



Case in Brief: ***R. v. Haevischer***

Judgment of April 28, 2023 | On appeal from the Court of Appeal for British Columbia

Neutral citation: 2023 SCC 11

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***The Supreme Court clarifies that applications in criminal proceedings must be “manifestly frivolous” to be summarily dismissed.***

Mr. Cody Rae Haevischer and Mr. Matthew James Johnston were members of a criminal organization called the Red Scorpions. In 2014, they were tried together and found guilty of six counts of first degree murder and one count of conspiracy to commit murder in what became known as the “Surrey Six” murders, precipitated by a dispute over the drug trade in Surrey, British Columbia.

Before convictions were entered into the court record, the two accused asked the judge to stop the trial. This is known as an application for a “stay of proceedings”. In the criminal context, a stay is a remedy available to the accused when the state has compromised their rights to a fair trial and undermined the integrity of the justice system. Mr. Haevischer and Mr. Johnston each applied for a stay, alleging systemic police misconduct by officers involved in the investigation. They also claimed they were deliberately and punitively kept in solitary confinement in harsh and inhumane conditions following their arrests.

The Crown asked the trial court to dismiss the stay applications, without considering them at a full hearing on their merits. It argued that neither application disclosed sufficient grounds to establish that a full hearing was necessary to determine whether the alleged abuses entitled the accused to a stay of proceedings. The trial judge agreed to hear the Crown’s request. She permitted Mr. Haevischer and Mr. Johnston to present their arguments and some evidence, but the record did not represent the full range of evidence they wanted the judge to consider. Such evidence would have been submitted at a full hearing and would have included cross-examinations of certain police officers involved in the misconduct.

The trial judge summarily dismissed the stay applications and ordered convictions. She concluded that even if she believed everything the two men claimed, and even though the alleged police misconduct was very serious, the crimes were so shocking that a stay of proceedings would not be an appropriate remedy. In her view, there was no reason to further consider the applications in a full hearing to hear all of the accused’s evidence.

The Court of Appeal allowed the appeal. It held the trial judge had not taken the correct approach in coming to her decision. She had not assumed that all of the allegations were true. In fact, if all of Mr. Haevischer and Mr. Johnston’s allegations were believed to be true, there was some chance the trial could be stayed. As a result, it was necessary to hear all of the accused’s evidence to determine the applications. The Crown appealed to the Supreme Court.

The Supreme Court has dismissed the appeal.

**The trial judge should not have summarily dismissed the applications as they were not manifestly frivolous.**

Writing for a unanimous Court, Justice Martin ruled that an application in a criminal proceeding should only be summarily dismissed if the application is “manifestly frivolous”. She explained that when applied, the “frivolous” part of this standard weeds out the applications that will necessarily fail, while the word “manifestly” captures the notion that the frivolous nature of the application should be obvious. According to Justice Martin, “[i]f the frivolous nature of the application is not manifest or obvious on the face of the record, then the application should not be summarily dismissed and should instead be addressed on its merits”. By adopting this rigorous standard, a judge may dismiss applications that would never succeed and which would, by definition, waste court time. However, it also protects fair trial rights by ensuring that those applications which might succeed are decided on their merits.

In light of the seriousness of the alleged state misconduct in this case, Justice Martin concluded the applications were not manifestly frivolous and should not have been dismissed summarily. She dismissed the appeal but ordered the trial court to conduct an evidentiary hearing on Mr. Haevischer's application for a stay of proceedings only, as Mr. Johnston had died after the appeal was argued before the Supreme Court of Canada.

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**Breakdown of the decision: *Unanimous*:** Justice [Martin](#) dismissed the appeal (Chief Justice [Wagner](#) and Justices [Karakatsanis](#), [Côté](#), [Rowe](#), [Kasirer](#), [Jamal](#) and [O'Bonsawin](#) agreed)

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