

CANADA / JUDGMENT

R. v. Wood

2025 ONCA 746

COURT

Court of Appeal for Ontario

DECIDED

30 October 2025

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Collection

Decisions of the Court of Appeal

Date

2025-10-30

Neutral citation

2025 ONCA 746

Docket numbers

COA-25-CR-0627

Judges

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

Subject

Criminal

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Wood, 2025 ONCA 746

DATE: 20251030

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Hourigan, Monahan and Dawe JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Jeffrey Wood

Appellant

Lawrence Greenspon and Hannah Drennan, for the appellant

Jennifer Epstein, for the respondent

Heard: September 22, 2025

On appeal from the sentence imposed by Justice R. Wadden of the Ontario Court of Justice on May 26, 2025, with reasons reported at 2025 ONCJ 285.

Monahan J.A.:

I. Overview [1] The appellant stole the “Roaring Lion” portrait photograph of Winston Churchill from the Château Laurier Hotel in Ottawa in January 2022, replaced it with a forgery, and sold the original through an auction house in London, England. The portrait, which was taken by Canadian photographer Yousuf Karsh following Churchill’s 1941 address to the Canadian Parliament, is one of the world’s best-known photographs of Churchill. The print at the Château Laurier was personally developed, matted, framed, signed, and gifted by Karsh to the hotel.

[2] The theft was not discovered by the Château Laurier until August 2022. Police eventually learned that the print had been purchased at a May 2022 Auction in London by a resident of Genoa, Italy. Although the purchaser had acquired the print without notice of the theft, he graciously agreed to return what he described as one of the “most significant photographs in our history”, so that it could continue to be displayed to and enjoyed by the public. With the assistance of authorities in the United Kingdom and Italy, the print was returned to public display at the Château Laurier.

[3] The appellant pleaded guilty to theft over \$5000, forgery, and possession of stolen property over \$5000 for the purpose of trafficking. He was sentenced to a period of incarceration of two years less a day. He seeks leave to appeal his sentence.

II. Reasons for sentence [4] The sentencing judge identified a number of aggravating factors, including that the crimes concerned an object of historical and cultural significance. Also aggravating was the fact that the appellant had replaced the stolen print with his forged copy, trafficked the stolen artwork, went to substantial planning and effort to profit by his theft, and caused irreparable damage to the print. The sentencing judge conceded that, although there were limited precedents involving the theft of artwork in Canada, the relevant Canadian and international jurisprudence provided support for the imposition of a penitentiary sentence for the theft of such a culturally significant work.

- [5] At the same time, the sentencing judge acknowledged that there were a number of significant mitigating factors, including that the appellant had no criminal record, had pleaded guilty and expressed remorse, and had spent five days in pre-sentencing custody and over a year under very strict bail conditions, which entitled him to Downes credit.[1] The sentencing judge further observed that he must consider options other than incarceration before imposing a jail sentence and impose the lowest sentence that can be imposed on a first-time offender.
- [6] The sentencing judge concluded that, absent mitigating factors, a penitentiary sentence in the range of three years would have been justified. However, after taking into account the relevant mitigating factors, he imposed a sentence of two years less a day.

III. Grounds of appeal [7] The appellant argues that the sentencing judge made a number of errors in principle that had an impact on his sentence, including; relying on international caselaw dealing with theft of items obtained through a breach of trust, with a far greater monetary value, or involving one of a kind items; failing to consider the availability of a conditional sentence; failing to consider the appellant's motive, which he claimed was to assist his ill brother; and incorrectly applying the principle of breach of trust.

- [8] The appellant further argues that the sentence was demonstrably unfit, since he had no prior criminal record, had pleaded guilty and expressed remorse, and the offences were property-related crimes where no violence was threatened or attempted.

IV. Analysis [9] It is well established that sentencing decisions are entitled to significant deference, and appellate intervention is only warranted if the sentencing judge made an error of law or an error in principle that had an impact on the sentence or if the sentence is demonstrably unfit: *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089, at paras. 11, 39-44 and 48.

