
CANADA / JUDGMENT

HMTQ v. Britten

2004 BCSC 678

COURT

Supreme Court of British Columbia

DECIDED

13 April 2004

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Citation:

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Date:

20040413

2004 BCSC 678

Docket:

47284-2

Registry: Chilliwack

IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Sentence

Mr. Justice B.M. Joyce

April 13, 2004

HER MAJESTY THE QUEEN

AGAINST

BRADLEY MICHAEL BRITTEN

Counsel for the Crown

R. McLeod

Counsel for the Defendant

D. Pedersen

- [1] THE COURT: Mr. Britten is before the Court to be sentenced for three offences to which he has pleaded guilty: (1) dangerous driving; (2) possession of stolen property, namely, a pickup truck; and (3) driving while disqualified by reason of a prohibition order.
- [2] The circumstances of the offences are briefly as follows. On July 15, 2003, a police officer in the downtown area of Abbotsford, British Columbia spotted a pickup truck matching the description of one that had been reported stolen the previous day. The officer followed the pickup truck for a distance without activating the emergency lights or siren on the police car because the officer was concerned not to initiate a high-speed chase.
- [3] The driver of the pickup truck, no doubt realizing the police were following him, took a somewhat zigzag route to McCallum Road, going through a red light in the process, then proceeded over the freeway overpass and turned west on King Road where another officer observed the pickup truck travelling at speeds over 100 kilometres per hour. The speed limit in that area ranges between 60 and 70 kilometres per hour.
- [4] Over the next several minutes, the pickup truck travelled around a rectangle, going west on King Road, south on Clearbrook Road, east on Huntington Road, which becomes Vye Road, then north on McKenzie Road and finally west again on King Road.
- [5] The pickup truck made the left turn from King Road onto Clearbrook Road by going into a right-turn lane for oncoming traffic turning from Clearbrook onto King Road.
- [6] A police officer estimated the speed of the pickup truck at between 100 and 120 kilometres per hour as it travelled south on Clearbrook and east on Huntington and then Vye Roads.
- [7] The pickup truck passed at least three cars on Huntington, forcing oncoming traffic to pull over and stop. It also passed one car on the right.
- [8] Another police officer managed to place a spike belt at the intersection of Huntington and Gladwin Road which caused the right side tires of the pickup to deflate as it proceeded along Huntington.
- [9] After the pickup truck turned left from McKenzie Road, heading west on King Road, it was in the right-hand lane of two westbound lanes. As it approached the intersection of McCallum Road, the pickup truck veered to the left, crossed three lanes of traffic and headed towards a police officer who had stopped his car on the south side of King Road and a pedestrian who was standing on a traffic island at the intersection. As the pedestrian and police officer both ran out of the way, the pickup truck suddenly turned to the right and travelled out of control through the intersection onto the sidewalk on the north side of King Road, striking a metal signpost before coming to rest on the south side of King Road.
- [10] Mr. Britten, the driver of the stolen pickup truck, was arrested at the scene. He has been in custody since his arrest, a period of approximately nine months.

- [11] Mr. Britten is 23 years of age. He was born and raised in Abbotsford and completed grade 11 in 1999. He was heavily involved with sports while at school and spent three years involved in a Christian youth organization where he was apparently well regarded. At the time of the offences, Mr. Britten was living with his parents who are supportive of their son.
- [12] For the past year and a half, Mr. Britten has been in a relationship with a young woman 18 years of age, though they have not lived together. Mr. Britten's girlfriend is employed and has no criminal record.
- [13] This appears to be yet another case where a young man has turned to criminal activity after becoming addicted to drugs, specifically, methamphetamine. At the time of these offences, I am told Mr. Britten was using drugs daily and had a \$100 per day habit.
- [14] Mr. Britten has a criminal record that includes the following convictions:
- (a) December 12, 2002, possession of stolen property and flight from a peace officer for which he received a three-month conditional sentence, one year probation and a driving prohibition;
 - (b) March 6, 2003, two counts of assault for which he received a suspended sentence and one year probation;
 - (c) June 30, 2003, two counts of possession of stolen property; namely, automobiles, for which he received a suspended sentence and probation;
 - (d) December 12, 2003, breach of probation for which he received a 30-day sentence;
 - (e) March 19, 2004, one count of mischief, one count of theft and one count of possession of stolen property involving two motor vehicles.
- [15] Mr. Pedersen says Mr. Britten has been free of drugs since being in custody and is committed to continuing with drug counselling, remaining clean and sober and free of crime. Mr. Britten's plan when he has completed his sentence is to move with his girlfriend to Saskatchewan where his aunt lives and start a new life together.
- [16] Mr. Pedersen submitted letters from Mr. Britten's family expressing the view that Mr. Britten has learned a valuable lesson while in custody and expressing confidence he can turn his life around.
- [17] Crown counsel submits that considering the circumstances of the offences and Mr. Britten's record, appropriate sentences would be concurrent sentences of imprisonment in the range of 18 to 24 months for each of the offences of dangerous driving and possession of stolen property, and a consecutive sentence of imprisonment of 12 months for the offence of driving while prohibited.

