COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Kumi, 2025 ONCA 3
DATE: 20250102
DOCKET: COA-23-CR-1237

van Rensburg, George and Gomery JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Jeffery Kumi

Appellant

Jeffery Kumi, acting in person

Dan Stein, appearing as duty counsel

Erica Whitford, for the respondent Crown

Heard: December 4, 2024

On appeal from the sentence imposed on October 27, 2023, by Justice Joseph A. De Filippis of the Ontario Court of Justice.

REASONS FOR DECISION

[1] On October 22, 2021, Jeffery Kumi fled on foot from the scene of a car accident. A person matching his description was recorded on CCTV cameras discarding objects while running down an alleyway. These objects were a loaded restricted firearm, fentanyl, and cocaine. The appellant was arrested at a nearby convenience store.

[2] The appellant was convicted following a trial. The main issue was identity. The trial judge found that the appellant was the person who had fled the accident and who was seen on the surveillance videos. Based on this finding, he convicted the appellant of possession of a loaded restricted firearm; possession of a firearm while prohibited; failure to comply with the term of two release orders and a probation order that he not possess weapons; and failure to remain at the scene of an accident. The trial judge was not convinced beyond a reasonable doubt about the quantity of drugs discarded. As a result, he acquitted the appellant of drug trafficking but convicted him of the included offences of possession of cocaine and fentanyl, and of failure to comply with a release order that he not possess drugs referred to in the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19.

[3] The trial judge sentenced the appellant to a total of seven years and seven months' imprisonment, less three years' credit for presentence custody, leaving four years and seven months to serve. The sentence included six years for firearms possession. This sentence was reduced by three years' credit for pre-sentence custody, leaving four years and seven months to serve. The trial judge also ordered a DNA sample, the forfeiture of the firearm and ammunition, and a lifetime prohibition on the possession of firearms under s. 109 of the *Criminal Code*, R.S.C. 1985, c. C-46.

[4] The appellant seeks to appeal his sentence. He contends that the trial judge erred in two ways: first, by giving undue weight to offences for which the appellant

was convicted under the *Youth Criminal Justice Act*, S.C. 2002, c. 1 (the "*YCJA*"); and second, by failing to grant the appellant a further reduction in sentence to account for harsh pretrial custody conditions.

[5] On the first ground, the appellant contends that the trial judge erred in treating him as a recidivist for the purpose of sentencing him for the firearms offence. Based on this court's decision in *R. v. Able*, 2013 ONCA 385, 116 O.R. (3d) 500, he acknowledges that a conviction for a s. 95 offence under the *YCJA* is a prior conviction for the purpose of sentencing an adult offender for a further s. 95 offence, so long as the offender is convicted within the so-called "access period" under s. 119 of the *YCJA*. Here, however, the appellant had been convicted as a youth of first-degree murder involving the use of a firearm, but this was his first conviction for a s. 95 offence.

[6] The appellant also relies on the philosophy underlying the *YCJA*. It states that, when sentencing a young person as compared to an adult who commits the same offence, courts should foster responsibility and ensure "accountability through meaningful consequences and effective rehabilitation and reintegration". Through its provisions, the *YCJA* gives youth offenders an opportunity to put their interaction with the criminal justice system behind them. This is based, in part, on the recognition that a young person who commits an offence is less morally blameworthy than an adult who commits the same offence.

[7] We do not agree that the trial judge erred in assessing the appellant's criminal record as he argues.

[8] The trial judge's reasons focussed on the appropriate sentence for the weapons charge. He cited at length from *R. v. Graham*, 2018 ONSC 6817, at paras. 37 to 39, in which Code J. reviewed appellate court authority on the appropriate ranges for a first conviction for possession of a loaded, prohibited firearm in association with another criminal activity under s. 95 of the *Criminal Code* (three to five years) and for subsequent s. 95 offences combined with a breach of weapons prohibitions orders (six to nine years). He concluded that a six-year sentence for the firearms charge was appropriate based on the appellant's criminal record as a whole and on the nature and circumstances of the offence, stating:

> The defendant is 31 years old. He was first convicted of an offence at the age of 15. He has been in trouble with the law since that time and has been in custody for much of his teenage and adult years. There are no meaningful gaps in the criminal record. The other convictions include four assaults, possession of cocaine for the purpose of trafficking, violation of court orders, dangerous driving and flight from the police. These offences preceded and followed that of first-degree murder (committed as a youth). The present offences were committed one year after the defendant was found guilty of numerous crimes and sentenced to jail.
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> The defendant's moral blameworthiness is high. He possessed a loaded handgun, while prohibited from doing so, and in breach of other court orders. He discarded the weapon in a parking lot in leaving the scene of an accident and in flight from police. He was also in possession of illicit drugs in violation of court

> orders. All this occurred in late afternoon in downtown Hamilton.

