1973 CarswellQue 205, 17 C.C.C. (2d) 361, 47 D.L.R. (3d) 363

R. v. Vallières (No. 2)

Regina v. Vallieres (No. 2)

Quebec Court of Appeal

Montgomery, J.A., Rivard J.A., Brossard, J.A.

Judgment: May 18, 1973
Docket: None given.

Counsel: M. Leclaire, for accused, appellant

P. Falardeau, Q.C., G. Deslandes, Q.C., for the Crown, respondent

Subject: Criminal; Criminal

Criminal law --- Bill of Rights — Principles of natural justice

Conviction for contempt in face of court — At time of conviction, Criminal Code not providing for appeal from conviction — Amendment to Code subsequently providing for appeal from conviction — Right of appeal not fundamental principle of justice — Amendment not operating retrospectively — Canadian Bill of Rights, R.S.C. 1970, App. III, s. 2(e), (f) — Criminal Code, R.S.C. 1970, c. C-34, s. 9(1) — Criminal Law Amendment Act, S.C. 1972, c. 13, s. 4.

Criminal law --- Offences — Disobedience — Disobeying court order — General.

Criminal law --- Post-trial procedure — Appeal from conviction or acquittal — Summary conviction offence — Right of appeal — Compliance with statutory requirements

Bill of Rights — Conviction for contempt in face of Court — At time of conviction, Criminal Code not providing for appeal from conviction — Amendment to Code subsequently providing for appeal from conviction — Right of appeal not fundamental principle of justice — Amendment not operating retrospectively — Canadian Bill of rights, R.S.C. 1970, App. III, s. 2(e), (f) — Criminal Code, R.S.C. 1970, c. C-34, s. 9(1).

Judges and courts --- Contempt of court — Punishment for contempt — Aggravating or mitigating circumstances

Court to consider all circumstances, both mitigating and aggravating — Accused detained over prolonged period

awaiting trial — Mitigating circumstance where accused committing contempt after 2 years' imprisonment — Period of incarceration reduced on appeal to time already served.

Judges and courts --- Contempt of court — Constitutional safeguards — Bill of Rights

Conviction for contempt in face of Court — At time of conviction, Criminal Code not providing for appeal from conviction — Amendment to Code subsequently providing for appeal from conviction — Right of appeal not fundamental principle of justice — Amendment not operating retrospectively — Canadian Bill of Rights, R.S.C. 1970, App. III, s. 2(e), (f) — Criminal Code, R.S.C. 1970, c. C-34, s. 9(1).

Conviction for contempt of Court — Court to consider all circumstances, both mitigating and aggravating — Accused detained over prolonged period awaiting trial — Mitigating circumstances where accused committing contempt after 2 years' imprisonment — Period of incarceration reduced on appeal to time already served.

***Montgomery, J.A.*:**

1 For the reasons given by my colleague Mr. Justice Brossard, I would dismiss the appeals against conviction.

2 Regarding the appeals against sentence, I do not wish in any way to condone the outrageous behaviour of appellant that led to the imposition of these sentences. I am nevertheless in agreement with my colleague that it would not be in the interest of justice to send this man back to prison and would accordingly modify the sentences as he proposes.

***Rivard, J.A.* (translation):**

3 I share the opinion of our brother, Mr. Justice Brossard. For the reasons expressed in his judgment to which I subscribe, I have come to the same conclusion.

***Brossard, J.A.* (translation):**

4 These separate appeals were presented at the same time.

5 The first appeal (No. 3318) is against: (a) a conviction for contempt of Court pronounced against the appellant on January 7, 1970, by a Judge of the Court of Queen's Bench, Crown Side, of the District of Montreal, (b) a sentence of six month's imprisonment imposed by the same Judge on January 19, 1970, with regard to the first contempt, and (c) a second conviction for contempt immediately followed by a sentence of an additional one-month imprisonment, rendered by the same Judge on the said date, January 19, 1970.

6 The second appeal (No. 3685) is against three convictions for contempt of Court pronounced by another Judge of the Court of Queen's Bench, Crown Side, of the District of Montreal. The first two citations were on April 27, 1971, and the third on April 28, 1971. The three contempts were committed before the same Judge, the first two on April 26th and the third on April 27, 1971.

7 The third appeal (No. 3687) is against the consecutive sentences of six months each passed on April 27, 1971, on the first two contempts of Court of April 26th and a sentence of one month consecutive to the first two passed on April 28, 1971, for the contempt on April 27, 1971.

