

CITATION: R. v. Gamble, 2011 ONCA 308

DATE: 20110419

DOCKET: C52650

COURT OF APPEAL FOR ONTARIO

Weiler, Blair and Epstein JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

David Gamble

Appellant

Kristin Bailey, for the appellant

Dena Bonnet, for the respondent

Heard: April 18, 2011

On appeal from the sentence imposed on June 28, 2010 by Justice J. Elliott Allen of the Ontario Court of Justice.

APPEAL BOOK ENDORSEMENT

[1] The appellant pleaded guilty to attempt to break and enter, possession of property obtained by crime and possession of break-in instruments. He was sentenced to two years less a day imprisonment and 3 years' probation, concurrent on all three charges.

[2] The primary issue on this appeal is whether the trial judge erred in principle in not giving the appellant any credit for five months of pre-trial custody. The appellant acknowledges that a trial judge has discretion to decide what credit, if any, to give to time spent in pre-trial custody, but submits that existing jurisprudence is to the effect that trial judges should ordinarily give credit for pre-trial custody and should not deny credit without good reason. The appellant submits that the trial judge stated only “there will be no credit for dead time” and gave no reasons for denying credit for pre-trial custody.

[3] We agree that the trial judge’s reasons are deficient in this regard and that he therefore erred in principle. Nevertheless, having regard to the appellant’s lengthy criminal record for offences of a similar nature and the fact that this offence was committed a scant two months after his statutory release for a similar offence, we are of the opinion that the sentence was not demonstrably unfit.

[4] Accordingly while leave to appeal sentence is granted the appeal as to sentence is dismissed.