



Appeals

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Personal and Confidential

Mr. Patrick Fox
c/o North Fraser Pretrial Centre
1451 Kingsway Avenue
Port Coquitlam, B.C. V3C 1S2

Mr. Fox:

**Re: Your applications for legal aid to appeal.
Legal Aid BC File # SR003305227**

On November 26, 2020, the trial judge convicted you of breach of probation. On April 12, 2021, the trial judge sentenced you to an effective sentence of 16 months and 15 days and, after credit for pre-sentence custody, an actual sentence of six months, with one year of probation to follow.

You applied for legal aid to appeal your conviction and sentence. I regret to inform you that your applications for legal aid are denied. I will first provide the reasons for denying your applications for legal aid and then I will outline your options for appealing without the assistance of legal aid.

Legal aid is not provided for every conviction or sentence appeal. Legal aid is only provided where our Section is of the opinion there is a reasonable prospect of success on appeal.

An appeal from conviction may be allowed on three grounds. An appeal may be allowed if the trial judge made a wrong decision on a question of law. I have read with care the trial judge's Reasons for Judgment. In my opinion, there is no reasonable prospect of demonstrating the trial judge made a wrong decision on a question of law in convicting you.

An appeal may also be allowed if the guilty verdict was unreasonable or unsupported by the evidence. The probation condition at issue required you to act, which is within 48 hours of your release to take all reasonable steps to ensure that certain websites, social media or other publication ("websites") are no longer available via the internet or any other means.

Your statements to the police reasonably supported the inference that you had ownership and control over the websites and therefore had the ability to take those steps. Your statements to the police reasonably supported the finding that you breached that obligation by refusing and thus failing to take any steps.

Finally, an appeal may also be allowed if there was a miscarriage of justice in the conduct of the trial. In your letter to our Section, you complain the Crown did not disclose a witness list or provide you some disclosure until three days before trial.

You did not complain of late disclosure at trial. You did complain of lack of a witness list in advance of the trial. However, it was disclosed to you that you had made statement to that officer. You agreed the Crown did not have to play the audio recording of those statements. It was in those circumstances that the Crown called the officer to testify as to the statements that you made. In those circumstances, in my opinion there is no reasonable prospect of demonstrating any late disclosure or lack of a witness list prejudiced your right to a fair trial. I note that you were able to cross-examine the Crown's witness on issues relevant to your defence.

For the reasons given above, in my opinion there is no reasonable prospect of success on an appeal of your conviction and therefore your application for legal aid to appeal your conviction is denied.

I have read with care the submissions at sentencing and the Reasons for Sentence . In my opinion, there is no reasonable prospect of success in demonstrating the trial judge erred in principle in sentencing you for that offence. In my opinion there is also no reasonable prospect of success in demonstrating the sentence is unfit or that the conditions of the probation order are unreasonable .

You complain the Crown refused to provide you disclosure of the officer's record of your statements prior to sentencing and the trial judge erred in failing to order the Crown to do so. However, the sentencing was based on the facts as found by the trial judge at trial, facts you were aware of. You wanted to argue that the statements you made to the officer were sarcastic or jokingly and that that was in mitigation. The trial judge noted that it was open to you to make that submission, even without the disclosure from the Crown. In my opinion, that fact had little relevance, if any, to the appropriate sentence to be imposed . You where being sentenced for failing to act as required by the probation order, as proved by your statements to the officer, however they were delivered. In all the circumstances of your case, in my opinion there is no reasonable prospect of demonstrating the sentencing process was not unfair because you did not have that disclosure to support your submission that you were speaking sarcastically or jokingly.

You also complain the trial judge refused to grant you an adjournment. Your stated need for an

adjournment related to you supposed inability to prepare because of the Crown's failure to provide disclosure. I have found there is no reasonable prospect of demonstrating that the failure to provide that disclosure prejudices your right to a fair sentencing process. In any case, in my opinion there is no reasonable prospect of demonstrating the sentencing process was unfair. There was a long delay after conviction, which provided you time to prepare relevant submission on sentence .

You also complain that after sentencing the Crown only indicated that they were seeking imprisonment and did not indicate they were seeking probation and therefore you were unprepared to make submissions on probation. The proceedings after conviction on November 26, 2020 were of a preliminary nature. The Crown indicated that it would seek a sentence of imprisonment of between 18 months and two years. The Crown did not say that it would not seek a probation order. A probation order is available for any sentence of two years or less. You were well aware from your own experience with the criminal justice system that probation orders could be ordered by a sentencing judge to follow imprisonment. In my opinion, there is no reasonable prospect of demonstrating the sentencing process was unfair in your case.

Even if you could demonstrate some unfairness in the sentencing process, the only remedy on a sentence appeal is the varying of the sentence after considering its fitness. In my opinion, there is no reasonable prospect the Court of Appeal would vary your sentence as the circumstances of your offending supported the sentence imposed.

For the reasons given above, in my opinion there is no reasonable prospect of success on an appeal of your sentence and therefore your application for legal aid to appeal your sentence is also denied.

You may decide to appeal your conviction, sentence or both without the assistance of legal aid. I have enclosed our booklets, which explain how to appeal without the assistance of legal aid. The booklets also explain how to apply to the Court of Appeal for a court-appointed lawyer pursuant to s.684 of the *Criminal Code*.

I have enclosed a copy of the trial transcripts our Section reviewed in deciding your application for legal aid.

Yours truly,



Garth Barriere
Barrister and Solicitor
Appeals Section
GB/rc
Enclosures