8 The five convictions, as well as the five sentences, were all pronounced before the adoption of the amendment dated June 15, 1972, and proclaimed in force July 15, 1972 by 1972, c. 13, which we will discuss later.

9 In the case of the judgments passed in 1970, only the sentences were appealed. However, some three years later and after the passing of the above-mentioned Act and a few days before the date on which the present appeals were to be heard, a Judge of this Court on November 3, 1972, granted the following request presented by the appellant regarding an appeal against the convictions of January 7 and 19, 1970 (D.C., p. 11):

> ...may it please your Lordship to extend the time limit of the appeal for a period of 15 days starting as of the date of the judgment on the present application to allow the applicant to file his notice of appeal as soon as judgment is passed on the present application.

10 The notices of appeal from the two aforesaid judgments were filed on November 8, 1972.

11 In the case of the three convictions passed on April 27 and 28, 1970, the notice of appeal had been filed on May 10, 1971.

12 In the case of each notice of appeal, namely, the recent notice of November 8, 1972, regarding the citations for contempt of Court of January 7 and 19, 1970, and the notice of May 10, 1971, with respect to the contempt of Court of April 27 and 28, 1970, the main ground, if not the only serious ground, was that the procedure followed by each of the two trial Judges was contrary to s. 2 of the *Canadian Bill of Rights* and to the principles stated by the Supreme Court of Canada in the case of *R. v. Drybones*, [1970] 3 C.C.C. 355, 9 D.L.R. (3d) 473, [1970] S.C.R. 282.

13 During the hearing, the Court was presented with a motion by the Crown to dismiss the appeals against conviction for the reason that none of these judgments were subject to appeal at the time that they were rendered as each judgment was related to a contempt committed in the face of the Court and each was delivered at a time when, under the old s. 9(1) of the *Criminal Code*, a conviction for contempt committed in the face of the Court was not appealable.

14 To this motion the appellant replied that under the amendments to s. 9 in force July 15, 1972, the judgments being appealed had to be considered reviewable at the date of the hearing. These judgments being prior, not only by several months but by several years, to the new Act, the question of the retroactive effect of this Act was raised as a fundamental issue.

15 I think it is therefore appropriate to cite the text of 1972, c. 13, s. 4, which repealed and replaced the former text of s. 9(1):

> 1. This Act may be cited as the *Criminal Law Amendment Act, 1972*.
>
> 4. Subsection 9(1) of the said Act is repealed and the following substituted there for:

16 The following is the new text compared to the old:

Old text

> 9(1) Where a court, judge, justice or magistrate summarily convicts a person for a contempt of court

committed in the face of the court and imposes punishment in respect thereof, that person may appeal against the punishment imposed.

New text

9(1) Where a court, judge, justice or magistrate summarily convicts a person for a contempt of court committed in the face of the court and imposes punishment in respect thereof, that person may appeal

(a) from the conviction, or

(b) against the punishment imposed.

17 It is also appropriate to cite s. 9(2) which was not altered by the new law:

9(2) Where a court or judge summarily convicts a person for a contempt of court not committed in the face of the court and punishment is imposed in respect thereof, that person may appeal

(a) from the conviction, or

(b) against the punishment imposed.

18 Let us emphasize immediately that in the new text in French, the words "outrage au tribunal commis *en presence* du tribunal" which replace the words "outrage au tribunal commis *en face* du tribunal" correspond in both texts to the English phrase "contempt of court committed *in the face* of the court".

19 Since the French expression "commis en face du tribunal" remained the same in s. 9(2) and since it corresponds to the English expression "committed in the face of the court" which remained the same in both texts, it seems we ought to give to the words "en presence du tribunal" of the new s. 9(1) the same meaning as the words "commis en face du tribunal" in the old text.

20 To the sections which I have just cited can be added the following provisions of ss. 36 and 37 of the *Interpretation Act*, R.S.C. 1970, c. I-23.

