

COURT OF APPEAL FOR ONTARIO

RE: **HER MAJESTY THE QUEEN (Respondent) – and – MANUEL FAGUNDES (Appellant)**

BEFORE: **ROSENBERG, SIMMONS and LAFORME JJ.A.**

COUNSEL: **Paul Calarco
for the appellant**

**Elliott Behar
for the respondent**

**HEARD &
RELEASED**

ORALLY: **February 23, 2006**

On appeal from sentence imposed by Justice Peter R. Mitchell of the Ontario Court of Justice dated October 12, 2005.

ENDORSEMENT

[1] In addition to a modest farm operation, the appellant operated a motor vehicle wrecking yard. This was not a permitted use for land that was zoned agricultural. When the police investigated, they found the appellant in possession of a number of stolen vehicle parts, a stolen backhoe, a stolen transport trailer and stolen liquor. The police also found the appellant in possession of unregistered long guns that were not properly stored. Further, some of the animals on the farm property had been neglected. Finally, while on bail the appellant was found driving a stolen vehicle, albeit the vehicle was stolen many years ago and only worth its scrap value.

[2] We agree that a relatively lengthy jail sentence was required, notwithstanding the appellant's minor prior record. In our view, however, the trial judge erred in principle in one respect. He imposed the sentence in part on the basis that the appellant had committed other offences in earlier years while operating the wrecking yard. The appellant pleaded guilty and admitted to specific facts supporting the pleas. He did not admit to any other offences and there was no suggestion that s. 725 of the *Criminal Code* applied.

[3] In our view, the sentences for the possession charges are excessive. We are also of the view that the probation terms were primarily imposed for punitive rather than rehabilitative purposes. We are not satisfied this forty-seven year-old man requires probation. Accordingly, the probation term will be struck out. However, the order under s. 446(5) of the *Criminal Code* will stand except that it will be for a period of one year and will only prohibit the appellant from owning animals or birds.

[4] We would reduce the sentences for possession to fifteen months imprisonment concurrent. Leave to appeal is granted, the appeal is allowed and the sentence reduced in accordance with these reasons.

Signed: “M. Rosenberg J.A.”
“Janet Simmons J.A.”
“H.S. LaForme J.A.”