- (1) The sentencing judge did not commit any of the alleged errors in principle. [10] I see no error in the manner in which the sentencing judge referenced domestic and international jurisprudence dealing with thefts of items of cultural and historic significance. As the sentencing judge pointed out, there were limited Canadian precedents dealing with such thefts, making it appropriate to consider the manner in which courts in other jurisdictions have approached such crimes. The sentencing judge relied on this jurisprudence for its normative value, as guidance on the factors or considerations relevant to the determination of an appropriate sentence dealing with the thefts of items of cultural or historic significance.
- [11] In *United States v. Goldman*, 953 F. (3d) 1213 (11th Cir. 2020), the court relied on the fact that the stolen item had an "intangible value" arising from its history, its donation to a museum where it had been displayed for many years, and the enjoyment of the item by the public and their association of it with that museum. These factors were directly relevant to the *Roaring Lion*, whose value was derived in significant part from the fact that it had been gifted by Karsh, on continuous public display since 1998 and was part of the recent history of the *Château Laurier*.

- [12] Similarly, in *United States v. Medford*, 194 F. (3d) 419 (3rd Cir. 1999) the court found that the price set by the commercial market was insufficient to “fully capture the harmfulness of the [defendants’] conduct”, given the historical and cultural importance of artifacts that had been stolen. In this case, the monetary value of the stolen objects “[did] not adequately take into consideration the real but intangible harm inflicted upon all the other victims of the offense, including the [...] general public.”
- [13] The U.K. Court of Appeal in *R. v. Stanton*, [2013] EWCA Crim 1456, identified the following factors as relevant to sentencing in a case dealing with the theft of cultural property from a museum:
- (a) The impact of the offence was immense, causing consternation to the museum and raising concerns amongst benefactors that valuable artifacts could not be safely entrusted to the museum;
 - (b) The museum had been put to significant expense, in the hundreds of thousands of pounds, in improving security;
 - (c) The offence was carefully planned, and tenaciously and audaciously executed;
 - (d) The property stolen was of huge cultural importance; and
 - (e) The offenders had played no role in assisting in the recovery of the property.
- [14] The sentencing judge did not treat these various cases as binding precedents. Rather, faced with limited Canadian precedent, the sentencing judge relied upon them for perspective and as a source of guidance in identifying the principles that should be taken into account in determining a fit sentence for the accused in this case.
- [15] On that basis, the sentencing judge found that the Roaring Lion had intangible value that exceeded its monetary value. The fact that the appellant had forged a replacement copy, damaged, and trafficked the stolen artwork were aggravating factors, as was the fact that he had engaged in these crimes for financial gain. These considerations were appropriately taken into account and supported the sentencing judge’s conclusion to impose a penitentiary sentence for crimes of this nature.
- [16] The sentencing judge also properly factored in the relevant mitigating factors in ultimately imposing a sentence of two years less a day. This included the fact that the appellant had pleaded guilty, expressed remorse to the court, and had no criminal record.
- [17] While the sentencing judge did not expressly refer to the possibility of imposing a conditional sentence on the appellant, he recognized the well-established principle that he must consider “options other than incarceration before imposing a jail sentence and impose the lowest sentence that can be imposed on a first-time offender.” When viewed as a whole, the sentencing judge’s reasons make clear that he considered and rejected alternatives other than incarceration for the appellant. This conclusion was open to the sentencing judge.

- [18] The sentencing judge also made reference to the appellant's statement at sentencing that his motive was to assist his brother, but the sentencing judge was nevertheless entitled to find that the theft was committed for financial gain.
- [19] The sentencing judge did refer to the appellant's "breach of trust" but, when read in context, the sentencing judge did not mean to suggest that the appellant was himself in a position of trust in relation to the print, nor that he was relying on s. 718.2(a)(iii) of the Criminal Code, R.S.C. 1985, c. C-46, dealing with breach of trust as an aggravating factor. The relevant passage in his reasons is as follows:

There is an element of trust in our society that allows such properties to be displayed to be enjoyed by all Canadians. To steal, damage and traffic in such property is to breach that trust. To do so in a planned matter for personal financial gain is aggravating.

- [20] The "breach of trust" referred to by the sentencing judge is simply the art holder and public's confidence that works of cultural significance can be safely displayed for the enjoyment of all. It was that generalized confidence that the appellant undermined, as opposed to some special trust obligation applicable specifically to the appellant. Indeed, the sentencing judge distinguished *R. v. Dalton*, [2007] O.J. No. 5602 (S.C.), one of the two Canadian authorities provided by the Crown, on the grounds that it involved a breach of trust while the present case did not.
- [21] The appellant has failed to identify any error in principle but merely asks us to reweigh the aggravating and mitigating factors and substitute our judgment for that of the sentencing judge. That is not our role, and we decline to do so.
- (2) The sentence of two years less a day was not demonstrably unfit [22] It follows from the above analysis that the sentence of two years less a day for the offences committed by the appellant was not demonstrably unfit. As the sentencing judge found, the theft and forgery "was an affront to the Château Laurier and to the reputation of Karsh, and to everyone who was deceived by the forgery". It was a "significant crime", deserving of a denunciatory sentence.

