

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Foster, 2014 ONCA 483

DATE: 20140620

DOCKET: C58499

Laskin, Cronk and Blair JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Jason Robert Foster

Applicant/Appellant

Robert Sheppard, for the applicant/appellant

Katie Doherty, for the respondent

Heard and released orally: June 18, 2014

On appeal from the sentence imposed on January 20, 2014 by Justice A.T. McKay of the Ontario Court of Justice.

ENDORSEMENT

[1] The appellant pleaded guilty to break, enter and theft of a dwelling house and possession of a weapon for a purpose dangerous to the public peace. He was sentenced to 12 months' imprisonment, less credit at the rate of 1:1 for 99 days of pre-sentence custody. His effective sentence, therefore, was 8 months and 21 days' imprisonment.

[2] The appellant appeals against sentence.

[3] The sole issue on appeal is whether the sentencing judge erred by declining to grant the appellant credit for his pre-sentence custody at the rate of 1.5:1. The appellant argues that the sentencing judge erred by concluding that there was insufficient information before him to justify enhanced credit for the appellant's pre-sentence custody.

[4] We reject this argument.

[5] The decision whether to grant pre-sentence custody credit and, if so, the amount of credit to be granted (up to a maximum credit calculated at the rate of 1.5:1), are matters squarely within the sentencing judge's discretion. As the Supreme Court recently confirmed in *R. v. Summers*, 2014 SCC 26, an offender who seeks enhanced credit for pre-sentence custody bears the onus of demonstrating that enhanced credit is warranted in all the circumstances.

[6] In this case, the sentencing judge concluded that the appellant failed to discharge this onus. Consequently, he denied the defence request for enhanced credit. This was his call to make. The sentencing judge's evaluation of the sufficiency of the record in respect of pre-sentence custody credit, and his assessment of an appropriate amount of credit, attract deference from this court. We note that, in this case, there was no information or evidence before the sentencing judge regarding the appellant's behaviour while in custody or the likelihood of his early release.

[7] In these circumstances, we see no basis for appellate intervention with the sentencing judge's ruling. Accordingly, the appeal is dismissed.

"John Laskin J.A."

"E.A. Cronk J.A."

"R.A. Blair J.A."