COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Hart, 2015 ONCA 480
DATE: 20150626
DOCKET: C58942

MacPherson, Simmons, and LaForme JJ.A.

BETWEEN

Her Majesty the Queen

Appellant

and

Matthew Everett William Hart

Respondent

Alison Wheeler, for the appellant

Michael Lacy and Anida Chiodo, for the respondent

Heard: June 23, 2015

On appeal from the sentence imposed on May 28, 2014 by Justice Nathalie Gregson of the Ontario Court of Justice.

ENDORSEMENT

[1] The respondent pleaded guilty to intentionally or recklessly causing damage by fire to a dwelling house. He acknowledged setting fire to a carport, which ended up setting fire to the attached home where five people resided. No one was injured, and as the trial judge expressed it at para. 50 of her reasons:

“Fortunately the consequences were not more serious”. The appellant said he did not intend to cause a big fire – but clearly his actions were reckless – and that his acts stemmed from a drug debt he owed to one of the residents. He was 20 years old at the time of the offence and has a youth record and a history of mental health issues.

[2] The Crown proposed a sentence of 9 – 12 months in custody and three years’ probation. The trial judge suspended the passing of sentence and imposed a three-year period of probation, along with various ancillary orders.

[3] Among several other terms, the probation order imposed by the trial judge requires that the respondent attend any counseling deemed necessary by his probation officer, including substance use and mental health assessments; attend to meet regularly with his medical doctor, including his psychiatrist, and comply with any treatment or counselling as recommended by them to deal with his mental health issues; and attend and meet regularly with a mental health worker at the Canadian Mental Health Association for counselling.

[4] The Crown appeals the sentence imposed and submits that the trial judge overemphasized the issue of mental illness and prospects for rehabilitation in deciding on a non-custodial sentence. While the Crown accepts that in exceptional circumstances a suspended sentence may be appropriate, it says that this is not such a case.

[5] We disagree. In our view the trial judge properly considered the issues of mental health and rehabilitation together with several other mitigating factors and arrived at a fit sentence.

[6] In *R. v. Prioriello*, 2012 ONCA 63 at paras. 11 – 12, this court suggested that a causal link was required between mental illness and the criminal offence before a mental illness could be considered as a mitigating factor in sentencing. Here, the inference of a mental health issue was available to the trial judge based on the materials before her, including the pre-sentence report. She was able, in our view, to properly infer that mental health played a causal role in the commission of the offence.

[7] It is clear from the record that the respondent had a history of mental health issues. The pre-sentence report evaluates the respondent and describes his circumstances as follows:

> What has brought this young man before the Courts, as a youth and now as an adult, are his identified mental health issues: Tourettes Syndrome, Attention Deficit Hyperactivity Disorder, Conduct Disorder and Obsessive Compulsive Disorder and his resulting behavior.
>
> The factors that place the offender before the court and at greatest risk of recidivism are his mental health issues, peer group choices and substance abuse.

[8] The record also supports the trial judge's conclusion at para. 50 of her reasons, namely: "To now impose a custodial sentence would likely destroy any

progress that has been made by Mr. Hart with respect to his mental health and in my view serve no genuine societal interest".

[9] The trial judge, at para. 25 of her reasons, set out the many aggravating and mitigating factors — one of which was mental health issues — that she considered and weighed in arriving at the sentence she imposed. We see no error in her thorough analysis.

[10] Finally, when the issue of mental illness is taken into consideration along with the other mitigating factors — a guilty plea, the youth of the offender, the fact that he had no adult record, his show of remorse, that he had no further criminal charges since 2011, and that he cooperated with the police — the sentence is not manifestly unfit.

[11] The trial judge's decision is entitled to deference from this court and the appeal is dismissed.

"J.C. MacPherson J.A."
"Janet Simmons J.A."
"H.S. LaForme J.A."