

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Spagnola, 2020 ONCA 638

DATE: 20201009

DOCKET: C67767

Pardu, Paciocco and Harvison Young JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Frank Spagnola

Appellant

Brian Snell, duty counsel

Joseph Selvaratnam, for the respondent

Heard and released orally: October 7, 2020 by video conference

On appeal from the sentences imposed on November 20, 2019 by Justice Allan G. Letourneau of the Ontario Court of Justice.

REASONS FOR DECISION

[1] The appellant appeals from sentences imposed for possession of methamphetamine for the purpose of trafficking, and possession of small amounts of marijuana and cocaine. In addition to sentences totalling 32 months, a forfeiture order was made.

[2] The sentencing judge referred to the fact that the appellant had been offered an 18-month sentence in exchange for an early plea, but indicated that his guilty plea, approximately one year after he was arrested, did not qualify as an early plea. The sentencing judge gave no weight at all to the guilty plea. This was an error in principle which had an impact on sentence. The appellant planned on sharing the methamphetamine with friends and did not plan to sell it. The absence of a commercial motive was also a relevant mitigating factor to which no weight was given. The Crown agrees that the range of sentence for the possession for the purpose offence was from 24 to 36 months and that the sentence imposed here was somewhat excessive. The appellant is now off drugs and on a methadone program, a significant step for him.

[3] We agree and would reduce the sentence for possession for the purpose of trafficking to 28-months (count 1 on the indictment). The minimum sentence within the range is not appropriate, given the appellant's lengthy criminal record.

[4] The appellant was also sentenced to 60 days concurrent for possession of less than a gram of marijuana (count 4 on the indictment). Given the nature of the drug and the amount possessed, we reduce that sentence from 60 days to ten days concurrent.

[5] The appellant had \$320.00 in his possession upon arrest. He intended to use that money to pay his hydro bill, which he showed to the arresting officers. The

sentencing judge ordered forfeiture of these funds without making any finding that the money was drug related. The forfeiture order is set aside and the money is ordered returned to the appellant.

“G. Pardu J.A.”
“David M. Paciocco J.A.”
“A. Harvison Young J.A.”