

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Pelley, 2015 ONCA 267

DATE: 20150416

DOCKET: C59403

Simmons, Tulloch and Huscroft JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Curtis Pelley

Appellant

Krystal Manitus, for the appellant

J. Sandy Tse, for the respondent

Heard and released orally: April 7, 2015

On appeal from the sentence imposed on October 21, 2013 by Justice John R. McIsaac of the Superior Court of Justice.

ENDORSEMENT

[1] The appellant seeks leave to appeal a total sentence of three years' imprisonment imposed in relation to two counts of assault, two counts of mischief and two counts of breach of probation that were committed as part of one set of circumstances.

[2] We agree that the appellant's lengthy criminal record, the domestic context of these offences and the fact that the appellant was on probation for offences in relation to his domestic partner, who was one of the complainants, are factors that required a stiff sentence. However, the sentence proposed by defence counsel at trial, two years plus one day imprisonment, was a stiff sentence.

[3] In our view, the sentencing judge erred by failing to refer to the mitigating factors that were present and factor them into the sentence he imposed. In particular, the appellant pleaded guilty; he was taking steps towards rehabilitation while incarcerated; and he expressed some insight into his problems in his comments to the court.

[4] In the circumstances, the sentencing judge's failure to refer to these mitigating factors and his failure to articulate why a three year sentence was justified in the face of them was an error in principle.

[5] Leave to appeal sentence is granted, the sentence of imprisonment imposed is set aside and a two year sentence of imprisonment is substituted. All other terms and conditions of the original sentence remain the same, including the term that the sentences be served consecutive to any other sentence already being served. We allocate the substituted sentence of imprisonment to specific offences as follows:

- i) the assault on Ms. Byford: one year imprisonment;

- ii) the assault on Mr. Santaw: six months' imprisonment consecutive;
- iii) the two mischief counts: six months' imprisonment on each count concurrent to each other and concurrent to the other sentences; and
- iv) the two breach of probation counts: six months' imprisonment on each count, concurrent to each other but consecutive to the other counts.

"Janet Simmons J.A."

"M. Tulloch J.A."

"Grant Huscroft J.A."