

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Stein, 2015 ONCA 720

DATE: 20151027

DOCKET: C60829

Watt, Hourigan and Huscroft JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Rene Stein

Appellant

Richard N. Stern, for the appellant

Vanita Goela, for the respondent

Heard and released orally: October 20, 2015

On appeal from the sentence imposed on May 1, 2015 by Justice Marquis S. Felix of the Ontario Court of Justice.

ENDORSEMENT

[1] On his plea of guilty to possession of powder cocaine for the purpose of trafficking, the appellant, a mature adult, was sentenced to a term of imprisonment of 12 months. He seeks a reduction in his sentence to a term of imprisonment that does not exceed six months less one day.

[2] At trial, counsel for the appellant (not Mr. Stern), initially sought a non-custodial sentence, a period of probation with terms akin to those commonly included in a conditional sentence order, a disposition that was not legally available.

[3] Trial counsel for the Crown initially sought a sentence of imprisonment in the range of 18 months to 2 years less one day. Later, Crown counsel changed her position to seek a custodial sentence of 12 to 18 months in a provincial reformatory.

[4] Our authority to vary a sentence imposed at trial is not without limit. Absent an error in principle, a failure to consider a relevant factor or overemphasis on an appropriate factor, our intervention is limited to instances in which the sentence imposed is demonstrably unfit.

[5] The appellant says that the trial judge made several errors that resulted in the imposition of an unfit sentence. Among others, he says the trial judge failed to give appropriate effect to the appellant's post-traumatic stress disorder and the immigration consequences he would suffer, if sentenced to a term of imprisonment of six months or more.

[6] He further submits that the trial judge misapprehended the applicable range of sentence, or at the very least, misapplied the range associated with

crack cocaine, to a case that involved powder cocaine. In addition, he says that the trial judge failed to consider alternatives to incarceration.

[7] We do not agree.

[8] The trial judge, in careful and considered reasons, took into account the appellant's post-traumatic stress disorder, as well as the collateral consequences of the sentence he was about to impose. His reasons reflect no error in the weight he assigned to those factors. The sentence he imposed was within the applicable sentencing range and reflects a proper blend of the governing sentencing objectives, principles and factors. We see no basis upon which to interfere.

[9] Leave to appeal sentence is granted, but the appeal from sentence is dismissed.

“David Watt J.A.”

“C.W. Hourigan J.A.”

“Grant Huscroft J.A.”