

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Williams, 2018 ONCA 886

DATE: 20181105

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MacPherson, Miller and Paciocco JJ.A.

BETWEEN

Her Majesty the Queen

Applicant/Appellant

and

Patrick Williams

Respondent

Tanit Gilliam, for the appellant

Nicolas M. Rouleau and Daniel Ciarabellini, for the respondent

Heard and released orally: October 31, 2018

On appeal from the sentence imposed on October 6, 2017 by Justice G. Paul Renwick of the Ontario Court of Justice.

REASONS FOR DECISION

[1] Patrick Williams pled guilty to importing hashish contrary to s. 6(1) of the *Controlled Drugs and Substances Act*. The combined effect of s. 6(3)(a) and *Criminal Code* s. 742.1(c) made Mr. Williams ineligible for a conditional sentence – the sentence he was seeking. He brought a constitutional challenge to the two provisions and to their combined effect under ss. 7 and 12 of the *Charter*. The

sentencing judge found s. 3(a) to be of no force or effect because of overbreadth contrary to s. 7. He also concluded that by depriving Mr. Williams of a conditional sentence, the combined effect of the two provisions is also unconstitutionally overbroad. The s. 12 challenges were dismissed.

[2] With the sections set aside, Mr. Williams was sentenced to a conditional sentence of two years less a day and 18 months' probation. The Crown appeals Mr. Williams' sentence arguing that the sentencing judge erred in finding s. 3(a) and the combined effect of the two provisions unconstitutional. The Crown takes the position however that given Mr. Williams' change in personal circumstances, the fact that he has already served the bulk of his conditional sentence, and the amount of community service he has done, he should not be reincarcerated. Instead, the Crown asks us to allow the appeal and substitute a sentence of 18 months' imprisonment, but stay the sentence. In our view, this concession removes the need to consider the correctness of the trial judge's constitutional determinations and makes the need to hear the appeal from sentence moot.

[3] The appeal is allowed to the extent that the sentence imposed will be varied to a sentence of time served. The probation order imposed by the sentencing judge shall remain in effect. Nothing we say should be interpreted as endorsing the s. 7 decision of the sentencing judge.

"J.C. MacPherson J.A."
"B.W. Miller J.A."

“David M. Paciocco J.A.”