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R. v. Hummel (Ont. C.A.)

Between
Her Majesty The Queen, Respondent, and
Ralph Hummel, Appellant

Ontario Judgments: [1989] O.J. No. 2339
Action No. 437/89

Ontario Supreme Court - Court of Appeal
Toronto, Ontario
Blair, Grange and Catzman JJ.A.

July 28, 1989

(On appeal from Begora Prov. Ct. J.)

Michael J. Shea, for the Appellant.

Susan Ficek, for the Respondent.

The following was endorsed on the appeal record by

BLAIR J.A.:— The learned trial judge erred in sentencing the appellant on four charges of obtaining by false pretences on the basis of one month's imprisonment for each $100 obtained. No such mathematical formula is part of the law and must be rejected. In our opinion, a fit sentence would be 3 months imprisonment concurrent for each conviction, but consecutive to the other sentences imposed.

The appellant was also convicted of driving while impaired under s. 237(a) of the Criminal Code, sentenced to 6 months imprisonment and his driver's licence was suspended for 5 years. A concurrent sentence of 6 months imprisonment was imposed for refusing a breathlyzer test under s. 238(5) without reference to a prohibition order.

The maximum suspension permitted for a conviction under s. 237(a) and s. 238(5) are established by s. 242(2) as 3 years. The sentence under s. 238(5) was made concurrent, and we can only assume that the trial judge intended the same three-year suspension to apply to the conviction under that section.

Accordingly, the appeal is allowed. The sentence of 16 months in total for the four false pretences convictions is reduced to 3 months concurrent. The period of suspension for the driving offences is reduced from 5 years to 3 years.

BLAIR J.A.