

 [R. v. Kandhai, \[2020\] O.J. No. 1254](#)

Ontario Judgments

Ontario Superior Court of Justice

D.E. Harris J.

March 16, 2020.

Court File No.: Crimj(P) 1135/18

[2020] O.J. No. 1254 | 2020 ONSC 1611

Between Her Majesty the Queen, and Jeremy Kandhai

(14 paras.)

Counsel

A. Mountjoy, for the Crown.

N. Sheiban, for Mr. Kandhai.

REASONS FOR SENTENCE

D.E. HARRIS J.

1 These are bottom line sentencing reasons for Jeremy Kandhai. Mr. Kandhai pled guilty before me to one count of possession of a prohibited firearm with accessible ammunition contrary to Section 95 of the *Criminal Code* and one count of breach of a Section 109 firearms prohibition order contrary to Section 117.01 of the *Code*.

2 Sentencing was originally scheduled for March 30, 2020, two weeks from today. However, the COVID-19 pandemic has led me to bring this matter forward. As a consequence of the pandemic, it was announced yesterday by Chief Justice Morawetz that all non-emergency, non-urgent matters in the Superior Court will be temporarily suspended until further notice as of tomorrow, Tuesday, March 17, 2020. That is an unprecedented event in our history.

3 Looking at the sentencing in this case, the offence date for both offences is September 9, 2017. Mr. Kandhai has been in custody since his arrest that day, a period of about 30 months. With the usual *Summers* 1:1.5 credit, this amounts to almost 45 months or three years and nine months. There is also an application for enhanced credit which I have found will increase the credited time to some extent.

4 The Crown's position on sentencing is 4-5 years. The defence position is 3 years.

5 We are now in the general neighbourhood of the Crown's position. In my view, taking into account all pertinent

circumstances, the appropriate overall total disposition is time served. My full judgment, to be released in writing within the next several weeks, will detail the reasons which have led to this conclusion.

6 Most pertinent to mention for the immediate purposes today is the pandemic threatening us all. Although there is a risk of overemphasizing it on sentence, the pandemic is nonetheless a significant factor.

7 Hardship in serving a jail sentence has always been a proper consideration in crafting an appropriate sentence. There is no specific evidence before me as to the effects on Mr. Kandhai, but there need not be. It is obvious at least up to a certain degree. The entire country is being told to avoid congregations of people. A jail is exactly that, a state mandated congregation of people, excluded from the rest of the population by reason of their crimes or alleged crimes. The situation, which has led to drastic measures in society at large, is bound to increase day to day hardship in prison and the general risk to the welfare of prison inmates. Given how much time he has served thus far in custody, it is in Mr. Kandhai's interest and the public's interest as well, that he be released at this point in time.

8 Furthermore, given my approach to the relevant sentencing principles in this instance, finalizing the disposition now rather than on March 30, 2020 has obvious logical advantages. Other factors which have led to this disposition will be spelled out in my full reasons. In a non-exhaustive summary, they include the need for enhanced credit to recognize lockdowns to which Mr. Kandhai has been subjected, his guilty plea to the two counts which counsel agreed should be deemed to be early pleas, and an assault suffered by Mr. Kandhai at the hands of other inmates on February 19, 2020 at the Toronto East Detention Centre. I have viewed this troubling incident on the videotape exhibit supplied by the defence.

9 The defence's major thrust in sentencing in this case was that I should apply the same approach as Justice Nakatsuru in his judgments in *R. v. Morris* [2018 ONSC 5186](#), [422 C.R.R. \(2d\) 154](#) and in *R. v. Jackson*, [\[2018\] O.J. No. 2136](#); [2018 ONSC 2527](#). I will not consider that issue here but only in my full reasons.

10 I am not *functus officio* in this matter until my full reasons are released. In those reasons, amongst other things, I will address the ancillary order requests that have been made. I will also apportion the pre-trial custody between the two counts.

11 Mr. Kandhai is not present today. Defence counsel has not objected. In light of all the circumstances, it was my view that justice required this matter to be brought forward immediately to impose the time served sentence, even in the absence of more satisfactory notice to the parties.

12 Section 650(2)(b) of the *Code* allows an exception to the fundamental rule that the accused ought to be present during trial proceedings against him. A judge has a discretion to permit an accused's absence "on such conditions as the court considers proper." That is the situation here. The truly extraordinary circumstances brought about by COVID-19 and the virtual closure of the Superior Court speak for themselves.

13 Mr. Kandhai's absence is not ideal, but justice to him must be paramount. I would ask defence counsel to explain the proceedings to his client and read this endorsement to him.

14 I thank counsel for making themselves available on such short notice.

D.E. HARRIS J.