

2010 CarswellOnt 8108

R. v. Wright

In the matter of Her Majesty the Queen, Respondent/Crown and Omari Wright, Applicant/
Defendant

Ontario Superior Court of Justice

Speyer J.

Heard: October 25, 2010
Judgment: October 25, 2010
Docket: None given.

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Counsel: Mr. D. Wright, for Crown

Mr. S.A. Pieters, for Mr. O. Wright

Subject: Criminal

Criminal law.

Speyer J., (Orally):

1 On May the 31st, 2010, shortly after two p.m., Mr. Omari Wright entered a plea of guilty before me on a charge of robbery with a weapon, a firearm, for which there is a minimum term of imprisonment of four years.

2 Just prior to the plea, Mr. David Wright and Mr. Omari Wright's counsel at the time, Douglas Usher, attended before me to assure themselves that I would agree to the recommended jail term of three years and ten months and explained the circumstances to me.

3 Court then convened. Mr. Omari Wright entered a plea of guilty. I undertook a plea comprehension hearing with respect to the voluntary nature of his plea and the fact that he was giving up his right to have the Crown prove beyond a reasonable doubt the essential elements of the offence with which he was charged.

4 It had been agreed in advance that the matter would be put over for sentence a lengthy period to permit Mr. Omari Wright to continue to work, and to live with his spouse and child. The Crown, as part of the plea agreement, had agreed to a bail variation.

5 The plea took place on the day in which a jury was to be selected. Justice McMahon was the designated trial judge and was ready to proceed. It was at Mr. Usher's request that the matter was held down until later in the day and a plea agreement was forged between counsel.

6 There is no issue that Mr. Douglas Usher attended upon the offices of the Crown Attorney, Mr. David Wright, for the purposes of discussing a plea in his hope that a plea might be entered, perhaps to an offence which did not carry a mandatory minimum.

7 There is no doubt that discussions took place with respect to a perspective plea. However, there was no agreement and Mr. David Wright is quite correct when he said in his submissions that Mr. Usher waited until the trial date to assure himself of two things; first of all, that the case would be called, which it was; and, secondly, that all of the Crown witnesses were in attendance who could give evidence on behalf of the Crown with respect to this prosecution.

8 There are two particularly unsatisfactory things that happened on May the 31st. First of all, Mr. Usher, who is a seasoned, experienced defence lawyer, did not obtain written instructions from his client whereby everybody could be informed that Mr. Omari Wright understood not only what he was pleading to, but what the consequences of his plea would be. Very rarely does a good lawyer ever allow a client to plead guilty without having written instructions.

9 Mr. Usher testified that he went over carefully with Mr. Omari Wright what was going to occur but there were no written instructions given to him.

10 The second thing that happened that day, which is not caught by the transcript, but which I observed and it was incumbent upon me to bring it to the attention of Mr. Pieters, who is new counsel and perhaps even Mr. David Wright, is that I certainly noticed a hesitation and a reluctance at that time by Mr. Omari Wright to plead guilty. I then undertook the plea comprehension in which Mr. Wright agreed that it was voluntary and that he knew what he was giving up.

11 And, finally, in a real sense, I think Mr. Pieters is right that plea negotiations that finally took place and were agreed upon -and I am speaking specifically of the agreement, not the negotiations - this was entered after Mr. Usher saw all of the witnesses were present and that there was not any clear defence that was evident to him.

12 It must be said on what I know about the case and, in particular, about the cross-examination by Crown counsel at this hearing, that the case against Mr. Omari Wright is very powerful. A very powerful case and I understand perfectly why Mr. Usher went to his client with respect to the recommendation of a minimum sentence because on the facts of this case as I understand them there may very well be, the matter goes to trial, a more severe sentence than the one agreed upon.

13 But the real issue is this; was Mr. Omari Wright informed? Was his plea voluntary and was it unequivocal? And although this is a very tough call for me, I am going to strike the plea because I am not assured that in all of the circumstances, in particular; the lack of written instructions, that the plea takes place at the last minute, and that what occurred in court in front

of me, the hesitation, the reluctance, I am not satisfied about the unequivocal nature of the plea, whatever pressure he may have felt on him.

14 In one sense I think, as I indicated during the course of argument, it may very well be 'buyer's remorse', he did not want to go to jail for a lengthy period of time, and that may have caused the hesitation. On the other hand, he testified that he went to the Pinkofsky law firm because of the reputation of taking matters to trial.

15 In the result, I am going to strike the plea of guilty but this matter has been going for a long time and it is not going to be allowed to linger. I am going to get this case within 30 to 60 days and I am going to ask Crown counsel what is the earliest date that you can have your witnesses ready and I will give you a few minutes if you want to make that determination Mr. Wright. This matter has been - it was up for trial on May the 31st. It was put over for the summer. It was put over for argument and I am not going to allow this matter to in any way linger. I am going to get it on, certainly within 60 days. This is not a long trial.

16 Mr. Pieters, you wish to say something?

MR. PIETERS: The - well —

THE COURT: Do you two want to put your heads together with respect to your calendars because I can assure you Mr. Pieters I am striking the plea today but this matter is going on quickly and this is - so I do not want to be autocratic about it but I am determined that this matter cannot linger any longer. So, within a reasonable period of time and I am going to give it priority and I am going to make sure that the case is called down in the trial office. So, if I give you both say ten minutes to talk to each other, to look at your respective calendars but I am going to get this case on.

MR. PIETERS: Thank you Your Honour.

MR. WRIGHT: Thank you.

REPORTER'S NOTE: A brief recess is taken and court reconvenes. Discussion regarding dates and court adjourns.

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