

CANADA / JUDGMENT

R. v. Guess

2000 BCCA 602

COURT

British Columbia Court of Appeal

DECIDED

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2000 BCCA 602 Citation: R. v. Guess Date: 20001102 2000 BCCA 602 Docket: CA024990 Registry: Vancouver COURT OF APPEAL FOR BRITISH COLUMBIA ORAL REASONS FOR JUDGMENT Before: The Honourable Mr. Justice Hall November 2, 2000 The Honourable Mr. Justice Low The Honourable Madam Justice Proudfoot Vancouver, B.C. BETWEEN: REGINA RESPONDENT AND: GILLIAN GUESS APPELLANT D.G. Butcher appearing for the Appellant P.A. Juk appearing for the (Crown) Respondent

- [1] LOW, J.A.: The appellant seeks leave to appeal the imposition of an 18 month sentence plus one year probation following the conviction of the appellant by a jury of the offence of wilfully attempting to obstruct, pervert or defeat the course of justice contrary to s. 139(2) of the Criminal Code. The offence carries a maximum sentence of 10 years.
- [2] While she was serving as a sworn juror in the trial of six men on first degree murder charges, the appellant, a mature and intelligent woman, engaged in a sexual relationship with Peter Gill, one of the six men accused. She did not disclose the relationship to the court and continued to serve as a juror until the jury rendered its verdicts. The jury at her trial found that, in so conducting herself, the appellant had the necessary intent in that she knew that what she was doing would obstruct or pervert the course of justice.
- [3] In sentencing the accused, Paris J. properly considered the fundamental principles of sentencing as set out in ss. 718 and 718.1 of the Criminal Code. He determined that rehabilitation of the appellant was not a matter of necessity nor was there any need to deter her from further criminal conduct. He found that the appellant was not dangerous and need not be separated from society on that account. Then he turned his attention to general deterrence and said the following: As to general deterrence, that is the need to deter other persons from similar conduct, as I mentioned earlier, hopefully there is no risk that this specific kind of conduct will ever be repeated. However, as I also mentioned earlier, there is a larger issue at stake here, namely, the integrity of the judicial system. The community has a great stake in the protection of the judicial process and those who would be of a mind to attempt to corrupt it in any way should be deterred to the extent possible. [4] In the mind of the trial judge, the most important consideration was denunciation of the unlawful conduct of the appellant. On that matter, the trial judge said:

[18] It seems to me that in the circumstances of this case, the objective of denunciation, that is, the need to denounce the unlawful conduct, which is also mandated by the Criminal Code, is largely subsumed into the objective of general deterrence, and the court must be careful that in the name of denunciation it does not engage in revenge or does not unfairly use an offender as an example by imposing a penalty which is greater than what the crime in the circumstances call for. [19] Those in the profession of law are of course especially offended by the facts of this case because they struck so blatantly, not only at the proper unfolding of the original case, but at the ideal of human justice through law and universality which we pursue, admittedly imperfectly, because we are all human. The corruption of that ideal in this way is offensive, but the court must be careful not to let indignation warp its judgment. However, it is proper and required that the court impose a sentence that is sufficient to demonstrate to the community that it is responding in a measured and responsible way to attacks on the fabric of our self-governing society. [20] The circumstances in this case, the nature of the offence and the manner in which it was committed, are simply too serious to warrant a non-custodial sentence, including a conditional sentence. Specifically, the latter would be inconsistent with those fundamental purposes and principles of sentencing that I have referred to above. [5] This court cannot interfere with a sentence imposed by a trial judge unless the sentence is demonstrably unfit. Counsel for the appellant now argues that the trial judge erred in not imposing a conditional sentence. He says that the law relating to conditional sentences, as enunciated early this year by the Supreme Court of Canada in *R. v. Proulx* (2000), 140 C.C.C. (3d) 449, was not before the trial judge and that he did not have the benefit of the instructive detailed analysis in that case. However, in my opinion, the trial judge properly considered the available option of a conditional sentence. It is important to note what was said by Lamer C.J.C. in *Proulx* at p. 502 on the subject of deterrence: ... There may be some circumstances ... where the need for denunciation or deterrence is so pressing that incarceration will be the only suitable way in which to express society's condemnation of the offender's conduct or to deter similar conduct in the future. And further, at the same page he said: ... Where objectives such as denunciation and deterrence are particularly pressing, incarceration will generally be the preferable sanction. [6] I agree with the view of the trial judge that the most important sentencing principle in this case is denunciation of the appellant's unlawful conduct and the ensuring of general deterrence by the imposition of a denunciatory sentence. Over a long period of time she indulged her own selfish desires in a way that undermined a fundamental principle of democracy, namely, the determination of guilt or innocence in a criminal trial by an impartial trier of fact. She preferred her own interests over her sworn duty as a juror. Such conduct grievously offends all right-thinking members of our society. It strikes at the heart of our ordered society. A conventional custodial sentence is required to properly denounce such conduct and act as a deterrent to its emulation by others. Its appropriateness in this case is emphasized by the appellant's public statements that she has done no wrong, as recently as during her statement to the court at the sentence proceedings.

[7] I would grant leave to appeal, but I would dismiss the appeal.

[8] HALL, J.A.: I agree.

[9] PROUDFOOT, J.A.: I agree.

[10] HALL, J.A.: Leave to appeal is granted and the appeal is dismissed. "The Honourable Mr. Justice Low"

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