

CANADA / JUDGMENT

R. v. Catania

2008 BCCA 185

COURT

British Columbia Court of Appeal

DECIDED

23 April 2008

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2008 BCCA 185 R. v. Catania COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Catania, 2008 BCCA 185 Date: 20080423 Docket: CA035335 Between: Regina Respondent And Alfred Christopher Catania Appellant Before: The Honourable Mr. Justice Low The Honourable Mr. Justice Smith The Honourable Mr. Justice Chiasson Oral Reasons for Judgment D. Carpentier Counsel for the Appellant J. Duncan Counsel for the (Crown) Respondent Place and Date: Vancouver, British Columbia 23 April 2008

- [1] LOW, J.A.: The appellant, Mr. Catania pled guilty to 1 count of robbery. He was 40 years of age at the time with no criminal record and a Provincial Court Judge in Kamloops imposed a conditional sentence of 18 months to be followed by probation for 18 months. Within a few days however, the appellant committed a second robbery, and on 14 October 2005 he appeared before another Provincial Court Judge in Kamloops and pled guilty to that offence. It had occurred on 2 October 2005. The appellant was also charged with breaching his conditional sentence, a breach which he conceded.
- [2] The second Provincial Court Judge, Jude Pendleton, revoked the conditional sentence and imposed a consecutive 12-month jail sentence for the second robbery and imposed what amounted to a total sentence of just under 30 months.
- [3] The problem arose thereafter with respect to the probation order that because of the provisions of s. 139(1) of the Corrections and Conditional Release Act, which provides where a person who is subject to a sentence that is not expired receives an additional sentence, the person, is for the purposes of the Criminal Code and the Prisons and Reformatories Act deemed to have been sentenced to one sentence commencing at the beginning of the first of those sentences to be served and ending on the expiration of the last of them to be served.
- [4] The meaning of that is that the probation order as a result of subsequent events is rendered illegal. A probation order cannot follow a term of imprisonment which exceeds two years.
- [5] Accordingly, I would extend the time to appeal to 17 August 2007 and allow the appeal and quash the probation order, the Crown consenting to these results.
- [6] SMITH, J.A.: I agree.

[7] CHIASSON, J.A.: I agree. "The Honourable Mr. Justice Low"

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