

CANADA / JUDGMENT

R. v. Rowe

2026 ONCA 8

COURT

Court of Appeal for Ontario

DECIDED

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R. v. Rowe Collection Decisions of the Court of Appeal Date 2026-01-12 Neutral citation 2026 ONCA 8 Docket numbers COA-25-CR-0983 Judges Lauwers, Peter D.; Sossin, Lorne; Pomerance, Renee M. Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. Rowe, 2026 ONCA 8 DATE: 20260112 DOCKET: COA-25-CR-0983 Lauwers, Sossin and Pomerance JJ.A. BETWEEN His Majesty the King Respondent and Joacquin Rowe Appellant Joacquin Rowe, acting in person Mark Halfyard, appearing as duty counsel Kevin Chan, for the respondent Heard: January 5, 2026 On appeal from the sentence imposed by Justice Robert F. Goldstein of the Superior Court of Justice on March 28, 2025. REASONS FOR DECISION

- [1] The appellant pleaded guilty to three offences: (1) possession of a firearm with ammunition contrary to s. 95(1) of the Criminal Code, R.S.C. 1985, c. C-46; (2) possession of a firearm while prohibited contrary to s. 117.01(1) of the Criminal Code; and (3) possession of ammunition while prohibited contrary to s. 117.01(1) of the Criminal Code. He appeals from the seven-month conditional sentence that was imposed, arguing that the sentencing judge erred in failing to grant him a discharge.
- [2] The circumstances of this case are unusual. The appellant took possession of the firearm from an individual who appeared to be drunk and posed a potential danger to the public. The sentencing judge accepted that the appellant did not intend to possess the gun and ammunition for an indefinite period. Rather it was his intention to find a way to divest himself of these items. He stored them in his safe and contacted a criminal lawyer on various occasions for advice. However, the law firm never replied to him. After about two and a half months, the police executed a search warrant at the appellant's residence and seized the loaded firearm and ammunition from the safe. At the time of these events, the appellant was bound by three weapons prohibitions.
- [3] The sentencing judge accepted the appellant's account of the events, finding that he took the firearm in order to prevent future danger. The sentencing judge also accepted the assertions in the Enhanced Pre-Sentence Report that the appellant was distrustful of police, given past experiences with law enforcement. He observed that the sentence must send a message that honest attempts to return a handgun will not "land a person in jail." It was on this basis that an 18-month conditional sentence was imposed, from which 11 months credit for pre-

sentence custody was deducted.

- [4] The sentencing judge found that a discharge was not in the public interest, given the appellant's criminal record, the weapons prohibitions, and the fact that he did not act with sufficient diligence in divesting himself of the gun and ammunition.
- [5] The appellant raises three arguments on appeal:
 - (1) That the sentencing judge did not offer appropriate credit for the period of time spent by the appellant on house arrest bail (Downes[1] credit);
 - (2) That the sentencing judge placed undue and arbitrary emphasis on the length of time that the appellant possessed the gun; and
 - (3) That the sentencing judge erred in concluding that the cases in which discharges had been granted were distinguishable.
- [6] Dealing with the first issue, the circumstances of the appellant's bail were not explored in detail in the court below, though it was apparent that the appellant had been on a release order imposing house arrest for a year and a half. In speaking of this period, the sentencing judge erroneously referred to a year of house arrest, rather than a year and a half. The sentencing judge did, however, grant a modest measure of Downes credit to the appellant.
- [7] The calculation of credit for stringent bail conditions is neither a mathematical nor a formulaic exercise. The trial judge expressly considered the stringent bail conditions, along with other mitigating factors, in deciding to impose a conditional sentence. We are satisfied that the sentence adequately accounted for the full amount of time spent by the appellant on a house arrest bail.
- [8] As for the second ground, the sentencing judge considered the fact that the appellant kept the gun for two and a half months, noting that if the appellant had turned it over sooner, the matter might be quite different. We see no error in this assertion. The sentencing judge found that the appellant was "not an ingenué"; that he was intelligent; a person with business experience and experience of the criminal justice system. The sentencing judge was of the view that appellant could have and should have done more to turn in the gun and ammunition in a timely way.
- [9] The sentencing judge's assessment of this issue is entitled to deference. The appellant is to be commended for taking the actions that he did in the interests of public safety. At the same time, it was for the sentencing judge to determine the weight to attach to the various mitigating and aggravating circumstances. In finding that a discharge was not in the public interest, the sentencing judge considered not only the duration of the possession, but the gravity of firearms offences, the appellant's criminal record, and the fact that he was under three separate firearms prohibitions at the time he took possession of the gun. We see no basis for interference with this conclusion.

- [10] Nor are we persuaded that the sentencing judge erred in his treatment of the case law. The cases relied upon by the appellant in the court below were quite distinguishable. Among other things, the individuals were all first offenders and were not bound by weapons prohibitions.
- [11] The appellant points to a passage in the sentencing judge's reasons, in which he stated of the cases presented to him: All of these cases involve first offenders who are the lower end of the spectrum, described by [Doherty] J.A. in [Nur]. They were not gun toting outlaws using firearms as a tool of the trade.
- [12] This was an unfortunate reference. The appellant, quite rightly, points out that he was not a "gun toting outlaw using firearms as a tool of the trade". However, we do not understand the sentencing judge to have used this language to describe the appellant. The sentencing judge was referring to an expression in the decision of the Supreme Court of Canada in *R. v. Nur*, 2015 SCC 15, [2015] 1 S.C.R. 773, at para. 82, which reads as follows: Section 95(1) casts its net over a wide range of potential conduct. Most cases within the range may well merit a sentence of three years or more, but conduct at the far end of the range may not. At one end of the range, as Doherty J.A. observed, "stands the outlaw who carries a loaded prohibited or restricted firearm in public places as a tool of his or her criminal trade. . . . [T]his person is engaged in truly criminal conduct and poses a real and immediate danger to the public". [Citations omitted.]
- [13] We are satisfied by the lenient sentence itself and by his approach to the appellant throughout his reasons that the sentencing judge did not intend to label the appellant as "gun toting outlaw using firearms as a tool of the trade".
- [14] It was open to the sentencing judge to conclude that a discharge was not in the public interest, but that a conditional sentence reflected a proper balance of mitigating and aggravating factors. This case was, as found by the sentencing judge, quite exceptional. However, the imposition of a conditional sentence was, itself, quite exceptional. It represented an appropriate combination of accountability and leniency. We see no error in principle that would warrant the intervention of this court.
- [15] In closing, we observe that appellant was very ably represented by duty counsel on this appeal, but also offered his own eloquent submissions. Like the sentencing judge, we were impressed by his intelligence and sophistication. We encourage him to continue exploring his rehabilitative potential.
- [16] Leave to appeal sentence is granted, but the sentence appeal is dismissed. "P. Lauwers J.A." "L. Sossin J.A." "R. Pomerance J.A."
- [1] See *R. v. Downes* (2006), 79 O.R. (3d) 321 (C.A.).

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