

CANADA / JUDGMENT

R. v. Min

2021 BCSC 1163

COURT

Supreme Court of British Columbia

DECIDED

30 April 2021

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2021 BCSC 1163 R. v. Min IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Min, 2021 BCSC 1163 Date: 20210430 Docket: 31131 Registry: Vancouver Regina v. Le Min Corrected Judgment: The text of the judgment was corrected at paragraph 4 on June 22, 2021 Before: The Honourable Madam Justice Lyster On appeal from: An order of the Provincial Court of British Columbia, dated October 9, 2020 (R. v. Min, Vancouver Action No. SG0015372-1) Oral Reasons for Judgment Counsel for Crown (Appellant) appearing via teleconference: K. Fast M. Bennett The Respondent appearing on her own behalf via teleconference: L. Min Place and Date of Trial/Hearing: Vancouver, B.C. April 30, 2021 Place and Date of Judgment: Vancouver, B.C. April 30, 2021

- [1] THE COURT: I am prepared to provide you with my decision and oral reasons in this matter. In the event that a transcript is requested I do reserve the right to make minor editorial changes such as ensuring that citations are complete and accurate.
- [2] The Crown appeals to this Court pursuant to s. 102(b)(2) of the Offence Act, R.S.B.C. 1996, c. 338, on a question of law. The Crown submits that the judicial justice exceeded his jurisdiction by imposing a lesser fine on Ms. Min than the minimum established by s. 148.1(5) of the Motor Vehicle Act, R.S.B.C. 1996, c. 318 and s. 41.03 of the Motor Vehicle Act Regulations, B.C. Reg. 26/58.
- [3] Ms. Min did not file a written response to this appeal, but she appeared and made oral submissions before me in which she submitted that the fine should not be increased, relying, as she did before the judicial justice, on her financial circumstances.
- [4] The facts, as set out in the Crown appeal submissions, are that on September 2, 2019 at 10:07 hours an image of a 2015 Audi bearing licence plate Number FT7 56M was captured while the vehicle was travelling in or near Vancouver, British Columbia. Le Min is the registered owner of the vehicle.
- [5] On September 4, 2019, the respondent was issued a violation ticket. The ticket states that the vehicle was recorded speeding contrary to s. 148(1) of the Motor Vehicle Act, which creates the offence of driving a vehicle on a highway in a municipality at a greater rate of speed than 50 kilometres an hour. As a result of s. 83.1(2) of the Motor Vehicle Act, Ms. Min was liable,

as the owner of the vehicle, for the commission of the offence. The violation ticket includes the wording prescribed by Schedule 3 of Violation Ticket Administration and Fines Regulations, B.C. Reg. 89/97, to describe the relevant contravention as, "liable as the owner of the vehicle for the commission of the offence of speed in municipality if the speed limit is exceeded by 41 kilometres an hour to 60 kilometres an hour."

- [6] Section 3 of the Violation Ticket Administration and Fines Regulation prescribes the ticketed amount as \$368, which includes a \$320 fine and a \$48 victim surcharge. That is the required fine for an owner who is liable under s. 83.1(2) of the Motor Vehicle Act for the contravention of s. 148(1) where the speed limit is exceeded by 41 to 60 kilometres an hour.
- [7] If an owner pays the ticket within 30 days of the date it is mailed, then the fine amount is automatically reduced to \$295, and then, including the \$48 victim surcharge, the total ticketed amount in that case is \$343.
- [8] On October 9, 2020, Ms. Min appeared before Judicial Justice Bowes. She pled guilty. The judicial justice entered a plea of guilty, but ordered Ms. Min to pay \$196, including the victim surcharge levy. It is apparent from reviewing the transcript of that hearing that the judicial justice did so in consideration of Ms. Min's financial circumstances. The fine ordered by the judicial justice resulted in a fine amount of \$120 plus an \$18 victim surcharge levy rather than the minimum prescribed amount of \$320 plus \$48 for a victim surcharge.
- [9] On October 28, 2020, the Crown filed the notice of appeal that gave rise to the appeal I heard this morning. The test that I must apply in considering an appeal of this nature was set out by our Court of Appeal in the *R. v. Agin*, 2018 BCCA 133, where at para. 42, the court stated that where an error by the sentencing judge is alleged, appellate intervention is appropriate where the error had an impact on the sentence, and the sentence would have been different had there been no error.
- [10] In hearing an appeal of this nature, the court is not investigating the matter afresh, it is not engaging in a fresh hearing of the alleged offence, and it cannot consider issues or defences that were not raised. I am limited to determining whether the judicial justice made an error, whether that error had an impact on the sentence, and whether the sentence would have been different had there been no such error.
- [11] The question of whether a judicial justice can reduce a sentence below the statutory minimum for an offence of this kind was very recently considered by this court in the case of *British Columbia (Attorney General) v. Guo*, 2021 BCSC 97. At paras. 36-37 of that decision Justice Gropper held:
- [36] I have determined that the Judicial Justice did not have the authority to reduce the fine under s. 88(1) of the Offence Act absent evidence of an inability to pay.

