

Judge cites anti-black discrimination as reason for non-jail sentence

"While this court is not in a position to remedy the societal issues, it can and should take the societal context into account in fashioning an appropriate sentence for an individual offender," wrote Ontario Superior Court Justice Edward Morgan.

By [WENDY GILLIS](#) News reporter

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Joel Reid witnessed Toronto's first fatal shooting at a high school, the 2007 murder of Grade 9 student [Jordan Manners](#) in the halls of C.W. Jefferys Collegiate Institute.



In a separate shooting, he lost his best friend.

Reid had, in the words of Ontario Superior Court Justice Edward Morgan, "a difficult childhood punctuated by traumatic events." It took its toll.

The young man dropped out of school, developed a drug problem, started selling. He was not a big-time dealer, not even middle; he sold enough crack to sustain his own habit, and had been charged with a series of low-level possession and trafficking offences.

But instead of sending Reid to jail for six to 12 months — the sentence sought by the Crown for three counts of trafficking in crack cocaine and one count of possession of the proceeds of crime — Morgan recently handed down what's known as a conditional sentence, more commonly known as house arrest.

In a decision now getting attention in Toronto's legal community and beyond, Morgan explains that he considered both Reid's personal circumstances and societal forces — including anti-black racism and the over-incarceration of people from the black community.

“While this court is not in a position to remedy the societal issues, it can and should take the societal context into account in fashioning an appropriate sentence for an individual offender,” Morgan wrote in his reasons released May 25.

Citing stark statistics about the overrepresentation of members of the black community in prisons — the Office of the Correctional Investigator recently found the number of federally incarcerated black inmates has increased by 80 per cent over the last decade — Morgan said it was evident more attention should be focused on the impact of the criminal justice system on black Canadians.

“There are a number of sociological causes for the overrepresentation of African Canadians in prisons and the justice system,” Morgan wrote, going on to quote a previous court decision stating anti-black discrimination “undoubtedly contributes to many of these underlying societal causes.”

In the U.S., Morgan noted, crack especially has been associated with a glut of young, minority men serving “draconian sentences” for nonviolent and low-level crack charges.

Also taken into consideration was the fact that Reid had taken responsibility for his action, has been drug-free for the past year, and posed no safety threat.

Morgan was impressed by the self-awareness evident in Reid's pre-sentencing report.

“I am a young man who has made poor choices for himself but I am making changes to better myself,” Reid wrote. “I do not want to be that 30-year-old black man who is a lost cause as I have potential to do something with my life.”

Within the criminal justice system it has long been a principle of sentencing that the circumstances of both the offence and the offender are relevant.

Chris Rudnicki, Reid's lawyer, said the sentence should send a message to lawyers that this is something that they can and should bring up in sentencing in the appropriate cases.

“Anti-black racism affects black people and their interaction with the criminal justice system at every stage, from when they're arrested — and whether they are arrested — to the bail stage when they have to spend time in custody awaiting trial, to the sentencing phase when they are more likely to receive harsher sentences,” he said.

“All of that contributes to the over-incarceration of black people and so it is entirely appropriate to take into consideration.”

Faisal Mirza, a Toronto-area criminal lawyer, says “a whole generation of lawyers” have been trying to get the courts to acknowledge the larger social context in sentences.

He senses a shift in both public sentiment and within the legal community that could indicate decisions such as Morgan's could happen with greater frequency.

In Halifax, for instance, a judge is now considering whether discrimination against African Canadians in Nova Scotia should be a factor in the sentencing of Kale Leonard Gabriel, a black man convicted of second-degree murder in the 2010 death of Ryan White.

“There is a better understanding of a number of issues when it comes to criminal law, overreliance on incarceration, but even on a broader social level, we recognize that some of the policies and ideas of the past are not working,” Mirza said. “They were either based on flawed presumptions or even intolerance.”

Both Mirza and Rudnicki, however, note that Reid was only eligible for a conditional sentence because the offences were committed in 2011 —

prior to the introduction of a new regime limiting such sentences by the federal Conservative government of the day.

“It’s a signal to the federal government that this has to be looked at again,” Mirza said.

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