36. Lorsqu'un texte législatif (au présent article appelé "texte antérieur") est abrogé et qu'un autre texte législatif (au présent article appelé "nouveau texte") y est substitué.

c) toutes les *procédures* prises aux termes du texte antérieur sont reprises et continuées aux termes et en conformité du nouveau texte, dans la mesure où la chose peut se faire conformément à ce dernier;

d) *la procédure* établie par le nouveau texte doit être suivie, autant qu'elle peut y être adaptée, dans le recouvrement ou l'imposition des peines et confiscations encourues et pour faire valoir des droits existant ou naissant aux termes du texte antérieur, ou dans toute procédure concernant des choses survenues avant l'abrogation;

f) sauf dans la mesure où les dispositions du nouveau texte ne sont pas, en substance, les mêmes que celles du texte antérieur, le nouveau texte ne doit pas être réputé de droit nouveau; il doit

> s'interpréter comme une codification et une manifestation de la loi que le texte antérieur renfermait et avoir l'effet d'une semblable codification et manifestation;
>
> 37(3) L'abrogation ou la modification, totale ou partielle, d'un texte législatif n'est censée ni être ni impliquer une déclaration quelconque sur l'état antérieur du droit.

(The French text does not appear to me to be an accurate translation of the English text which reads:)

> 37(3) The repeal or amendment of an enactment in whole or in part shall not be deemed to be or to involve any declaration as to the previous state of the law.

21 The offence of contempt of Court which has never been precisely defined in the *Criminal Code*, is however recognized in ss. 8 and 9 of the *Code* as being a subject of intervention by "courts, judges, justices or magistrates who had, immediately prior to April 1, 1955, the jurisdiction or the authority to impose punishment for contempt of court". It has, during the years and, more particularly, for the last few years, been the subject of extensive studies by superior Courts, civil as well as criminal. I consider it, if not pointless at least redundant to historically and judicially analyze these decisions.

22 I will only state the opinion that "contempt of Court" at common law, which is translated as "outrage au tribunal" in the French text of our Canadian law, constitutes an offence which is added as it were to the nomenclature of crimes which are more specifically set out and described in the *Criminal Code*. It is derived from the English common law as essentially an offence of jurisprudential origin, the authorities always having considered it necessary to law and to the duty of the Courts in enforcing the law.

23 It appears sufficient to reiterate, after numerous jurists have done so, certain fundamental principles which incorporate the sections I have just referred to.

24 In the case of a contempt of Court committed in the face of the Court, a Court or a Judge could and still can cite for contempt *summarily* for the purpose of punishing the guilty. This was recognized in ss. 8 and 9 of the *Criminal Code* before as well as after the amendment of s. 9(1) in July, 1972. This mode of adjudication, undoubtedly exceptional, has been applied from time immemorial in England; Gladstone, *Commentaries on the Laws of England*, 4th ed. (1770), bk. 4, p. 285.

25 This is what I think was implicitly recognized by the majority of our Supreme Court in the case of *McKeown v. The Queen* (1971), 2 C.C.C. (2d) 1, 16 D.L.R. (3d) 390, [1971] S.C.R. 446, in affirming the judgment of a trial Judge who had proceeded summarily to a conviction of contempt of Court committed in the face of the Court against McKeown, and it was recognized, by the two dissenting Judges who dissented on the point that, in their opinion, it was not a contempt of Court entirely committed in the face of the Court.

26 In the *McKeown* case, after stating that "in my opinion, there was evidence upon which that finding [contempt of Court in the face of the Court] could properly be made." Mr. Justice Martland, speaking on behalf of the majority, affirmed the decision of the trial Judge stating [p. 3 C.C.C., p. 393 D.L.R.]:

> If, as the learned trial Judge found, the contempt of Court was committed in the face of the Court, s-s. (1), quoted above, only permits an appeal against the punishment imposed, and not against the conviction itself.

27 The majority of the Court recognized that the conviction for contempt of Court delivered summarily by the trial Judge was valid.

28 The two dissenting Justices expressed themselves regarding this summary procedure for contempt of Court as follows:

Mr. Justice Spence, p. 447:

> When a contempt is "in the face of the court", in most cases it cannot be dealt with efficiently except *immediately* and by the very judicial officer in whose presence the contempt was committed.

29 Mr. Justice Laskin, p. 448:

> Contempt in the face of the Court is distinguished from contempt not in its face on the footing that all the circumstances of the alleged contempt are in the personal knowledge of the Court. The presiding judge can then *deal summarily with the matter without the embarrassment of having to be a witness to issues of fact which may be in dispute because of events occurring outside.* (The italics are mine.)

