

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. [REDACTED] 2019 ONCA 500
DATE: 20190614
DOCKET: C65165

Doherty, Watt and Pardu JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

[REDACTED]

Appellant

Andrew Stastny, for the appellant

Meaghan Hourigan, for the respondent

Heard: June 12, 2019

On appeal from the convictions entered on January 26, 2018 and the sentence imposed on March 16, 2018 by Justice Beverly Brown of the Ontario Court of Justice.

APPEAL BOOK ENDORSEMENT

[1] We are satisfied that the trial judge materially misapprehended the evidence when she described the appellant “as having taken no steps toward rehabilitation”. In fact, he had taken significant steps to become a law-abiding, contributing member of the community in the two plus years since his arrest. The

fresh evidence put before us confirms that he has done the same since his release on bail pending appeal. The appellant is a first-time offender.

[2] We do agree with the trial judge that this was a serious offence. The appellant was trafficking for profit, albeit in small amounts of cocaine over a two-month period.

[3] We accept the range of sentence for this offence as described in *R. v. Woolcock*, [2002] O.J. No. 4927. However, on a proper understanding of the appellant's personal circumstances and rehabilitative steps, we think this case belongs in the mid-range. We would allow the appeal and vary the sentence to eight months. The probation term stands. The victim surcharge is set aside on consent.

[4] The conviction appeal is dismissed as abandoned.