Stuck With Fines

Sentence Discretion Involving Speeding Charges Statutorily Unavailable

Statutorily Prescribed Sentences

With tens of thousands of traffic tickets issued for violations of the ***Highway Traffic Act***, R.S.O. 1990, c. H.8 ("***HTA***") and in accordance to Part I of the ***Provincial Offences Act***, R.S.O. 1990, c. P.33 ("***POA***") each year, driving offences are likely the most common types of charges that occur in Ontario. As a means of handling the volume of these charges, especially speeding violations, the prosecutors are often willing to negotiate deals during a pre-Trial process known as an Early Resolution Meeting at which the accused person may choose to agree to an amended charge and a certain agreeable fine, among other things. For example, a person charged with the serious charge of 'careless driving', which will usually pose risk of extreme insurance implications, may be agreeable to reducing the charge to 'following to close' and a certain fine or penalty that the Prosecutor and the accused person agree is appropriate. Following negotiation of the plea terms, the deal is then brought into a courtroom for reading onto the court record and registering of a conviction. With careless driving charges, where an accused person may be willing to accept a substantial fine while receving the benefit of a less serious charge and therefore less implications to insurance premiums, among other things, the Prosecutor and the accused person may negotiate within a discretionary range ($500 to $2,000) for the fine; however, with speeding charges per s. 128 of the HTA, fines are without a discretionary range and are instead statutorily prescribed. Accordingly, whereas the fines are a mathematical formula statutorily prescribed by the government rather than a discretionary range, a Judge or Justice is without jurisdiction to allow a speeding conviction with a fine that varies from the mathematical formula.

The Law

The lacking of jurisdiction to allow a speeding conviction with a fine that varies from the mathematical formula prescribed by the government was recently detailed in the case of ***Greater Sudbury (City) v. Balli***, 2019 ONCJ 364 wherein it was stated:

> [9] For the purposes of clarity, the following analysis is limited to the speeding fines arising from s.128 of the *HTA*, notably s. 128 (14). There are different applicable fines for such situations as speeding in a community safety zone or a construction zone where a worker is present. Their discussion is left for another day.

> [10] To understand how speeding fines are applied, it is essential to accept that the legislature has decided to strictly limit judicial discretion with respect to the imposition of speeding fines and that the Legislature may lawfully do so: *York (Regional Municipality) v. Winlow*, 2009 ONCA 643 (CanLII), at para. 33.

> [11] By design, there are only two types of speeding fines that may be imposed by a justice of the peace. The 'set fine' is the first. At its core, a 'set fine' is a reduced fine that is available where a matter settles without the scheduling of a trial or if the defendant fails to attend a scheduled Part I trial (s. 9.1 POA). The fixed fine is the second type. It applies upon conviction after a trial or a guilty plea on the day set for trial: see *Winlow*; *R. v. Weber*, 2003 CanLII 72341 (ON SC), [2003] O.J. No. 1491 (ONCJ); *R. v. Powell*, [2010] ONCJ 302; *R. v. Appiah*, 2012 ONCJ 754 (CanLII); *R. v. Garwal*, 2016 ONCJ 217 (CanLII).

Within the ***Greater Sudbury (City)*** case it is also stated:

> [18] Sentencing options within the 'early resolution' process are set out in s. 5.1 (9) of the POA. The provision reads as follows:

> > (9) Upon receiving the plea and submissions under subsection (8), the justice may,

> > (a) require the prosecutor to appear and speak to the submissions, if the submissions were submitted under clause (8) (b); and

> > (b) enter a conviction and impose the set fine or such other fine as is permitted by law in respect of the offence for which the plea was entered. [Emphasis added]

[19] This provision imposes important limitations on sentencing. With respect to the offence of speeding, the presiding judicial officer has only two sentencing options. First, he or she may impose the applicable 'set fine'. Second, he or she may impose the applicable 'fixed fine' in s. 128 (14). There is simply no other fine "as is permitted by law" with respect to the offence of speeding.

[20] It is common for the *HTA* to provide a range of fines for an offence. For example, the fine for disobeying a red light can range from "not less than $200 and not more than $1,000": s. 31.2.1 *HTA*. The Legislature has provided for no such discretion with respect to speeding even within the context of the 'early resolution' process.

[21] Every sentence—even one jointly submitted—must be permitted at law. In the context of the 'early resolution' process, the only lawful speeding fine is either the applicable 'set fine' or the applicable 'fixed fine'.

[22] The prosecution and defence cannot on consent or by joint submission create a statutory penalty, grant judicial discretion or confer statutory jurisdiction where it does not exist. For greater certainty, In Winlow, the Court of Appeal, at para. 33, stated:

> Justices of the peace and provincial court judges belong to tribunals created by statute. Therefore, their jurisdiction to impose a penalty is limited by their authorizing legislation. Neither has any inherent power. The governing principle, now well established, is that justices of the peace and provincial court judges have only the powers expressly or impliedly granted to them by the legislature: see *R. v. 974649 Ontario Inc.*, 2001 SCC 81 (CanLII), [2001] 3 S.C.R. 575, [2001] S.C.J. No. 79, at p. 589 S.C.R. See, also, s. 17(1) of the Justices of the Peace Act, R.S.O. 1990 c. J.4. A corollary of [page346] this principle is that although sentencing judges ordinarily have a discretion to exercise, the legislature can limit that discretion or eliminate it altogether: see R. v. Wu, 2003 SCC 73 (CanLII), [2003] 3 S.C.R. 530, [2003] S.C.J. No. 78.

> [23] In R. v. Anthony-Cook, 2016 SCC 43 (CanLII), the Supreme Court confirmed that a judicial officer may only reject a joint submission where the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

> [24] In the present cases, the jointly submitted sentences are not legal. Giving effect to the joint submissions would necessarily bring the administration of justice into disrepute and be contrary to the public interest.

Summary Comment

Per the ***Greater Sudbury (City)*** case cited above, and the cases and statute law cited within, the flexibility for negotiating plea deals involving speeding charges may be diminished. While at first glance this may seem to benefit those charged with speeding violations, the loss of flexibility may inhibit negotiations, especially where an accused person may be quite willing to accept a lesser charge and a greater fine such as situations where the insurance effects, among other things, of the original charge may be significant.