Court File No. 33650

IN THE SUPREME COURT OF CANADA
(Appeal from the Court of Appeal for Ontario)

BETWEEN:

MANASIE IPEELEE

Applicant
(Appellant)

-and-

HER MAJESTY THE QUEEN

Respondent

REPLY

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(Rule28)

1. The Respondent erroneously argues, in paragraph 42 of the Response, that this case is not about impaired bicycling, but is about a breach of a condition. In fact, this case is about both.

2. That the Appellant, by consuming and possessing alcohol, breached his condition, does not alter the description of the misdeed. In particular, it does not make his crime an act of violence. Thus, the Respondent is inaccurate in Paragraph 6 of the Response in describing this offence as a violent crime.

3. The penalty for a given delict must be proportional to the crime itself, no matter who commits it. The fact that the Appellant has a record and is therefore designated as a Long Term offender is admittedly an aggravating factor. However, three years for consuming alcohol is disproportionately high. Proportionality is the fundamental principle of sentencing, though it is not the only principle to be considered. Parity, totality, and restraint are also principles which must be engaged when determining the appropriate sentence.

   R v Hamilton, 2004 CanLII 5549 (O.C.A.), par. 95

4. Furthermore, the Respondent, and arguably the Learned trial judge, have ignored mitigating factors present (See Memorandum of Argument of Appellant, paragraphs 19 to 27).

5. The Respondent points out correctly, in paragraph 40 of the Response, that long term supervision is about managing the risk presented by the offender. Here, the misconduct, done openly on the main street of Kingston, and the prompt response by the authorities, present an excellent example of managing that risk. To add a crushing three year sentence on top is inconsistent with the concept of management of the risk, and more in keeping with a three strikes and you are out approach. Such an approach has been implicitly rejected by Parliament in the sentencing principles as enacted.
Criminal Code of Canada, S. 718.2(e)

6. The history offered by the Respondent in Paragraph 15 of the Response supports the evidence received at this sentencing hearing (See Memorandum of Argument of Appellant, paragraph 4) that the Appellant has done quite well on supervision and thus speaks positively both to the conduct and resolve of the Appellant, despite his ultimate relapse; and to the management measures in place by reason of the long term supervision, though less than ideal. On his last release, upon warrant expiry, he drank immediately and constantly to the point of intoxication. After six months of doing so, he apparently stumbled into a van frequented by the homeless and came upon the lady who then became the victim of the crime that resulted in six years and the long term offender designation.

7. First, this means that he is not a person who can be expected to be violent each time he drinks. He drank for six months before the crime the last time. Moreover, it also means that he did well in addressing his serious alcohol problem this time by refraining from getting drunk for six years in the penitentiary; and 17 months on supervision prior to this delict.

8. In paragraph 44, the Respondent misstates sentences imposed in previous cases. In so doing, the Crown seeks to have this Honourable Court proceed on false assumptions, a problem we have attempted to address in the Memorandum of Argument of Appellant, at paragraphs 46 and 50.

9. Specifically, the Respondent states that McGarroch received 34 months. In fact, he was sentenced to 19 months, having served 270 days (9 months) presentence custody, for a total of 28 months. Moreover, he will be released after two thirds of the 19 months, or 12 2/3 months, and serve, altogether, 21 2/3 months; whereas Mr. Ipelee will serve 36 months. Mr. McGarroch had two convictions, and Mr. Ipelee only one.

R v McGarroch [2007]) O.J. No. 5587 (C.J.), paragraph 2 note: the Apppellant's Schedule of Sentence Precedents is in error, but the error favours the Crown.

10. The Respondent states that Browne got 47 months. In fact, after 11 months of presentence custody, he got 18 months, for a total of 29. But, as his imposed sentence is under two years, he will serve 12 of the 18, for a total of 23 months. Thus, Mr. Browne serves thirteen months less than Mr. Ipelee. Mr. Browne had breached on four previous occasions, and, for one of those, had previously been convicted and sentenced to 1 day,

following four months pretrial custody. On this offence he not only drank but used crack cocaine and escaped from Keele Community Correctional Center.

R v Browne, [2007] No. 3995 (C.J.), at paragraphs 4, 7, 86, and 87

11. Bourdon we addressed as an example in Memorandum of Argument of Appellant, paragraph 46. Despite this, the Respondent has misstated the sentence. Bourdon served 644 days pretrial custody and received a sentence of 172 days for a total of 816 days, or two years 46 days. He will serve two thirds of the 172 days and thus serve a total of 758 days or two years plus less than one month. This, the Respondent states, is 48 months. Truth in sentencing is essential. Mr. Bourdon's delicts and antecedents during supervision were, it is respectfully submitted, far more egregious than Mr. Ipelee's.

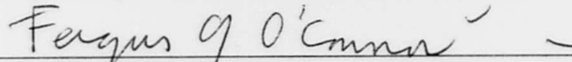
R v Bourdon, [2008] O.J. No. 5034

12. S.J.D. served fourteen months presentence custody and was sentenced to two years. The Respondent calls this 45 months, because the sentencing Court characterized the dead time as being equivalent to 21 months. In fact, it totals 34 months. This is two months less than Mr. Ipelee. Mr. S.J.D., a convicted pedophile, was found to have been luring and grooming a ten year old boy.

R v S.J.D. (2004) , 182 C.C.C. (3d) 257 (B.C.C.A.), paragraphs 4, 15, and 53

13. The Respondent acknowledges, in paragraph 37 of the Response, that, where appropriate, a restorative approach to sentencing is required for aboriginals. Nowhere is this more important than for Inuit experiencing alcohol problems It is respectfully submitted that such is the case even on a breach of long term supervision; and that in the case of Mr. Ipelee, even upon sentencing him to incarceration, it is wrong to decide that this approach is no longer important.

All of Which Is Respectfully Submitted, this 25th day of May, 2010, by



Fergus J. (Chip) O'Connor
Counsel for the Applicant/Appellant

List of Authorities

***R v Bourdon*, [2008] O.J. No. 5034**

***R v Browne*, [2007] No. 3995 (C.J.),**

***R v McGarroch* [2007]) O.J. No. 5587 (C.J.),**

***R v S.J.D.* (2004) , 182 C.C.C. (3d) 257 (B.C.C.A.),**

R. v. Hamilton, 2004 CanLII 5549 (O.C.A.).

Service hereof admitted this
25th day of May 2010.
Ottawa Agents for the Respondent.
Burke-Robertson