

No more jail time for Markham rapist

BY JEFF MITCHELL
Staff Writer

Convicted rapist Michael Farouk will have to serve no more time in prison, a Superior Court of Ontario judge has ruled.

Justice David Stinson sentenced the Markham man, convicted in November of sexual assault, kidnapping and robbery, to five and a half years in jail — a term that was offset by the time he spent in custody awaiting his trial and sentence.

"I hereby sentence Mr.

Farouk to time served," Justice Stinson said Friday, before ordering the man be held for an additional day, as is customary.

A clearly relieved Mr. Farouk, 23, turned in the prisoner's box to smile over his shoulder at his mother.

Meanwhile, the decision was met with grim silence by police and the Crown prosecutor. The Crown had recommended an eight-year jail term.

"It's a disappointing sentence," said Det. Const. Jim Killby of York Regional Police's

sexual assault bureau.

"It seems to reflect more conditions in jail than the gravity of the offences he committed."

Indeed, pretrial custody — and the conditions under which it was served — were a central aspect of the sentencing hearing, which began in December and continued over several days in Newmarket court.

The defence argued Mr. Farouk, who spent two and a half years in pretrial custody, should be given enhanced credit for that period.

Lawyer Christopher Hicks argued Mr. Farouk's pretrial custody, commonly referred to as "dead time", was made that much more onerous because of chronic overcrowding in the Metro West and Metro East detention centres and because of restrictions placed on prisoners during two extraordinary periods.

The eight-week public service strike in the spring of 2002 and the SARS outbreak of 2003.

Prisoners received fewer visits and programs and were

often not able to exercise outdoors during those periods, Mr. Hicks told the court.

He was partially successful. While Justice Stinson allowed the customary two-for-one credit for the majority of his dead time, he gave Mr. Farouk a three-for-one credit for the periods covered by SARS, the strike and time the man spent in segregation after being attacked by other inmates.

The result was a credit of five and a half years, exactly the sentence the judge deemed appropriate for the crimes for which Mr. Farouk was convicted by a jury.

Testimony during the sentencing phase depicted a grim scenario of overcrowding and deprivation in some of the province's remand centres, Justice Stinson said.

The picture of the Toronto West and Toronto East detention centres is not a pretty one, the judge said.

The ruling does not mean Mr. Farouk will automatically

go free; he remains in custody pending a trial in Peel Region, where he is charged with sexual assault in connection with an incident police allege occurred in October 2000.

Colin Adams, another of Mr. Farouk's lawyers, said Friday the man is now eligible to apply for a bail review in Peel Region and seek release. The trial is scheduled to begin in March.

Mr. Farouk was free on bail July 8, 2001, when he snatched a woman off a Toronto street and forced her into his car. He demanded she remove her clothes, threatening to kill her if she resisted, court heard.

He drove north to Markham, forcing the woman to perform oral sex. He stopped in a public school parking lot in Markham and raped her, court heard.

Mr. Farouk then drove off with the woman's clothes, leaving her naked and unaware of where she was.

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