DATE: **20040226**
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COURT OF APPEAL FOR ONTARIO

RE:	HER MAJESTY THE QUEEN (Respondent) v. ELLISON CAMERON LINDSAY KING (Appellant)
BEFORE:	DOHERTY, GOUDGE and ARMSTRONG JJ.A.
COUNSEL:	Gregory Lafontaine for the appellant
	Christine Bartlett-Hughes for the respondent
HEARD:	February 20, 2004
ORALLY RELEASED:	February 20, 2004

On appeal from the conviction entered by Justice M.Z. Charbonneau, of the Superior Court of Justice, dated March 21, 2002.

E N D O R S E M E N T

[1] The appellant pled guilty to a charge of touching a seven year-old girl for a sexual purpose. A second charge of sexual assault based on the alleged rape of the same child was withdrawn by the Crown. The plea was the result of a plea bargain arrived at on the day of trial. It is clear that the appellant was told that if he proceeded to trial on both counts and was convicted, he would in all likelihood receive a significant jail term. He was told that if he accepted the proposed plea bargain, there was a good chance that he would receive a non-custodial term. The appellant was also told that ultimately, the question of sentence would be for the judge.

[2] The appellant gave written instructions to his counsel advising him to proceed with the guilty plea on the basis of the negotiations. After the appellant pled guilty, the trial judge conducted a thorough inquiry into the plea. That inquiry indicated that the plea was informed and voluntary.

[3] Subsequently, but before sentence, the appellant brought a motion to strike his guilty plea before the trial judge. His counsel argued that the plea was not voluntary. He relied on the following:

- the plea negotiations had been initiated by counsel without specific instructions from the appellant;
- the plea bargain was arrived at on the day of trial and "sprung" on the appellant shortly before the trial was to commence;
- the plea was put to the appellant as his best, if not only chance of avoiding jail; and
- the appellant was told by a friend that if he went to jail on these charges, he would in all likelihood suffer physical violence in jail.

[4] On the motion to strike the plea, the trial judge identified the legal principle applicable where it is alleged that a plea is involuntary: see *R. v. T.(R.)* (1992), 17 C.R. (4th) 247 (Ont. C.A.). The trial judge also referred to authority which makes it clear that the inducements inherent in a plea negotiation do not in and of themselves render a subsequent plea involuntary.

[5] We agree with the trial judge's description of the applicable legal principles. The trial judge had the benefit of seeing and listening to the accused over two days and was certainly in a much better position to assess the voluntariness of his plea than this court is. There is no basis upon which we can interfere with his conclusion that the plea was voluntary.

[6] The conviction appeal must be dismissed.

"Doherty J.A."
"S.T. Goudge J.A.
"Robert P. Armstrong J.A."