

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Jones, 2018 ONCA 1032

DATE: 20181213

DOCKET: C62506

Hoy A.C.J.O., Feldman and Benotto JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Sheldon Jones

Appellant

R. Craig Bottomley and Mayleah Quenneville, for the appellant

Jennifer Epstein, for the respondent

Heard and released orally: December 4, 2018

On appeal from the conviction entered on October 29, 2015 and the sentence imposed on October 29, 2015 by Justice Paul H. Reinhardt of the Ontario Court of Justice.

REASONS FOR DECISION

[1] The appellant, who was self-represented throughout the proceedings below, pled guilty to one count of fraud under \$5,000. Before he volunteered that he wished to plead guilty, he had spoken to two duty counsel and discussed his situation with his father.

[2] The appellant admitted that he had attended at the Ontario Ministry of Transportation and obtained a false driver's licence under the name Roy Page. That licence was presented to police after two separate car crashes, both of which led to "Roy Page" being charged with careless driving. While the appellant admitted that he had obtained the "Roy Page" driver's licence, he denied that he was the driver in the two car crashes.

[3] The appellant now appeals his conviction and seeks leave to appeal his sentence. He argues:

1. the trial judge erred by accepting his guilty plea, as it was not informed;
2. the trial judge erred in entering a conviction for fraud under \$5,000, as the facts admitted in the guilty plea proceedings did not establish any "risk of loss or deprivation", which is a necessary element of the offence;
3. the trial judge provided inadequate assistance to the appellant as a self-represented litigant, in relation to his decision to plead guilty;
4. the trial judge erred in imposing a suspended sentence and in not granting the appellant a conditional discharge; and
5. the trial judge's reasons on sentencing were insufficient.

[4] We reject these arguments.

[5] The trial judge ensured the plea was informed. The trial judge explained the plea process to the appellant; ensured the appellant understood he would be giving

up “a bundle of rights”; and ensured the appellant understood that the trial judge could disagree with the Crown’s and the appellant’s respective submissions on sentencing and impose his own sentence. The appellant indicated that he understood.

[6] Contrary to the appellant’s submission, the “risk of loss or deprivation” element of the offence of fraud under \$5,000 is made out in these circumstances. It is clear that there is a monetary cost to the Ministry in producing and issuing a driver’s licence.

[7] We are also satisfied that the trial judge provided reasonable assistance to the appellant. Once the appellant indicated that he wished to plead guilty, the trial judge explained the fraud charge in plain language, reminded the appellant that if he went to trial he would have the opportunity to speak to a lawyer and call a witness another day, and allowed the appellant’s father to ask questions on his behalf. Moreover, on appeal, the appellant does not indicate how the alleged lack of assistance rendered the proceedings unfair.

[8] Finally, viewed in the context of the sentencing submissions, it is clear that even though the trial judge accepted that the evidence led on sentencing did not establish that the appellant was the driver in the two car crashes, the fact that the fraudulently obtained licence was subsequently used in two instances requiring police involvement was a central factor in the trial judge’s decision not to grant a

conditional discharge. The appellant's last minute guilty plea, on the third scheduled trial date, and the impact that a criminal record would have on the appellant, did not outweigh this central factor.

[9] Given the importance of maintaining the integrity of the public licencing system, the trial judge's decision to impose a suspended sentence is entitled to deference. We are not persuaded that there is any basis to interfere.

[10] Accordingly, the appeal is dismissed and leave to appeal sentence is granted, but the appeal from sentence is dismissed.

"Alexandra Hoy A.C.J.O."

"K. Feldman J.A."

"M.L. Benotto J.A."