[9] The trial judge did not simply apply a higher range based on the authority discussed in *Graham*. He considered the appellant's lengthy and uninterrupted criminal record, including convictions for carrying a concealed weapon and committing a murder using a gun as a youth, and repeated breaches of weapons prohibitions. He also considered the nature and the circumstances of the offences for which he was sentencing the appellant. Weighing all these factors, the trial judge concluded that a six-year sentence for the weapons charge was necessary to achieve the goals of specific and general deterrence and denunciation.

[10] We agree that, in an appropriate case, it would be open to a sentencing judge to give a youth record less weight, either due to the passage of time or because the record did not, in the judge's view, imply a heightened moral culpability for an offence committed as an adult. Here, the trial judge accepted that the appellant had potential for rehabilitation, based on family and community support. But he concluded that a lower sentence would not reflect the gravity of the appellant's offences, his moral culpability as an adult offender, and the sentencing goals of denunciation and deterrence. As noted by the trial judge, in *R. v. Owusu*, 2019 ONCA 712, this court upheld a six-year sentence for a 19-year-old who committed a concealed handgun offence, based on a prior conviction under the *YCJA* for a similar offence a short time earlier.

[11] On the second ground, the trial judge acknowledged that the appellant endured harsh conditions in presentence custody. During the 680 days in total that the appellant awaited trial, he was under lockdown for 147 days and in overcrowded cells for 124 days. During the lockdowns, the appellant had no access to showers, phones, the yard, or visits. Meals were provided through a slot in his cell. The lockdowns created a hostile and stressful environment for detainees, which sometimes exploded into violence when the lockdowns were lifted. The trial judge cited a passage in *R. v. McEwan*, 2023 ONSC 1608, at para. 101, which characterized such conditions as "bordering on inhumane".

[12] The trial judge reduced the sentence that the appellant had left to serve by giving him a "*Summers*" credit of 36 months. Despite the uncontradicted evidence of the harsh pretrial custody conditions, however, he declined to make a further deduction for a "*Duncan*" credit, as proposed by the defence. The appellant contends that this was an error.

[13] We do not agree.

[14] As held in *R. v. Marshall*, 2021 ONCA 344, at paras. 51-53, a *Summers* credit and a *Duncan* credit are analytically distinct. A person convicted of an offence is generally given enhanced credit for time spent in custody awaiting trial, based on the principles set out in *R. v. Summers*, 2014 SCC 26, [2014] 1 S.C.R. 575. A *Summers* credit results in a straightforward deduction in the time left to serve in a sentence, statutorily capped at a maximum ratio of 1.5:1 days' credit for

every day in pre-sentence custody. As recognized in *R. v. Duncan*, 2016 ONCA 754, a sentencing judge may also take harsh presentence custody conditions into consideration when determining an appropriate sentence. A *Duncan* credit does not generally result in a mathematical deduction of time left to serve in a sentence, however. It is instead a mitigating factor taken into account, along with other mitigating and aggravating factors, in determining an appropriate sentence.

[15] The trial judge accepted the Crown's submission that a global sentence of seven and a half years was lower than a sentence that did not include a *Duncan* credit for the harsh conditions experienced by the appellant in pretrial custody. He considered, but rejected, the defence argument that the sentence should be further reduced. He concluded that a shorter sentence would inappropriately subordinate denunciation and deterrence to the credit and would hence be unfit. This was a conclusion open to him to reach on the applicable sentencing principles and the circumstances of this case.

[16] The trial judge's reasons reflect a thorough consideration of all factors relevant to sentencing. Notwithstanding the harsh presentence conditions endured by the appellant, the sentence was fit.

[17] Accordingly, while we grant leave to appeal the sentence, we dismiss the appeal.

"K. van Rensburg J.A."
"J. George J.A."
"S. Gomery J.A."