30 I emphasize immediately, and I shall come back to it later, that the judgment in the *McKeown* case in the Supreme Court of Canada was decided on November 29, 1970, which was almost 10 years after the adoption of the *Canadian Bill of Rights* by Parliament, one year after the judgment of the Supreme Court in *R. v. Drybones* which was delivered on October 28 and November 20, 1969, and a few months after the judgment in *Bergeron v. Societe de Publication Merlin Ltee*, 14 C.R.N.S. 52, delivered by a judge of the Court of Queen's Bench of Quebec on June 25, 1970, which the appellant referred to in support of his ground of appeal. In the *McKeown* judgment there is no mention of the two previous judgments and no reference to the *Canadian Bill of Rights*. Since it was a case where the trial Judge had disposed of the contempt of Court summarily, we can assume from the silence of the Supreme Court Judges with respect to s. 2 (*f*) or (*e*) that they did not consider them applicable in the case before them of contempt of Court committed in the face of the Court.

31 Secondly, the *McKeown* judgment seems to have raised, prior to the adoption of the new s. 9(1), implicitly by the three majority Judges, and directly by the two minority Judges, the principle that before deciding as to the existence or absence of a right of appeal against conviction for contempt of Court committed in the face of the Court, it should be determined whether the contempt of Court was, in fact, committed in the face of the Court.

32 On this point, I share the opinion of my brother Owen who, in supporting his judgment against a conviction for contempt of Court (*R. v. Cote* C.A.M. No. 3535, judgment of October 24, 1972) expressed the opinion that:

> It appears from this decision of the Supreme Court of Canada that an appeal Court is entitled to look into the question as to whether the alleged contempt was committed in the face of the Court in order to determine whether or not the conviction is appealable.

33 Thirdly, before the passing of 1972, c. 13, which granted a right of appeal in the case of a conviction for contempt of Court (pronounced summarily) committed in the face of the Court, this conviction could not be appealed under s. 9(1).

34 Did the amendment of July 15, 1972, have a retroactive effect on judgments passed before it came into force, making appealable those judgments which could not have been appealed until then because they were related to contempts of Court committed in the face of the Court? This is the fundamental question. In my opinion, it must be answered in the negative when it is established that they were contempts committed in the face of the Court.

35 Paragraphs (*c*), (*d*) and (*f*) of s. 36 of the *Interpretation Act* which I cited earlier cannot in any way be interpreted so as to give retroactive effect to any matter other than to matters of procedure and particularly not to a new fundamental right considered independently from the ways of exercising this right. In contrast with these provisions affecting procedure, or if you prefer, the manner of exercising a right, s-s. (3) of s. 37 raises *a priori* the rule of non-retroactivity of a new enactment replacing a previous one which is repealed at the same time.

36 Therefore, in the case of a fundamental right, the new text must stipulate expressly whether or not it is retroactive. The provisions of the *Interpretation Act* only, apply the general rule in force in common law countries, as expressed by Lord Blackburn in the well-known judgment in 1878 of *Gardner v. Lucas et al.*, 3 App. Cas. 582, cited in *Howard Smith Paper Mills Ltd. et al. v. The Queen* (1957), 118 C.C.C. 321 at p. 388, 8 D.L.R. 449 at p. 466, [1957] S.C.R. 403.

> Now the general rule, not merely of *England* and *Scotland*, but, I believe, of every civilized nation, is expressed in the maxim, *'Nova constitutio futuris formam imponere debet non praeteritis — prima facie, any new law that is made affects future transactions, not past ones*. Nevertheless, it is quite clear that the subject-matter of an Act might be such that, though there were not any express words to shew it, it might be retrospective. For instance, I think it is perfectly settled that if the Legislature intended to frame *a new procedure*, that instead of proceeding in this form or that, you should proceed in another and a different way; clearly these bygone transactions are to be sued for and enforced according to the new form or procedure. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be. Then, again, I think that where alterations are made in matters of evidence, certainly upon the reason of the thing, and I think upon the authorities also, those are retrospective, whether civil or criminal.

37 These are the same principles which were applied by the Supreme Court in *Singer v. The King*, 56 C.C.C. 381 at p. 382, [1932] 1 D.L.R. 279 at p. 280, in November, 1931, and by Chief Justice Thibaudeau Rinfret of the Supreme Court in *Boyer v. The King* (1948), 94 C.C.C. 259, [1949] 4 D.L.R. 469, 7 C.R. 257, where numerous decisions in support were applied and analyzed.

