COURT OF APPEAL FOR ONTARIO

CITATION: R. v. A.E., 2016 ONCA 243
DATE: 20160404
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C58070

Feldman, MacPherson and Miller JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

A.E.[1]

Appellant

A.E., acting in person

Lisa Feinberg, *amicus curiae*

Joanne Stuart, for the respondent

Heard: September 9, 2015

On appeal from the judgment of Justice Eric N. Libman of the Ontario Court of Justice dated October 30, 2007 and the judgment of Justice Peter A. J. Harris of the Ontario Court of Justice dated February 10, 2011.

Feldman J.A.:

[1] Between 2005 and 2006, the appellant was convicted of four separate offences of driving a motor vehicle without insurance, contrary to the *Compulsory*

[1] Pursuant to the decision of Lauwers J.A. dated November 21, 2013, an order restricting publication in this proceeding is in place. Any information that could identify the appellant in this appeal shall not be published in any document or broadcast or transmitted in any way.

Automobile Insurance Act, R.S.O. 1990, c. C-25. He was sentenced to fines for each of these convictions.

[2] The appellant did not seek to appeal his sentences until late 2007, when he brought a motion before a judge of the Ontario Court of Justice to extend the time in which to appeal three of the convictions. The judge refused to grant the extension of time. The appellant brought a second motion to extend the time in which to appeal on February 10, 2011. That motion concerned all four of his convictions. The second judge found that he had no jurisdiction to address the extension of time on the first three convictions, as they had been addressed by the first motion judge. He granted the extension of time to appeal sentence on the fourth conviction together with an extension of the time to pay the fine.

[3] The appellant now appeals these two judgments to this court, having been granted an extension of time in which to appeal as well as leave to appeal sentence by Lauwers J.A.: 2013 ONCA 713, 118 O.R. (3d) 98. If successful, he asks for a suspension of his sentence or, in the alternative, that the fines be reduced. He also seeks to file fresh evidence on the appeal. Whether this court has jurisdiction to entertain an appeal from a refusal to extend the time to appeal the original sentences under s. 85 of the *Provincial Offences Act*, R.S.O. 1990, c. P-33 ("*POA*"), is the first issue.

[4] For the reasons that follow, I conclude that this court has jurisdiction to hear an appeal, with leave, from a refusal to extend the time to appeal under s. 85 of the *POA*. Leave having been granted on the basis of the fresh evidence of the appellant's mental illness and inability to pay the substantial total fines, I would reduce the fines owed by the appellant.

FACTS

[5] All four convictions are for driving without insurance contrary to s. 2(1)(a) of the *Compulsory Automobile Insurance Act*. The appellant's first offence occurred on April 18, 2005. The appellant was self-represented at his trial on October 13, 2005. He requested an adjournment on the basis that he was not prepared, that he was in school and had a test that day. The adjournment request was denied, and the appellant pleaded guilty to the charge.

[6] Though the minimum fine was $5,000, the court exercised its discretion under s. 59(2) of the *POA* to impose a fine below the minimum in exceptional circumstances. The court reduced the fine to $2,500 because it was the appellant's first offence and he had pleaded guilty. He was given six months to pay. Also the court declined to suspend his licence. The appellant submitted that the amount of the fine was too high because he was in school, was not working, and had loans to pay, but the court rejected his submission.

[7] The second offence occurred on June 30, 2005. There was a collision, resulting in a charge of following too closely as well as driving without insurance. At the trial on February 23, 2006, the appellant was again self-represented. He pleaded not guilty. The trial was adjourned following the appellant's testimony for him to bring any further proof of insurance. There was evidence that both at the scene and prior to trial, he gave the officer false insurance documents. On September 15, 2006, he returned with an agent and advised the court that he had no further proof of insurance. The matter was adjourned for judgment. He was convicted of both offences on December 8, 2006.

[8] He was represented by the agent at his sentencing hearing on February 16, 2007. The Justice of the Peace rejected the agent's submission that the court should exercise its discretion to impose a fine of $6000, below the minimum $10,000 required by s. 2(3) of the *Compulsory Automobile Insurance Act* for a second offence, and imposed the $10,000 minimum with 12 months to pay.

[9] The third offence occurred on September 15, 2005. The appellant's agent entered a guilty plea on his behalf on November 16, 2006. The evidence again was that the appellant presented the officer on the scene with a false insurance document. Based on a joint submission, the appellant was sentenced to a fine of $2,500 with 12 months to pay.

