

Information No. 12-0529

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

DEREK DUNLOP

P R O C E E D I N G S

BEFORE THE HONOURABLE JUSTICE J.J. DOUGLAS

on April 9, 2013 at BARRIE, Ontario

APPEARANCES:

F. Temple

Counsel for the Crown

Derek Dunlop

Self Represented

TUESDAY, APRIL 9, 2013

COURT OPENS...

MR. TEMPLE: Your Honour, Mr. Dunlop is in the prisoner's docket. There was a Mr. David Adanja, A-D-A-N-J-A, Barrister and Solicitor from Toronto who stopped into the courtroom earlier today. He advised me he couldn't stay this afternoon but left me a number of dates that you wanted, to see him personally, but what he did confirm with me was that he was accepting the 486 appointment to cross-examine.

THE COURT: David...

MR. TEMPLE: ...Adanja, I have his card if you want to affix it somewhere, A-D-A-N-J-A. I may need a copy of it, Madam Clerk, because I have to fax him - sorry Purolator him some material.

THE COURT: Have you met him, Mr. Dunlop?

DEREK DUNLOP: Yes I have, Your Honour, but I believe - I'm in firm belief that any recusal motion to be heard prior to 486 aspects of this matter being decided upon, analysed, assessed, so on and so forth.

THE COURT: Well the 486 order has already been made so.

DEREK DUNLOP: Well there's a recusal motion to have....

THE COURT: I know that. I know that, sir, but there's still a 486 order made.

DEREK DUNLOP: There's also - I also have an addendum here that I, you know, to the notice of motion. So due to some inconveniences with the jail, feasibility issues with the jail faxing, I

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apologize to the Court that this has not been sent to the Court. This addendum is in relation to this notice of motion. So I would like to bring this before the Court's attention, and hopefully Madam Court Clerk can - could make copies for me.

THE COURT: All right.

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MR. TEMPLE: Just before we leave the counsel issue, Your Honour, Mr. Adanja did indicate to me that should it be Mr. Dunlop's wish, he was willing to act as amicus for the entire trial, the 486 order. Obviously that's a decision for Mr. Dunlop. I did advise him though that, without intending to be presumptuous or speak for the Court, I said if that were to happen on the next occasion and you were intending to act for Mr. Dunlop in full capacity, if you were to come to a falling away or a parting the ways with Mr. Dunlop, I expect the Court may well order you to stay on - remain on for the purposes of 486, and I advised him what had happened with previous counsel. So that's the counsel issue. Your Honour, I - I didn't print cases rather I printed a memo that refer to....

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THE COURT: Do you have what he has?

MR. TEMPLE: I do - I do not, and I was going to take a staple out and give a copy and sort of a summary of cases dealing with recusal motions.

THE COURT: Okay.

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MR. TEMPLE: Again, there's some quotations, and if the Court wishes I can print the cases off in full, but I'll - I just began with this. Madam

Clerk, I'll just hand you that for His Honour.

THE COURT: Let's take - do you have two of these?

MR. TEMPLE: I do, I have one for Mr. Dunlop. I'm just going to staple it. Again, if there's - if there is any - I think the leading case, Your Honour, I refer to first page where it says *R.v.SRD*, that's a Supreme Court decision.

THE COURT: Okay, Madam Clerk, can you take what the prisoner has there and make two copies of it. All right, who wants to start where?

DEREK DUNLOP: Well if I could respond to the issues surrounding the prospective or non-prospective having to secure, that's something I'm not willing to even entertain at this point.

THE COURT: That's fine, sir, I'm talking about the recusal.

DEREK DUNLOP: No, I - I'm talking about that because I want to respond to that.

THE COURT: So you can respond to that later if we get to that point. We're dealing with the recusal issue.

DEREK DUNLOP: Well the recusal motion, there's numerous issues in relation to that, Your Honour.

THE COURT: Right, let's deal with them.

DEREK DUNLOP: First of all, as I've mentioned to this Court many times, and the Court doesn't seem to want to do anything and Central North Correctional Centre doesn't want to do anything, I've forwarded another subsequent letter to the Superintendent regarding the laptop, legal