38 From these two judgments, I cite the opinion of the editors of the time:

In re: *Singer v. The King*, headnote:

> Unless it is manifestly the intention of the Legislature that a retrospective construction should be put upon an enactment so that it may cover cases arising prior thereto, no clause conferring a new jurisdiction on an Appellate Court to entertain an appeal, can be so construed".

39 In re: *Boyer v. The King* headnote [C.R.]:

Legislation conferring a new jurisdiction on an appellate court to entertain an appeal cannot be construed

> retrospectively so as to cover cases arising prior to such legislation unless there is something making unmistakeable the legislative intention that it should be so construed. The matter is one of substance and of right.

40 In this last case, we should recall particularly the statement made by the learned jurist that "the matter [the right of appeal] is one of substance and of right".

41 No subsequent judgments contradicting these decisions were cited to us.

42 I conclude from the previous discussion that unless all the contempts in this case were committed in the face of the Court, the legislation adopted on July 15, 1972, could not in any way affect the appeals pending before our Court because it could not and did not make the new right of appeal applicable to judgments to which it did not apply before it came into force.

43 At this point allow me to add that in the first appeal against the judgments of January 7, and 19, 1970, the extension of time for filing the appeal granted by a Judge of our Court did not and could not constitute leave to appeal judgments which were not appealable. The only effect which this extension could have was to give the appellant the right to present before the Court his reasons regarding the right of appeal, having been allowed to file a notice of appeal.

44 Regarding the question of whether the contempts were committed in the face of the Court, a careful reading of everything that occurred in the proceedings during which the contempts were committed convinces me that everything which was said and done was committed or expressed during discussions which took place before the presiding Judges during the sessions when the contempts were committed. Yet, the evidence of anything which was said or which took place outside of the Court was neither necessary nor could be considered as being part of the contempt.

45 It is sufficient to emphasize that on January 7, 1970, after being reminded by the presiding Judge that he would not tolerate "a Court-room being used as a platform for representations and speeches", the appellant, moments later, made the following two statements which were considered contempts of Court by the Judge (D.C., p. 10):

> The judges have accused us of just about everything in this court-room. I say that when accused are called to appear once every two months, against their will, because of their political ideas, they have the right to use the Court to express them, your Lordship.
>
> . . . . .
>
> The injustice which started three and a half years ago deserves to be mentioned here because it is here that it was committed. It is the Judges and the Crown who violated the law; it is they who are responsible.

and on January 19th, the following exchange took place between the appellant and the presiding Judge, after the Judge had read his judgment regarding the first contempt, citing, with references to supporting judicial decisions, the reasons why he was of the opinion that the appellant had been guilty of contempt of Court during the hearing of January 7th (D.C., p. 31):

> Your Lordship, I will not say long live justice (interrupted)

BY THE COURT:

You have nothing to say.

BY THE ACCUSED:

I say "Vive le Quebec Libre", I am completely disgusted with justice in Quebec.

46 There were three other contempts committed on April 26, 27 and 28, 1971, respectively, before another Judge of the same Court. These occurred after the Judge had refused an adjournment of the trial to the appellant. I will only cite the following excerpts from a dialogue, if it can be thus called, between the appellant and the Judge:

(D.C., p. 23) — appellant addressing the Judge:

> Yes, I am talking about your decision which I find nauseating and unspeakable and for which you will be responsible, and I accuse the Crown Attorney of having had something to do with it. He does not surprise me. I already had him as prosecutor in my case which is being appealed. He has already done many things and in the case of Coco Mercier and Luc Desmarais, he even went as far as going into the jury room to erase something from the blackboard. He is so unconscious and stupid that he laughs about it, as any self-respecting creditist.

47 (D.C., p. 24 — *idem*):

I shall not listen to you, I am going to bed.

. . . . .

You use violence besides.

48 (D.C., p. 25 — *idem*):

I did not work for a private Anglo-Saxon company before coming to sit here.

. . . . .

I accuse you of being partial.

49 (D.C., p. 26 — *idem*):

Of being absolutely dishonest ... and of being more of a hangman than a Judge.

50 Regarding the second contempt committed according to the Judge on April 27, 1971 (D.C., p. 45 — *idem*):

...it would be my right to ask you if you understood what is in it or if you are just here as a "Rubber stamp"

for the Crown?

. . . . .

Either a "rubber stamp" or an ignorant, an incompetent.

