

Case Name:

• **R. v. Peddle**

Between
**Her Majesty the Queen, and
Phillip Barry Peddle, accused**

[2003] O.J. No. 2096

57 W.C.B. (2d) 591

Ontario Court of Justice
Newmarket, Ontario

Kenkel J.

May 30, 2003.

(10 paras.)

Criminal law -- Procedure -- Information or indictment. charge or count, indictable offences -- Stay of charge -- Quashing or objecting to, procedure.

Application by Peddle to quash the information against him alleging simple possession of marijuana based on a decision that the charge was no longer an offence known to law. The Crown asked the court to stay the charge. The issue was whether the Crown could pre-empt the motion to quash by staying the charge.

HELD: Application allowed. The Crown was not permitted to stay the charge as it was a nullity. Where the information did not disclose an offence known to law, it would be wrong to keep a citizen in jeopardy of prosecution for a year by permitting a stay.

Statutes, Regulations and Rules Cited:

Criminal Code, ss. 579, 581(1), 601.

Counsel:

Amit Ghosh, for the Federal Crown.
Chris Hanson, for the defence.

<http://www.lexisnexis.com/ca/legal/delivery/PrintDoc.do?jobHan...> 6/30/2010

KENKEL J.:-

Introduction

1 Where an information on its face does not disclose an offence known to law, can the Crown preempt a motion to quash the information by staying the charge?

Facts

2 The applicant is charged with simple possession of marihuana contrary to s. 4(1) of the C.D.S.A.

3 In R. v. J.P., [2003] O.J. No. 1949 (S.C.J.) (Summary Conviction Appeal), a decision binding on this court, Mr. Justice Rogin held that simple possession of marihuana is no longer "an offence known to law".

4 The accused/applicant has applied to this court to quash the information alleging simple possession of marihuana. At the same time, the Federal Crown has asked that the charge be stayed.

Motion to Quash

5 A motion to quash under s. 601 of the Criminal Code may be brought where an information fails to disclose an offence known to law as required under s. 581(1) of the Criminal Code.

6 The Federal Crown submits that their motion to stay the proceedings deprives this court of jurisdiction to hear the motion to quash.

7 Section 579 of the Criminal Code provides that Crown counsel may direct the clerk of the court to stay proceedings at any time before judgement and that such an entry shall be made forthwith thereafter.

8 Proceedings stayed under s. 579 may be recommenced without laying a new information within one year. Thus, the accused person remains in jeopardy of prosecution on the original information until that period expires.

9 The discretion of the Crown under s. 579 to intervene by directing a stay of proceedings should not normally be interfered with by the court. However, where the charge before the court is itself a nullity, then in my view there is nothing to stay. It would be wrong to keep a citizen in jeopardy of prosecution for a period of one year on an information that does not disclose an offence.

Conclusion

10 The information before the court will be quashed as not disclosing an offence as required by s. 581(1) c.c.

KENKEL J.