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resources, Quick Law, Lexis, Nexus, Can LII so on and so forth, that apparently was authorized on the - not apparently, was authorized on the honourable court record on or about November 2nd, 2012. I've written to the Superintendent November 4, 2012, a subsequent letter on November 26, 2012, subsequent letter on January 2nd, 2013, and now a fourth letter on April 5th, 2013. So obviously, in fairness to the Superintendent, that's only four days ago so they're not necessarily going to have a lot of time to respond to that letter. However, that's been the fourth letter that I have not only not received any access to a laptop, legal resources, so on and so forth, I've not received any acknowledgement or any responses to those four letters at this point. So it's very difficult for me to do any - well, it's - it's not difficult, I - I can't do - conduct any research. I've been provided now a 12-page, I'm not sure whether this is a generic copy from Ms. McCallum who's an Assistant Crown Attorney in Newmarket, so I don't know whether it's generic in a sense to assist Crown Attorneys in the recusal motions of judges or so on and so forth, but there's specific citations, numerous case law in here. I mean, from my perspective, there's no way that any - a recusal motion can even begin to transpire today. I - I - I'm being - I can't research those. I can't go into those and provide, you know, from a defence standpoint, aspects of a recusal motion that

would contradict or counteract any - anything that's in here. Apparently, there's supposed to be some sort of court transcripts. I'm not sure whether those are available to me as of yet, and I'm not sure whether the Crown has a copy of those. That's another huge issue before any recusal motion. I would need a substantial amount of time to review any of those materials, a substantial amount of time to review this recusal - generic recusal, 12, 14 pages, or whatever it is, I'm not exactly sure how many pages are there, and I'm not sure where any of those things stand; and I mean, just in those facts alone there's biases, prejudice and discriminations continuing to mount against me, but nobody seems to want to admit to. Nobody seems to want to do anything about it, and nobody seems to want to do anything about anything that I write. Everybody wants to place that against me, turn that upon me, manipulate, sway that upon me. Mr. Temple, I'm not sure whether this is an oversight on his part, but I've never even received a copy of the 486 application throughout this whole process. Mr. Temple has also made derogatory, disparaging, condescending comments to me on the honourable court record in Collingwood, Ontario, in relation to him making some apparent allegations in relation to myself, my apparent self-fulfilling prophecies. So I - I'm not sure whether Mr. Temple would care to, you know, care to elaborate on that. I'm sure he wouldn't.

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MR. TEMPLE: Well, maybe I'll interrupt, Your Honour, before we go too much further. If Mr. Dunlop is alleging that something was said on the record that shows a bias on the part of the Court or myself, he should have a transcript of it. If he wants time to - to do that, it's obviously not something that can be done instantaneously. It takes time, but it's - it does strike me that in reviewing all his....

THE COURT: I've got March 19th, March 8th, February 19th, and one I don't understand why from December 5th in front of Justice of the Peace.

COURT REPORTER: Your Honour, I did that transcript. It started off in bail court, went to some other Court and then came back. I was given that. I didn't really understand why I was taking bail hearing either.

THE COURT: I don't know but I have, I think, and I should say recently have the three on which I have been involved.

MR. TEMPLE: And those will be the only relevant ones in my view. I only have the one, sir, relating to February 19. I don't have the - the other two dates.

THE COURT: Sorry, so what's your proposal, Mr. Temple?

MR. TEMPLE: Well, it's clear that if - if his application proceeds, we'll have to have all of the transcripts, but even though Mr. Dunlop is self represented when I look at his materials they seem to be nothing other than a series of

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bare allegations, insults and conclusions. In other words, he doesn't relay any portion of a transcript. I know he doesn't have them, but he doesn't refer to any particular comment made by the Court or made by me. It's simply over and over again, his assertions that he's being maltreated with nothing at all to back it up, and - well, he's going to back it up with something and have some show of proof before we take up a whole bunch of court time and engage in this as though it's a serious inquiry when, I'll say it again, it does become a self-fulfilling prophecy that these matters get delayed. Every time he leaves this courtroom, he comes back with another application like this which is devoid of any evidence at all or even a promise of evidence.

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DEREK DUNLOP: Just admitted to saying it again yourself. I catch you in so many lies, Mr. Temple, and I bring to the Honour - His Honour's attention. Nothing is done or nothing is said about it. It's - it's - at this point it's getting ludicrously ridiculous and absurd. The collusion, cover-ups and corruption is so, so great, and nobody wants to do anything about it, nobody, right from Maria Malvaso of the Simcoe CAS, so on and so forth.

THE COURT: None in my notes, sir, but apart from that.

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DEREK DUNLOP: No, well that's fine, but I'm sure you know people....

THE COURT: What do you want to do? Do you want

to get copies of the transcripts and study them
and - what do you want to do?

DEREK DUNLOP: Well, like I said, I'm going to
need a substantial period of time, and if this
Court is thinking that in any way, shape or
form, that I'm going to be able to conduct that
today, that'll be absolutely preposterous.
Furthermore, I'm going to suggest that some
contact needs to be made with Central North
Corrections. There - there needs to bridge
these gaps....

