



Criminal Law Case Study

The Guilty Plea

On Thursday, November 4th, 2014, Rebecca Gaines was leaving the courthouse in Prince Albert, Saskatchewan, with her client, Jim Kelly, when he loudly accused her of not doing enough to represent him. Jim had just pleaded guilty to assault, in accordance with a plea bargain that Rebecca advised him to take. After a heated conversation, Rebecca told Jim she would no longer represent him. When Jim's new lawyer, who was making an application to strike the plea, sent Rebecca a letter outlining her former client's allegations of ineffective representation, she was not sure how to respond.

The Lawyer

Rebecca was called to the bar in 1995 and opened her own criminal defence practice in Prince Albert, Saskatchewan. Jim had been referred to her by another lawyer, who had withdrawn from the case because of a conflict.

The Client

Jim was 28 and lived with his girlfriend, Aileen Barnes, in Prince Albert, Saskatchewan. He worked as a driver for a local furniture store. On the night of March 25th, 2014, he went to a bar with some friends from work. After drinking heavily for a couple of hours, Jim got into a fight with Aileen's ex-boyfriend, hitting him over the head with a beer bottle, cutting his forehead and knocking him unconscious. The man was taken to the hospital, where he received 10 stitches and was released. After Jim was charged with assault, he retained Rebecca to represent him. He admitted to her that he started the fight and asked, "What can you do for me?" Jim was concerned that a conviction for assault might affect his application for Canadian citizenship and wanted to plead self-defence. Rebecca said that she would try to make a deal with the Crown. After meeting with Jim, she wrote a memo to file outlining the facts he provided, including his admission of the offence.

The Plea Bargain

During a break in the judicial pre-trial on Jim's assault charge, the Crown offered to recommend probation in exchange for a guilty plea. Rebecca told Jim that they needed to discuss the deal and he said that he wanted Aileen to sit in on the meeting. Rebecca outlined the terms of the plea bargain and explained to Jim and Aileen the consequences of pleading guilty. She presented him with a letter she had prepared that outlined the details of the Crown's offer, as well as alternative written instructions for him to sign if he decided 1) to accept the offer, or 2) to plead not guilty. Jim was ambivalent about what to do and spent the next two hours with Aileen, trying to make up his mind. He finally told Rebecca that he would accept the offer, but didn't sign the written instructions that she prepared. When the pre-trial resumed, Jim pleaded guilty, and almost

immediately regretted his decision, later accusing Rebecca of not doing enough to represent him. After an angry exchange outside the courthouse, she told him that she was withdrawing. A couple of weeks later, Rebecca received a letter from Donna Cheng, Jim's new lawyer, advising that she was making an application on his behalf to strike the plea.

The Allegations

In support of the application, Jim and Aileen swore affidavits alleging that Rebecca had provided ineffective representation as counsel. After they were cross-examined by the Crown on their affidavits, the judge decided that the hearing should be adjourned to give Rebecca an opportunity to respond. Donna sent Rebecca a letter outlining the allegations, and attached copies of the affidavits as well as the transcript of the cross-examinations. Jim and Aileen had sworn that even though he asserted his innocence, Rebecca pressured him into pleading guilty. Rebecca made notes directly on the letter, rebutting Jim and Aileen's allegations, and sent it back to Donna.

Conclusion

Rebecca realized that the statements contained in Jim's and Aileen's affidavits were serious enough to expose her to liability. Aside from responding to the allegations, she wasn't sure what else she should do.