

Supreme Court sets rule for screening racist jurors

By Janice Tibbetts

OTTAWA (CP) — It will be easier for Canadian lawyers to screen potential jurors for racism following a Supreme Court decision Thursday that ordered a new trial for an aboriginal man convicted of robbing a pizza parlor.

The top court ruled that jurors can be quizzed on their racial attitudes if a lawyer demonstrates there is reason to believe there is widespread prejudice in the community against the racial minority in question.

The unanimous decision effectively sets aside the conviction of Victor Williams, who has long since completed his six-month jail sentence after being found guilty by a Vancouver Island jury when a judge refused to let his lawyer question them on racial prejudice.

To suggest that all persons who possess racial prejudices will erase those prejudices from their mind when serving as jurors is to underestimate the insidious nature of racial prejudice and the stereotyping that underlies it, wrote Justice Beverley McLachlin.

Buried deep in the human psyche, these preconceptions cannot be easily and effectively identified and set aside, even if one wishes to do so.

Williams considers the decision a victory, said his lawyer, Joseph Blazina.

He has been pursuing this largely as a concern for native persons in general, said Blazina.

He realizes this is something that goes well beyond his own circumstances. The big picture is there is going to be significant changes in the way juries are selected in the case of persons who are from visibly different racial minorities.

Blazina and Crown attorney George Ivanisko agreed there's virtually no prospect of a new trial.

In essence he has served his penalty and whether there's any merit in continuing with a new trial in light of this ruling may be moot, Ivanisko said.

Williams has already had two trials following the 1993 robbery.

At his first trial, his lawyer questioned prospective jurors about whether their judgment would be affected by the fact that Williams is aboriginal and the victim is white.

Twelve prospective jurors were dismissed because of their answers.

Two days after jury selection, the judge declared a mistrial, in part because of the jury selec-

tion process.

Before the second trial, the lawyer asked the judge if he could once again question potential jurors about racial prejudice. The request was denied and Williams was convicted.

The B.C. Court of Appeal upheld the decision, ruling that while there is widespread bias in society against aboriginal people, it's not such that it would affect jurors.

The B.C. decision was the opposite of one in Ontario where a ruling by the province's top court means lawyers can generally ask questions about racial prejudice against blacks.

The Supreme Court ruling today effectively endorses the Ontario ruling.

Until now, the Canadian rule of thumb has been that candidates for jury duty are presumed to be indifferent or impartial and before lawyers can question them they must seek approval from a judge and give reasons for their suspicion.

The most traditional applications involve questioning jurors on what they already know about the case, based on the media coverage.

For instance, it took several days to select a jury in the notorious Paul Bernardo trial because the judge allowed that line of questioning.

Canadian law is much stricter than in the United States, where lawyers can routinely go much further in questioning every potential juror.

In the O.J. Simpson trial, for example, prospective jurors were even given questionnaires that included questions on racial prejudice.

But the Supreme Court noted Thursday that its ruling does not mean Canada is heading toward the same approach as in the U.S., which opponents charge is time consuming, expensive and a potential invasion of juror privacy.

McLachlin cautioned that trials involving racial minorities will not automatically lead to questioning.

There can be no automatic right, she wrote.

In order to establish such a right, the accused must show that there is a realistic potential that some members of the jury pool may be biased in a way that may negatively impact on the accused.

As long as this requirement is in place, the Canadian rule will be much more restrictive than the rule in the United States.