THE COURT: I have no authority over them, sir.

DEREK DUNLOP: Well, there needs to be these
gaps bridged between the....

THE COURT: Sir, I have no authority over them.
I - did I not endorse the warrant of committal
to some effect Madam Clerk back in - but I
cannot order them to do a thing.

COURTROOM CLERK: There is a note here, Your
Honour.

THE COURT: Let me see it. "Accused trial
commenced today. It continues on March 19th.
The accused needs to be provided", I think it
says, "time, opportunity and resources and
computer access to retrieve disclosure and
prepare for his trial." That's what I endorsed
on the warrant of committal. It went to the
jail. You're telling me they've done nothing
about it.

DEREK DUNLOP: Nothing, they've done nothing
about it. As I said....

THE COURT: My only potential means to enforce

that is to direct somebody to attend here and explain themselves, but I cannot literally order them to do it.

DEREK DUNLOP: Sure, but I'm not - I mean, I don't know whether you want me to produce a copy of the four letters that I've sent to the Superintendent. I mean, obviously that's a - that's a....

THE COURT: No, but what do you want me - all I'm saying here, sir, is you've raised the issue of the transcripts. Do you want copies of the transcripts...

DEREK DUNLOP: I would greatly appreciate that.

THE COURT: ...and time to review them?

DEREK DUNLOP: Yes, a substantial period of time, I don't know how many, you know, there's no way I can do it today.

THE COURT: Well, we're not talking about today. We'll - when's the next trial date?

MR. TEMPLE: We - I don't believe we have one, Your Honour. It was set to this date for an update on counsel.

THE COURT: I thought there was a set date.

MR. TEMPLE: I could stand corrected. I do believe we had set one.

THE COURT: You don't know, Mr. Dunlop?

DEREK DUNLOP: I don't believe there is another date, Your Honour. I believe that this was a review date at this point, Your Honour, to possibly hear motions at this point.

COURTROOM CLERK: Your Honour, it indicates here that - I think it says, I don't know if it's the

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R. v. Dunlop

19th of March, I can't - or March 20, 2013 for a two-day trial.

THE COURT: Not March 19.

COURTROOM CLERK: Oh March.

THE COURT: That's passed.

COURTROOM CLERK: Yeah, right, sorry.

THE COURT: So it's not April.

COURTROOM CLERK: I don't see anything.

THE COURT: Let me look at my schedule.

MR. TEMPLE: We abandoned those dates and...

COURTROOM CLERK: Oh, yes it was.

MR. TEMPLE: ...and we set it to today's date to ensure there is a lawyer who is available pursuant to the 486 order.

THE COURT: All right. So I'm prepared to have copies of these. That's all I have. That's all I ask for ones that I sat on. You can have them. We'll get copies for you.

MR. TEMPLE: Your Honour, I propose I can provide a copy of the one case. It's the only case I propose to refer to, the Supreme Court case.

THE COURT: Okay, we'll give him that.

MR. TEMPLE: I can get that in about 15 minutes. I can come back and give the Court a copy and Mr. Dunlop a copy.

THE COURT: And then in the interim, we'll need a date. We need to find a date. I'm kind of guessing is May, maybe May the 7th at 2:00 p.m. just as a potential or May the 13th at 2:00 p.m., might have time to hear this application.

DEREK DUNLOP: Still I don't - I mean, I don't

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mean to belabour this point, but in relation to what you suggested and maybe calling somebody from the CNCC, I don't want to do that, but I mean, I don't know what my - when you're detained in custody your resources are fairly limited as it is. I've put out four letters to the Superintendent, and I haven't even received a response or an acknowledgement to those letters. So I don't know whether there's a possibility that those letters are not getting to the Superintendent or - or - or what's happening with those, or the Superintendent is just choosing not to respond. So I don't know whether His Honour could possibly....

THE COURT: Mr. Temple, could I ask you to take a copy of the warrant of committal and call the Superintendent's office and ask them to produce someone for the next date, whatever date we determine, to explain why Mr. Dunlop has not been provided the access he thinks he should be provided. I'll put it another way, the access I noted on the warrant of committal.

MR. TEMPLE: I could do that, Your Honour, or I could contact them to see what, if any, steps they're going to take.

THE COURT: Six of one, but I - I want him to either have access - again I recognize the limits of my authority but I can certainly make them explain themselves - but I want him to have sufficient access before whatever that date is or to be here to explain why not. I mean, I'm not saying this, sir, but they may have good

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reason. They may say, you know, we can't trust
him with a computer. I don't know, but either
way, they should respond to my endorsement.
That may not be fulfilling my endorsement, it
may not totally satisfy Mr. Dunlop, I don't
know.

