

Decisions of the Court of Appeal

R. v. Clare

Collection: Decisions of the Court of Appeal

Date: 2023-09-12

Neutral citation: 2023 ONCA 591

Docket numbers: C69017

Judges: Miller, Bradley; Thorburn, Julie; Favreau, Lise G.

Subject: Criminal

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Clare, 2023 ONCA 591

DATE: 20230912

DOCKET: C69017

Miller, Thorburn and Favreau JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Edward Clare

Appellant

Edward Clare, acting in person

Marie Comiskey, for the respondent

Dan Stein, appearing as duty counsel

Heard: September 6, 2023

On appeal from the conviction entered by Justice Bonnie Oldham of the Ontario Court of Justice on September 10, 2020.

REASONS FOR DECISION

[1] Mr. Clare appeals his conviction. He claims his guilty plea was involuntary and that trial counsel was ineffective. He has served his sentence.

[2] Charges were laid after police executed a search warrant at Mr. Clare's residence and discovered \$2,000 cash and 3 bottles of hydromorphone capsules, with an estimated street value of \$7,300. Police also seized \$1,655 from Mr. Clare's wallet.

[3] Mr. Clare entered a plea of guilty to one count of possession of hydromorphone for the purpose of trafficking and possession of the proceeds of crime pursuant to s. 5(2) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 and s. 354(1)(a) of the *Criminal Code*, R.S.C. 1985, c. C-46. He was sentenced to two years in custody in addition to the 228 days or 7.6 months pre-trial custody, which were credited as 342 days or 11.4 months on a 1:1.5 scale.

[4] After serving two months of his sentence, Mr. Clare sought to appeal his conviction on the basis that his guilty plea was uninformed due to ineffective assistance of counsel. Mr. Clare claims that he pleaded guilty on the understanding that he would receive a sentence of two years *including* time served and he did not understand that he would receive a sentence of an *additional* two years in custody.

[5] The court transcript of the guilty plea establishes that the joint position of counsel was two years in addition to pre-trial custody served on the drug trafficking charge. The Crown submitted that a nine-month concurrent sentence would be appropriate for the possession of proceeds. Mr. Clare's trial counsel agreed with the Crown and indicated that the intent was to

ensure that Mr. Clare would serve his sentence in the federal penitentiary system. Mr. Clare reiterated that: "I want to go to federal...".

[6] A plea inquiry was conducted by the sentencing judge to determine whether the plea was informed. Mr. Clare stated that he was pleading guilty voluntarily and had not been pressured. Mr. Clare confirmed his understanding that by pleading guilty he was giving up his right to a trial, and that he was prepared to admit the facts the Crown would read into the record without requiring proof of those facts beyond a reasonable doubt. Mr. Clare indicated that he knew that the sentencing decision would be that of the judge even though there might be a joint position between the Crown and the defence.

[7] When asked by the judge if he wished to say anything, Mr. Clare said:

I just want to apologize to the courts and everyone that I have harmed. I guess you could say that, yeah, it was actions that were stricken by lack of money and addiction.

[8] Mr. Clare voiced no concerns, and he acknowledged that the allegations read-in at the time of pleading guilty were correct.

[9] The transcript reflects a clear and informed waiver of his constitutional right to have a trial.

[10] The record before us does not meet the high threshold to establish ineffective assistance of counsel.

[11] Mr. Clare's counsel kept records of his interactions with Mr. Clare. His notes confirm that Mr. Clare was told that the Crown's revised resolution position was two years in addition to pre-trial custody and that Mr. Clare chose to accept this proposal.

[12] While Mr. Clare claims that he is unable to read or write, this information was explained and confirmed to him orally by counsel and by the sentencing judge who conducted the plea inquiry. As such, Mr. Clare has not met the high bar required to establish ineffective assistance of counsel.

[13] For these reasons the appeal is dismissed.

“B.W. Miller J.A.”

“Thorburn J.A.”

“L. Favreau J.A.”