

CANADA / JUDGMENT

R. v. Shirizadeh

2025 ONCA 676

COURT

Court of Appeal for Ontario

DECIDED

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R. v. Shirizadeh

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COA-24-CR-0940

Judges

Hourigan, C. William; Monahan, Patrick J.; Dawe, Jonathan

Subject

Criminal

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Shirizadeh, 2025 ONCA 676

DATE: 20250926

DOCKET: COA-24-CR-0940

Hourigan, Monahan and Dawe JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Anoshirvan Shirizadeh

Appellant

Ariel Herscovitch, for the appellant

James Clark, for the respondent

Heard: September 25, 2025

On appeal from the sentence imposed by Justice Michelle Fuerst of the Superior Court of Justice on September 21, 2022, with reasons reported at 2022 ONSC 5321.

REASONS FOR DECISION

[1] The appellant pleaded guilty to twelve firearm-related offences, including two counts of discharge of a prohibited firearm with intent to prevent arrest, contrary to s. 244(1) of the Criminal Code, R.S.C. 1985, c. C-46; possession of a firearm while prohibited, contrary to s. 117.01(1); dangerous driving, contrary to s. 320.13(1); and possession of explosive substances, contrary to s. 82(1). He was sentenced to 18 years' incarceration, less 50 months of presentence custody, leaving a total sentence to serve of 13 years and 10 months. He seeks leave to appeal his sentence.

[2] At the conclusion of the appellant's submissions, we did not find it necessary to call on the Crown and dismissed the appeal with reasons to follow. These are our reasons.

I. Circumstances of the offence [3] On the morning of December 27, 2019, the appellant armed himself with a five-bullet capacity Smith and Wesson .38 revolver and additional ammunition and drove to a gas station located at a busy commercial intersection in Richmond Hill. After a uniformed police officer recognized him and attempted to effect his arrest, the appellant rapidly fired at least four times in the direction of the officer. The officer returned fire. The appellant reloaded his gun and fired at least three times at the officer. He then managed to flee the gas station in his SUV by deliberately ramming another vehicle. Fortunately, no one was injured.

[4] The appellant sped back to his residence, which he had equipped with signalling devices, trip wires, explosives, firearms, ammunition, knives, other weapons, and combat gear. He barricaded himself in the house, called 911 to report that he had been involved in a shooting, and demanded a "negotiator".

- [5] Officers and police vehicles surrounded his home, but the appellant refused to surrender. After a 10-hour negotiation, the police moved an armoured vehicle toward the house, pushed a ram through the front door, and fired gas-filled projectiles into the residence. The appellant responded with gunfire, firing at least 12 shots out of various windows, which hit neighbouring homes and vehicles. Remarkably no-one was injured.
- [6] After the appellant surrendered, police removed the explosives, trip wires, and signaling devices to search the house and found an arsenal of weaponry, including two loaded handguns, two loaded rifles, a shotgun, ammunition, 27 knives, hatchets, machetes, homemade cricket bombs, and pipe bombs. At the time the appellant was bound by two weapons prohibition orders. One was imposed when he was sentenced to a three-year penitentiary term for possession of two unauthorized restricted firearms, a .457 Beretta handgun and a 12-gauge shotgun. The second had been imposed just 11 days earlier for possession of two .40 caliber magazines.

II. Sentencing judge's reasons [7] The sentencing judge described the case as one involving a "stunning constellation of firearms and weapons possession offences." The relevant aggravating factors included the appellant's prior criminal record, the fact that the appellant discharged a firearm at police officers multiple times, not only at the gas station but during the standoff at his home; the appellant had amassed a large cache of firearms, ammunition, explosives and weaponry capable of causing serious harm, many of which were illegal; the appellant had assembled this arsenal notwithstanding that he had been on a strict house arrest bail until just days before the incident, which included a clause that he not possess any weapons including firearms, ammunition, and explosive substances; and the appellant had "booby-trapped" his property, creating an extra measure of hazard for the police officers at the scene.

- [8] In mitigation, the sentencing judge noted that the appellant had pleaded guilty, expressed remorse and accepted responsibility for the offences. Although the guilty pleas "were not made at the earliest opportunity, as they came after a date for a Superior Court trial was set, they did save weeks of court time". The sentencing judge acknowledged that this relief was important given the pandemic-created backlog of cases that the Superior Court was dealing with at the time and, further, that the guilty plea avoided the need to have witnesses testify and relive distressing events. Also mitigating was the fact that the majority of the appellants' presentence custody had been served during the pandemic, when conditions in the detention centres were harsher than usual. The appellant had experienced a difficult childhood having initially been raised by his mother in a war-torn country before coming to Canada as a refugee. He suffered abuse by his biological father but, following his parents' divorce, he has gained a stable and supportive family unit, which provides a potential for his rehabilitation.
- [9] Notwithstanding these mitigating factors, the sentencing judge found the gravity of the appellant's offences and his moral blameworthiness to be high. The appellant chose to arm himself and take a concealed loaded handgun to a public place. When approached by a police officer who attempted to arrest him, he fired at the officer multiple times, putting the

safety of the officer and others at the scene in immediate risk. Throughout the subsequent standoff at his home culminating in a third round of gunfire, the appellant put multiple police officers and the local community at peril, demonstrating a complete disregard for the safety of others. The sentencing judge described the appellant's conduct as "chilling" and exemplifying what this court in *R. v. Morris*, 2021 ONCA 680, 159 O.R. (3d) 641, at para. 68, described as "antithetical to the Canadian concept of a free and ordered society". The sentencing judge concluded as follows:

This is an exemplary case, and an exemplary sentence is required. There is a very strong need for a sentence that denounces Mr. Shirizadeh's unlawful conduct, deters him and deters others, and protects the public. Rehabilitation, while not entirely out of the question for Mr. Shirizadeh, is a sentencing objective of markedly less weight.