51 Regarding the third contempt, on April 27, 1971, I will only cite the following excerpts (D.C., p. 60):

BY THE COURT:

There is no doubt about the fact that you referred to the Court in the manner I have mentioned. I do not intend to repeat them. It was said once, it is in the evidence.

BY VALLIERES:

I said it because I meant it, I believe it and I still believe it.

52 (D.C., pp. 70-1):

...I have had enough of the intrigues of the administration of so-called justice, and say that in Quebec, in particular, in political cases the judicial system is an instrument of systematic repression and that the Bar which recently held its convention should come here, come here in this Court, for this case which started yesterday, to see for itself what judicial decadence is; this is what I have to say.

53 In order to judge the contemptuous character of these statements and of the conduct of the witness before the Court and to find them contemptuous, the two learned Judges did not have to present any evidence other than what was said or done in the presence of the Court.

54 But could the appellant, in his appeal, as he tried to do with some hesitation, rely on the text of s. 2 (*f*) of the *Canadian Bill of Rights* and rely on the decision in *R. v. Drybones* which I mentioned earlier that, notwithstanding the old text of s. 9(1) of the *Criminal Code*, he had in the judgments which he appealed a right of appeal that the text of s. 9(1) and (2) and the authorities denied him?

55 Section 2 (*f*) of the *Canadian Bill of Rights* reads as follows:

> 2. Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the *Canadian Bill of Rights*, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to
>
> > (f) deprive a person charged with a criminal offence of the right to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal, or of the right to reasonable bail without just cause; or

56 Paragraph (*f*) is the complement of para. (*e*); I shall also cite it:

(e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;

57 I explained at the beginning of this judgment why, in my opinion, the *McKeown* judgment seems to indirectly support that there was no reason to apply s. 2(f) or to apply the *Drybones* decision in order to establish a right of appeal denied until now by s. 9(1).

58 Nothing, either in s. 2 (*f*) or in the *Canadian Bill of Rights* indicates that the right of appeal is a fundamental principle of justice in the definition of the rights and obligations of the ordinary man. Neither para. (*f*) nor the preceding para. (*e*) of s. 2 of the *Canadian Bill of Rights* could, in my opinion, be interpreted in that way.

59 Therefore, I am not surprised at the lack of reference to the *Canadian Bill of Rights* and to the *Drybones* decision by the majority as well as the minority in the *McKeown* case which raised the application of the old s. 9(1) long after the adoption of the *Canadian Bill of Rights*.

60 For these reasons it is my opinion the five convictions for contempt of Court which are being appealed before us by appeals 3318 and 3685, were not subject to appeal.

61 The motions to dismiss these two appeals as not being appealable must be granted and the two appeals on conviction must be dismissed.

62 We must now review the sentence imposed in these two appeals and on appeal 3687.

63 For this we must depart from the field of law and venture into a more delicate area.

64 Counsel for the appellant presented, several weeks after the hearing, a statement which he had been allowed to submit. It is quite easy to understand the complexity of the task of unravelling the activities of his client as of September, 1966, regarding the numerous stays in penitentiaries during a tragic period of his life which was not foreign to the social climate of the time.

65 I cite the following from this statement on behalf of the appellant (pp. 2-3):

> In order to appreciate in an objective way the elements necessary to a fair judgment in this case, we must take into account all the vicissitudes of Mr. Pierre Vallieres' involvement with justice in Quebec.
>
> Mr. Pierre Vallieres was arrested in September, 1966, and detained until May, 1970, when he was released on bail. On October 16, 1970, he was again arrested and detained on other charges. He was, for a second time, released on bail on June 23, 1971.
>
> Mr. Vallieres was therefore detained for 52 months for different indictments for which he was later acquitted or which the Crown withdrew, except for the charge laid on March 8, 1971, in case No. 71-1561, Court of Queen's Bench in Montreal. In this case Mr. Vallieres pleaded guilty and received a suspended sentence. I refer you to the judgment of Mr. Justice Bisson in this case, which analyzed the mitigating circumstances which justified the sentence. Sentence served: case 3318
>
> In this case, the sentence was imposed on January 19, 1970, and consisted of six months' imprisonment plus one month consecutive. But from January, 1970, to May, 1970, he served 4 months and the rest of the sen-

tence from October 16, 1970 to March 8, 1971.

