

CANADA / JUDGMENT

R. v. Engh

2018 BCCA 371

COURT

British Columbia Court of Appeal

DECIDED

1 October 2018

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2018 BCCA 371 R. v. Engh COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Engh, 2018 BCCA 371 Date: 20181001 Docket: CA45396 Between: Regina Respondent And Taylor James Engh Appellant Before: The Honourable Madam Justice Stromberg-Stein The Honourable Mr. Justice Savage The Honourable Mr. Justice Hunter On appeal from: An order of the Supreme Court of British Columbia, dated May 17, 2018 (R. v. Engh, Kelowna Docket 87441). Oral Reasons for Judgment Counsel for the Appellant: R. Mansoori-Dara Counsel for the Respondent: M.A. Mereigh A. MacDonald, Articled Student Place and Date of Hearing: Vancouver, British Columbia October 1, 2018 Place and Date of Judgment: Vancouver, British Columbia October 1, 2018 Summary: At the request of the Crown, the sentencing judge imposed a firearms prohibition order pursuant to s. 109 of the Criminal Code. Held: Appeal allowed to quash the s. 109 firearms prohibition order. The prohibition order was imposed in error. Section 109 had no application as the offence involved no violence used, threatened or attempted to any person.

- [1] STROMBERG-STEIN J.A.: On January 15, 2018, the appellant, Mr. Engh, entered a guilty plea to the offence of intentionally or recklessly causing damage by fire or explosion to a snow groomer, contrary to s. 434 of the Criminal Code, R.S.C. 1985, c. C-46. On May 17, 2017, he appeared before Judge Gunnell for sentencing and received a suspended sentence with a 30-month probation order. In addition, at the request of the Crown, the judge imposed a s. 109 firearms prohibition order.
- [2] Mr. Engh sought to appeal the imposition of the firearms prohibition to the Supreme Court. However, since the Crown had proceeded by indictment, his appeal should have been brought in the Court of Appeal.
- [3] His Notice of Appeal to this Court was filed out of time on July 3, 2018. He brought an application for an extension of time to appeal on July 13, 2018.
- [4] The respondent Crown agrees that there should be an extension of time to appeal.
- [5] Counsel for the appellant and respondent agree that the prohibition order was imposed in error since s. 109 had no application as the offence involved no violence used, threatened or attempted to any person.

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- [6] In the circumstances, I would allow the appeal and quash the s. 109 firearms prohibition order as part of the appellant's sentence.
- [7] SAVAGE J.A.: I agree.
- [8] HUNTER J.A.: I agree.
- [9] STROMBERG-STEIN J.A.: The extension of time to appeal is granted to July 3, 2018.
- [10] The appeal is allowed to the extent of quashing the s. 109 of the Criminal Code firearms prohibition order. "The Honourable Madam Justice Stromberg-Stein"
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