



***The Supreme Court confirms that sentencing judges may consider time needed for treatment in determining the length of sentences.***

This is an appeal about whether a sentencing judge may consider the time an offender needs to complete rehabilitative programming when deciding the length of a sentence. This appeal also addressed the factors the sentencing judge may consider when deciding whether an offender is entitled to “enhanced credit” for time spent in detention. The *Criminal Code* allows sentencing judges to grant one day of credit for each day an offender has been detained in custody prior to trial and sentencing, and may also grant “enhanced credit” in certain circumstances at a rate of 1.5 days for each day in custody.

In 2018, J.W., an Indigenous man with significant cognitive impairments, was living in a group home where he violently sexually assaulted a staff member. A few months later, J.W. pled guilty to sexual assault, threatening to cause death, and unlawful confinement. He was arrested and held in custody pending trial. Over the next few years, the proceedings were delayed as he changed counsel three times and withdrew from three proposed plea agreements.

In 2020, J.W. was admitted to a mental health facility for a court-ordered assessment and, in January 2021, he was found unfit to stand trial. A few months later he was found fit to stand trial and ultimately pled guilty in November 2021.

At the time of sentencing, nearly four years had passed since J.W. was first charged. While he was detained in the mental health facility, he was diagnosed with mental illness and developmental intellectual disabilities.

The sentencing judge imposed a nine-year prison sentence. She concluded that a longer sentence was appropriate in part because J.W.’s cognitive impairments would increase the time required to complete sexual offender programming. The judge also denied enhanced credit for part of the time J.W. spent in custody, given he repeatedly changed counsel and failed to follow through with earlier plea agreements.

The Court of Appeal dismissed J.W.’s appeal, except for correcting an error in the sentencing judge’s calculation of the number of days J.W. was in pre-sentence custody.

The Supreme Court has allowed the appeal in part, awarding additional credit for the time J.W. was detained at the mental health facility.

**J.W.’s actions in delaying proceedings were a consequence of his mental health, and did not amount to wrongful conduct that justified denying enhanced credit.**

Writing for a unanimous Court, Justice Rowe said that when there is a sufficient evidentiary basis on the availability and accessibility of institutional programming, it is not an error in principle for the sentencing judge to consider an offender’s anticipated time to complete it as a factor in the individualized sentencing process, provided that the sentence arrived at is proportionate to the gravity of the offence and the degree of responsibility of the offender.

With respect to “wrongful conduct” on the part of an offender that could justify denying enhanced credit, he explained that it is not sufficient that the offender has acted so as to delay proceedings. The acts must have been done with an intention to frustrate the proper operation of the system of criminal justice.

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**Breakdown of the decision:** *Unanimous*: Justice [Rowe](#) allowed the appeal in part (Chief Justice [Wagner](#) and Justices [Karakatsanis](#), [Côté](#), [Martin](#), [Kasirer](#), [Jamal](#), [O’Bonsawin](#) and [Moreau](#) agreed)

**More information:** [Decision](#) | [Case information \(40956\)](#)

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