

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Stone, 2019 ONCA 62

DATE: 20190129

DOCKET: C65795

Simmons, Lauwers and Trotter JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

John Stone

Appellant

John Stone, in person

Lindsay Daviau, as duty counsel

Luke Schwalm, for the respondent

Heard and released orally: January 15, 2019

On appeal from the conviction entered and the sentence imposed on July 27, 2018,  
by Justice D. Gunsolus of the Superior Court of Ontario.

ORAL ENDORSEMENT

[1] The appellant was convicted of sexual assault and sentenced to 15 months' imprisonment, plus one year of probation. He appeals against conviction and sentence. With the assistance of duty counsel, the appellant argues that the trial judge erred in failing to take account of the appellant's problem with memory and other cognitive difficulties in assessing his credibility and, in fact, used these

difficulties against him. We do not accept this submission. The core of the appellant's defence was that he never had sex with the complainant and did not have the opportunity to have sexual relations with her in 2015. The trial judge gave ample reasons for rejecting the appellant's testimony in this regard that were unrelated to the appellant's cognitive difficulties. The trial judge identified aspects of the appellant's evidence that were patently untrue and also noted the presence of collusion between the appellant and his mother.

[2] While the trial judge was obviously aware of the appellant's cognitive difficulties, we are not persuaded that he used them to discount the appellant's credibility. The conviction appeal is dismissed. The appellant has not identified any error in principle in the sentence imposed and, in our view, it was entirely fit. Leave to appeal sentence is granted, but the sentence appeal is dismissed.

“Janet Simmons J.A.”

“P. Lauwers J.A.”

“G.T. Trotter J.A.”