Sentence served: case 3687

In this case, the sentence was passed on April 28, 1971, and consisted of 7 months' imprisonment. But Mr. Vallieres was detained until June 23, 1971. Therefore, if we take into account the free days, Mr. Vallieres served 2 months and 11 days in prison.

66 The accuracy of the preceding dates, figures and compilations were not contradicted by the Crown who, better than anyone, would have been able to do so.

67 It appears from the preceding text that the prolonged time that the appellant spent in prison was for the purpose of awaiting trial.

68 It appears particularly that on the date of the hearing of these appeals, from sentences which are the subject of the first appeal (No. 3318 C.A.), the appellant had served four months of the non-concurrent seven months to which he was sentenced by a Judge of the Court of Queen's Bench and that on the non-concurrent sentences of one year and one month which are the subject of the third appeal (No. 3687) and to which he was sentenced by another Judge of the Court of Queen's Bench, he had served two months and 11 days. Altogether he spent 52 months in prison following different indictments and sentences.

69 It appears that, from a judgment of Mr. Justice Claude Bisson of the Court of Queen's Bench, 71-1561 C.B.R. of October 4, 1972, the appellant did not present a danger to society since placed under conditional discharge in January, 1972. It seems to me that is a circumstance which I should take into consideration for the purpose of making a decision which, as a member of the Bench which heard these appeals, I am now called on to render at this stage of the proceedings. It is a new decision which, although related to sentences going back several months, will only be totally effective as of the date when it is imposed by our Court.

70 I see no better way of expressing the words of wisdom formulated by Mr. Justice Bisson in the above-mentioned judgment (p. 7):

No one can scrutinize someone else's thoughts and it would take a perceptive person to be informed of all his neighbour's activities but nevertheless it does not seem that for the past 15 or 16 months, Pierre Vallières has been a danger to society. (pp. 8-9):

3. Mitigating circumstances

The circumstances in which the letter was written can be mentioned:

Imprisonment of the accused for almost two years, and a few weeks earlier, a verdict of "manslaughter" (by interpretation) and sentence to life imprisonment.

This does not exculpate the accused in any way but it is helpful to imagine his state of mind.

Another mitigating circumstance is the fact that no publicity would have been given to the letter found and made public without the proclamation of the *War Measures Act* and the searches which followed.

On a subjective level let us examine what effect the sentence had on Pierre Vallières.

> Either Pierre Vallières is rehabilitated and stops preaching violence and crime as a means of reaching the goals he advocates, or he is not.
>
> If he is rehabilitated, which the Court hopes, an additional imprisonment would serve no useful purpose, quite to the contrary.
>
> If he is not rehabilitated and if he still fosters thoughts of violence and crime, would a sentence of imprisonment contribute to rehabilitation?
>
> It is doubtful for the last six years have probably allowed Pierre Vallières to think it over and at 34 his character is certainly permanently formed.

71 These questions raised by the learned Judge are similar to those that the Judges of our Court had to decide in the case of *Chartrand v. The Queen* (C.A.M. No. 3583, December 20, 1971) [since reported 21 C.R.N.S. 49], before concluding as Mr. Justice Jean Turgeon did [translation pp. 66-7]:

> In dealing with an appeal against sentence, it is incumbent on a Court of Appeal to take into account all the circumstances, both mitigating and aggravating.
>
> . . . . .
>
> In the instant case, Michel Chartrand had been in prison for three months following the events which took place in October 1970, and while in prison, he was surrounded by the sort of antagonistic and irritating atmosphere which could affect and upset him. These circumstances mitigate, to some extent, his offence, and explain in part why he lost his sense of proportion, and used language unworthy of a well-balanced person.
>
> After analyzing the record objectively, and deliberately ignoring the appellant's conduct under other circumstances of which I can take no judicial notice, I am of the view that returning him to prison would serve no purpose.

72 Using the wisdom of the opinions expressed by Mr. Justice Turgeon of our Court and Mr. Justice Claude Bisson of the Court of Queen's Bench, I do not believe, that in law it is necessary, in view of what follows, to decide at this late date on the fairness of the appealed sentences when they were imposed. After a thorough study of the circumstances disclosed in this case, I am convinced that it would be more detrimental than useful to justice to uphold the terms of imprisonment imposed by the sentence being appealed.