- [10] Consistent with that finding, the sentencing judge found that the offences at the gas station and those at the house required consecutive sentences, given that they occurred in different locations, involved different weaponry and conduct, and implicated different potential victims.
- [11] Nevertheless, bearing in mind that "the principle of totality requires that the global sentence not be excessive", and balancing the aggravating and mitigating factors in light of the applicable principles and objectives of sentencing, she concluded that a global sentence of 18 years in jail less presentence custody credited at one-and-a-half-to-one should be imposed. This included a sentence of nine years for discharging a prohibited firearm at the police officer at the gas station, and six years consecutive for discharging a firearm at police officers during the standoff at his residence. The sentencing judge also imposed consecutive sentences of eighteen months for the possession of firearms while prohibited; one year for dangerous driving and six months for possession of explosive substances. The sentences for the remaining offences were to be served concurrently.

III. Grounds of appeal [12] The appellant raises the following grounds of appeal:

- (i) the sentencing judge erred by overemphasizing denunciation and deterrence, and by failing to explain how any of the mitigating factors impacted upon the sentence imposed;
 - (ii) the sentencing judge erred in finding that the appellant's guilty plea did not occur at the "earliest opportunity", thus minimizing the impact of what should have been recognized as a more significant mitigating factor;
 - (iii) the sentencing judge failed to explain how totality impacted upon the sentence imposed; and
 - (iv) the sentencing judge imposed a harsh and excessive sentence.
- [13] The appellant argues that a global sentence of 12 years imprisonment, prior to taking into account credit for pre-sentence custody, should be substituted for the sentence imposed.

IV. Analysis [14] It is well established that sentencing decisions are entitled to significant deference, and appellate intervention is only warranted if the sentence is demonstrably unfit or if the sentencing judge made an error of law or an error in principle that had an impact on the sentence: *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089, at paras. 11, 39-44 and 48.

[15] The first two grounds of appeal focus on how the sentencing judge weighed the aggravating and mitigating factors in this case. Yet the appellant fails to identify any error of law or principle in the sentencing judge's analysis, and simply invites us to revisit the weight attached to certain mitigating factors, particularly the appellant's guilty plea. The sentencing judge's weighing of the aggravating and mitigating factors was reasonable, and we see no basis for reweighing those factors.

[16] Nor did the sentencing judge impose a sentence that was unduly harsh or excessive. This court has repeatedly stressed the need for exemplary sentences for firearms offences and that such sentences must further the goals of denunciation, deterrence and protection of the public: *R. v. Burke-Whittaker*, 2025 ONCA 142, 175 O.R. (3d) 726, at para. 37; *R. v. Brown*, 2010 ONCA 745, at para. 14; *R. v. Danvers* (2005), 199 C.C.C. (3d) 490 (Ont. C.A.), at para. 78.

[17] What was particularly aggravating in this case was the appellant's exchange of gunfire with police officers at both the gas station and his residence. The offence of discharging a firearm with intent to avoid arrest or detention warrants a very strong sanction, as Doherty J.A. directed in *R. v. McArthur* (2004), 182 C.C.C. (3rd) 230, at para. 49:

Violent attacks upon police officers who are doing their duty are attacks on the rule of law and on the safety and well-being of the community as a whole. Sentences imposed for those attacks must reflect the vulnerability of the police officers, society's dependence on the police, and society's determination to avoid a policing mentality which invites easy resort to violence in the execution of the policing function. [Citations omitted.]

[18] The appropriate range for serious gun-related offences involving the discharge of firearms is between seven and eleven years: *R. v. Bellissimo*, 2009 ONCA 49, at para. 3; *R. v. Jefferson*, 2014 ONCA 434 at para. 14; *R. v. Jarvis*, 2022 ONCA 7, at para. 6. The sentences imposed for the two discharge firearm offences in this case were either within that range or slightly below it (i.e. nine and six years respectively).

[19] Given the fact that the offences involved distinct wrongs, the sentencing judge imposed those sentences consecutively. This court has previously determined the appropriateness of consecutive sentencing for offences related to flight from the police given the need to deter this highly dangerous behaviour and the sentencing judge reasonably exercised her discretion in this regard: *Jarvis*, at para. 5.

- [20] Given the above-mentioned range for gun-related offences, the remaining consecutive sentences for dangerous driving, possession of a firearm while prohibited, and possession of an explosive substance were appropriate. The sentencing judge also expressly took into account the principle of totality, noting that the 20-year global sentence proposed by the Crown would have been unduly long and therefore imposed a global 18-year sentence.
- [21] As the sentencing judge concluded, the appellant's conduct was shocking and put police officers as well as the public at great risk. The sentencing judge properly found that an exemplary sentence was required.
- [22] While we would grant leave to appeal sentence, the sentence appeal is dismissed.

"C.W. Hourigan J.A."

"P.J. Monahan J.A."

"J Dawe J.A."

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