- [137] The Judicial Justice did not have the authority to reduce the fine below the minimum fine amount prescribed by the Motor Vehicle Act and Motor Vehicle Act Regulations. Section 88(2) of the Offence Act expressly prohibits this: "a justice must not impose under subsection (1) a fine of less than the minimum established" under the Motor Vehicle Act.
- [12] Justice Gropper went on to hold in that case that the judicial justice erred in law by imposing a smaller fine than the prescribed minimum.
- [13] That decision was followed even more recently in this Court in the R. v. Rawlings, 2021 BCSC 593. As was clear from the transcript before the judicial justice, I am sympathetic to Ms. Min's circumstances and the financial difficulties that have been caused to her, as so many people, by the COVID pandemic. Nonetheless, the law is clear and I must follow it, and I conclude that the judicial justice did exceed his jurisdiction in reducing the fine below the statutory minimum.
- [14] The fine that was required by statute was \$320 plus a \$48 victim surcharge for a total amount of \$368. The judicial justice ordered Ms. Min instead to pay \$196, which amount she paid in accordance with his order.
- [15] The Crown asks that Ms. Min be now required to pay the difference between \$196, the amount Ms. Min paid, and \$343. That \$343 is made up of a \$295 fine plus a \$48 victim surcharge. The fine amount is reduced, as I understand the Crown's submissions, pursuant to s. 88(2) of the Offence Act, to the amount that Ms. Min would have been required to pay had she paid the ticket within 30 days of it being mailed to her. I therefore vary the judicial justice's sentence to impose a fine of \$295 plus a victim surcharge of \$48, for a total of \$343, but from that will be subtracted the \$196 that has already been paid by Ms. Min. She must therefore pay a total amount now of \$147.
- [16] Section 82(2)(b) of the Offence Act gives me the discretion to order that a fine be paid at a time and in instalments and subject to such terms and conditions as I consider appropriate. So, Ms. Min, I ask you, how much time do you need to pay the \$147?
- [17] THE RESPONDENT: Well, honestly this is not helping in any situation, so just impose a day whenever you feel like it.
- [18] THE COURT: Well, you are not requesting any particular amount of time to pay?
- [19] THE RESPONDENT: Well, it really doesn't help. Mm hmm.
- [20] THE COURT: All right then. I order that the \$147 payable by Ms. Min be paid by her by June 1, 2021.
- [21] THE RESPONDENT: June 1?
- [22] THE COURT: June 1. Anything further arising?
- [23] THE RESPONDENT: Give me one second, please.

- [24] THE CLERK: My Lady, or Crown if you're on the phone, there is a list here on the application that I need to fill in. And I've got the order, but it's got the disposition of the appeal. It's got conviction appeal dismissed, sentence appeal dismissed, appeal dismissed, appeal allowed, conviction set aside, acquittal entered, sentence varied.
- [25] MS. FAST: Sentence varied.
- [26] THE CLERK: Okay, thank you.
- [27] THE RESPONDENT: Well, My Lady, I mean this -- it's looking really really evident, this is not helping at all. I mean I have already paid the \$170. If you want me to -- if you want me to suggest a pay and you should have asked for the whole amount for the whole thing, not just for the \$140.
- [28] THE COURT: Ms. Min, I have asked you if you needed time to pay the \$147. You told me that there was no date that would be of assistance. I am prepared to vary my order if you give me submissions with respect to when you would seek to have it be payable. Otherwise it is June 1st.
- [29] THE RESPONDENT: Okay.
- [30] THE COURT: All right. I do not hear anything further from you.
- [31] THE RESPONDENT: Yeah, okay. Thank you.
- [32] THE COURT: The remaining part of the fine payable by June 1st. Anything further, Ms. Fast?
- [33] MS. FAST: No, My Lady, thank you. "Lyster J."

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