

CITATION: R. v. Ade-Ajayi, 2011 ONCA 192

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COURT OF APPEAL FOR ONTARIO

O'Connor A.C.J.O., Doherty and Blair JJ.A.

BETWEEN:

Her Majesty the Queen

Respondent

and

Alex Ade-Ajayi

Appellant

Alex Ade-Ajayi, in person

Joanne Stuart, for the Crown

In-Writing appeal heard the week of March 7, 2011.

On appeal from the order of Justice B. Cavion of the Ontario Court of Justice, dated October 28, 2010, dismissing an appeal from the fine imposed by Justice of the Peace C. Flaherty on February 18, 2004 following a guilty plea for driving without insurance.

By the Court:

Overview

[1] The appellant seeks an order suspending the \$5,000 fine imposed on him by Justice of the Peace C. Flaherty on February 18, 2004, following a guilty plea for driving

without insurance, the appellant being the owner or lessee of the vehicle in question. On October 28, 2010, Justice B. Cavanagh of the Ontario Court of Justice dismissed his sentence appeal. With the consent of the Crown, leave to appeal from that decision was granted by Sharpe J.A. on January 21, 2011.

[2] A \$5000 fine is the minimum fine for a first offence by an owner operating a motor vehicle while uninsured: *Compulsory Automobile Insurance Act*, R.S.O. 1990, c. C.25, s. 2(3).

[3] The court has jurisdiction, however, to reduce or suspend a fine imposed in such circumstances pursuant to s. 59(2) of the *Provincial Offences Act*, R.S.O. 1990, c. P.33, which reads as follows:

Although the provision that creates the penalty for an offence prescribes a minimum fine, where in the opinion of the court exceptional circumstances exist so that to impose the minimum fine would be unduly oppressive or otherwise not in the interests of justice, the court may impose a fine that is less than the minimum or suspend the sentence.

Background

[4] The appellant arrives in this Court, on this appeal, after a circuitous voyage.

[5] In 2002 he was charged, as a result of two separate instances, with operating a motor vehicle while uninsured, being the owner or lessee of the vehicle. The appellant was relatively newly-arrived in Canada at the time.

[6] He pleaded not guilty to the first of these charges on the basis that the vehicle ownership had been transferred to his girlfriend. He was not able to provide evidence to that effect, however and was convicted and fined. It is important to the sequence of events that followed that this conviction was subsequently overturned on appeal, in May 2007, on the basis that the appellant was not, in fact, the owner of the vehicle at the relevant time.

[7] In the meantime, the appellant had pleaded guilty to the second charge referred to above. He was sentenced to pay a fine of \$5000. The Crown accepts that this plea was treated as a second offence, because the appellant's first conviction had not, at that stage, been overturned. A second offence calls for a minimum fine of \$10,000. In the circumstances, the Crown sought a fine of \$7500. The Justice of the Peace imposed a fine of \$5000.

[8] The appellant appealed this second fine, but his appeal was dismissed at the first level. He then appealed to this Court, alleging that he had not received a fair hearing and that he had been sentenced on the basis of the now-overturned prior conviction. In February 2009, with the Crown's consent, this Court allowed the appeal and sent the matter back to the Ontario Court of Justice to have the sentence appeal heard anew.

[9] Cavion J. presided over the re-hearing of the sentence appeal on October 28, 2010. He dismissed it on the basis that the appellant had made no payments towards the fine in the intervening 6 years and that the amount of the fine was appropriate in the

circumstances (there had been an accident, in which the appellant was at fault, and it was important to uphold the importance of motor vehicles being insured while on the roads). However, he did not address the point on which the matter had been sent back for re-hearing, namely, the significance, if any, of the now-overturned prior conviction. This left the appellant with the impression again that he had not received a fair hearing. He appealed once more to this Court. However, in consultation with duty counsel during that process, he realized that he had, in fact, not been sentenced as a second offender, but that the \$5000 fine was the minimum imposed by statute for a first offence for driving while uninsured.

[10] The appellant now pursues the appeal on the basis that this Court should exercise its discretion to reduce the fine, or suspend it, in light of his financial situation and the hardships caused to him by the various convoluted turns in his appeal process (which, among other things, cost him \$2,600 in paralegal fees).

Disposition

[11] Given the history of the matter, the Crown, as noted, consented to the granting of leave to appeal and now consents to the appeal being allowed. It is the Crown's position, however, that the fine should not be suspended, but rather reduced to \$2500.

[12] In the particularly unusual circumstances of this saga, we accept the Crown's submission.

[13] The fines imposed under s. 2(3) of the *Compulsory Automobile Insurance Act* are designed to underscore the importance of every vehicle operated on the public roadways of Ontario being insured: *Regina v. Zwicker* (1994), 17 O.R. (3d) 171 (C.A.). The idea behind the high level of minimum fines is to make it more financially onerous to offend the legislation than to bear the required cost of insurance premiums: see *R. v. Baritz* (2006), 37 M.V.R. (5th) 121, at para. 31 (Ont. C.J.). A reduction in the minimum fine should not lightly be imposed, therefore. The court may reduce or suspend a minimum fine, however, where it is of the opinion that “exceptional circumstances exist so that to impose the minimum fine would be unduly oppressive or otherwise not in the interests of justice”: *Provincial Offences Act*, s. 59(2).

[14] Here, the appellant’s financial resources are limited, at best. While he has been employed in the past as a welder and forklift driver, he suffered a welding injury to his eye in 2008 and can no longer work in that capacity. He is seeking disability support from the Ontario Disability Support Program, and is currently enrolled in an aviation management program at Georgian College in an effort to retrain himself. He is married – although he and his wife are in the process of obtaining a divorce – and has two small children to support. Currently, student loans are his only source of income. Nevertheless, his retraining prospects create the potential for an ability to pay the fine, or some portion of it, over time.

[15] Appeals to this Court on matters under the *Provincial Offences Act* are very much the exceptions, and particularly so with respect to sentence. Trial judges must decide

whether the circumstances of a particular case call for something less than the minimum fine. This Court will not “second guess” that assessment absent factors that meet the leave to appeal criteria set out in s. 139 of the *Provincial Offences Act*.

[16] However, in this case, as the Crown points out, it appears that the original sentencing judge, dealing with what was then thought to be a second offence, intended to impose a fine that was half the minimum, namely \$5000 instead of \$10,000. We agree with the Crown that, given the present landscape, a reduction to \$2500 strikes an appropriate balance between the individual circumstances of the appellant and the legislative purpose behind the significant minimum fines called for in the *Compulsory Automobile Insurance Act*. In the particularly unusual circumstances of this case a reduction to \$2500 is in the interests of justice.

Disposition

[17] We accordingly allow the appeal and reduce the penalty imposed to a fine of \$2500. As the Justice of the Peace did, we accord the appellant a period of one year from this date to make the payment.

“D. O’Connor A.C.J.O.”

“D. Doherty J.A.”

“R.A. Blair J.A.”

RELEASED: March 10, 2011