

Criminal

Stay decision encourages offenders to take ‘significant rehabilitative steps,’ court rules

By **Amanda Jerome**

(May 10, 2023, 12:21 PM EDT) -- In an “exceptional” case that warranted “appellate intervention to respond to the appellant’s significant positive transformation,” the Court of Appeal for Ontario has stayed the custodial portion of a drug trafficking sentence, highlighting the “extraordinarily successful rehabilitative steps” taken by the appellant.

“The appellant’s circumstances supporting our decision to stay the appellant’s sentence are remarkable and commendable. To the extent that the appellant’s rehabilitative example and our decision encourage other offenders to undertake very significant rehabilitative steps, this unquestionably serves the public interest,” a unanimous court determined in a decision released May 4.

Lisa Csele, senior counsel with the Public Prosecution Service of Canada, representing the Crown with Jacqueline Porter, noted that the court “denounced and deterred the appellant’s illegal conduct in upholding the sentence; but decided not to incarcerate her and instead to support her remarkable rehabilitative efforts.”

“In doing so, the court balanced two different but related public interests: there is the community at large being harmed by horrible drugs like fentanyl and there is a fully rehabilitated youthful offender with many mitigating circumstances who is on course to make a positive contribution to the community,” she added.

This decision, Csele explained, shows the “court’s awareness that they are impacting real people’s lives.”

“It’s a huge responsibility that must be taken very seriously by all justice system participants,” she added.

In *R. v. Sauv *, 2023 ONCA 310 the court heard that the appellant, Alycia Sauv , was “convicted of several counts in relation to possession of six different controlled substances for the purpose of trafficking, including fentanyl.”

Sauv , the court noted, was “only 19 years old and a first-time offender at the time she committed the offences.”

According to court documents, Sauv  “used drugs and was romantically involved with someone who was nine years older, appeared to be immersed in drug dealings, and exerted pressure on her to fulfill his demands.”

Regarding the offences in this case, her romantic partner “instructed her to bring money from his mother for his bail hearing and to transport a safe that she retrieved from his residence.” Sauv , along with a friend, “travelled from Ottawa to Kingston” to attend the bail hearing and to “transport the safe.”

The police, acting on a “tip that the appellant was trafficking fentanyl from the hotel room where she was staying,” obtained and executed a search warrant while Sauv  “attended her boyfriend’s unsuccessful bail hearing.”

According to court documents, the police found the safe “open on one of the hotel room beds, containing myriad controlled substances, along with used and unused syringes and other drug paraphernalia strewn around the room.”

The police then “arrested the appellant and her friend when they exited the courtroom.”

The sentencing judge, Justice Allan Letourneau of the Ontario Court of Justice, “characterized the appellant as a ‘pressured and wilfully blind courier’ for her boyfriend.”

“As for the mitigating factors,” the court noted that Justice Letourneau “took into account” that Sauvé was a “youthful first offender; that her boyfriend was the mastermind of the safe scheme; that she did not sell the drugs or derive any financial benefit from them; that she was recently pregnant and had the support of her family; and that she was no longer using drugs and had voluntarily pursued and completed a number of rehabilitative and educational programs.”

However, he concluded that the “objectives of deterrence and denunciation were paramount because the variety and quantity of controlled substances in issue resulted in very serious criminal conduct that put the community at risk of serious harm.”

Justice Letourneau “rejected the defence suggestion of a suspended or a conditional sentence because they would not be sufficient to meet the objectives of deterrence and denunciation that were paramount in this case.”

According to court documents, Sauvé spent “44 days in pre-sentence custody and over 7 months on house arrest while on bail.”

“After the application of enhanced credit calculated as 178 days for the time spent in custody and on house arrest, she received a global 18-month custodial sentence followed by 18 months of probation and other ancillary orders,” the court explained, noting that Sauvé had brought an “appeal of her convictions and sentence and was granted bail pending appeal.” However, she abandoned her conviction appeal in March 2023.

