

CANADA / JUDGMENT

R. v. Stewart

2026 ONCA 350

COURT

Court of Appeal for Ontario

DECIDED

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R. v. Stewart Collection Decisions of the Court of Appeal Date 2026-05-15 Neutral citation 2026 ONCA 350 Docket numbers COA-24-CR-0470 Judges Rouleau, Paul S.; Wilson, Darla A.; Madsen, Lene Subject Criminal Decision Content COURT OF APPEAL FOR ONTARIO CITATION: R. v. Stewart, 2026 ONCA 350 DATE: 20260515 DOCKET: COA-24-CR-0470 Rouleau, Wilson and Madsen JJ.A. BETWEEN His Majesty the King Respondent and Jamel Stewart Appellant Aidan Seymour-Butler, for the appellant Samuel Mazzuca, for the respondent Heard: May 1, 2026 On appeal from the sentence imposed by Justice Wailan Low of the Superior Court of Justice on April 5, 2024.

REASONS FOR DECISION

- [1] The appellant pleaded guilty to three firearms-related offences: two counts of unauthorized possession of a non-restricted firearm (contrary to s. 92(1) of the Criminal Code, R.S.C., 1985, c. C-46 (the “Code”)) and one count of failure to comply with a release order which stipulated that he was not to possess any weapons as defined by the Code (s. 145(5)(a)). The appellant was sentenced to 30 months. The sentencing judge then deducted a total of seven months, six months for pre-sentence custody, and one month credit for his bail conditions pursuant to R. v. Downes (2006), 79 O.R. (3d) 321 (C.A.), at para. 33 (the “Downes credit”).
- [2] The appellant seeks leave to appeal his sentence and if leave is granted, he asks that his sentence be reduced by “five months or more”.
- [3] The appellant submits that the sentencing judge made two errors in principle: first, she placed insufficient weight on his bail conditions, granting inadequate Downes credit; and second, she misapplied R. v. Morris, 2021 ONCA 680, 159 O.R. (3d) 641 (“Morris 2021”), and R. v. Morris, 2023 ONCA 816 (“Morris 2023”), regarding the impact of anti-Black systemic racism by requiring a “rational connection” between his experiences and his conduct. I.
- Background [4] The charges arose from a call received by the Toronto Police Services to attend an underground parking garage. Witnesses reported that the appellant was fighting with another man over a shotgun. Both men left the scene before the police arrived. Video surveillance depicted the appellant removing a shotgun from a duffel bag and a struggle between the two men over the shotgun. After a search warrant was issued, the police found a 12-gauge Uzkon shotgun, a 12-gauge Mossberg shotgun, 56 rounds of 12-gauge ammunition, and a pellet gun in the trunk of the vehicle the appellant was driving. He was

later apprehended.

- [5] At trial, the Crown sought a penitentiary sentence of three years less four months credit for pre-sentence custody. Defence counsel sought a conditional sentence of two years less a day.
- [6] The sentencing judge concluded that a global custodial sentence of 30 months, less credit, was appropriate in the circumstances and gave oral reasons for her decision. She set out the facts of the offences, and the appellant's background, including that he identifies as a Black man, was raised in poverty in a "crime ridden" neighbourhood, and is the father of a young child. The sentencing judge considered the appellant's relative youth and rehabilitative potential, but also that he was "no novice to violent crime", having served a previous custodial sentence for armed robbery which was "not a successful deterrent." She determined that these offences lay at the "true crime" end of the spectrum.
- [7] The sentencing judge considered several mitigating factors, including the appellant's guilty plea, his remorse and assumption of responsibility, and his employment prospects. She also noted that the appellant was subject to strict bail conditions. She balanced the mitigating factors with the aggravating factors, including the circumstances surrounding the offences.
- II. Analysis [8] It is well established that appellate intervention in sentencing is only warranted where the sentencing judge has committed an error in principle that impacts the sentence or has otherwise imposed a sentence that is demonstrably unfit: *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089, at paras. 36- 55. We would not interfere with the appellant's sentence.
- a. The Sentencing Judge did not err in Downes Credit Allocation [9] Defence counsel submitted that the appellant's 20 months of pre-sentence bail conditions should be considered as a mitigating factor. His bail conditions were restrictive: he was subject to electronic monitoring and could not leave his residence unless he was with his surety or in the event of a medical emergency.
- [10] The appellant argues that although the sentencing judge stated that she would account for the strict bail conditions using a non-numerical formula, she ultimately took a numerical approach, giving Downes credit of one month. The appellant argues that while it was open to the judge to apply this approach, she erred in doing so because the credit did not adequately reflect the harshness of the appellant's bail conditions.
- [11] The appellant's complaint is essentially that the sentencing judge should have given him more Downes credit for time spent on bail. Nevertheless, he acknowledges that quantification, rather than treating harsh pre-sentence custody as a mitigating factor, is "not necessarily inappropriate": *R. v. Lowe*, 2025 ONCA 475, at para. 17.
- [12] While the appellant asserts that there was evidence of hardship arising from his bail conditions and states that he struggled to complete further schooling or find employment, there was no evidence before the sentencing judge about the impact of the bail conditions or any suggestion that the appellant pursued online opportunities.

- [13] The consideration of Downes mitigation is both fact-specific and discretionary: Lacasse, at para. 44; Downes, at para. 37. Neither the approach of the sentencing judge nor the credit allocated reflect an error in principle.
- b. The Sentencing Judge did not Misapply Morris [14] The appellant is a Black man of Jamaican descent living in Toronto. The Enhanced Pre-Sentence Report (the “Morris Report”) indicates that throughout his life, he has experienced anti-Black racism. He was raised in a high-crime neighbourhood and experienced discriminatory practices such as being stopped and searched and carded which left him with a distrust of the police. The appellant told the assessor that he had fears for his safety in his neighbourhood and in high-risk situations and carried a weapon to protect himself.
- [15] The appellant submits that the sentencing judge erred in principle in her application of Morris, resulting in a longer sentence than appropriate. He argues that she applied a higher standard than that set out in Morris in determining whether his experience of systemic racism impacted his moral culpability. Specifically, he says that the sentencing judge erred in stating that there was no “rational connection” between his background and the circumstances of the offences.
- [16] We do not accept this argument. The sentencing judge correctly set out the legal principles from Morris 2021 and Morris 2023 and that “some connection” must be shown between the anti-Black racism identified and the circumstances or events that are said to explain or mitigate the criminal conduct in issue: Morris 2021, at para. 97. She considered the appellant’s experiences, as set out in the Morris Report, and acknowledged that the appellant told the assessor that because of his experiences he felt safer with a firearm.
- [17] The sentencing judge concluded, however, that there was no nexus between any overt or systemic racism experienced by the appellant and the offences to which the appellant pleaded guilty. She stated: “[a] naked shotgun in the stairwell of a downtown parkade being struggled over by [the appellant] and another and the cache of two shotguns, a pellet gun, and abundant ammunition in the trunk of [the appellant’s] car point to motives other than self defence.”
- [18] We do not find that the sentencing judge misapplied the test by referring, on one occasion, in her oral judgment to a “rational connection” rather than “some connection.” She understood the correct legal test and properly applied it: Lowe, at para. 13.
- [19] We would add that we reject the appellant’s secondary argument that the sentencing judge erred in mentioning other groups who experience discrimination in Canada. Referring to discriminatory practices in Canada more broadly, at the outset of her analysis, was not an error. III. Disposition [20] For these reasons, while we grant leave to the appellant to appeal his sentence, the sentence appeal is dismissed. “Paul Rouleau J.A.” “D.A. Wilson J.A.” “L. Madsen J.A.”

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