

CANADA / JUDGMENT

R. v. Schell

2015 BCCA 74

COURT

British Columbia Court of Appeal

DECIDED

20 February 2015

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2015 BCCA 74 R. v. Powers COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Schell, 2015 BCCA 74 Date: 20150220 Docket: CA042264 Between: Regina Respondent And Brandon Clifford Schell Appellant Before: The Honourable Mr. Justice Donald The Honourable Madam Justice D. Smith The Honourable Mr. Justice Groberman On appeal from: An order of the Supreme Court of British Columbia, dated August 16, 2013 (R. v. Schell, 2013 BCSC 1678, Kamloops Docket No. 93349-3). Counsel for the Appellant: D. Melville Counsel for the Respondent: E. Campbell Written Joint Submission Filed: January 30, 2015 Place and Date of Judgment: Vancouver, British Columbia February 20, 2015 Written Reasons by: The Honourable Madam Justice D. Smith Concluded in by: The Honourable Mr. Justice Donald The Honourable Mr. Justice Groberman Summary: The appellant appeals the credit granted for pre-sentence custody. Held: Appeal allowed. Adjustment to credit granted in accordance with R. v. Summers, 2014 SCC 26. Reasons for Judgment of the Honourable Madam Justice D. Smith:

- [1] The appellant, Brandon Clifford Schell, applies for an extension of time to appeal, leave to appeal, and if granted appeals his sentence to reflect credit for pre-sentence custody at a ratio of 1.5 days to each day spent in pre-sentence custody, in accordance with R. v. Summers, 2014 SCC 26.
- [2] Mr. Schell was sentenced on August 16, 2013, to a global sentence of 50 ½ months (or 4 years and 2 ½ months) as follows: Indictment 93349-3 Count 2 - unlawfully discharging a firearm, contrary to s. 244(2)(a) of the Criminal Code - 50 ½ months (or 4 years, 2 ½ months) after receiving credit for pre-sentence custody of 21 ½ months (or 1 year, 9 ½ months); Count 3 - aggravated assault, contrary to s. 268(2) of the Criminal Code - 3 years concurrent to Count 2
- [3] Mr. Schell was in pre-sentence custody for 21 months and 10 days. He received credit for that period at a ratio of 1:1. Based on Summers, he was entitled to credit for pre-sentence custody at a ratio of 1:1.5 or 32 months (21.33 x 1.5 = 32). The increase in credit to Mr. Schell would be 10 ½ months resulting in a reduction in Mr. Schell's sentence on Count 2 to three years and four months.
- [4] The record indicates that Mr. Schell acted in a timely manner to pursue his appeal upon learning of the Summers decision.

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- [5] The Crown advises that it does not oppose the granting of credit for pre-sentence custody at a ratio of 1:1.5 and that Mr. Schell is not disqualified from receiving such credit pursuant to s. 719(3.1) of the Criminal Code.
- [6] In these circumstances, I would grant an extension of time for the filing of the appeal, grant leave to appeal, and allow the appeal to the extent only that the sentence on Count 2 of Indictment 93349-3 be reduced to three years and four months, after giving Mr. Schell credit of two years and eight months (or 32 months) for pre-sentence custody. "The Honourable Madam Justice D. Smith" I AGREE: "The Honourable Mr. Justice Donald" I AGREE: "The Honourable Mr. Justice Groberman"
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