial judge erred in her interpretation or understanding of the term "no longer available" as it is used in condition 6 of the probation order (which I was convicted of breaching). My understanding of the precise wording of condition 6 was, essentially, that it required me to perform some particular actions in order to cause the website to be "no longer available" on the internet and, once that is achieved and the website is "no longer available" then the condition had been fulfilled. Condition 5 of the probation order prohibited me from publishing, et cetera, particular information and would, necessarily, prohibit me from putting the website back online after having

Grounds of Appeal (cont.)

complied with condition 6. The court, however, interpreted "no longer available" to mean "not available during the entire duration of the probation order". I argued that if that were the case then it should have been stated as, for example "no longer available and remains no longer available". The court did not accept that proposition.

This point is significant because the witnesses admitted they had no knowledge of whether the website had been taken down for any duration of time in between the very brief, 4 times they had checked it over a 4 day period (once per day). Under my understanding of condition 6, if the website had been taken down for any duration of time, no matter how brief, then it would have been in compliance with condition 6.

3. The trial judge erred in finding that it was implausible that a third party, who is not related to or involved in the matters between Capuano and myself would be willing to put the time and effort into maintaining the website on their own. However, the time and effort involved in maintaining such a website is, literally, almost completely nil. Moreover, as I had testified, since 2018

Grounds of Appeal (cont.)

when the website was taken over by a third party, it has been focused almost exclusively on highlighting the corruption and misconduct going on in the local justice system - NOT on Capuano; and in fact, as I had testified since the website had been put back online in 2018 there have not been any updates about Capuano.

In addition, the Crown and the Crown's witnesses acknowledged that there have been updates to the site while I have been in custody and, therefore, I could not possibly have been the one to make those updates. Therefore, contrary to the judge's finding, there must be a third party who is maintaining the website.

4. The trial judge erred in finding my testimony about my friend putting the current website online not credible considering my prior statements to the police that I had put the current website online then transferred ownership and control to a third party. The judge found my statements in my testimony were less incriminating than the statements I had made to the police and that that was the reason for the inconsistent statements.

Grounds of Appeal (cont.)

However, it was no more incriminating to say I was involved in putting the current website online than transferring control to a third party; than it is to say my friend arranged, through a third party, to put the current website online without my prior knowledge; because either way, it occurred BEFORE the probation began and by the time the probation began I had no involvement or association with the website. Moreover, the statement to the police could not have possibly been true because I was in custody at FRCC at the time the website was published and did not have access to the internet or a computer - therefore, it would have been impossible for me to publish the website.

I had explained, in my testimony, that the statements I am making in my testimony are under oath and subject to penalty of perjury whereas the statements I made to the police were not under oath, I was not under any legal obligation to tell them the full truth, and I had an interest at that time of encouraging them to charge me with criminal harassment related to the current website.

Moreover, what the judge characterized as an inconsistency between my statements to the police and my statements

Grounds of Appeal (cont.)

on the witness stand was not an inconsistency but rather a clarification or a more thorough and precise explanation of the matter. I had stated that in my testimony, I had also explained that my prior statements to the police that I had published the current website and that I initially had ownership and control of it before transferring control to a third party would have been symbolic, not actual or physical because I was in custody at the time and did not have access to the internet - it would have been impossible for me to be the person who published and had control of the website at that time.

And finally, contrary to the Crown and the court's assertions that this was the first time I had raised the possibility that a third party had actually put the current website online - Not me - I had actually alluded to exactly that when I cross examined VPD Det. Jennifer Fontana at my trial in Provincial Court file 244069-6-13 (BCCA file CA46979) on 2020-08-19 (CA46979 TR p37 l21-31).

Grounds of Appeal (cont.)

5. The trial judge erred in finding my testimony that it was easier to say to the police I had "transferred ownership and control of the website to a third party," than to say "a third party put the current website online without my involvement", not credible because, according to the judge, it is just as easy to say one as the other.

However, it had been my experience, in conversations with others, that saying I transferred ownership and control to a third party was generally accepted without further inquiry, particularly since the police enter the conversation with the assumption that I own and control the website anyway (if you "admit" to something the police already assume/believe they don't generally pursue the questioning any further), whereas saying my friend put the website online through

Grounds of Appeal (cont.)

a third party without my involvement, generally lead to more follow up questions requiring more explanation: the fact, that is even what happened when I testified. For that reason, it is clearly true and correct to say that the explanation that I had transferred ownership and control to a third party is significantly easier to say.

6. The trial judge erred in making numerous erroneous assumptions and/or inferences regarding critical parts of my testimony, rather than requesting clarification or further explanation. The judge should have known that as a self-represented, in-custody defendant I may not have been aware of what additional, unstated information may have been helpful for the court or required for me to make full answer and defense. I believe, when dealing with a self-represented defendant the court should not make ANY inferences or assumptions regarding the defendant's statements - particularly the statements made by the self-represented defendant while giving testimony. The self-represented defendant may not be aware that information which he unknowingly takes for granted and therefore inadvertently failed to state may not be obvious to the court or the other parties.