[10] The fourth offence occurred on March 17, 2006. On November 22, 2006, the appellant's agent again entered a guilty plea on his behalf. The judge accepted the joint submission of the prosecutor and the agent and sentenced the appellant to a fine of $2,000 with six months to pay.

[11] Following the fourth sentence, the appellant faced fines of $17,000 together with a 25% surcharge totalling in excess of $21,250.

[12] In August 2007, the appellant filed notices of appeal of all four sentences, and brought motions under s. 85 of the *POA* to extend time in which to appeal his sentences on three of the four convictions, citing his inability to pay the fines as his grounds for appeal. On October 30, 2007, those motions were heard by Libman J. at the Ontario Court of Justice. The motion judge denied the extension of time. He indicated that the appellant's delay in waiting to appeal his sentences persuaded him that the appellant was "treating the entire system as a joke."

[13] The appellant brought a second motion for an extension of time to file an appeal at the Ontario Court of Justice, this time for all four sentences. At the hearing in February 2011, Harris J. explained to the appellant that for the three matters where the extension had already been denied, he would have to apply for leave to appeal to this court. On the fourth matter, the judge granted the extension of time to appeal sentence, refused to reduce the $2000 fine, but granted the appellant a further nine months in which to pay that fine.

[14] In November 2012, the appellant again moved, this time before Boivin J., to extend time to appeal the first three sentences, seeking a reduction in the fines and informing the court that he had been under stress and had had a mental breakdown. Boivin J. held that he had no jurisdiction, as the motions had already been decided.

[15] Finally, in November 2013, the appellant filed a notice of appeal in this court, seeking special leave to appeal the denials of an extension of time to appeal the sentences and in the case of the fourth conviction, to appeal the sentence. Lauwers J.A. granted an extension of time in which to appeal and also granted leave to appeal. He explained:

> Significant minimum fines for the offence of operating a motor vehicle without insurance may well have a good public policy justification, particularly in acting as a general deterrent. It is nonetheless, in my view, in the public interest to determine whether in the particular circumstances of any individual defendant or appellant, some accommodation should be made for individuals with significant personal disabilities. Although it may well have been within the power of the provincial offences appeal court to consider this issue, there was never an opportunity for that court to consider that issue, because of the manner in which the appeal proceedings unfolded, and because the applicant evidently was unable to advance the issue.

[16] Lauwers J.A. recognized that there was an outstanding issue regarding the jurisdiction of this court to entertain an appeal from a refusal to grant an

extension of time under s. 85 of the *POA* to appeal a Part III offence, and expressly left that issue to be decided by the panel hearing the appeal.

Issues

[17] The appellant appeals from the 2007 judgment of Libman J. refusing to grant an extension of time to appeal the first three sentences. He also appeals from the 2011 judgment of Harris J., which granted the extension of time to appeal the fourth sentence and extended the time to pay the $2000 fine, but refused to reduce that fine.

[18] The following are the issues to be addressed:

> 1. Does this court have jurisdiction to hear an appeal from the 2007 decision under s. 85 of the *POA*, denying an extension of time to appeal sentence in a proceeding commenced under Part III of the *POA*?
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> 2. If so, did the motion judge err when he failed to grant the extension of time to appeal?
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> 3. Should this court admit the fresh evidence relating to the appellant's mental illness and inability to pay the fines, and, in light of that evidence, reduce the fines owed by the appellant?

[19] I will address each issue in turn.

Jurisdiction

[20] The issue of whether an appeal lies to this court, with leave, from the dismissal of a motion to extend the time to appeal under s. 85(1) of the *POA*, which does not include a right of appeal, has been the subject of conflicting

decisions of single judges of this court sitting on motions, but has not been considered by a panel of the court.[2] As this court's jurisdiction over *POA* matters is statutory, its jurisdiction must be found in the *POA* and the proper interpretation of the governing provisions.

