

THE PROVINCIAL COURT OF MANITOBA

BETWEEN

Her Majesty the Queen)	Michael Bodner,
)	for the Respondent
)	
- and -)	
)	
Andrea Giesbrecht)	Greg Brodsky, Q.C.
)	and Zachary Kinahan
)	for the Applicant
)	
)	Decision on Motion delivered:
)	July 14, 2017

<p>NON-PUBLICATION ORDER:</p> <p><i>Note- there is an order of non-publication banning publication in any document or the broadcasting or transmission in any way, of the names or identities of the accused's two living children.</i></p>
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M.P. Thompson, P.J.

Introduction

[1] Section 11(b) of the *Canadian Charter of Rights and Freedoms* states that:

11. Any person charged with an offence has the right...

b) to be tried within a reasonable time.

[2] The Applicant brings a Motion alleging her section 11(b) *Charter* right to a trial within a reasonable time has been violated and seeks a judicial stay of proceedings pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms*.

[3] In response, the Crown brings an application for short leave and for summary dismissal.

[4] This is my decision and reasons for that decision on this Motion and the Crown's application. I reserve the right to file further and more fulsome reasons for this decision.

Timing of the Motion for Unreasonable Delay

[5] In order to fully appreciate the timing of this defence Motion, some context is required.

[6] The Information against Giesbrecht was sworn on October 21st, 2014.

[7] The trial commenced on April 18, 2016. One week was set. More time than estimated was required. The trial continued on July 18 to 21st, 2016 and to expedite the trial I cancelled a previously scheduled week of vacation from August 29 to September 2nd in order to conclude the trial.

[8] The evidence was completed on August 31st, 2016 when the defence elected not to call evidence and closed their case.

[9] The trial was complex: the Crown called twenty-five witnesses, including seven expert witnesses. The Crown requested an adjournment of two days to prepare closing arguments: to Friday, September 2nd, 2016. Closing arguments did not proceed as the Crown, Ms. Buors, was unavailable due to illness. As a result, I ordered written submissions be provided by counsel and imposed deadlines for filing with the Court. Closing arguments took place on October 5th, 2016.

[10] On October 5, 2016, I reserved my decision to provide a written Judgement. On February 6, 2017, I delivered that Judgment convicting Giesbrecht. The

defence requested a Pre-Sentence Report and sentencing submissions were adjourned to May 10, 2017 for preparation of that report.

[11] The May 10, 2017 sentencing date was adjourned at defence request because defence counsel informed the Court he was unavailable until July 7th, 2017. Defence took responsibility for any delay in the period between May 10 and July 7th, 2017.

[12] On Friday, July 7th, 2017 sentencing submissions took place. At the end of those submissions, at 3:30 pm, defence raised with the Court for the first time the prospect of bringing a Motion for unreasonable delay.

[13] No Motion had yet been filed with the Court. Defence advised they were still considering whether to file the Motion and would take the weekend to decide. I advised defence I was proceeding to write my sentencing decision on the weekend and that the Court intended to proceed to disposition on July 14, 2017, at 1pm, a date confirmed for disposition since April 24, 2017.

[14] On Tuesday, July 11th, 2017 at 4:30 pm defence filed their Motion for unreasonable delay.

[15] A last minute hearing was arranged for this morning, Friday, July 14 at 9:00 am.

[16] As we speak, the Motion is still not compliant with procedural requirements. *The Constitutional Questions Act* requires that defence serve notice of any *Charter* Motion on the Constitutional Law Branch, 30 days in advance of any hearing date for a Notice of Motion. That notice requirement has been breached. Defence only provided service to the Constitutional Law Section at 4:20 pm on July 11, 2017, 2 days notice, not the required 30.

[17] This is not a new rule and defence counsel is very experienced.

[18] The transcripts of excerpts of proceedings and emails were only delivered to me at 4:13 pm yesterday, July 13, 2017.

[19] Defence has ignored the *Practice Directives for Contested Applications in the Provincial Court of Manitoba*, by filing this Motion without sufficient notice.

Analysis

[20] Proceeding with serious Motions means that counsel have a responsibility to ensure they are filed in a timely way. There are no emergent reasons why this Motion was filed at the last possible moment.

[21] If this Motion was of such importance to the defence, it would not have been withheld. All of these actions speak to the lack of seriousness with which the defence has presented this Motion.

[22] Raising the specter of a Motion for unreasonable delay for the first time on Friday at 3:30 pm, when a conviction was entered months ago, sentencing dates have been set for months, and distracting a Judge writing an important and detailed decision is unacceptable.

Decision

[23] Public confidence in the justice system is enhanced when important legal issues are decided in a timely way and in accordance with rules set out by the law. Ironically this is a Motion for delay that has been delayed and asks for further delay.

[24] In dismissing this Motion for delay I grant short leave to the Crown. I will file further reasons for decision at a later date.

[25] The Motion is dismissed.

Original signed by:

THOMPSON, P.J.