

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Leonardo, 2012 ONCA 788

DATE: 20121116

DOCKET: C55693

Doherty, LaForme JJ.A. and Glithero J. (*ad hoc*)

BETWEEN

Her Majesty the Queen

Respondent

and

Christopher Leonardo

Appellant

Candice Suter, for the appellant

Alison Wheeler, for the respondent

Heard: November 14, 2012

On appeal from the sentences imposed on June 7, 2012 by Justice Cavion of the Ontario Court of Justice.

APPEAL BOOK ENDORSEMENT

[1] The parties agree that the sentencing was not conducted in a manner required by the *Criminal Code*. One of the charges was an indictable offence. The trial judge could not proceed in the absence of the accused without making the appropriate inquiry to determine whether the preconditions to proceeding in the absence of the accused had been made out. The parties also agree that the sentences imposed are excessive and should be reviewed by this court.

[2] In our view, sentences of three months consecutive on both charges would have been appropriate. The appellant had served about 56 days in pretrial custody prior to sentencing. Consequently, sentences of two months consecutive on each charge should have been imposed. We would vary the sentence to two months consecutive on each charge. The Correctional authorities will determine the appellant's appropriate release date in light of the post-sentence events.

[3] We decline to impose a probation term. The appellant is already subject to a probation order on another charge.

[4] The appeal is allowed and the sentences varied.