

February 4, 2010

The appellant appeals his impaired driving conviction. This appeal turns on the trial judge's assessment of the credibility of witnesses. Taylor J. made clear findings of credibility, supported by very careful reasons. While he did not refer to every piece of evidence, he was not required to do so. I can find no error in how he approached this case or in any of the findings he made. The appeal is dismissed.

I note that Mr. Marek was also found guilty of driving "over 80." He did not appeal this finding. Indeed, there would appear to be no basis to appeal. Even had I allowed the appeal on the impaired driving conviction, I would have been obliged to lift the conditional stay on the "over 80" charge, putting the appellant in the exact same position.

The appellant also ^{10/29} appeals his sentence. The trial judge was persuaded to impose a sentence and prohibition beyond the minimum. The appellant is a first offender of good character. While the appellant's driving behaviour was erratic, the officer who made the arrest let Mr. Marek drive for 15 mins before pulling him over.

Court File No. CR-08-40000190-00AP

SUPERIOR COURT OF JUSTICE
TORONTO

HER MAJESTY THE QUEEN
Respondent

and
EARL MAREK
Appellant

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~~Now I will be the appellant~~

In my view, while an elevated sentence beyond the minimum might have been warranted, the one that was imposed was too harsh for a first offender with the readings Mr. Marek had.

Accordingly, the fine is reduced to \$750 and the driving prohibition is reduced to 12 months.



Mr. Justice Trotter