V. DISPOSITION

- [23] While I would grant leave to appeal sentence, I would dismiss the sentence appeal.

"P.J. Monahan J.A."

"I agree. C.W. Hourigan J.A."

Dawe J.A. (dissenting):

- [24] I have read my colleague Monahan J.A.'s reasons for dismissing the appellant's sentence appeal. I respectfully disagree with his conclusion that the sentencing judge did not make errors in principle that had an impact on the appellant's sentence.

- [25] Although “the choice of sentencing range or of a category within a range falls within the trial judge’s discretion and cannot in itself constitute a reviewable error” (R. v. Lacasse, 2015 SCC 64, [2015] 3 S.C.R. 1089, at para 51), it is an error in principle for a sentencing judge to misidentify the applicable sentencing range for an offence or for a category of an offence: see e.g., R. v. Cunningham, 2023 ONCA 36, 166 O.R. (3d) 147, at para. 22; R. v. Lynch, 2022 ONCA 109, 160 O.R. (3d) 241, at paras. 10, 14-15; R. v. Navarathinam, 2022 ONCA 377, at para. 10.
- [26] In my view, the sentencing judge’s reasons disclose that he made two related errors that led to his misidentifying the applicable sentencing range for the appellant’s offences. First, the sentencing judge narrowed his focus and only considered Canadian sentencing precedents in which the subject-matter of the offences were works of art. Second, when he found too few Canadian decisions involving art works to establish a meaningful sentencing range for this subcategory of offences, he bridged this gap by turning to foreign sentencing precedents, without taking into account the very different sentencing regimes that exist in some other jurisdictions. As a result, the sentencing judge did not properly situate the appellant’s conduct on the Canadian sentencing spectrum for the offences he had committed. This caused the sentencing judge to lose sight of the fundamental sentencing principle of proportionality: Criminal Code, R.S.C. 1985, c. C-46, s. 718.1.
- [27] On the first point, the sentencing judge considered two Canadian sentencing precedents involving art theft or art forgery. In the first case, R. v. Dalton, [2007] O.J. No. 5602 (S.C.), the accused had received a five-month jail sentence for stealing art works he had been hired to store for their owner. The sentencing judge dismissed this case as “not especially helpful” because it was “primarily about the breach of trust”. In the second case, R. v. Lamont (December 14, 2023) Thunder Bay, CR-23-00000043-0000 (Ont. S.C.), the accused had created hundreds of fake paintings and passed them off as the work of a prominent Indigenous artist, and had received a five-year penitentiary sentence on a joint submission (less credit for pre-sentence custody). The sentencing judge considered it to be “more relevant”, and concluded:

Although the Lamont case involved a much larger scale crime than Mr. Wood’s, it sets a standard that these crimes warrant consideration of a penitentiary sentence.

- [28] In my view, it was an error for the sentencing judge to treat a single case involving a markedly different crime as setting a sentencing range for art crimes in general. More fundamentally, it was an error for him to narrow his focus to offences involving works of art, while dismissing the relevance of other cases relied on by the defence because they involved “commonplace frauds” rather than the theft of “a piece of artwork of historic and cultural importance.” The appellant was being sentenced for Criminal Code offences that apply to all forms of property, not just works of art, and the principle of proportionality required his crimes to be situated on the full sentencing spectrum for these offences. While the sentencing judge’s conclusion that the appellant’s offences involved “an object of historical and cultural significance” was a relevant factor, the gravity of his offences had to be

measured along multiple axes, only one of which was the nature and value of the item he stole.