Grounds of Appeal (cont.)

Those erroneous assumptions and/or inferences were not made apparent until the judge read her Reasons for Judgment and Reasons for Sentence, by which point it was too late for me to clarify or further explain.

7. The trial judge misapprehended my testimony about taking back control of the website when my probation expires - I testified I would either do that if the current owner will release it to me OR if not then I would start a new website. The judge erroneously found that my statement that I would take back control of the website was evidence that I maintained some control over it, however that only works if you only consider a particular fragment of my statement (that I intend to take back the website) and deliberately ignore the other relevant and critical parts of the statement (if the current owner releases it to me; and, if not, then I would create a new site).

When taken in it's entirety, my statement did not suggest that I maintain any control or influence over the website.

Grounds of Appeal (cont.)

8. The trial judge erred in finding I had sufficient opportunities to present the email I had sent to editor@desicapucano.com requesting they take down the website.

The judge found that at the time of my arrest I could have provided the police access to the email. However, what the police were requesting of me - the only option they presented me - was to give them the passwords for my phone and laptop so THEY could locate the email. However, providing them the passwords would have given them full access to all of the data and information on the devices. I believe the intentions of the police were to gain access to my devices to try to find incriminating evidence on them - NOT to access and verify the email I sent editor@desicapucano.com. That belief is supported by Det. Dent's testimony that they put no real effort into obtaining the email. Moreover, as discussed in the trial, "gmail" is an IMAP based service which means the messages are stored on the server, not on the user's device. So even if I had provided the police my passwords, giving them full access to my laptop and phone, that would not necessarily have given them access to my

Grounds of Appeal (cont.)

email account or more specifically, to the email I sent to editor@desicapeans.com on 2021-08-13.

The judge found that I could have used my laptop, which was in police custody and which Det. Dent had brought to court for the trial, to access and present the email in the court room, during the trial. However, it is my understanding, based on Crown Counsel's statements to me, that by doing that it would be opening the laptop to further inspection by the police and Crown and the court may have ordered me to provide Crown the passwords for it, providing the police full access to it. As discussed during the trial, the laptop runs Linux, but also the Linux partitions are encrypted so the VPD's Digital Forensics Unit had been unable to access anything on the laptop other than the unused Windows partition. It was my understanding, from Crown, that booting, logging into, and accessing content on the laptop as part of the trial could result in the court ordering me to make the encrypted partitions of the laptop accessible to the police and/or Crown so they could prepare a cross examination.

The judge had erroneously believed I had access to the

Grounds of Appeal (cont.)

internet, and therefore to my email, from within NFPC.
For that reason, she believed that at any point over the past 6 months, while I've been detained at NFPC, I could have forwarded a copy of the email to Crown or the police. But that was simply wrong - from the moment of my arrest on 2021-08-17 until now I have been in custody with absolutely no access to the internet or to my emails.

Presumably I will be released from custody before the L35 and section 684 applications are completed so I will be able to include, as new evidence which was not available to me at the time of trial, the email and possibly other supporting artefacts which I was not able to obtain prior to trial as a result of being in custody and having no access to them.

9. The trial judge erred by not allowing me to confront the witness, Det. Dent, with specific clips/segments from the audio/video recordings of his 2020-09-17 interview of me. I explained to the court the reason I wanted to confront Dent with the clips was to show the significant discrepancies between how my statements were made

Grounds of Appeal (cont.)

in the interview and how Dent misrepresented them at the subsequent trial. My intention was to show that Det. Dent had a clear history of misrepresenting relevant facts and deliberately misleading the court when giving testimony in my prior trial.

10. The trial judge erred in accepting Det. Dent's testimony over mine in matters where there was a dispute or discrepancy between Det. Dent's testimony and mine. On cross examination I had confronted Det. Dent on two specific instances of him contradicting himself in his testimony in my prior trial. Those two instances, together with the audio/video evidence showing that Det. Dent clearly and deliberately misrepresented my statements to the court in that prior matter should have been sufficient for the judge to question Dent's credibility as a witness. In addition, even Det. Dent himself testified that he has never encountered any evidence and has no reason to believe I have ever been dishonest in any of my legal proceedings. Yet in almost all matters where there was a discrepancy between Dent's testimony and mine, the judge accepted Dent's testimony over mine.

Grounds of Appeal (cont.)

11. Such further grounds as I may advise and this Honorable Court may permit, it believe, upon reviewing the transcripts and the judge's Reasons for Judgment and Reasons for Sentence further grounds will be identified.