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COURT OF APPEAL FOR ONTARIO

RE: **HER MAJESTY THE QUEEN (Respondent) – and – TROY ANTONE (Appellant)**

BEFORE: **MACPHERSON, CRONK and GILLESE JJ.A.**

COUNSEL: **Jeanine E. LeRoy**
for the appellant

Alex Hrybinsky
for the respondent

HEARD & ENDORSED: **May 19, 2004**

On appeal from the sentence imposed by Justice John F. McGarry of the Superior Court of Justice dated October 10, 2002.

A P P E A L B O O K E N D O R S E M E N T

[1] It is true that the trial judge did not specifically mention s. 718.2(e) of the *Code*. However, it is clear from the submissions at the sentencing hearing and the reasons for judgment that the trial judge was very aware of, and took into account, the aboriginal status of the accused.

[2] The blended sentence imposed by the trial judge was entirely fit. This was a serious crime, terrifying for the victim who suffered serious physical and psychological injuries.

[3] Accordingly, the appellant's aboriginal status should not result in a sentence much different from that of a non-aboriginal offender: see *R. v. Wells* (2000), 141 C.C.C. (3d) 368 at para. 42.

[4] Finally, we cannot say that the trial judge's decision to impose a custodial sentence for the robbery offence constituted an error. The trial judge was alive to both deterrence and rehabilitation and took them both into account in imposing the sentence. He did not overemphasize either.

[5] Leave to appeal sentence is granted and the appeal is dismissed.