[21] The governing sections of the *POA* are s. 85(1),(2), s.116(1),(2) and s. 131(1),(2), which provide:

> 85. (1) Subject to this section, the court may extend any time fixed by this Act, by the regulations made under this Act or the rules of court for doing any thing other than commencing or recommencing a proceeding, whether or not the time has expired.
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> (2) No more than one application for an extension of the time for filing of an appeal may be made in respect of a conviction.
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> …
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> 116. (1) Where a proceeding is commenced by information under Part III, the defendant or the prosecutor or the Attorney General by way of intervention may appeal from,
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> (a) a conviction;
>
> (b) a dismissal;
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> (c) a finding as to ability, because of mental disorder, to conduct a defence;
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> (d) a sentence; or
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> (e) any other order as to costs.
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> (2) An appeal under subsection (1) shall be,

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[2] The jurisprudence I refer to below includes only those cases that have considered this issue in some depth. I have not referred to appeals or applications disposed of on consent or where one party did not make any submissions on jurisdiction.

> (a) where the appeal is from the decision of a justice of the peace, to the Ontario Court of Justice presided over by a provincial judge; or
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> (b) where the appeal is from the decision of a provincial judge, to the Superior Court of Justice.
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> …
>
> 131. (1) A defendant or the prosecutor or the Attorney General by way of intervention may appeal from the judgment of the court to the Court of Appeal, with leave of a judge of the Court of Appeal on special grounds, upon any question of law alone or as to sentence.
>
> (2) No leave to appeal shall be granted under subsection (1) unless the judge of the Court of Appeal considers that in the particular circumstances of the case it is essential in the public interest or for the due administration of justice that leave be granted.

[22] The jurisprudence began with the decision of G. Blair J.A. in *R. v. Valente* (1982), 40 O.R. (2d) 535, which dealt with the predecessor to s. 131 of the Act (then s. 114). At the first level of appeal from a conviction for careless driving obtained through Part III proceedings, the Provincial Court judge declined to decide a *Charter* issue regarding the jurisdictional competence of provincially appointed judges. The Crown sought leave to appeal to the Court of Appeal, and the issue was whether the decision declining to decide the appeal was a "judgment" within the meaning of s. 114.

[23] G. Blair J.A. held that the term "judgment" in s. 114 should be given a broad meaning consistent with the intent of the *POA* to avoid undue technicality. He also analogized to the similar interpretation given to the term "decision" in then s. 771 of the Criminal Code, dealing with summary conviction appeals.

[24] The result and reasoning in *Valente* were followed and applied by Gillese J.A. in *R. v. Belanger*, [2006] O.J. No. 3453 (C.A.), where, as in this case, the underlying decision was the denial of an extension of time to appeal, in that case, convictions for driving with a suspended licence. In granting leave to appeal under s. 131, Gillese J.A. referred to *R. v. Gonsalves*, [1995] O.J. No. 4046 (C.A.), where, in a brief endorsement, the court expressed doubt as to its jurisdiction to hear an appeal with leave from the denial of an extension of time to appeal a summary conviction.[3] This contradicted part of the reasoning in *Valente*. Nevertheless, Gillese J.A. agreed with G. Blair J.A. that the word "judgment" in s. 131 of the *POA* should be broadly interpreted, noting that the British Columbia Court of Appeal had made a similar decision in *R. v. Burgar* (2003), 176 C.C.C. (3d) 253, interpreting British Columbia's provincial offences legislation.

[25] Two decisions of single judges of this court take the contrary view. In *R. v. Melaku* (2011), 106 O.R. (3d) 481, the applicant had been convicted of a number of *Highway Traffic Act* offences. As the time had passed to launch an appeal, the applicant had to obtain an extension of time to appeal under s. 85. His application was denied. It was from that denial that he sought leave to appeal to this court.

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[3] This issue has not been reconsidered by this court since *Gonsalves*. But see *R. v. Burgar* (2003), 176 C.C.C. (3d) 253 (B.C. C.A.); *R. v. Belaroui* (2004), 186 C.C.C. (3d) 386 (Que. C.A.); and *R. v. West*, 2007 NSCA 5, 250 N.S.R. (2d) 106, as well as *R. v. Menear* (2002), 162 C.C.C. (3d) 233 (Ont. C.A.), where this court granted leave to appeal without adverting to the issue of jurisdiction.

[26] The offences in *Melaku* were prosecuted as Part I offences under the *POA.* Charges brought under Parts I and II are commenced by a certificate and are generally for less serious offences, while prosecutions under Part III are commenced by an information and are more serious, with higher potential penalties.

