



THE UPDATE

Issue #21 November 18, 2005

SENTENCE - ASSAULT CAUSING - 10 MONTHS JAIL PLUS PROBATION

R. v. Van Wezel - Oct. 7, 2005
ABCA 337 per Paperny, J.A.;
Bensler, Erb, J. - Trial Judge:
Lamoureux, P.C.J.:

Accused originally received 12 month jail sentence after being convicted of aggravated assault. Conviction for assault causing bodily harm substituted on appeal. Issue regarding whether 12 month sentence still fit. Conditional sentence application

Held: Sentence varied to 10 months jail plus probation.

Accused attacked complainant regarding a work place dispute. Complainant struck in the face 5 times with a tire punch, and then left in a parking lot in freezing cold weather. One previous assault conviction. Conditional sentence inappropriate, as accused constituted a danger to the community.

J. Brunnen - Defence Counsel

SENTENCE - BREAK AND ENTER - TWO HOLIDAY TRAILERS - LENGTHY RECORD - 2 YEARS JAIL

R. v. Micallef - Sept. 29, 2005
ABCA 311 per Fraser, C.J.A.;
Hawco, Coutu, J. - Trial Judge:
Pahl, P.C.J.:

Defence appeal from 3 year sentence imposed after accused pled guilty to break and enter into 2 holiday trailers stored in a locked compound. Lengthy record including 14 prior break and enter convictions. Accused on bail for break and enter at time of offence.

Held: Appeal allowed.

Sentence reduced to 2 years jail plus 12 months probation. Given that the thefts arising from the break and enters were minor (a television and DVD player) and the early guilty pleas entered, 3 year sentence "not within the acceptable range".

In Person

SENTENCE - THEFT - BREACH OF TRUST - \$31,684.56 - CONDITIONAL SENTENCE

R. v. Barber - Oct. 7, 2005 ABPC
229 per Semenuk, P.C.J.:

Accused pled guilty to stealing \$31,684.56 from her employer. Accused worked as a payroll clerk, and issued 7 company cheques over 9 months to a fictitious entity. 43 year old accused with 1987 conviction for a minor fraud. Some mental health issues (depression).

Held: 2 years less one day conditional sentence, 3 years probation.

Sentence included \$500 monthly restitution payments, and a curfew. "Individuals breaching trust will generally be dealt with severely by the Court ... In the circumstances of this case, I find that the moral blameworthiness of the accused was reduced at the time of the offence because of her physical and mental health issues". Authorities reviewed.

A. Fay - Defence Counsel

SENTENCE - JOINT SUBMISSIONS - COUNSEL TO BE TOLD IF SUBMISSION UNACCEPTABLE

R. v. McKerricher - Sept. 29, 2005
ABCA 313 per Fraser, C.J.A.;
Hawco, Coutu, J. - Trial Judge:
Gaede, P.C.J.:

Accused pled guilty to breach of a conditional sentence, possession of a stolen vehicle and evading police. Joint submission for 2 years jail, collapse of conditional sentence and 18 month driving prohibition. Sentencing judge imposed a 42 month sentence and 3 year driving prohibition.

Held: Appeal allowed.

Joint submission restored.
“Defence counsel made it clear that his submissions were made on the basis that the Court had no difficulty with the joint submission ... In failing in these circumstances to give counsel an opportunity to address any concerns relating to the joint submission, the sentencing judge erred.”

D. Vigen - Defence Counsel



SENTENCE - JOINT SUBMISSIONS - SENTENCE MUST FALL WITHIN ACCEPTABLE RANGE

R. v. Lessard - Sept. 1, 2005
ABPC 286 per Norheim, P.C.J.:

Accused originally charged with impaired driving, but pled guilty to careless driving contrary to TSA. Joint submission for \$1000 fine and no license suspension. Joint submission based upon weak Crown case. Accused convicted in 1997 of impaired driving and in 2002 of dangerous driving.

Held: \$1000 fine plus 30 day license suspension.

License suspension necessary. Procedure set out in *G.W.C.* [2000] A.J. No. 1585 (C.A.) followed. “The furthest that a court can go in giving credit for a weakness in the Crown’s case is to impose a sentence at or near the low end of the appropriate range ... the most important element in addressing both specific and general deterrence, is the issue of license suspension”.

R. Prithipaul - Defence Counsel



SENTENCE - ROBBERY - 7 GAS STATION ROBBERIES - 7 YEARS JAIL

R. v. Ramsankar - Oct. 11, 2005
ABCA 323 per Fraser, C.J.A.;
Hawco, Coutu, J. - Trial Judge:
Broda, P.C.J.:

Defence appeal from 9 year sentence imposed after accused pled guilty to 7 robberies. Robberies occurred over 8 days and each involved demands of money from cashiers at gas stations. Early guilty pleas.

Held: Appeal allowed.

Sentence reduced to 7 years. Insufficient credit originally given for the early guilty pleas. “A global sentence of 9 years, did not adequately take into account the principle of totality, taking into account there was no use of violence and no threats of harm to any of the cashiers”.

L. Stevens - Defence Counsel



Also Released:

R. v. Atchison 2005 ABCA 343

Leave to appeal on following question of law: “For the purposes of the Traffic Safety Act, is a person on a skateboard or similar device a pedestrian?”

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