COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Acoby, 2015 ONCA 75
DATE: 20150203
DOCKET: C54146

Doherty, Rouleau and Watt JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Renee Acoby

Appellant

Breese Davies and Owen Goddard, for the appellant

Benita Wassenaar, for the respondent

Heard and released orally: January 9, 2015

On appeal from the sentence imposed by Justice G.E. Taylor of the Superior Court of Justice on March 16, 2011.

ENDORSEMENT

[1] Despite Ms. Davies' able argument, we are satisfied that the appeal must be dismissed. It is common ground that the appellant met the criteria for a finding that she was a dangerous offender. It is also common ground that, under

the legislation as it then stood, the trial judge had a discretion to decline to declare the appellant a dangerous offender even though she met the criteria in the legislation. The judge appreciated that he had that discretion. His exercise of that discretion is entitled to deference in this court.

[2] In the course of his review of the evidence, the trial judge made several significant findings, including this one:

> There is no evidence before me that Renee Acoby's violent behaviour can be controlled in the community. The evidence before me is that, even when subject to the Management Protocol which is the highest level of supervision available within Corrections Canada, Renee Acoby's behaviour cannot be controlled.

[3] The trial judge then turned to whether he should exercise his discretion in favour of finding the appellant a dangerous offender having determined that she met the criteria. In doing so, he considered the appellant's aboriginal status, the *Gladue* Report and the relevant principles of sentencing. He concluded:

> However, I am also aware that she has not benefitted from treatment and continues to react negatively to the restrictions to which she has been subjected. It would be naïve to think she will miraculously become amenable to supervision in the community upon her release from custody.
>
> I have no hesitation in concluding that Renee Acoby is one of the small group of offenders whose personal characteristics are such that the goal of protection of the public can only be achieved through a period of indeterminate detention.

[4] In this court, counsel for the appellant submitted that the public could be adequately protected by a determinate sentence made consecutive to the lengthy *remanet* being served by the appellant. Counsel argued that if the appellant reoffended during that lengthy period of incarceration, she could be sentenced accordingly and not released back into the public. However, if she did not reoffend during that lengthy period of determinate custody, there would be no basis to conclude that her continued detention was necessary in the public interest.

[5] The trial judge found that there was no prospect that the appellant would be amenable to supervision in the community. That finding was open to him on this record. Consequently, we must defer to that finding. On that finding, the trial judge's determination that the appellant should be declared a dangerous offender was a reasonable determination.

[6] We would dismiss the appeal.

"Doherty J.A."
"Paul Rouleau J.A."
"David Watt J.A."