

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Hart, 2024 ONCA 488

DATE: 20240617

DOCKET: M55077 (C61906)

Monahan, Dawe and Madsen JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Melissa Hart

Applicant  
(Appellant)

Melissa Hart, self represented

Evan Akriotis, for the respondent

Heard and released orally: June 14, 2024

REASONS FOR DECISION

[1] On April 2, 2015, the applicant was found guilty in the Ontario Court of Justice of operating a motor vehicle with a blood alcohol concentration above the legal limit. Her appeal to the Superior Court of Justice (sitting as a Summary Conviction Appeal Court) against her conviction only was dismissed on March 7, 2016. An application for leave to appeal to this court was heard by a panel on October 4, 2016 and was dismissed, with a final order dismissing the leave to

appeal application entered and issued by this court on March 6, 2017. The appeal panel found that the grounds of appeal the applicant was advancing did not raise a question of law alone, as required by s. 839 of the *Criminal Code*, and were also not such as to meet the requirements set out in *R. v. R.R.*, 2008 ONCA 497, 96 O.R. (3d) 641. No appeal was taken from this court's order to the Supreme Court of Canada.

[2] The applicant seeks to reopen her application for leave to appeal to this court by raising a new argument that she did not raise in the Summary Conviction Appeal Court or before the panel that denied her leave to appeal to this court in 2016. The applicant now argues that she received ineffective assistance of counsel at her April 2015 trial in the Ontario Court of Justice, resulting in a miscarriage of justice. She also seeks leave to appeal her sentence.

[3] It is unclear to us that we have jurisdiction to re-open an application for leave to appeal that has been dismissed, with an order reflecting the dismissal having been entered and issued. Nevertheless, even assuming, without deciding, that we do have such jurisdiction, we are not prepared to exercise it in the circumstances here. As noted above, appeals to this court from an order of a Summary Conviction Appeal Court are permitted only on questions of law alone. Since the appellant did not raise the issue of ineffective assistance of counsel in her Summary Conviction Appeal, there is no error of law by that court from which to appeal. The Summary

Conviction Appeal Court cannot be faulted for not addressing an argument that was not raised before it.

[4] Moreover, appellants are only rarely permitted to raise new grounds of appeal in this court that were not advanced in the proceedings below. As this court noted in *R. v. E.F.H.; R. v. Rhingo* (1997), 115 C.C.C. (3d) 89 (Ont. C.A.), at p. 101, “[t]he appellate process cannot become or even appear to become a never closing revolving door through which appellants come and go whenever they propose to argue a new ground of appeal”. The finality concerns the court discussed in that case are heightened when, as here, the appellant seeks to reopen an appeal that was dismissed years earlier.

[5] As for the applicant’s motion for leave to appeal her sentence, no appeal was taken from the sentence imposed in the Ontario Court of Justice. Any appeal from sentence is properly brought before the Summary Conviction Appeal Court and, in the absence of such an appeal, this court has no jurisdiction to entertain a sentence appeal directly from the Ontario Court of Justice.

[6] Accordingly, the applicant’s motion for leave to reopen her appeal from conviction, as well as to appeal her sentence, is denied.

“P.J. Monahan J.A.”

“J. Dawe J.A.”

“L. Madsen J.A.”