- [29] The sentencing judge found that the stolen print in this case had intangible value that exceeded its monetary value for a number of reasons, including because it had been developed, framed, and signed by the photographer, who had lived and worked in the Château Laurier for many years, and because it was a gift from him to the hotel. That said, the signed print had been appraised and insured for only \$20,000 CAD, and it sold at auction in London, England for slightly less than the equivalent of \$10,000 CAD. This court has upheld reformatory-length sentences in some cases where offenders abused personal relationships of trust to steal hundreds of thousands of dollars from vulnerable senior citizens: see e.g., *R. v. Cvetas*, 2022 ONCA 499; *R. v. Fagan*, 2013 ONCA 32. In my view, the print's intangible value to the hotel did not elevate the overall gravity of the appellant's crimes above that of these other offences.
- [30] The sentencing judge's second error in principle was to rely on precedents from other countries to help establish a sentencing range for art crimes.
- [31] The sentencing judge considered three museum theft cases from the United States and one from the United Kingdom, in which the defendants had received sentences between approximately 3½ and 7 years' imprisonment: *United States v. Goldman*, 953 F. (3d) 1213 (11th Cir. 2020); *United States v. Medford*, 194 F. (3d) 419 (3rd Cir. 1999); and *United States v. McCarty*, 628 F. (3d) 284 (6th Cir. 2010); and *R. v. Stanton*, [2013] EWCA Crim 1456. He also considered a New Zealand decision involving the theft of a painting as part of a political protest, where the accused had received a suspended sentence: *R. v. Te Kaha*, [1999] D.C.R. 48. The sentencing judge then stated:

Taking guidance from the Lamont decision, as well as the Goldman, Medford and McCarty decisions from the United States, and the UK decision in Stanton & Anr and the New Zealand case in Te Kaha, it is clear that in Canada, the United States and the Commonwealth, sentences in the penitentiary range, of several years of imprisonment, have been deemed appropriate for crimes committed for profit involving culturally significant works.

- [32] I respectfully disagree with my colleague's conclusion that the sentencing judge only used the foreign sentencing decisions he cited "for perspective and as a source of guidance in identifying the principles that should be taken into account in determining a fit sentence for the accused in this case." The sentencing judge's reasons show that he went further and treated the length of imprisonment imposed in these cases as helping to establish a sentencing range for the appellant's offences, without considering the potentially significant differences between the sentencing regimes in Canada and these other jurisdictions: see e.g., *United States of America v. Thamby*, 2011 ONCA 333, 280 O.A.C. 298, at paras. 10, 23.
- [33] I would find further that the sentencing judge's errors in principle had an impact on the sentence he imposed, such that appellate intervention is warranted: *Lacasse*, at para. 44. After concluding that "sentences in the penitentiary range ... have been deemed appropriate

for crimes committed for profit involving culturally significant works”, the sentencing judge found that a fit sentence for the appellant would be three years’ imprisonment. He then reduced this sentence to a maximum reformatory term of two years less a day, both to account for the appellant’s personal mitigating circumstances and because that was the sentence the Crown had requested. But for his errors in identifying a sentencing range for the appellant’s offences, he might well have imposed a lower sentence.

- [34] The appellant requests that we set aside the sentence imposed and substitute a conditional sentence of two years less a day. I would accede to this request.
- [35] A conditional sentence for the appellant’s offences is statutorily available if the conditions in s. 742.1 of the Criminal Code are met. The appellant’s offences are not excluded by ss. 742.1(b), (c), or (d), and having him serve his sentence in the community would not endanger community safety, having regard to his status as a first offender and the time he has spent without incident on bail pending trial and appeal: Criminal Code, s. 742.1(a).
- [36] I am also satisfied that a conditional sentence would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718, 718.1, and 718.2 of the Criminal Code. I take no issue with the sentencing judge’s identification of the aggravating factors in this case, or with his conclusion that a denunciatory sentence was required. However, a properly crafted conditional sentence can provide “a significant amount of denunciation”: *R. v. Proulx*, 2000 SCC 5, [2000] 1 S.C.R. 61, at para. 102; see also *R. v. Ali*, 2022 ONCA 736, 164 O.R. (3d) 81, at paras. 30-33, 39-42. The denunciatory effect of a conditional sentence can also be enhanced by making it longer than what would have been a fit jail sentence: *Proulx*, at para. 102. I will not attempt to quantify what would have been a fit jail sentence for the appellant, but in my view it would have been significantly shorter than the maximum reformatory-length sentence that was imposed by the sentencing judge.
- [37] I would accordingly grant leave to appeal sentence, and would allow the appeal and substitute a conditional sentence of two years less a day.

Released: October 30, 2025 “C.W.H.”

“J. Dawe J.A.”

- [1] See *R. v. Downes* (2006), 79 O.R. (3d) 321.

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Prepared on 28 October 2026 · Esheria