

Date: 20081001

Docket: A-76-08

Citation: 2008 FCA 290

**CORAM: DÉCARY J.A.
SEXTON J.A.
SHARLOW J.A.**

BETWEEN:

WILLIAM A. JOHNSON

Appellant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard at by teleconference (Toronto and Warkworth Institution, Ontario) on September 29, 2008.

Judgment delivered at Toronto, Ontario, on October 1, 2008.

REASONS FOR JUDGMENT BY:

SHARLOW J.A.

CONCURRED IN BY:

**DÉCARY J.A.
SEXTON J.A.**

Date: 20081001

Docket: A-76-08

Citation: 2008 FCA 290

**CORAM: DÉCARY J.A.
SEXTON J.A.
SHARLOW J.A.**

BETWEEN:

WILLIAM A. JOHNSON

Appellant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT

SHARLOW J.A.

[1] Mr. Johnson is appealing a judgment of Justice Hughes (2008 FC 119). That judgment dismissed an appeal from an order of Prothonotary Aalto which, among other things, refused Mr. Johnson's motion for directions for the commencement of contempt proceedings against certain officials of Warkworth Institution, where Mr. Johnson is incarcerated.

[2] In his motion, Mr. Johnson alleges that the prison officials delayed repairs to his computer, thus impeding his ability to pursue four applications for judicial review that he has filed in the

Federal Court. In support of his motion, Mr. Johnson argued that, because he has a legal right to have access to a computer to pursue his litigation, the failure on the part of the prison officials to ensure that his computer is repaired on a timely basis puts them in contempt of court.

[3] Prothonotary Aalto denied Mr. Johnson's motion because he found that Mr. Johnson had not in fact been deprived of the means to continue his litigation. Justice Hughes refused to intervene because he found no error on the part of Prothonotary Aalto warranting his intervention.

[4] Mr. Johnson raises a number of grounds of appeal. I will address each of them in the order in which they appear in his memorandum of fact and law.

[5] First, Mr. Johnson alleges bias or a reasonable apprehension of bias on the part of Justice Hughes. There is no basis for that allegation.

[6] Second, Mr. Johnson argues that Justice Hughes misconstrued the facts by referring to his applications as "actions". There is no merit to this submission. The word "actions" is used in its most general sense, as synonymous with "proceedings".

[7] Third, Mr. Johnson argues that Justice Hughes misinterpreted Rule 466 and in his approach to the appeal of Prothonotary Aalto's order. There is no such error. In the circumstances of this case, contempt of court cannot be established in the absence of evidence of conduct on the part of the prison officials that fits within Rule 466 of the *Federal Courts Rules*. As a practical matter that

would require, at least, evidence of conduct that is in breach of an order of the Federal Court, or that would impair the orderly administration of justice. The record presented by Mr. Johnson falls considerably short of what would be required to justify contempt proceedings. However, even if such evidence had been presented, the order sought by Mr. Johnson was a discretionary one. In other words, it was within the discretion of Prothonotary Aalto to refuse to permit contempt proceedings to be commenced. On the appeal, Justice Hughes was obliged to consider whether the order of Prothonotary Aalto was based on an error of law, but he was not entitled to exercise the discretion anew. That is what Justice Hughes explains in paragraph 5 of his reasons.

[8] Fourth, Mr. Johnson alleges that Justice Hughes erred in awarding costs in each of the four proceedings when he made an identical order in each. Mr. Johnson cannot complain of being assessed costs in all four proceedings in the Federal Court, when he brought motions in four separate proceedings.

[9] Fifth, Mr. Johnson alleges that Justice Hughes erred in awarding costs against him rather than to him. There is no error in requiring a moving party to pay costs when a motion is dismissed.

[10] In his oral submissions, Mr. Johnson emphasized his belief that Justice Hughes and Prothonotary Aalto did not understand the factual basis of his motion, which was that the prison officials had unreasonably delayed approving the repair of his computer in a deliberate attempt to impede his ability to pursue his applications for judicial review on a timely basis, forcing him to borrow someone else's computer in order to file motions to extend the time for taking certain steps.

He also explained that at least one of his applications involves a complaint about the same individual who, according to Mr. Johnson, failed to approve his computer repairs. I appreciate that Mr. Johnson believes that his motion should have been granted, but there is no basis for concluding that the facts were not understood.

[11] I conclude, in summary, that the record before this Court, read in light of Mr. Johnson's written and oral submissions, discloses no error on the part of Justice Hughes that warrants the intervention of this Court.

[12] This appeal will be dismissed. As the respondent did not appear, no costs will be awarded.

“K. Sharlow”

J.A.

“I agree
Robert Décary J.A.”

“I agree
J. Edgar Sexton J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-76-08

**(APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE HUGHES
DATED JANUARY 29, 2008, DOCKET NO. T-1317-07.)**

STYLE OF CAUSE: WILLIAM A. JOHNSON v. THE ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 29, 2008

REASONS FOR JUDGMENT BY: SHARLOW J.A.

CONCURRED IN BY: DÉCARY J.A.
SEXTON J.A.

DATED: OCTOBER 1, 2008

APPEARANCES:

WILLIAM A. JOHNSON FOR THE APPELLANT (On his
own behalf)

No appearance FOR THE RESPONDENT

SOLICITORS OF RECORD:

William A. Johnson
Warkworth Institution
Campbellford, Ontario FOR THE APPELLANT (On his
own behalf)

No solicitor on record FOR THE RESPONDENT