

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK

BETWEEN:

Citation: 2009 NBQB 112

Date: 20090428

WALLACE GLASPY

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

BEFORE: Justice William T. Grant

APPEAL HELD: Saint John

DATE OF HEARING: April 28, 2009

DATE OF DECISION: April 28, 2009

APPEARANCES:

William Glaspy, per se

Patrick Wilbur, Crown Prosecutor on behalf of the Respondent

DECISION

GRANT, J. (Orally)

[1] In this appeal Wallace Glaspy seeks to overturn his plea of guilty and have a new trial ordered. He was charged with failing to provide food, water, shelter or care to an animal in his possession or care contrary to section 18(2) of the ***Society for the Prevention of Cruelty to Animals Act***, *S.N.B. 1997 c. S-12*.

[2] The charge arose as a result of a complaint by a neighbour about a dog that had been barking and whimpering for a few days. Two animal control officers came to Mr. Glaspy's residence and found a small dog that appeared very thin in a caged kennel inside an SUV. There was no food or water present so they seized the dog and Mr. Glaspy was charged.

[3] On September 10, 2008 Mr. Glaspy pled not guilty and a trial date was set for December 10, 2008. On December 2, 2008 Mr. Glaspy signed a Plea of Guilty Form under the ***Provincial Offences Procedure Act***, *S.N.B. 1987 c. P-22.1*. On December 10th 2008 he attended court but left after confirming that he had signed the guilty plea. When his case later came up in court the circumstances were related to the judge and he was fined the minimum of \$172.50 which he has paid.

[4] After reading a story about the case in the newspaper, he filed this appeal in which he asks the Court to permit him to change his plea and order that a trial be held. He now says he only left his dog in the cage for

fifteen minutes when the animal control officers came and that there was no urine or feces in the cage which there would have been if he had left the dog for days. He says he wants a trial to clear his name.

[5] In order for a court to overturn a conviction after an appellant has pleaded guilty, it must be satisfied " ... that there are valid grounds for him being permitted to do so." See *R. v Adgey*, [1973] S.C.J. No. 159.

[6] In the case of *R. v. G.G.* [2006] O.J. No. 1427 (Ont. C.A.). the Court said that such grounds could include if the plea was involuntary or the appellant did not understand the consequences of pleading guilty.

[7] In *R. v Desmond* [2002] N.S.J. No.85 (NSCA) the Court stated:

A judge has a discretion to strike a guilty plea where the facts indicate the possibility that the accused is not guilty, had no intention to plead guilty or there is a misapprehension of facts amounting to guilt.

[8] In this case it is not alleged that Mr. Glaspy did not intend to sign the guilty plea. Neither does he allege that he did not understand the consequences of what he was doing when he signed it. He submits that the facts were not as related to the Court but if what he now says is accurate, it is difficult to understand why charges would have been laid against him and it is even more difficult to understand why he would have pleaded guilty. In my view there is no air of reality to his submission.

[9] Moreover, if he had remained in Court on the day his plea was entered he could have disputed the facts as related to the Court but he chose to leave. By doing so, in my opinion, he waived his right to dispute whether or not the facts as related to the Court established his guilt.

[10] In the circumstances I therefore find that there are no valid grounds presented by Mr. Glaspy for permitting him to change his plea and I dismiss this appeal.

William T. Grant
A Judge of the Court of Queen's Bench
of New Brunswick