- [18] He submits Mr. Britten should receive credit for the time he has spent in custody at the usual two-for-one rate and that an appropriate sentence would therefore be in the range of 12 to 18 months.
- [19] Mr. McLeod also submits there should be a driving prohibition of between five to ten years.
- [20] Mr. McLeod has referred to a number of cases which I have read. In *R. v. McKay* [1998] B.C.J. No. 1412, the Court of Appeal upheld a global sentence of eight months, one count of dangerous driving and one count of possession of stolen property after taking into account that the offender had spent two months in custody. This was effectively a 12-month sentence.
- [21] In *R. v. Allen* [1990] Y.T. No. 137, the Court of Appeal upheld a sentence of 18 months for danger driving. In that case, Mr. Justice Cumming had this to say:
- The facts in this case are aggravated and they indicate a high degree of culpability which appropriately merits a lengthy jail sentence, notwithstanding that death or serious bodily injury was not caused. Sentences for these offences should still be substantial even though death or serious bodily injury does not result.
- [22] In *R. v. Hudson* [1995] B.C.J. No. 417, the Court of Appeal upheld a sentence of four years following conviction by way of a plea on a charge of dangerous driving, together with two years concurrent for driving while disqualified. The Court thought a four-year sentence might well be viewed as excessive for a conviction of dangerous driving simpliciter, but held that viewed globally, the sentence of four years was justified, considering the accused's record and the aggravating circumstances of the offence.
- [23] In *R. v. Sebelley* [2000] B.C.J. No. 920, the Court of Appeal upheld sentences of 18 months and 30 months consecutively for convictions by way of pleas on two counts of dangerous driving. In that case, the offender also pleaded guilty to possession of a stolen vehicle, escaping lawful custody and obstruction of a police officer.
- [24] In *R. v. Hooper* [1995] B.C.J. No. 503, the Court of Appeal concluded 30 months was a fit sentence for dangerous driving.
- [25] In *R. v. Budge*, [2001] B.C.J. No. 761, the offender, a man of 24 with no prior record for driving offences, was sentenced to two years imprisonment for dangerous driving and one year concurrent for possession of stolen property which sentence was upheld by the Court of Appeal.
- [26] Mr. Pedersen, on behalf of Mr. Britten, does not disagree with the range of sentences suggested by the prosecutor, but submits Mr. Britten should receive credit for the time he has spent in custody at the rate of three for one, which would amount to credit of 27 months. He also submits all three sentences should be served concurrently. Accordingly, Mr. Pedersen submits Mr. Britten should be sentenced, in effect, time served or one day in jail.

