NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Smith*, 2019 NSCA 48

Date: 20190605
Docket: CAC 478390
Registry: Halifax

Between:

Thomas Smith

Appellant

v.

Her Majesty The Queen

Respondent

Judges:	Wood, C.J.N.S.; Saunders and Bryson, JJ.A.
Appeal Heard:	June 5, 2019, in Halifax, Nova Scotia
Written Release:	June 6, 2019
Held:	Appeal dismissed, per reasons for judgment by the Court
Counsel:	Peter Mancini, for the appellant Glenn A. Hubbard, for the respondent

Reasons for judgment:

By the Court (Orally)

[1] This is an appeal against sentence. Although we are prepared to grant leave, we are unanimously of the view that the appeal ought to be dismissed, for the following reasons.

[2] Thomas Joseph Smith pled guilty to three charges which were laid after a motor vehicle operated by him struck and killed Jackie Dean Deveau on a highway outside Sydney on March 11, 2017. The Agreed Statement of Facts filed with the trial court established a litany of steps taken by the appellant to cover up his crimes. The charges on which guilty pleas were entered are:

1. Failing to stop and offer assistance following an accident, contrary to section 252(1.3) of the *Criminal Code*;
2. Driving while disqualified contrary to s. 259(4) of the *Code*; and
3. Attempting to obstruct the course of justice contrary to s. 139(2) of the *Code*.

[3] On March 29, 2018 the Honourable Judge Diane L. McGrath conducted a sentencing hearing for Mr. Smith. Her decision indicates that she considered the relevant circumstances as presented to her and concluded that a fit and proper sentence for the s. 252(1.3) offence was four years' imprisonment and for s. 259(4) it was one year to be served concurrently. With respect to the s. 139(2) offence, a fit sentence was found to be two years' imprisonment which was to be consecutive to the four year custodial term.

[4] After considering the principle of totality the trial judge reduced the global sentence to four years' imprisonment – three years for s. 252(1.3), a concurrent term of one year for s. 259(4) and a consecutive one year period for s. 139(2).

[5] This appeal focussed exclusively on a comment by the trial judge in her oral sentencing decision when she described Mr. Smith's actions in attempting to conceal his involvement in the collision that caused the death of Mr. Deveau. This conduct formed the basis for the s. 139(2) conviction. After reciting various steps which Mr. Smith took, she said that he "attempted to have another individual burn" his vehicle. Mr. Smith says this fact was not proven and should not have been considered in the sentencing process.

[6] The Agreed Statement of Facts, signed by Mr. Smith and filed as evidence at the sentencing, said that he told an associate that "I think I'm just gonna burn it [the car]". It also indicated that a person known to Mr. Smith burned the windshield and other debris from his car.

[7] The Supreme Court of Canada in *R. v. Lacasse*, 2015 SCC 64 said:

> [44] In my view, an error in principle, the failure to consider a relevant factor or the erroneous consideration of an aggravating or mitigating factor will justify appellate intervention only where it appears from the trial judge's decision that such an error had an impact on the sentence.

[8] In the absence of such an error, the Supreme Court confirmed that an appeal court should not interfere with a trial judge's discretionary decision on sentence unless it is demonstrably unfit.

[9] We are of the view that the trial judge's decision was well reasoned, considered the relevant evidence and applied the appropriate legal principles. There was no error in principle nor is the sentence demonstrably unfit. The reference to burning the car was a reasonable inference drawn from the evidentiary record and, in any event, that one fact did not impact the sentence. There were ample other circumstances recited by the trial judge to justify her decision.

Disposition

[10] The appeal is dismissed.

Wood, C.J.N.S.

Saunders, J.A.

Bryson, J.A.