

R. v. Suter, 2018 SCC 34 – aggravating/mitigating factors

Facts:

On May 19, 2013, Richard Suter and his wife went out for dinner. They each had one alcoholic drink. When the food arrived, it was cold, and Suter wanted to go to a different restaurant. Mrs. Suter did not want to leave, and they argued on the drive to a second restaurant.

When they arrived at the second restaurant, they pulled into a parking space that was separated from a patio area by a sheet of glass. The vehicle was not put in park. Mrs. Suter turned to Suter and said “maybe we should get a divorce.” The car inched forward, and Suter mistakenly hit the gas instead of the brake. The vehicle went through the glass and hit a family of four that was dining there. A two-year-old boy was pinned against the wall and killed. Suter was pulled from the driver’s seat and beaten by witnesses.

When police arrived, Suter was arrested and given a breath demand. He called a Legal Aid lawyer, who told him to not provide a breath sample to the police. Suter took this advice and refused to provide a sample. He was charged with refusal to provide a sample, impaired driving causing bodily harm, and impaired driving causing death.

Sometime after his arrest, Suter was abducted by vigilantes, who cut off his thumb with garden shears and left him unconscious in the snow. He was later also attacked by vigilantes in a shopping mall.

In June of 2015, Suter pleaded guilty to the refusal charge, and the Crown dropped the impaired driving charges. He was sentenced to 4 months imprisonment and a 30-day driving prohibition. Both Suter and the Crown appealed this sentence. The Court of Appeal increased the length of imprisonment to 26 months. Suter appealed to the Supreme Court.

The Decision:

The Court substituted the 26-month sentence with the time he had already served (about 10.5 months).

Sentencing judges have broad discretion to impose sentences, based on the facts of each particular case. Courts hearing appeals of these sentences should only interfere with sentences if the sentence is “demonstrably unfit” or the judge makes a mistake. One example of a mistake would be ignoring aggravating or mitigating circumstances. (Aggravating circumstances are details that make an offence worse, and can increase a sentence. Mitigating circumstances make an offender more sympathetic or help explain why the offence happened, and can reduce a sentence.) As long as a sentence meets the objectives and principles of sentencing, an appeals court should not change it.

If there are facts that are not relevant to how serious an offence is or the

Discussion Questions:

1) All three levels of court came to very different sentences in this case. Which court do you think got it right?

Relevant Law:

The Criminal Code of Canada, sections 254(3), 254(5), and 255(3.2) (**now repealed**).

Resources:

You can read the entire case at:

<https://www.canlii.org/en/ca/scc/doc/2018/2018scc34/2018scc34.html>

You can find the *Criminal Code* at:

<https://laws-lois.justice.gc.ca/eng/acts/c-46/>

offender's blameworthiness, a court should not consider them as aggravating factors when deciding on a sentence. Also, if there were any collateral consequences that negatively impacted an offender, these should not be given so much weight that the final sentence is too low.

In the Court's opinion, the sentencing judge gave a sentence that was too low. The sentencing judge put too much weight on the fact that Suter was not actually impaired at the time of the offence. Refusal to provide a breath sample is a separate charge from impaired driving, and a person can still be convicted of it even if they are not impaired. The sentencing judge also made too much of the fact that Suter had followed bad advice from a lawyer. While the bad advice did have to be taken into consideration, there was not enough evidence to meet the standard of "an honest but mistaken belief in the law."

The Court also thought the Court of Appeal's sentence was too high. In their decision, the Court of Appeal had referred to Suter as being "impaired by distraction" and "impaired by health issues", including a past drinking problem and a recent head injury. In the Supreme Court's view, this was a totally new approach to the idea of impaired driving, and felt that the Court of Appeal was using it to effectively sentence Suter for impaired driving causing death and bodily harm, even though those charges had already been dropped. There was no evidence that Suter's past health problems played any role in the accident, so the Court of Appeal should not have considered them during sentencing.

At the same time, the Court of Appeal should not have ignored the vigilante attacks on Suter. Collateral consequences to an offence have limited value as mitigating factors. But, they cannot be ignored altogether. The court has to consider the negative impact any such consequences have had on an offender. But the court cannot end up with a sentence that is inappropriate for the offence. This would undermine faith in the justice system. In this case, Suter had been attacked a number of times as a result of this incident, and was left disfigured. This was a permanent and traumatic injury, and the Court of Appeal should have taken it into account.

The Court then considered what would be an appropriate sentence. The sentencing range for this refusal offence was the same as for impaired driving causing death: a usual range of anywhere from 2 - 10 years, with a potential maximum of life imprisonment. The Court recognized that the facts of this case were very unusual. There were no other similar cases available to help decide an appropriate sentence.

Suter had no criminal record, and was not impaired at the time of driving. His refusal was based on bad legal advice, and he had suffered a disfiguring attack as a result of this incident. Taking everything into account, a sentence of 15 - 18 months would have been appropriate. However, at this point he had served 10.5 months, 9 of which were spent waiting for the Supreme Court's decision. The Court did not feel that forcing Suter to serve the remainder of his sentence would serve any meaningful purpose, and decided to reduce the sentence to time served.

Relevant Law:

The Criminal Code of Canada:

Note: In 2018, these sections of the Criminal Code were repealed. Their replacements can now be found at sections 320.28(1), 320.15(1), and 320.15(3).

254 (3) If a peace officer has reasonable grounds to believe that a person is committing, or at any time within the preceding three hours has committed, an offence under section 253 as a result of the consumption of alcohol, the peace officer may, by demand made as soon as practicable, require the person

- (a) to provide, as soon as practicable,
 - (i) samples of breath that, in a qualified technician's opinion, will enable a proper analysis to be made to determine the concentration, if any, of alcohol in the person's blood, or
 - (ii) if the peace officer has reasonable grounds to believe that, because of their physical condition, the person may be incapable of providing a sample of breath or it would be impracticable to obtain a sample of breath, samples of blood that, in the opinion of the qualified medical practitioner or qualified technician taking the samples, will enable a proper analysis to be made to determine the concentration, if any, of alcohol in the person's blood; and
- (b) if necessary, to accompany the peace officer for that purpose.

254 (5) Everyone commits an offence who, without reasonable excuse, fails or refuses to comply with a demand made under this section.

255 (3.2) Everyone who commits an offence under subsection 254(5) and, at the time of committing the offence, knows or ought to know that their operation of the motor vehicle, vessel, aircraft or railway equipment, their assistance in the operation of the aircraft or railway equipment or their care or control of the motor vehicle, vessel, aircraft or railway equipment caused an accident resulting in the death of another person, or in bodily harm to another person whose death ensues, is guilty of an indictable offence and liable to imprisonment for life.