[27] The appeal provisions that apply are also different. For proceedings under Parts I and II, the first level of appeal is provided in s. 135(1), and a further appeal to the Court of Appeal with leave is provided in s. 139(1). Those sections read:

> 135. (1) A defendant or the prosecutor or the Attorney General by way of intervention is entitled to appeal an acquittal, conviction or sentence in a proceeding commenced by certificate under Part I or II and the appeal shall be to the Ontario Court of Justice presided over by a provincial judge.
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> …
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> 139. (1) An appeal lies from the judgment of the Ontario Court of Justice in an appeal under section 135 to the Court of Appeal, with leave of a judge of the Court of Appeal, on special grounds, upon any question of law alone.

[28] Epstein J.A. observed that an appeal to this court under s. 139(1) only lies from a judgment made by an appeal court under s. 135 on appeal from a conviction, an acquittal or from sentence. As the denial of an extension of time to appeal is not a judgment in an appeal under s. 135, no appeal lies to this court. Epstein J.A. also considered whether the ‘dead-end’ created by s. 85 for Part I

offences was consistent with the overall scheme of the *POA* and the intent of the legislature. She concluded that for the less serious Part I offences, a more limited number of appeal opportunities and routes was fair and consistent with the scheme of the legislation.

[29] In *R. v. Borges*, 2011 ONCA 621, 107 O.R. (3d) 377, the Crown asked the chambers judge in this court to apply the principle of a limited right of appeal for Parts I and II proceedings from *Melaku* to a decision denying an extension of time to appeal in a Part III proceeding.

[30] Juriansz J.A. rejected the analysis from *Valente* and *Belanger* that turned on the scope of the term "judgment" in s. 131. He found that the *POA* creates a two-tier route for appeals to this court and reasoned that because an appeal to the Court of Appeal has to be a second level of appeal, therefore the appeal provided by s. 131 with leave, must be only from first-level appeal decisions under s. 116. Because a decision granting or denying an extension of time under s. 85 is not a decision under s. 116, it could not be appealed under s. 131.

[31] I do not agree that s. 131 only allows appeals to this court as a second level of appeal. Rather, it allows only appeals from judgments of a "court" designated to hear appeals at the first level. This is confirmed by the definition of the term "court" in Part VII of the *POA* – which contains the appeal provisions, including s. 131 – as "the court to which an appeal is or may be taken under this

part” (s. 109). However, those judgments do not have to be judgments made under s. 116.

[32] There is no limiting language in s. 131, as there is in s. 139, which is the comparable provision for appeals to this court in Part I and Part II proceedings. Section 139 provides an appeal only from a “judgment … in an appeal under s. 135”. In s. 131, appeals are from the judgment “of the court”, but there is no specific reference to a judgment of the court that was made under s. 116. Had the legislature intended to limit the jurisdiction of this court to hear appeals of Part III proceedings in the same way as Part I and Part II proceedings, it could have structured the appeal provision in a manner similar to the one governing those appeals.

[33] A motion for an extension of time to appeal sentence is made to the first level of appeal court, as defined in s. 109, and may be brought together with the notice of appeal appealing one of the five dispositions that are listed in s. 116. The order dismissing the motion to extend time is a judgment of that court, although it is not the appeal judgment itself.

[34] I agree with Gillese J.A. that the term “judgment” is essential to the proper interpretation of the section, and there is “no reason to restrict the meaning of the word ‘judgment’ so as to exclude certain decisions” (*Belanger*, at para. 15). By contrast with Part I and II proceedings, there is good reason to allow a slightly

less restricted opportunity to appeal in Part III proceedings, which generally involve more serious offences and which may carry more significant penalties.

[35] The effect of this analysis is that this court does have jurisdiction to grant leave to appeal under s. 131 of the *POA* from a judgment that denies an extension of time to appeal under s. 116. However, because of the strict requirements of s. 131(2) governing the granting of leave, coupled with the deference owed to discretionary decisions such as denying an extension of time to appeal, leave to appeal to this court from such decisions will necessarily be rarely granted.

Did the Motion Judge Err by Denying the Extension of time to Appeal?

[36] As leave to appeal was granted by Lauwers J.A., subject to this court's finding on the issue of jurisdiction, I now turn to the merits of the appeal. The test for granting an extension of time to appeal is set out in this court's decision in *R. v. Menear* (2002), 162 C.C.C. (3d) 233 (Ont. C.A.), at paras. 20-21:

> There is no absolute rule to be applied in the exercise of the discretion whether or not to grant an extension of time. The court will, however, usually consider the following three factors:
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> (i) whether the applicant has shown a *bona fide* intention to appeal within the appeal period;
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> (ii) whether the applicant has accounted for or explained the delay; and
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> (iii) whether there is merit to the proposed appeal.

