

Case Name:
R. v. Mascoe

Between
Lascelles Mascoe, and
The Queen

[2008] O.J. No. 1559

Ontario Court of Justice
Toronto, Ontario

G. Trotter J.

Heard: January 9, 2008.
Judgment: January 9, 2008.

(17 paras.)

Counsel:

Mr. D. Knipe: Counsel for the Crown.

Mr. M. **Riddell**: Counsel for the Appellant.

APPEAL ON SENTENCE

1 G. TROTTER J.:-- All right, these are my reasons. Mr. Lascelles Mascoe was charged with driving while under suspension. He appeared before His Worship, Justice of the Peace Lewin, and a plea of guilty was entered on his behalf to that charge and another charge, which is not before me. Counsel submitted to Justice of the Peace Lewin that an appropriate submission would be a \$3,000 fine. Justice of the Peace Lewin rejected the joint submission, saying the following quote: "Well I hate to tell you gentlemen, but I do not agree. I think a \$3,000 fine is basically a slap on the wrist, you know, four years of not paying fines. You know, we rush in and pay the fines at the 11th hour. Three prior convictions. I do not think a fine is going to suffice where there is the deterrent to the general and specific. I do not believe there is one." Justice of the Peace Lewin then went on to

impose a sentence of 45 days imprisonment without hearing submissions on the quantum of imprisonment. A request for intermittent time was summarily rejected without hearing submissions as well. Mr. Mascoe appeals his sentence, alleging that His Worship committed reversible error by not giving sufficient weight to the joint submission that was put before him. In reading Justice of the Peace Lewin's reasons, I understand why he did not think the sentence that was submitted to him was appropriate.

2 It's clear from his reasons that he thought it was too lenient in light of Mr. Mascoe's prior record. I am concerned that in the paragraph that I have just read out, that there may have been some misapprehension as to what his prior record was for driving while under suspension. In particular, I refer to Justice Lewin's reference to, "Three prior convictions." Furthermore, I am concerned that while the very experienced Justice of the Peace did not agree that the sentence was sufficient to meet the conduct that was before him, he never explained why it would bring the administration of justice into disrepute by going along with what was suggested by counsel. So therefore -- and I should say this -- without reaching any firm conclusion on whether Justice of the Peace Lewin committed the error that is alleged here today, more generally it is my view that the sentence imposed in this case was excessive. I note that there is only one prior conviction for driving while under suspension, and that was not met with a custodial term. I do not disagree with the fact that a custodial term was within the appropriate range of sentence in this particular case, however 45 days is excessive. So in all of the circumstances, I am prepared to set aside the sentence that was imposed by Justice of the Peace Lewin. I am setting aside the incarceration aspect of it altogether. Having served seven days, that in my view is sufficient punishment for that type of sanction, and in its place I am going to impose a fine of \$1,500.

3 MR. KNIPE: Thank you.

4 MR. RIDDELL: Thank you, Your Honour.

5 THE COURT: Thank you.

6 CLERK OF THE COURT: Time to pay, Your Honour?

7 THE COURT: How much time?

8 MR. RIDDELL: I believe -- six months? Six months to start anyways, Your Honour.

9 THE COURT: All right.

10 MR. RIDDELL: Thank you.

11 THE COURT: If you do not mind me saying, Mr. Mascoe, jail is something that might be coming again if you drive while under suspension. You have received it once. As I said, I thought it was excessive, but it is not out of the ball park, so just keep that in mind, all right. Are there any

holds on Mr. Mascoe?

12 COURT OFFICER: There is, but I think it's actually this hold.

13 THE COURT: All right, so you will have to check that downstairs?

14 COURT OFFICER: Yes.

15 THE COURT: Okay, thank you.

16 MR. RIDDELL: Thank you, Your Honour. That completes my matters. May I be excused?

17 THE COURT: Thank you.

qp/s/qlmxm/qlpxm