

1967
 *Feb. 20
 Feb. 24

DAVID BEATTIE APPLICANT;
 AND
 HER MAJESTY THE QUEEN RESPONDENT.

MOTION FOR LEAVE TO APPEAL

Criminal law—Leave to appeal—Whether question of law—Whether magistrate properly exercised discretion as to sanity of accused—Whether accused deprived of right to counsel—Criminal Code, 1953-54 (Can.), c. 51, ss. 524(1), 597(1)(b)—Canadian Bill of Rights, 1960 (Can.), c. 44.

The applicant was convicted of unlawfully having in his possession an offensive weapon. His appeal was dismissed by the Court of Appeal for British Columbia. On his application for leave to appeal to this Court, two grounds were urged by his counsel: (1) that the magistrate should have directed that an issue be tried to determine whether the accused, because of insanity, was incapable of conducting his defence; (2) that the accused was deprived of his right to counsel and to a fair trial.

Held: The application for leave to appeal should be dismissed.

Under the provisions of s. 597(1)(b) of the *Criminal Code*, leave to appeal to this Court may be granted on any question of law alone. No question of law was involved in the determination of whether the magistrate had properly exercised his discretion under s. 524(1) of the Code. In any event, it appeared that the magistrate had carried on an investigation. The sufficiency of that investigation as well as the conclusion to which the magistrate came, are not matters involving a question of law.

*PRESENT: Cartwright, Ritchie and Spence JJ.

There was no evidence that the applicant was deprived of the right to retain and instruct counsel without delay or was deprived of the right to a fair hearing.

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Droit criminel—Permission d'appeler—Question de droit—Le magistrat a-t-il exercé proprement sa discrétion concernant l'état mental de l'accusé—L'accusé a-t-il été privé de son droit de retenir un avocat—Code Criminel, 1953-54 (Can.), c. 51, arts. 524(1), 597(1)(b)—Déclaration canadienne des Droits, 1960 (Can.), c. 44.

Le requérant a été trouvé coupable d'avoir eu illégalement en sa possession une arme offensive. Son appel fut rejeté par la Cour d'appel de la Colombie-Britannique. Lors de sa requête pour permission d'appeler devant cette Cour, deux motifs ont été soulevés par son avocat: (1) le magistrat aurait dû ordonner que soit examinée la question de savoir si l'accusé était, pour cause d'aliénation mentale, incapable de subir son procès; (2) l'accusé a été privé de son droit de retenir un avocat et d'avoir un procès équitable.

Arrêt: La requête pour permission d'appeler doit être rejetée.

En vertu des dispositions de l'art. 597(1)(b) du *Code Criminel*, la permission d'appeler devant cette Cour peut être accordée sur toute question de droit strict. Aucune question de droit ne se soulève dans la détermination de la question à savoir si le magistrat a exercé proprement sa discrétion en vertu de l'art. 524(1) du Code. A tout événement, il appert que le magistrat a fait une enquête. La suffisance de cette enquête ainsi que la conclusion à laquelle le magistrat en est arrivé, ne sont pas des sujets soulevant une question de droit.

Il n'y a aucune preuve que le requérant a été privé de son droit de retenir et de constituer un avocat sans délai ou qu'il a été privé de son droit à une audition équitable.

REQUÊTE pour permission d'appeler devant cette Cour d'un jugement de la Cour d'appel de la Colombie-Britannique. Requête rejetée.

APPLICATION for leave to appeal from a judgment of the Court of Appeal for British Columbia. Application dismissed.

F. A. Brewin, Q.C., for the applicant.

W. G. Burke-Robertson, Q.C., for the respondent.

The judgment of the Court was delivered by

SPENCE J.:—This is an application for leave to appeal from the Order of the Court of Appeal for British Columbia made on November 18, 1966. By that Order the said

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Court dismissed an appeal by this applicant from a conviction by Magistrate D. Hume at Vancouver, on July 8, 1966, on the charge that the accused unlawfully did have in his possession an offensive weapon, to wit, a knife, for a purpose dangerous to the public peace, contrary to the form of the statute in such case made and provided, and from his sentence upon such conviction.

In this Court, the accused was represented by counsel who urged two grounds of appeal:

Firstly, that the Magistrate ought to have directed that an issue be tried to determine whether the accused, because of insanity, was incapable of conducting his defence. Such an issue is provided for in s. 524(1) of the *Criminal Code*.

Secondly, that the accused was deprived of his right to counsel and his right to a fair trial, contrary to the provisions of the *Canadian Bill of Rights*, Statutes of Canada 1960, c. 44.

As to the first ground of the application, after consideration of the matter, I have come to the conclusion that the only question involved is whether the magistrate properly exercised his discretion to determine whether there was, in the words of the section, "sufficient reason to doubt that the accused is, on account of insanity, capable of conducting his defence". Under the provisions of s. 597(1)(b) of the *Criminal Code*, if leave is granted, an appeal to this Court may be taken on any question of law alone. I am of the opinion that there is no question of law involved in the determination of whether the magistrate had properly exercised his discretion. It would appear that the magistrate did in fact carry on an investigation to determine whether an issue should be directed. The sufficiency of that investigation, and the conclusion to which the magistrate came, are not matters involving a question of law.

As to the second ground, there is no evidence that the applicant was deprived of the right to retain and instruct counsel without delay or was deprived of the right to a fair hearing in accordance with the principles of fundamental justice.

I would dismiss the application for leave to appeal.

Application dismissed.