



## Case in Brief: *R. v. Suter*

2018 SCC 34 | Judgment of June 29, 2018 | On appeal from the Court of Appeal of Alberta

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### ***Refusing a breathalyzer after causing a fatal accident is as serious as the crime of drunk driving causing death, the Supreme Court has confirmed.***

In May 2013, two year-old Geo Mounsef was killed when Richard Alan Suter drove his car onto a restaurant patio where the Mounsef family was eating dinner. Mr. Suter and his wife were arguing as he pulled up to park in front of the restaurant. At one point, he accidentally hit the gas pedal instead of the brake and drove into the patio. The sentencing judge later found that Mr. Suter wasn't impaired by alcohol at the time.

Mr. Suter was arrested. He spoke to a legal aid lawyer, who confused him and gave him bad legal advice by telling him not to provide a breath sample. Mr. Suter then refused to provide the sample, despite being told by a police officer that this was a crime.

Sometime after his arrest, Mr. Suter was abducted by a group of vigilantes who used a set of pruning shears to cut off his thumb. The attack was linked to the death of Geo Mounsef.

Mr. Suter pleaded guilty to refusing to provide a breath sample after causing an accident where someone died. There is a wide range of possible penalties for this, depending on the circumstances and the offender's moral blame. The maximum penalty is life in prison, the same as for drunk driving causing death. This is to reflect the seriousness of the crime and discourage people from refusing. When a person refuses to provide a breath sample, it means the police, court, public, and family of the person who died will never really know whether the driver was impaired or "over 80" at the time.

The sentencing judge would have sent Mr. Suter to prison for over three years, but lowered the sentence to four months plus a thirty-month driving ban because of the circumstances. He said four months was appropriate because Mr. Suter's refusal to provide a breath sample was based on the lawyer's bad advice, and that "fundamentally" reduced his moral blame. Both Mr. Suter and the Crown appealed. The Court of Appeal increased his prison sentence to twenty-six months.

Justice Michael Moldaver, writing for the majority at the Supreme Court, said that both the Court of Appeal and sentencing judge made errors. The Court of Appeal, in raising Mr. Suter's sentence to twenty-six months, effectively punished Mr. Suter for crimes he wasn't charged with (careless driving or dangerous driving causing death). It also didn't consider the vigilante attack as part of his total circumstances. On the other hand, the sentencing judge, in sentencing Mr. Suter to four months, gave too much weight to the fact that Mr. Suter was not drunk at the time and received bad legal advice. Justice Moldaver agreed with the sentencing judge that Mr. Suter should have received a lower sentence than would normally be the case. But given the sentencing judge's errors and the seriousness of the crime, he thought four months was too low. He decided that a 15- to 18-month sentence would have been appropriate at the time of the plea. However, Mr. Suter had already served just over 10½ months in custody, and spent almost nine months awaiting the Supreme Court's decision. Justice Moldaver said that sending him back to jail now would serve no useful purpose, so he reduced the sentence to "time served" (leaving the thirty-month driving ban in place). Five judges agreed.

Justice Clément Gascon disagreed and would have kept the four-month sentence. While he would have weighed the facts differently than the sentencing judge did, he didn't find the sentence "clearly unreasonable" (the legal standard required to change it). Justice Gascon said the circumstances of this case were unique and particularly sympathetic; Mr. Suter was sober and only refused the breath sample because he was explicitly told to by his state-provided lawyer. This left him with very little moral blame. In any case, he said, the sentencing judge was in the best position to weigh these facts and decide an appropriate sentence.

This was the first time the Court ruled on 2008 changes to the *Criminal Code* that raised penalties for refusing a breath sample after an accident where someone is hurt or dies. The changes meant that refusing a breath sample would lead to the same penalties as impaired and "over 80" offences causing injury or death. The decision highlighted that a sentence must match both the seriousness of the crime and the person's level of responsibility.

**For more information (case no. 37247):**

- [Reasons for judgment](#)
- [Case information](#)
- [Webcast of hearing](#)

**Breakdown of the decision:**

- Majority: [Moldaver](#) J. ([Abella](#), [Karakatsanis](#), [Wagner](#), [Côté](#) and [Rowe](#) JJ. concurring)
- Dissenting: [Gascon](#) J.

**Lower court rulings:**

- Court of Appeal of Alberta ([appeal judgment](#))
- Provincial Court of Alberta ([trial judgment](#))

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