> Depending on the case, the court may take into consideration other factors such as whether the consequences of the conviction are out of all proportion to the penalty imposed, whether the Crown will be prejudiced and whether the applicant has taken the benefit of the judgment. In the end, the main consideration is whether the applicant has demonstrated that justice requires that the extension of time be granted.

[37] The position of *amicus* is that on the motion to extend time for three of the sentences, the appellant was not given a full hearing by the motion judge, who did not apply the test in *Menear* before denying leave to appeal.

[38] The appellant told the judge that he was a student, and that he was not able to pay the fines imposed. The judge observed that the appellant waited until August after being in court in February before he attempted to challenge the sentences imposed, and concluded that the appellant was "treating the entire system as a joke." He also referred to the fact that the appellant had three convictions for driving without insurance, and that he could ask a justice to extend the time to pay.

[39] I agree that the hearing before the motion judge can be viewed as somewhat perfunctory. However, in the context of a busy Ontario Court of Justice docket, I would not view the proceeding as failing to give the appellant the opportunity to be heard, nor did the motion judge fail to apply the correct test. His conclusion indicates that he was not satisfied that the appellant formed the intention to appeal within the 30 day appeal period, nor that the justice of the

case required an extension of time. In my view, the motion judge did not err in his discretionary decision to deny an extension of time to appeal.

The Fresh Evidence

[40] Some fresh evidence that the appellant suffered from a mental illness was placed before Lauwers J.A. on the application for leave to appeal to this court. Upon granting leave to appeal, he suggested that *amicus* assist the appellant to obtain further evidence regarding the appellant's mental illness and his financial circumstances. In response, the appellant attended an assessment by Dr. Gojer, an expert psychiatrist, who filed a report. The appellant also filed a further affidavit.

[41] Although the Crown does not object to the admissibility of the fresh evidence, it takes the position that it has limited relevance.

[42] In his report, dated February 9, 2015, Dr. Gojer gave the opinion that the appellant suffers from paranoid schizophrenia and chronic major depression following on post-traumatic stress disorder as a result of his background in Nigeria, the loss of his parents there and his abuse on the voyage to Canada. He opined further that the appellant likely had these illnesses at the time of the offences but he could not give an opinion on whether the appellant was NCR at the time.

[43] He commented as follows with respect to the offences:

> The account that Mr. [E] gives with respect to the 4 insurance related offences do[es] not make sense. It appears that he either used very poor judgment secondary to his illness or was simply making a rational choice not to pay for his insurance… Given his history, it is more likely that his mental illness was responsible for the very poor judgment at the time of all four offences…
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> My concern is that he has a history of not handling his finances well and owes money on his credit cards and an OSAP loan. He has struggled to also complete his real estate course and only recently completed all the requirements, taking almost 7 years to do it. It is likely that his mental illnesses precluded him from handling his finances.

[44] Apparently the appellant had been under the care of a treating psychiatrist for several years at the time of the assessment and Dr. Gojer stated that his illness had stabilized, although he was not fully well. He doubted that given the appellant's minimal earnings as a real estate agent ($12,673.91 net income in 2013), he would be able to pay his fines within a reasonable amount of time.

[45] In his affidavit also sworn in February 2015, the appellant gave details of his financial circumstances with his current debts. On November 12, 2014, his licence was suspended for non-payment of his fines. He states that without his licence it is difficult to operate as a real estate agent because the time and cost of showing properties is increased. He states further that he is not able to pay the fines on his current income. He expresses remorse for the offences and states that he has come a long way since they were committed and that he will continue

to make efforts to seek treatment for his mental conditions. He asks the court to assist with his rehabilitation by reducing the fines he owes.

[46] To be admissible on appeal, fresh evidence must meet the criteria in *Palmer v. The Queen*, [1980] 1 S.C.R. 759, the last of which is that the evidence could reasonably be expected to have affected the outcome of the decision under appeal.

[47] I am prepared to admit the fresh evidence on the basis that it does meet the *Palmer* criteria in respect of the decision to deny an extension of time to appeal. I am satisfied that had the motion judge had this evidence, he may well have taken a different view of the reason for the appellant's delay in appealing and of the circumstances of his convictions and sentences generally, and may thus have granted the extension of time to appeal.

