

CANADA / JUDGMENT

R. v. Seniuk

2015 BCCA 162

COURT

British Columbia Court of Appeal

DECIDED

20 April 2015

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2015 BCCA 162 R. v. Seniuk COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Seniuk, 2015 BCCA 162 Date: 20150420 Docket: CA42608 Between: Regina Respondent And Jordan Cole Seniuk Appellant Before: The Honourable Madam Justice Bennett The Honourable Madam Justice Garson The Honourable Madam Justice Stromberg-Stein On appeal from: An order of the Provincial Court of British Columbia, dated July 8, 2013 (R. v. Seniuk, Vancouver Docket Nos. 228855-1; 230177-1). Counsel for the Appellant: M. Poulsen Counsel for the Respondent: E. Campbell Written Joint Statement Filed: Vancouver, British Columbia March 24, 2015 Place and Date of Judgment: Vancouver, British Columbia April 20, 2015 Written Reasons by: The Honourable Madam Justice Garson Concurred in by: The Honourable Madam Justice Bennett The Honourable Madam Justice Stromberg-Stein Summary The appellant applies for an adjustment of time in custody in accordance with R. v. Summers, 2014 SCC 26. Held: Appeal allowed. The appellant is entitled to a credit of 150 days. Reasons for Judgment of Madam Justice Garson:

- [1] The appellant, Jordan Cole Seniuk, applies for an extension of time to file for leave, leave to appeal the sentence, and if, leave is granted, seeks enhanced (i.e., 1.5:1) credit for the 100 days he spent in pre-sentence custody based on the decision of the Supreme Court of Canada in R. v. Summers, 2014 SCC 26.
- [2] On July 8, 2013, Mr. Seniuk was sentenced to 3-years' imprisonment less time served in pre-sentencing custody on two counts of robbery to be served concurrently. In imposing that sentence, the sentencing judge granted Mr. Seniuk credit for the 100 days he spent in custody prior to sentencing at a 1:1 basis. An enhanced credit of 1.5:1 ratio for time served in pre-sentencing custody would lead to a total credit of 150 days to be deducted from the 3-year total sentence. This leaves an effective sentence of 2 years and 215 days from the time of sentencing.
- [3] The Crown is not opposed to time being extended or to enhanced credit being given. It agrees Mr. Seniuk is not disqualified from receiving such credit for any statutory reason. The Crown says it is not in a position to point to circumstances that make enhanced credit inappropriate or to rebut the inference that the appellant has lost eligibility for parole or early release.

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- [4] The record does not indicate that Mr. Seniuk did not act in a timely manner to pursue his appeal upon learning of the Summers decision.
- [5] In the circumstances, I would extend the time for filing of the notice of application for leave to appeal to March 3, 2015, grant leave to appeal, allow the appeal, and vary the effective sentence to 2 years and 215 days from the time of Mr. Seniuk's sentencing. "The Honourable Madam Justice Garson" I agree: "The Honourable Madam Justice Bennett" I agree: "The Honourable Madam Justice Stromberg-Stein"
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