

CANADA / JUDGMENT

R. v. Morgan

2014 BCCA 441

COURT

British Columbia Court of Appeal

DECIDED

7 November 2014

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2014 BCCA 441 R. v. Morgan COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Morgan, 2014 BCCA 441 Date: 20141107 Docket: CA042045 Between: Regina Respondent And Troy Morgan Appellant Before: The Honourable Mr. Justice Frankel The Honourable Madam Justice Garson The Honourable Mr. Justice Willcock On appeal from: Provincial Court of British Columbia dated March 5, 2013 (R. v. Morgan, Surrey Docket No. 194954) Oral Reasons for Judgment Counsel for the Appellant: M. Poulsen Counsel for the Respondent: E.A. Campbell Place and Date of Hearing: Vancouver, British Columbia November 7, 2014 Place and Date of Judgment: Vancouver, British Columbia November 7, 2014 Summary: Enhanced credit given for pre-sentence custody on the basis of Summers (S.C.C.).

- [1] FRANKEL J.A.: On March 5, 2013, Troy Morgan was sentenced to six years and three months' imprisonment on a charge of breaking and entering. In imposing that sentence, the sentencing judge granted Mr. Morgan 1:1 credit for nine months of pre-sentence custody. At the same time, the judge sentenced Mr. Morgan to nine months (concurrent) on each of three related charges. All charges arose out of what is commonly referred to as a "home invasion".
- [2] Having sought legal aid funding in a timely manner, Mr. Morgan now applies for an extension of time to apply for leave to appeal the sentence on the breaking and entering charge and, if leave is granted, seeks enhanced (i.e., 1.5:1) credit for the nine months of pre-sentence custody based on the decision of the Supreme Court of Canada in R. v. Summers, 2014 SCC 26, 308 C.C.C. (3d) 471. In effect, he seeks an addition four and one-half months' credit. The Crown is not opposed to time being extended or to enhanced credit being given. It agrees Mr. Morgan is not disqualified from receiving such credit for any statutory reason.
- [3] In the circumstances, I would extend the time for filing of the notice of application for leave to appeal to August 1, 2014, grant leave to appeal, allow the appeal, and vary the sentence to five years, ten and one-half months' imprisonment.
- [4] GARSON J.A.: I agree.
- [5] WILLCOCK J.A.: I agree.

[6] FRANKEL J.A.: The extension of time is granted. Leave to appeal is granted and the sentence is varied to five years and ten and one-half months' imprisonment. "The Honourable Mr. Justice Frankel"

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