1967
*Oct. 23
1968
Jan. 23

THOMAS WILLIAM HIND ..... APPLICANT;

AND

HER MAJESTY THE QUEEN ..... RESPONDENT.

MOTION FOR LEAVE TO APPEAL

Criminal law—Appeals—Jurisdiction—Leave to appeal—Dismissal by Court of Appeal of application to extend time to appeal to that Court from a sentence—Whether Supreme Court of Canada has jurisdiction to grant leave to appeal—Penitentiary Act, R.S.C. 1952, c. 206, s. 49(3)—Supreme Court Act, R.S.C. 1952, c. 259, s. 41—Criminal Code, 1953-54 (Can.), c. 51, s. 597(1)(b).

The applicant pleaded guilty to a charge of robbery with violence and was sentenced to imprisonment for ten years. On the day he was sentenced and pursuant to s. 49(3) of the *Penitentiary Act*, he signed a written notice waiving all rights of appeal. Subsequently, he applied to the Court of Appeal for an extension of time to appeal to that Court from his sentence. His application was dismissed by the Court of Appeal. He then applied to this Court for leave to appeal from that refusal.

Held: The application for leave to appeal should be dismissed.

*PRESENT: Cartwright C.J. and Fauteux and Hall JJ.

This would be a case to grant leave to appeal if this Court had jurisdiction to do so. However, such jurisdiction cannot be found either in the *Criminal Code* or in s. 41 of the *Supreme Court Act*. In *Paul v. The Queen*, [1960] S.C.R. 452, this Court reached the view that it had no jurisdiction to entertain an application for leave to appeal from a judgment of a Court of Appeal refusing leave to appeal in a criminal matter. *A fortiori* must a like view obtain in the case of an application for leave to appeal from a judgment of a Court of Appeal refusing an extension of time for appealing in a criminal matter and, more particularly so, when the true question, sought to be brought for review ultimately, relates to sentence.

Droit criminel—Appels—Juridiction—Permission d'appeler—Rejet par la Cour d'appel d'une requête pour étendre les délais pour appeler devant elle d'une sentence—La Cour suprême du Canada a-t-elle juridiction pour accorder la permission d'appeler—Loi sur les pénitenciers, S.R.C. 1952, c. 206, art. 49(3)—Loi sur la Cour suprême, S.R.C. 1952, c. 259, art. 41—Code criminel, 1953-54 (Can.), c. 51, art. 597(1)(b).

Le requérant a plaidé coupable sur une accusation de vol qualifié et a été condamné à l'emprisonnement pour dix ans. Le jour où la sentence fut prononcée, et en conformité avec l'art. 49(3) de la *Loi sur les pénitenciers*, il a signé un avis écrit en vertu duquel il se désistait de tous ses droits d'appel. Subséquemment, il a présenté à la Cour d'Appel une requête pour obtenir une extension des délais pour appeler devant elle de sa sentence. Sa requête a été rejetée par la Cour d'Appel. Il a alors présenté une requête devant cette Cour pour obtenir la permission d'en appeler de ce refus.

Arrêt: La requête pour permission d'appeler doit être rejetée.

Il s'agit ici d'un cas où, si cette Cour avait juridiction de le faire, la permission d'appeler devrait être accordée. Cependant, on ne peut pas trouver une telle juridiction ni dans le *Code criminel* ni dans l'art. 41 de la *Loi sur la Cour suprême*. Dans la cause de *Paul v. The Queen*, [1960] R.C.S. 452, cette Cour a conclu qu'elle n'avait pas la juridiction pour accorder une requête demandant la permission d'appeler d'un jugement d'une Cour d'Appel ayant refusé la permission d'appeler dans une matière criminelle. Un point de vue semblable doit *a fortiori* prévaloir dans le cas d'une requête pour permission d'appeler d'un jugement d'une Cour d'Appel refusant d'étendre les délais pour appeler dans une matière criminelle et, encore plus, lorsque la question à débattre en définitive concerne une sentence.

REQUÊTE pour permission d'appeler d'un jugement de la Cour d'Appel de l'Ontario, refusant d'étendre les délais pour appeler d'une sentence. Requête rejetée.

APPLICATION for leave to appeal from a judgment of the Court of Appeal for Ontario, refusing an extension of time to appeal from a sentence. Application dismissed.

B. A. Crane, for the applicant.

C. Meinhardt, for the respondent.

1968

HIND
v.
THE QUEEN

The judgment of the Court was delivered by

FAUTEUX J.:—Thomas William Hind applies for leave to appeal from a judgment of the Court of Appeal for Ontario, which dismissed his application for an extension of time to appeal to that Court from a sentence of ten years' imprisonment, imposed upon him by His Honour Magistrate Kurata, upon a plea of guilty to a charge of robbery with violence.

