

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 aspect 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.

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The appellant also 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.

File No. CR-08-40000190-00AP

SUPERIOR COURT OF JUSTICE  
TORONTO

HER MAJESTY THE QUEEN  
Respondent

and

MAREK MAREK  
Appellant

APPELLANT'S FACTUM

Heyday Hamilton PC  
Barristers & Solicitors  
439 University Avenue  
Suite 1200  
Toronto, ON M5G 1Y8

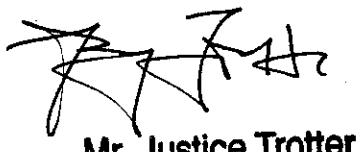
Tanya C. Walker  
LSUC # 52997A  
Tel: 416-972-9001  
Fax: 416-972-9940

Lawyers for the Appellant

~~Notwithstanding the appeal court~~

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. Morek had.

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



Mr. Justice Trotter