



CAN I SERVE MY SENTENCE IN THE COMMUNITY?

THE FACTS

After a night of partying during which the accused consumed some alcohol, the accused, an 18-year-old, decided to drive his friends home. He only had seven weeks of experience as a licensed driver and knew that his vehicle was not in good condition. According to the evidence, he drove erratically, weaving in and out of traffic and tailgating vehicles in order to pass them.

Ultimately, when passing a vehicle, the young man unfortunately side-swiped a first vehicle and crashed into a second one. The driver of the second vehicle was seriously injured and one of the passengers in the accused's car was killed. The accused remained in a coma for some time. The accused pled guilty to charges of dangerous driving causing death and dangerous driving causing bodily harm.

The trial judge sentenced him to 18 months of imprisonment based on the following reasons:

- the seriousness of the offence;
- the accused young age;
- the accused's lack of a prior criminal record;
- the fact that alcohol and drugs had not been a factor in the accident;
- the accused's injuries;
- the fact that the accused was employed;
- the fact that the accused was about to become a father.

The trial judge considered whether the accused could be allowed to serve his sentence in the community pursuant to the *Criminal Code*.

The trial judge rejected this possibility, concluding that such a measure would be incompatible with the objectives of denunciation and dissuasion generally acknowledged in society and set forth in the *Criminal Code*. Following a decision by the Court of Appeal, the Supreme Court considered the matter.

THE ISSUE

In the circumstances, could the accused be allowed to serve his sentence in the community?

THE DECISION

In this case, even though the Supreme Court found that the accused could have been entitled to serve his sentence in the community, it upheld the trial judge's decision.

THE GROUNDS

A conditional sentence of imprisonment to be served in the community is a solution to the problem of overincarceration in Canada, a country which has the second highest rate of incarceration among industrialized democracies. Furthermore, in this type of situation, imprisonment is ineffective in achieving the objective of reintegration and the public objectives.

A conditional sentence served in the community addresses both punitive (incarceration) and rehabilitative objectives (in the community). In the case at hand, the judges of the Supreme Court referred to the requirements for imposing a conditional sentence to be served in the community:

1. The *Criminal Code* must not provide a minimum term of imprisonment for the offence in question.
2. The court must impose a term of imprisonment of less than two years.
3. The judge must conclude that neither imprisonment in a penitentiary (+ than two years) nor probationary measures are appropriate penalties.
4. The judge must be convinced that the term of imprisonment can be served in the community and that doing so would not endanger the community.
5. The judge must assess the accused's dangerousness based on the following criteria:
 - the risk of re-offence;
 - past criminal record;
 - gravity of the harm in the event of re-offence;
 - acknowledgement of the harm caused to the victims.

A term of imprisonment to be served in the community can be coupled with onerous conditions. Thus, a term of imprisonment to be in the community allows for reintegration while emphasizing society's condemnation of the crime committed.

References

R v. Proulx, (2000) 1 S.C.R. 61, Supreme Court of Canada, January 31, 2000

Criminal Code, s. 718, s. 742

The judgement discussed in this article was rendered based on the evidence submitted to the court. Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

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