

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Jean, 2022 ONCA 901

DATE: 20221228

DOCKET: C69970

Fairburn A.C.J.O., Harvison Young and Favreau JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Marc Jean

Appellant

Kenneth Jim, for the appellant

Caitlin Sharawy, for the respondent

Heard and released orally: December 21, 2022

On appeal from the convictions entered by Justice Charles H. Vaillancourt of the Ontario Court of Justice on December 14, 2017, and from the sentence imposed on March 21, 2018.

REASONS FOR DECISION

[1] The appellant entered a guilty plea to numerous offences on December 14, 2017. He received a global sentence of 12 months imprisonment in addition to credit for time served and time spent under strict house arrest.

[2] At the time of his plea and sentencing, the appellant was a permanent resident of Canada. The conviction and sentence have had significant immigration consequences for the appellant. He was found inadmissible to Canada, and removal proceedings have taken place. As a result of the length of his sentence, the appellant did not have a right of appeal from the removal order.

[3] The appellant argues that his guilty plea was uninformed because he was not aware of the immigration consequences arising from that plea. While there are some nuances in the fresh evidence placed before the court on that issue, at its core, the evidence supports the suggestion that the plea was uninformed. The respondent agrees. Indeed, the respondent concedes that, in light of the fresh evidence, the appeal should be allowed. We agree with this concession.

[4] Having considered the fresh evidence, we conclude that there is a reasonable possibility that, had the appellant understood the immigration consequences arising from his plea, he may well have insisted upon proceeding differently, either by way of a not guilty plea or through further resolution discussions.

[5] The fresh evidence is admitted, the conviction is set aside, and a new trial is ordered.

“Fairburn A.C.J.O.”
“A. Harvison Young J.A.”
“L. Favreau J.A.”