- [27] Mr. Pedersen suggests Mr. Britten should receive three-for-one credit on the ground that he has spent most of his pre-sentence custody in the North Fraser Pre-Trial Centre, which is overcrowded and has been subject to lockdown.
- [28] The amount of credit for pre-sentence in custody is a matter of discretion, although it is common to give credit of two for one on the basis that pre-sentence custody is seen as dead time, without the same opportunities that inmates have when they are sentenced and without the benefit of remission.
- [29] I note that in fact Mr. Britten has taken advantage of drug and alcohol counselling and has attended Narcotics Anonymous meetings while he has been in custody.
- [30] Mr. Pedersen did not provide me with any authorities to support the notion of three-for-one credit and I am not persuaded the nature of the pre-trial custody was such as to warrant my exercising my discretion in the manner he suggests. I will give the usual credit of two for one.
- [31] Mr. Pedersen did not refer me to any authorities to suggest that the sentence for driving while prohibited should run concurrently with the other sentences. In *R. v. Hudson*, Mr. Justice Wood said, at paragraph 22:

No doubt the trial judge had that global sentence in mind which would explain the rather unusual order that the sentence for driving whilst disqualified be served concurrently to the sentence imposed on the dangerous driving conviction.

- [32] At paragraph 26, His Lordship observed that:

Generally speaking, a sentence for driving whilst disqualified will be ordered to be served consecutively to any sentence imposed on the offender for concurrently-committed driving offences.

- [33] On the authority of *Hudson*, I accept the Crown's submission that the sentence imposed on Mr. Britten for driving while prohibited should be served consecutively to the sentences imposed for dangerous driving and possession of the stolen automobile.
- [34] The circumstances of the dangerous driving in this case are not as horrendous as those in *Hudson* and *Hooper* and are more similar to those in *Allen*, *Budge* and *Sebelley*.
- [35] Mr. Britten fled from the police in the stolen pickup truck, causing a chase at high speeds over a considerable distance on roads that ranged from rural to busy residential streets. Mr. Britten went through a red light, made an illegal and dangerous turn using an oncoming lane, overtook cars at high speed, forcing oncoming traffic to the side of the road to avoid collision, and finally, came dangerously close to the police officer and pedestrian at the intersection of King Road and McCallum Road before he lost control of the vehicle. The pickup truck ran up onto a sidewalk and struck a signpost before sliding across the road to a stop. It is indeed fortunate that no one was injured.

- [36] High-speed chases of the kind Mr. Britten engaged in are far too common, sometimes with fatal results. While this Court must of course be concerned with the rehabilitation of the offender, it must also be concerned with the principles of denunciation and deterrence. As Mr. Justice Cumming observed in *Allen*, sentences for these offences should be substantial, even though death or serious bodily injury does not result.
- [37] Considering all of the factors, including the fact Mr. Britten pleaded guilty, his relatively young age, the fact that he appears to have committed the offences because of his drug addiction which he asserts, with the support of his family and friends, he is committed to put behind him, his past criminal record, the circumstances of the offences and the need adequately to address all sentencing principles, including denunciation and deterrence, I am of the opinion that sentences in the range suggested by the Crown are indeed appropriate.
- [38] If it were not for the time Mr. Britten has spent in custody, I would impose sentences of imprisonment as follows. 18 months for dangerous operation of a motor vehicle and 18 months for possession of stolen property, to be served concurrently, and 12 months for driving while disqualified, to be served consecutively. That would, in effect, represent a total global sentence of 30 months.
- [39] Taking into account the time Mr. Britten has spent in custody, Mr. Britten, I sentence you to a global sentence of 12 months imprisonment.
- [40] With regard to an order prohibiting Mr. Britten from operating a motor vehicle, the prosecutor did not indicate whether the Crown sought an order under s. 98 of the Motor Vehicle Act in addition to an order under the Criminal Code. As I was not provided with a copy of Mr. Britten's driving record, I conclude the Crown is not intending to proceed under the Provincial statute and seeks a prohibition under s. 259 of the Criminal Code only.
- [41] Because the maximum sentence possible for an offence under s. 249(1)(a) of the Criminal Code is five years or less, the longest prohibition possible under s. 259(2)(c) is three years, plus any period to which the offender is sentenced to imprisonment, which in this case is 12 months.
- [42] In this case, I am of the view that the maximum length of prohibition is appropriate. Accordingly, Mr. Britten, as I said, I sentence you to 12 months imprisonment and order that you are prohibited under s. 259(2)© of the Criminal Code from operating a motor vehicle for a period of four years.

"B.M. Joyce, J."

The Honourable Mr. Justice B.M. Joyce

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Prepared on 29 October 2026 · Esheria