

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Bedzra, 2015 ONCA 254

DATE: 20150414

DOCKET: C58195

LaForme, Watt and Epstein JJ.A.

BETWEEN

Her Majesty the Queen

Appellant

and

Evans Bedzra

Respondent

Susan Magotiaux, for the appellant

John Hale, for the respondent

Heard: March 27, 2015

On appeal from the sentence imposed by Justice Robert N. Fournier of the Ontario Court of Justice, dated December 20, 2013.

ENDORSEMENT

[1] The respondent was convicted of thirty-six offences in relation to two domestic partners. His convictions included numerous assault offences, some of which were with a weapon. One conviction was for assault causing bodily harm. He was also convicted of several counts of criminal harassment, breach of probation, and mischief. We note, in particular that the respondent assaulted his

victims while they were pregnant with his child – he punched one in the stomach and threw a plate at the other.

[2] The trial judge sentenced the respondent to a term of imprisonment of three years less one day. He credited the respondent with one year for his pre-trial custody leaving him to serve a sentence of two years less one day. The respondent had been held in custody for 133 days before being released on bail, 17 of which were in lockdown. On being granted bail, he was on strict house arrest for approximately one year.

[3] On this Crown appeal from sentence, the respondent properly conceded that the record does not support the trial judge's finding that the respondent's *Charter* rights were infringed when he was first denied bail, and that it was an error for the trial judge to grant credit of one year for 133 days of pre-sentence custody, even if 17 days of that had been spent in lockdown. Despite these errors, the respondent submits that the overall sentence is fit.

[4] On March 27, 2015 we granted the Crown leave to appeal and allowed the appeal. At that time, we set aside the respondent's sentence and substituted the following sentence. We concluded that a fit sentence in all the circumstances is a sentence of 4.5 years' imprisonment, less 199.5 days credit for pre-sentence custody. This leaves the respondent with a net sentence of 47.35 months'

imprisonment. In addition, we made an order under s. 743.21(1) of the *Criminal Code* during the custodial portion of the sentence.

[5] The sentence of imprisonment is to be apportioned as follows:

1. Count 4 – Assault: 9 months in prison
2. Count 31 – Assault: 9 months **consecutive**
3. Count 35 – Assault Bodily Harm: 9 months **consecutive**
4. Count 38 – Assault: 4.5 months **consecutive**
5. Count 41 – Assault: 3 months **consecutive**
6. Count 1 – Assault with a Weapon: 1.5 months **consecutive**
7. Count 8 – Criminal Harassment: 4.5 months **consecutive**
8. Count 29 – Criminal Harassment: 9 months **consecutive**
9. Count 44 – Criminal Harassment: 4.5 months **consecutive**
10. Count 2 – Assault with a Weapon: 0.75 months concurrent
11. Count 3 – Assault with a Weapon: 0.75 months concurrent
12. Count 17 – Criminal Harassment: 9 months concurrent
13. Count 39 – Criminal Harassment: 6 months concurrent
14. Count 42 – Criminal Harassment: 9 months concurrent

15. Count 7 – Assault: 0.75 months concurrent
16. Count 10 – Assault: 0.75 months concurrent
17. Count 12 – Assault: 4.5 months concurrent
18. Count 15 – Assault with a Weapon: 1.5 months concurrent
19. Count 18 – Mischief: 1.5 days concurrent
20. Count 21 – Assault: 0.75 months concurrent
21. Count 24 – Assault: 2.25 months concurrent
22. Count 26 – Assault with a Weapon: 0.75 months concurrent
23. Count 28 – Assault: 4.5 months concurrent
24. Counts 6, 9, 11, 19, 23, 25, 27, 30, 32, 36, 40, 43, 45 – Breach of Probation: 0.75 months each concurrent

[6] We advised that reasons for our decision would follow; they are set out below.

[7] The offences committed by the respondent were very serious. They were carried out over a lengthy period of time. They included 16 counts of assault consisting of hitting, kicking, slapping and throwing things at two of his domestic partners. He assaulted them when they were pregnant and when he felt they did not give him enough attention, or put others' needs over his.

[8] The respondent belittled his partners. When they attempted to leave or express resistance or discontent, he threatened them in words and conduct. Almost all of the offences were committed while the respondent was on probation

for previous violence against one of the same victims. His conduct demonstrated a blatant and disturbing disregard for the court's supervision order.

[9] Aside from his relatively youthful age, little mitigated in favour of the respondent. His expression of remorse was viewed by the trial judge with skepticism. He has a habit of shifting blame to his victims and has no record of rehabilitative success.

[10] The respondent has a criminal record which, although not extensive, contained a prior offence of violence against one of the same victims. We do note, as did the trial judge, that the respondent was not sentenced to any terms of imprisonment for his prior convictions.

[11] Previous efforts to deal with the respondent's domestic violence issues reveal little or no impact. His probation officer reports that the respondent denies any abusive conduct and believes the efforts are not helpful or relevant to him. The trial judge found that his prospects for rehabilitation did "not appear to be very promising".

[12] The respondent, a father, has rarely had work and has made little effort to better himself or contribute to the financial and practical responsibilities of a household. According to the trial judge, his preference was to "live off the avails of the complainants."

[13] The victim impact statements in this case illustrate how his domestic partners viewed themselves as pathetic for staying with an abuser, how they lost their self-worth; and how they isolated themselves from others. The effects the victims suffered as a result of the respondent's domestic abuse are ongoing. This case acutely reflects the comments from this court in *R. v. Bates* (2000), 146 C.C.C. (3d) 321 (Ont. C.A.), at para. 30:

Crimes involving abuse in domestic relationships are particularly heinous because they are not isolated events in the life of the victim. Rather, the victim is often subjected not only to continuing abuse, both physical and emotional, but also experiences perpetual fear of the offender.

[14] This is a case where the principles of general deterrence, specific deterrence and denunciation, together with concern for the safety and security of the victims, predominate in determining a fit and proper sentence. The constellation of factors relating to the offences and the offender warranted a sentence in the range of 4.5 years less appropriate credit for pre-sentence custody. The sentence of three years less a day, as imposed by the trial judge, was manifestly unfit.

[15] For these reasons, leave to appeal sentence was granted, the appeal allowed, and the sentence varied in the manner we have explained.

"H.S. LaForme J.A."
"David Watt J.A."
"Gloria Epstein J.A. »