In its reasons for judgment, the Court of Appeal relates the circumstances of this bank robbery, refers to the criminal record of the applicant and concludes that, having regard to his previous convictions and the nature of the offence of which he was convicted, there was no merit in the application. The Court also notes that the applicant had waived all rights of appeal. In fact, on the day he was sentenced, he gave a written notice to this effect, pursuant to s. 49(3) of the *Penitentiary Act,* R.S.C. 1952, c. 206, which provides, *inter alia,* that, upon such a notice, the time limited for appeal shall be deemed to have expired. With respect to this waiver, the circumstances attending its signature and the position taken by applicant in this regard, the Court of Appeal makes these observations:

> The accused had signed a waiver while imprisoned at the Don Gaol and in his application for extension of time for appealing he stated that he had signed the waiver *'without being informed of and without realizing I was signing away my rights. The signing of the waiver took place late at night and I was caught unawares (sic) of what I was doing.'* Mr. G. A. Taggart (an official of the Court of Appeal) communicated with the authorities at the Don Gaol and was advised that the accused had had his rights fully explained to him and that the waiver was signed not late at night but before six o'clock in the afternoon.

The grounds upon which the applicant is seeking leave to appeal to this Court are formulated as follows:

(1) Had the Court of Appeal jurisdiction to enter upon the hearing of the application in the absence of the accused, who was in custody, not represented by counsel, had submitted no written argument, had requested permission to argue his application in person, and was not notified of the date of the hearing of the application?

(2) Had the Court of Appeal jurisdiction to adjudicate the question of fact surrounding the signing by the Applicant of a waiver of his right to appeal in the absence of legally admissible evidence regarding this issue?

The criminal record of the applicant and the nature of the crime for which he was convicted may or may not justify, as a proper one, the sentence imposed upon him. This question is not before us and is not, furthermore, susceptible, in law, to be entertained by this Court: *Goldhar v. The Queen*[1]. We are here concerned with an application for leave to appeal from a judgment of a Court of Appeal *refusing an extension of time for appealing to that Court from a sentence.*

Having considered the grounds raised in support of the application and the material, in the record, which is relevant to these grounds, I would be disposed to grant leave to appeal had this Court jurisdiction to do so, having regard to the nature of the judgment *a quo*. It is obvious that this Court has no jurisdiction to exercise a jurisdiction, over a Court of Appeal, similar to that which the High Court exercises over inferior tribunals, in *certiorari* proceedings. It is also clear that this Court can only deal with a judgment of a Court of Appeal, by way of appeal, if jurisdiction to do so can be found in some statutory enactment. *Welch v. The King*[2]; *Okalta Oils Limited v. The Minister of National Revenue*[3]; *Chagnon v. Normand*[4]; *William Cully v. François* alias *Francis Ferdais*[5]. With respect to a judgment of the nature of the judgment *a quo,* such a jurisdiction cannot be found either in the *Criminal Code* or in s. 41 of the *Supreme Court Act*. The provisions of s. 597(1)(*b*) of the *Criminal Code,* upon which the application purports to be made, have particularly no application in the matter. In *Paul v. The Queen*[6], this Court, having to consider whether it had jurisdiction to entertain an application for leave to appeal from a judgment of a Court of Appeal *refusing leave to appeal in a criminal matter,* reached the view that it had none. *A fortiori,* in my opinion, must a like view obtain in the case of an application for leave to appeal from a judgment of a Court of Appeal *refusing an extension of time* for appealing in a criminal matter and, more particularly so,

---

[1] [1960] S.C.R. 60, 125 C.C.C. 209, 31 C.R. 374.

[2] [1950] S.C.R. 412 at 428, 97 C.C.C. 177, 10 C.R. 97, 3 D.L.R. 641.

[3] [1955] S.C.R. 824 at 825, [1955] C.T.C. 271, 55 D.T.C. 1176, 5 D.L.R. 614.

[4] (1889), 16 S.C.R. 661 at 662.

[5] (1900), 30 S.C.R. 330 at 333.

[6] [1960] S.C.R. 452, 127 C.C.C. 129, 34 C.R. 110.

1968

HIND
v.
THE QUEEN

Fauteux J.

when the true question, sought to be brought for review ultimately, relates to sentence: *The Queen v. J. Alepin & Frères Ltée et al*[7].

I would refuse the application for lack of jurisdiction.

Application dismissed.

Solicitors for the applicant: Croll, Borins & Goldberg, Toronto.

Solicitor for the respondent: The Attorney General for Ontario, Toronto.

---

[7] [1965] S.C.R. 359 at 364, 3 C.C.C. 1, 46 C.R. 113, 49 D.L.R. (2d) 220.