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DEREK DUNLOP: I appreciate you doing that, Your
Honour. I mean - I mean, at least it's a - it's
- there's nothing else that I can really - my -
I can't really do anything else. There's
nothing else I can really - what else do I do?
I mean I keep sending the highest authority with
Central North letters, and I'm not receiving a
response. So I don't know what else I can even
really do.

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THE COURT: So I'll just pencil, you can look at
your diary, Mr. Temple, but May 7th, May 13th in
the afternoon. Would either of....

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MR. TEMPLE: I know almost the entire month of
May I'm engaged in an inquest, but because Mr.
Dunlop is in custody, it may be that somebody
else has to step in just so....

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THE COURT: Just step out of the inquest for a
few hours one afternoon. You might - I'm
totally shot the rest of this month. Give me
another one, May 2nd. No, that's not going to
work, sorry. May 7th, May 13th, May 30th, all at
2:00 p.m. say. So I'll stand down. Madam
Clerk, we'll worry about the subtleties later,
but we'll need to make photocopies of those,
unless the reporter can print them for us now.

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COURT REPORTER: I can print it.

THE COURT: December 5, I have no idea what it's for, but we may as well put that in. It's been printed. It's been made. So we can get that one. The other ones we'll just have to copy, and then copy the case for me and....

MR. TEMPLE: Yes, sir, I can get that.

DEREK DUNLOP: Your Honour, there was just the one other thing, if I may, in relation to - the Crown has stated over numerous times that they'd be willing to release me if I'm drug free. I've notified the Court on numerous occasions, and I'm not going to enter a plea. The Crown is insistent and adamant for 13 months, from February 19th until actually Your Honour started presiding over this matter, that I be detained in custody. There's been some discussion about bail, so on and so forth. At this point, I don't think that that's something that I can come up with a surety. I know that - that Your Honour has also said that if I do go to bail court that - that the possibility of being released is still - is still there. However, I mean, I've also proposed to this Court, and I'll propose to this Court again with the Crown's agreement, you know, either being released on my own recognizance with a promise to appear or ankle bracelet. There's a non-communication order that I've abided by since January 31st, 2012, with the alleged complainant, Ms. Maria Malvaso, with a Schedule A, I think there's some I think 30 maybe employees of Simcoe CAS that I would adhere to as well.

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THE COURT: Mr. Dunlop, I'm - I'm ready to, I would say, to sign almost any bail order that you two agree on. I mean expedite the matter. I mean obviously I have to look at it to satisfy myself it protects the public, but broadly speaking, I'm in the middle of the trial and we've gone through this. I can't embark on a bail hearing in the detailed sense of litigating the issue of whether you should or shouldn't be out. I can see on the face of it you've been in custody for a fairly modest offence as far as I know for a long time. So I've urged the issue of bail, but I can't do it, and I - it's like the jail, I can't order the Crown Attorney to agree to it. So the best I can do for you is refer you to bail court where you can fight it out, duke it out, agree on it, whatever; but you can't have it both ways. You can't, as it were, not agree to have me as a trial judge - I don't mean your recusal application - because I hear a bail hearing, and have me do a bail hearing. So, you know, just....

DEREK DUNLOP: Sure, I respect that, yeah, yeah. I respect that. Yeah. That's fine.

THE COURT: So do you want to talk - again the forum to do it is bail court. So I'll simply stand down now while we get the copies made and see if we can get through some dates.

R E C E S S

U P O N R E S U M I N G :

THE COURT: Yes.

MR. TEMPLE: Your Honour, I have a copy of the RVS case from the Supreme Court. I have one for this Court and one for Mr. Dunlop.

THE COURT: Okay, and is there a date that works better?

MR. TEMPLE: Your Honour, the dates that work for me are either May 7, that was one of the dates I believe, or May 30th.

THE COURT: Do you have a preference, Mr. Dunlop?

DEREK DUNLOP: I mean the earlier is preferable, I mean....

THE COURT: Sorry?

DEREK DUNLOP: The earliest is preferable, but I mean that's fine.

THE COURT: Well, May the 7th then, 2:00 p.m. to continue the application. I suppose we could call them putative counsel. You might advise...

MR. TEMPLE: Yes, sir, I will.

THE COURT: ...them, and you're going to make enquiries of the jail.

THE COURT: Yes, sir, I'll make sure that they're aware of your endorsement on the warrant of committal.

THE COURT: Okay, anything else?

COURTROOM CLERK: That's it, Your Honour.

M A T T E R A D J O U R N E D

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