73 From this perspective, I would substitute:

> (a) to the sentence of six months plus one month imposed on January 19, 1970, appealed by appeal 3318, a sentence of four months and one month concurrent (the said sentences having been entirely served);
>
> (b) to the consecutive sentences of 6 months, 6 months and one month imposed on April 27 and 28, 1971, and appealed by appeal 3687, two sentences of two months and 11 days and one sentence of one month, all three concurrent and in any case having been served already by the appellant.

74 *Judgment accordingly.*

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KEYCITE

R. v. Vallieres (No. 2), 47 D.L.R. (3d) 363, 17 C.C.C. (2d) 361, 1973 CarswellQue 205 (C.A. Que., May 18, 1973)

History

Direct History

=> 1 **R. v. Vallieres (No. 2),** 47 D.L.R. (3d) 363, 17 C.C.C. (2d) 361, 1973 CarswellQue 205 (C.A. Que. May 18, 1973) **(Judicially considered 9 times)**

Negative and Cautionary Citing References (Canada)

Recently added (treatment not yet designated)

2 R. v. Gennings, 1977 CarswellOnt 1557, 1 W.C.B. 269 (Ont. Co. Ct. Mar 24, 1977)

3 R. v. Chartrand, 1982 CarswellOnt 2157, 8 W.C.B. 180 (Ont. Prov. Ct. Jul 21, 1982)

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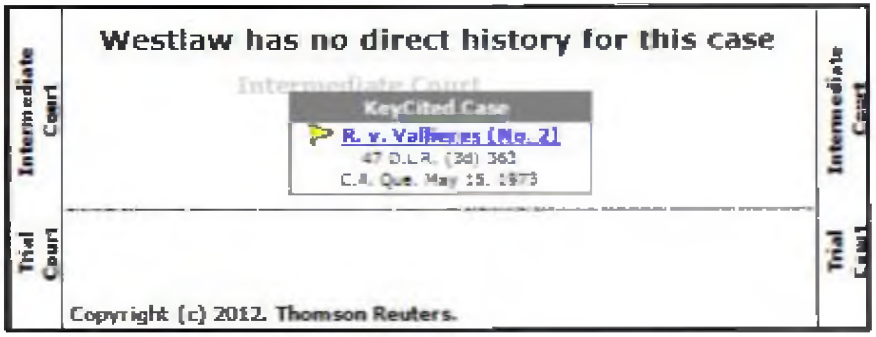
Intermediate Court
Trial Court
Westlaw has no direct history for this case
Intermediate Court
KeyCited Case
R. v. Vallières (No. 2)
47 D.L.R. (3d) 362
C.A. Que. May 15, 1973
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Citing References

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2 R. v. Gennings, 1977 CarswellOnt 1557, 1 W.C.B. 269 (Ont. Co. Ct. Mar 24, 1977)

Positive & Neutral Cases (Canada)

Followed in

3 R. v. Silber, 69 C.C.C. (2d) 147, 1982 CarswellBC 723, 2 C.R.R. 104, [1982] B.C.W.L.D. 1978 (B.C. Prov. Ct. Jun 10, 1982) **(Judicially considered 2 times)**

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6 Paquet v. U.S.W.A., 1985 CarswellNat 701, 1985 CarswellNat 702, 85 C.L.L.C. 16,053, 59 di 149 (Can. L.R.B. Jan 10, 1985) **(Judicially considered 6 times)**

7 R. v. Mitchell, 29 Nfld. & P.E.I.R. 125, 9 M.V.R. 243, 1981 CarswellPEI 4, 82 A.P.R. 125 (P.E.I. S.C. Jan 29, 1981) **(Judicially considered 12 times)**

8 R. c. Hamel, [1977] C.S. 757, 1977 CarswellQue 427, EYB 1977-163513 (C.S. Que. Jun 09, 1977)

Referred to in

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10 [1980-1984] Nadin-Davis, Canadian Sentencing Digest 1., Contempt in the Face of the Court

(1984)

11 CED Contempt of Court I, §1-§4

12 CED Sentencing V.2.(d).(ii), V -- Procedure and Appeals, 2 -- Sentence Appeals: Proceedings on Indictment, (d) -- Special Considerations Affecting Decision on Alteration of Trial Sentence, (ii) -- New Evidence

13 CED Sentencing III.2.(a).(ii), III -- Quantum of Sentence, 2 -- Offences Against Administration of Law and Justice, (a) -- Contempt of Court, (ii) -- Contempt in Face of Court