



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

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No Crown Appeal from Sentence in the Robinson Case

Victoria - The Criminal Justice Branch, Ministry of Justice, will not file an appeal from sentence for the offence of wilfully attempting to obstruct justice in *R. v. Benjamin Montgomery Robinson*, 2012 BCSC 1134. The Branch recognizes that this case has attracted significant public attention over the course of its history. For this reason, the Branch considers it in the public interest to provide background information on the case, as well as the reasons underlying its decision to not file an appeal.

The Branch will not appeal the sentence for three main reasons: although the Crown asked for three to nine months jail, it acknowledged that a conditional sentence of 12 to 18 months was legally available; the Branch cannot identify an error of law that would justify intervention by an appeal court; and a reviewing court would likely defer to the Judge's exercise of discretion.

Trial judges have broad discretion at sentencing. If a sentence is appealed, the appeal court will generally defer to the judge's findings of fact, as well as the judge's assessment of what principles of sentence should be given priority in the case.

A court hearing an appeal cannot substitute its opinion for that of the trial judge simply because it might have taken a different approach. Unless the Crown can show that the sentence was "demonstrably unfit", the appeal court will not interfere with the judge's ruling and impose something different. A "demonstrably unfit" sentence is a sentence that because of legal error, or its clear inadequacy, significantly departs from the range of sentences that might otherwise be available in similar cases.

The fact that a sentence is different from what the Crown asked for does not mean that it was "demonstrably unfit."

Following a trial in the Supreme Court of British Columbia, Benjamin Montgomery Robinson was found guilty of one offence: wilfully attempting to obstruct justice contrary to s.139(2) of the *Criminal Code*. At the time of the offence, he was an off-duty police officer with the Royal Canadian Mounted Police.

When the Crown prosecutes obstructing justice by indictment (which it did in this case), the offender is subject to a maximum punishment of ten years imprisonment. There is no mandatory minimum term of imprisonment.

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At Mr. Robinson's sentencing, Crown Counsel sought jail of three to nine months. The Crown acknowledged that a 12 to 18 month conditional sentence was an available option for the Judge to consider, but argued that in this case, a conditional sentence was not appropriate.

It was up to the Judge to decide what the sentence should be. On July 27, 2012, the Judge imposed a 12 month conditional sentence on Mr. Robinson, with a number of conditions.

Section 742.1 of the *Criminal Code* allows a judge to impose a conditional sentence for obstructing justice where the sentence will be less than two years long, and the judge is satisfied that serving a sentence of imprisonment "in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing". If the offender does not comply with the terms of the conditional sentence, he can be "breached" and brought back into court. Where the court is satisfied that a breach has occurred "without reasonable excuse", the court has the power to "terminate the conditional sentence order and direct that the offender be committed to custody until the expiration of the sentence" (s.742.6(9)).

Many factors can be considered at sentencing, including: the circumstances of the offence; the offender's responsibility or moral blameworthiness; mitigating and aggravating factors (including factors relating to the personal circumstances of the offender); the impact of the offence on the victim(s); and sentences that have been imposed in similar cases.

Sentencing is also guided by legal principles that are found within the *Criminal Code*. For offences without an automatic, minimum term of imprisonment, the *Code* specifically directs that "all available sanctions other than imprisonment that are reasonable in the circumstances should be considered", with "particular attention to the circumstances of aboriginal offenders" (Section 718.2(e)).

After a careful review of the *Reasons for Sentence* in the Robinson case, the Criminal Justice Branch has decided there is no reasonable prospect of a successful Crown appeal. This determination was reached by senior prosecutors in the Branch, including members of the Criminal Appeals office with specialized expertise in appellate law. The Branch has not identified a legal error that could properly form the basis for appellate intervention. Nor can the Crown persuasively argue, given its acknowledgment that a conditional sentence was an option for the Judge, that a 12 month conditional sentence is "demonstrably unfit" within the meaning of that term.

The Judge specifically considered the aggravating features of this case, including the fact that:

- the offender "was in a position of public trust as an off-duty police officer";
- he "acted for his own benefit in obstructing the investigation";
- he "used his knowledge learned in police training to subvert the ends of justice";
- he "failed in his fundamental duty to render assistance";
- he "discredited" the RCMP;
- his conduct was "deliberate and calculated"; and
- the offence is a "serious" one. It "strikes at the heart of the justice system".

As such, the Crown cannot argue that the Judge ignored the factors that it said weighed against a conditional sentence. Nor can it persuasively argue, after reviewing the *Reasons* as a whole, that the Judge took factors into consideration she should not have. The mitigating factors she identified for Mr. Robinson were open for her to consider. The Judge did not see the case the same way as the Crown and exercised her discretion in favour of a conditional sentence, but that does not provide a legal basis for an appeal.

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