Before the Court of Appeal, Sauvé sought a “stay of execution of her sentence or alternatively that a sentence of time served or a conditional sentence be substituted for the custodial sentence.”

Sauvé relied on “fresh evidence of the extraordinarily successful rehabilitative steps that she has taken to turn her life around.” She deposed that she is “not the same person as she was when she was convicted and sentenced for these offences.”

The Crown, the court noted, consented to the “admission of the fresh evidence” and did not oppose the “stay of the appellant’s sentence given the appellant’s remarkable and highly unusual degree of rehabilitation since her convictions and sentencing.”

“However,” the Crown opposed “any substitution of the sentence which, as the appellant now acknowledges, was fit and at the low end of the range for the offences in issue,” the court added.

Justices Kathryn Feldman, Lois Roberts, and Steve Coroza, writing for the Court of Appeal, agreed that a “stay of the sentence would be the appropriate remedy in the particular circumstances of this case.”

“This is one of those exceptional cases that warrants appellate intervention to respond to the appellant’s significant positive transformation,” the judges wrote, noting that the fresh evidence “shows that the appellant has turned her life around: she is a devoted mother to her young child; she supports her disabled mother with whom she resides who assists the appellant with child care and household tasks; she has achieved extraordinary academic success – she completed her high school credits as an Ontario scholar, winning several scholarships, and is on the cusp of completing a business administration degree at the top of her class; and she has been an outstanding community volunteer.”

“Importantly,” they added, the appellant has “conquered her use of illicit drugs that appears to have

contributed to her commission of the offences in issue here, as well as subsequent possession offences to which she pled guilty. She has not reoffended for over three years.”

The court stressed that there is “also no suggestion that the appellant has sought to ‘game the system,’ deliberately delayed her appeal or did not pursue it with reasonable dispatch.”

The court found that in the “particular circumstances of this case, it is not in the interests of justice to reincarcerate the appellant.”

“The only justification for requiring the appellant to return to prison would be general deterrence and denunciation. However, in the circumstances of this case, a stay will not undermine those principles,” the judges wrote, noting that “Any gain in those sentencing objectives would be minimal and would be offset by the negative impacts on the appellant’s rehabilitation, including the completion of her education and the disruption of the wellbeing of her child and mother.”

The court determined that the “confirmation of an appropriate sentence followed by a stay of the execution of the remainder of the custodial portion, rather than a reduction of the sentence to time served or a conditional sentence, is an appropriate disposition in that it identifies and affirms the fitness of the sentence that was imposed.”

The court emphasized that the “fresh evidence demonstrates the appellant’s commitment to a positive, pro-social future.”

“By all accounts, she has truly transformed her life. Her enormous rehabilitative strides warrant recognition. In the unique circumstances of this case, and particularly in light of the strong fresh evidence, it is appropriate to stay the execution of the remainder of the custodial portion of the appellant’s sentence. The 18-month probation order, as well as all other ancillary orders, are to remain unchanged,” the judges ruled, noting that in their view, “this sentence will support the remarkable progress the appellant has made and continues to make, which is clearly in the appellant’s interest, as well as the public interest.”



Cassandra Richards, Hale Criminal Law

Cassandra Richards, of Hale Criminal Law and counsel for the appellant, said lawyers should “encourage clients, when possible, to undertake rehabilitative steps while on bail pending appeal.”

She noted that this case was “obviously a unique situation, where a client accomplished incredible milestones while on bail pending appeal.”

“Nonetheless, the court signalled that they are willing to seriously consider any rehabilitation made by individuals while on bail pending appeal. Even in cases like this where denunciation and deterrence are paramount, custody may not be the best way to achieve these goals,” she added.

Richards also emphasized that “criminal law is not an easy practice” and “there can be many difficult cases.”

“However, this case reminds us that rehabilitation is possible. Our clients are more than poor

decisions they may have made. Further, it is clear that our clients need social services and support, not jail. While difficult, pushing for decisions that allow our clients to stay in the community with appropriate support, is what will foster long-term public safety. This is not always an easy or popular argument to make, but it is a necessary one," she stressed.

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