COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Hejazi, 2018 ONCA 435
DATE: 20180508
DOCKET: C62094

LaForme, Watt and Nordheimer JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Alaa Ali Hejazi

Appellant

Michael Dineen, for the appellant

Candice Suter, for the respondent

Heard: May 4, 2018

On appeal from the sentence imposed on October 9, 2015 by Justice Todd Ducharme of the Superior Court of Justice.

REASONS FOR DECISION

[1] The appellant was convicted of a planned home invasion robbery and unplanned sexual assault against two women. Specifically, he was convicted of the offences of breaking and entering with intent, sexual assault with a weapon, robbery, unlawful confinement, and possession of the proceeds of crime. The Crown sought a sentence of 12 to 15 years imprisonment. Defence counsel sought

a sentence of 5 to 7 years. The trial judge imposed a sentence of 9 years. The appellant appeals his sentence. At the conclusion of the hearing, we dismissed the appeal with reasons to follow. We now provide those reasons.

[2] The appellant fairly concedes that the sentence imposed is within the range for this home invasion robbery, and does not argue that it is demonstrably unfit. What he does contend is that, if we accept that the trial judge erred, in either of two respects regarding his treatment of aggravating factors, a fresh look at these offences and this offender will reveal that a 9 year sentence is not the shortest one proportionate to the offence. Rather, he submits that a more proportionate sentence is 7 years, as it was in *R. v. Brown*, 2015 ONCA 361.

[3] We do not accept the appellant's submission that the trial judge erred in a manner that had an impact on the sentence. Nor do we accept there is a reason to interfere with the discretion of the trial judge.

[4] The trial judge reviewed the principles of sentencing in s. 718 of the *Criminal Code*, and the guidance from this court in *R. v. Priest,* (1996), 110 CCC (3d) 289 in light of the appellant being a young, first offender. He carefully examined all of the circumstances of this frightful home invasion, the nature and severity of the sexual assaults committed with a weapon in the course of it, and the particulars of the appellant.

[5] In his analysis, the trial judge specifically disagreed with the Crown’s submission that the appropriate sentencing range for this offence and this offender was in the 12 to 15 year range. Instead, he correctly observed this court’s conclusion that the sentencing range for home invasions is between 4-13 years’ incarceration, with the high end of the range being appropriate for offences involving violence or sexual assaults: see *R. v. Wright*, (2006), 83 O.R. (3d) 427, at para. 23.

[6] The trial judge went on to find that the appellant is not a psychopath and his risk of re-offending is low to moderate. He determined that 9 years’ imprisonment was a fit sentence. In doing so, his reference to following the *Brown* decision does not mean he erred by not concluding that the same sentence should apply. We would also note that the decision in this case predated the Supreme Court of Canada’s decision in *R. v. Lacasse*, [2015] 3 SCR 1089, which now governs this court’s analysis in sentencing cases.

[7] The sentence ultimately arrived at and imposed by the trial judge, in all the circumstances, was fully reasoned, within the appropriate range, and within the proper exercise of his discretion. This court is required to take a highly deferential approach and only intervene if the sentence imposed by the trial judge is demonstrably unfit: *Lacasse*, at para. 51.

[8] The sentence in this case is not demonstrably unfit. Leave to appeal sentence is granted, but the appeal is dismissed.

"H.S. LaForme J.A."
"David Watt J.A."
"I.V.B. Nordheimer J.A."