[48] I conclude that although the motion judge made no error on the record before him, had he had the fresh evidence, he would have had the basis to grant the extension of time to appeal. On that basis, this court may consider the merits of the appeals against sentence on those three charges as well as on the fourth charge, where the extension of time to appeal sentence was granted by the appeal judge but there was no reduction in the fine owed.

Sentence appeal

[49] Having concluded that this court may address the propriety of the sentences imposed in light of the fresh evidence, the court must decide how the evidence that the appellant has suffered and to some extent continues to suffer from mental illness should affect the amount of the fines imposed for driving without insurance.

[50] *Amicus* submits that while the fines imposed were within the appropriate range at the time, based on the fresh evidence regarding the appellant's mental illness, it would be contrary to the public interest and would result in extreme hardship if this court did not reduce or eliminate those fines. *Amicus* relies on two decisions of this court that involved jail sentences, where the fresh evidence of mental illness showed that the appellants' mental health had deteriorated or would deteriorate significantly in jail and that an appropriate sentence would be a conditional sentence (*R. v. Jacobson* (2006), 207 C.C.C. (3d) 270; *R. v. Tran*, 2008 ONCA 471).

[51] The Crown submits that to the extent that the appellant's mental illness affects his ability to pay the fines imposed, or to manage his finances, that issue is more properly raised in default proceedings under s. 69 of the *POA* where a judge may reduce or waive a fine. Although such proceedings may not currently be initiated by the defaulter – there has been a pending amendment since 2009

(s. 69(14.1)) – the Crown has undertaken to facilitate the commencement of such a proceeding if the appellant so requests.

[52] The Crown also points out that for three of his four convictions, the sentencing judges did exercise their discretion and imposed a reduced fine in recognition of the appellant's student status and therefore his reduced ability to pay. He only received the mandatory minimum of $10,000 for a second offence on the occasion where he was found guilty after a trial, and where he had caused an accident with damage to both cars. This was the occasion when the appellant tendered two false insurance slips to the officer, once at the scene and again before trial.

[53] In my view, there is merit to the position taken by the Crown in the context of sentencing for this particular offence. The purpose of the escalating fine structure for convictions for driving without insurance is obvious: to deter persons who have been given the privilege of driving a car from driving without compulsory liability insurance, the purpose of which is to protect other people who are personally injured or suffer damage to their property in an accident with an uninsured motorist. It is expected that if a person can qualify for a licence and own a car, that person is able to comply with the licensing and registration requirements of doing so.

[54] However, the sentencing judges were not made aware of the appellant's mental illness. I note that the judges who sentenced the appellant could have suspended his licence for up to one year as part of the sentence but did not do so: *Compulsory Automobile Insurance Act*, s. 2(3). It may be that had they felt constrained from imposing fines on the appellant because of his mental illness and its effect on his financial management capability, they may have suspended his licence instead of or in addition to a smaller fine.

[55] Relief from minimum fines under the *POA* is governed by s. 59(2), which provides, in part, that "where in the opinion of the court exceptional circumstances exist so that to impose the minimum fine would be unduly oppressive or otherwise not in the interests of justice, the court may impose a fine that is less than the minimum or suspend the sentence." Similar considerations apply in the circumstances of this appeal.

[56] This appeal comes down to whether it is in the interests of justice to relieve the appellant of his fines and whether they are unduly oppressive. A somewhat confusing picture is presented by the fresh evidence. The appellant states in his affidavit that he wants his licence back so that he can drive for his work as a real estate agent. To do so, he will need the financial capability to access a car and insurance. Dr. Gojer opines that "[the appellant's] symptoms continue to interfere with his thinking and are likely to impact on any future ability to generate a sustainable income."

[57] In my view, it is not in the interests of justice for the appellant to be fully relieved of these fines, so that he can immediately drive again. The specific deterrence purpose of the fines remains essential. However, given the appellant's mental illness and its detrimental effect on his ability to earn money to pay the fines, it is also in the interests of justice that the total amount of the fines be reduced, to give the appellant the hope and opportunity to pay the reduced fines and be able to get on with his life.

[58] The appellant has made attempts to pay the fines, including payments totalling $480 in August and November 2014. I would reduce the balance owing to $5000.

Disposition

[59] In the result, I would allow the appeal against sentence, and reduce the total fines to $5000 with two years to pay.

Released: "KNF" April 4, 2016

"K. Feldman J.A."
"I agree. J.C. MacPherson J.A."
"I agree. B.W. Miller J.A.