COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Drake, 2024 ONCA 4
DATE: 20240102
DOCKET: C69227

van Rensburg, George and Favreau JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Quinnton Drake

Appellant

Jeffery Couse, for the appellant

Heather Fregeau, for the respondent

Heard: December 18, 2023

On appeal from the sentence imposed on July 3, 2020 by Justice Heather McArthur of the Superior Court of Justice, with reasons reported at 2020 ONSC 4085.

REASONS FOR DECISION

[1] The appellant, Quinnton Drake, pleaded guilty to several offences, including robbery with a firearm, possession of a loaded prohibited firearm, pointing a firearm, failing to comply with a prohibition order and failing to comply with probation. The appellant committed these offences while he was on probation. He has a lengthy record of prior convictions for violent offences.

[2] At the sentencing hearing, the appellant conceded that he met the criteria for designation as a dangerous offender pursuant to s. 753 of the *Criminal Code*. However, he argued that he should be subject to a long-term supervision order of 10 years, subsequent to a sentence of 9 to 11 years (minus pre-sentence custody), rather than an indeterminate sentence as requested by the Crown.

[3] The sentencing judge was satisfied that the appellant met the criteria for designation as a dangerous offender and that only an indeterminate sentence could adequately protect the public.

[4] On appeal, the appellant argued that the sentencing judge erred in imposing an indeterminate sentence. At the conclusion of the hearing, the panel advised that the appeal was dismissed with reasons to follow. These are the reasons.

[5] At the sentencing hearing, the Crown called two witnesses: 1) Dr. Scott Woodside, who prepared a court-ordered assessment report pursuant to s. 752.1 of the *Criminal Code;* and 2) Sherri Rousell, from Correctional Service Canada, who testified about the programs available for inmates in federal institutions and the supervision available once offenders are released back into the community. The appellant also testified. He described his remorse for the index offences and past offences, and he testified about his willingness to participate in treatment and counseling.

[6] The appellant submits that the sentencing judge made an error in principle in her treatment of his evidence. He argues that, when determining a sentence for a dangerous offender, the sentencing judge is to consider all sentencing principles under ss. 718 to 718.2 of the *Criminal Code* in accordance with *R. v. Boutilier*, 2017 SCC 64, [2017] 2 S.C.R. 936, at para. 53. In this case, while the sentencing judge referred to the appellant's evidence of remorse and willingness to participate in treatment and counseling, the appellant submits that she failed to consider this evidence as part of her assessment of whether an indeterminate sentence was necessary.

[7] We disagree.

[8] In her reasons, the sentencing judge explicitly recognized that she was required to apply the sentencing principles set out in ss. 718 to 718.2 of the *Criminal Code.* In addition, she correctly stated that, while all sentencing principles are relevant, protection of the public is the primary purpose of dangerous offender proceedings: *Boutilier*, at para. 106; see also *R. v. Johnson*, 2003 SCC 46, [2003] 2 S.C.R. 357 at paras. 19, 23, and 29.

[9] In addition, in her analysis of the appropriate penalty for the appellant, the sentencing judge explicitly referred to his evidence of remorse and willingness to participate in programs and counseling. However, she went on to explain that, based on Dr. Woodside's evidence, the appellant's apparent remorse and

willingness to participate in programs and counseling did not mitigate the need for an indeterminate sentence in this case for several reasons.

[10] First, she conducted a detailed review of Dr. Woodside's diagnosis and prognosis for treatment, concluding that the appellant's prognosis for successful treatment and for a reduction in his risk of committing further violent offences was "very poor compared with other offenders".

[11] Second, the sentencing judge noted that, while Dr. Woodside was aware of the appellant's expressions of remorse and stated desire for rehabilitation, he had explained that "positive expressions of motivation to take treatment, such as [the appellant's], were 'largely unhelpful' in attempting to determine who would be likely to benefit from treatment or supervision."

[12] Third, Dr. Woodside's evidence was that the appellant had previously participated in many treatment programs, but with no or little success. Similarly, previous supervision had failed to deter the appellant's ongoing violent criminality.

[13] Finally, Dr. Woodside reviewed the appellant's employment prospects and supports within the community, and found that they were very poor, which increased the risk posed by the appellant.

[14] We see no errors in the sentencing judge's decision. She applied the correct legal principles, including in her treatment of the appellant's expressions of remorse and desire for rehabilitation. She explained why the evidence of

Dr. Woodside nevertheless led her to find that nothing short of an indeterminate sentence was needed to protect the public. Her explanation for this conclusion was well-supported by the record.

[15] Accordingly, we dismissed the appeal.

"K. van Rensburg J.A."
"J. George J.A."
"L. Favreau J.A."