

CANADA / JUDGMENT

HMTQ v. Cooper

2000 BCSC 746

COURT

Supreme Court of British Columbia

DECIDED

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Citation:

HMTQ v. Cooper

2000 BCSC 746

Date: 20000512

Docket No.:

CC991286

Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

HER MAJESTY THE QUEEN

v.

PHILLIP THOMPSON COOPER

REASONS FOR SENTENCE

OF THE

HONOURABLE MR. JUSTICE HOOD

Counsel for the Crown

R.G. Ruttan

Counsel for the Accused

P. McMurray

Date and Place of Hearing/Trial:

May 3, 2000

Vancouver, BC

- [1] On May 3, 2000, I sentenced the Offender, Phillip Thompson Cooper to three and one half years imprisonment, after taking into consideration time served, and agreed to deliver brief Reasons at a later date. These are those Reasons.
- [2] On March 1, 2000, I delivered written Reasons pertaining to the admissibility of certain evidence, and finding the Accused guilty as charged. Those Reasons, in which the facts are outlined in detail, should be read in conjunction with these Reasons.
- [3] The 33 year old Offender was convicted of the robbery of a bank, or its teller, on May 28, 1999. He had escaped from Mount Thurston Camp two days earlier, just after he had been transferred there from Fraser Regional Correctional Centre.
- [4] On the day in question the Offender entered the Canadian Imperial Bank of Commerce situate at 3297 Kingsway, and after waiting in line for a period of time, went to the teller station of Amarjit Gill. He then handed her a note which read as follows:

This is a robbery. Give me \$4,500.00. 45 \$100.00 bills. Be quik Be discreet Don't! Fuck with me I will shoot you and everybody around me. Ms. Gill then went immediately to the cash dispensing machine where she pointed out her predicament to another teller, Ms. R. Matendi. She was unable to withdraw monies from the machine, probably because she was so nervous. In any event she returned to her teller's station where the Offender immediately told her to hurry up or he would shoot her. She then handed him \$250.00 in marked bills and he left the bank.

- [5] In one of the photograph stills taken from the video tape of the robbery the Offender can be seen standing in front of Ms. Gill's station, with one of his hands inserted under his shirt. However, it is not known whether in fact he actually had a gun in his possession. Mr. McMurray, for the Offender, said that his instructions are that the Offender did not in fact have a gun at the time of the robbery.
- [6] I have before me the Victim Impact Statements of the two tellers. It is suffice to say that they were both quite frightened by the experience, had sleeping problems, and were made aware "of the dangers involved" in their working environment.
- [7] I also have before me a copy of the Offender's lengthy criminal record dating back to April 12, 1983, when he was around 17 years of age. The majority of his convictions are for crimes such as breaking and entering and committing an offence or with intent to do so, possession of stolen property, possession of a narcotic, failure to comply with recognizance, failure to appear, driving offences involving alcohol, escaping lawful custody on two occasions, failure to comply with a probation order and so on. Most of his sentences in the early years were nominal, involving a few days or probation. They would not deter anyone. They did not deter him. In the late 1980s and the early 1990s sentences were increased to three or four months, some being as high as nine months, and one, in 1994, for a period of one year.

- [8] Since 1994 the favoured sentence appears to be about six months, although it generally involved a "batch" of offences. It is worthy of note that a fair number of the Offender's sentences have involved a number of offences. His last batch of sentencing occurred in both February and May, 1999, and covered offences committed in different parts of the Province. In February, in effect, he was given six months and two years probation, for five offences ranging from breaking and entry with intent to attempted false pretences. In May he was given four months for four offences, possession of stolen property, theft under, attempted theft under and mischief.
- [9] He has no record of violence, other than a conviction for assault in 1984, for which he received one month, and a conviction for assault using a weapon in 1990, for which he received four months. He has never been convicted of robbery before. However, in my view, his record clearly shows complete and utter disdain for authority and for the law. He simply does what he wants to do, including escaping custody on two occasions, the latter occasion bringing the minor sentence of 30 days.
- [10] I have before me a Pre-Sentence Report dated March 7, 2000. The sources are the Provincial Community Corrections case file, police files, his father, his sister and his girlfriend. Neither Counsel referred to the Report to any extent. Mr. McMurray relied almost entirely on what he was instructed by the Offender.
- [11] According to the Report, the Offender's late mother was a Status Native. She "drank herself to death" in 1986. His father is Caucasian. His father has always worked as a ranch hand or cowboy, and has raised three families. He now buys and sells livestock, and still works as a cowboy.
- [12] The Offender got into trouble at an early age, around 15, and was asked to leave home and school. Apparently he chose to associate with his negative peers. He has not been in contact with his family for many years. Earlier on they tried to help him, but eventually gave up. It is stated on pg. 2 of the Report:

They state that he "blames everybody for his troubles and that gets old", that "he is a drug addict, an alcoholic, that is why he is in trouble and he hasn't tried another way". His sister Cheryl stated that the "family has been waiting and waiting for him to smarten up but eventually you get tired and he has run out of people to ask".

- [13] It is stated under the topic 'Present Situation':

The Subject has been in a common-law relationship with Angela Hourie for the past four years. Angela resides in a single family home on the Cheam Reserve near Popkum, BC. Both at from the Merritt area and grew up as neighbours. Angela also has a long history of drug abuse and together they had a large habit to support. Angela has been on the methadone program for the past ten weeks and is trying to deal with her drug dependency.

- [14] The Offender has a Grade 9 education. Under the topic 'Employment' it is stated:

"The Subject has never had a job that has lasted for any length of time. Most recently he claimed to be creating and selling art. As to how productive he was it is hard to confirm".

[15] The Offender is an alcoholic and drug abuser. Any attempts to recover through recovery programs have been unsuccessful.

[16] He denies his guilt claiming that it is a case of mistaken identity. However, for the purposes of sentencing he is prepared to admit his guilt: which Crown Counsel says demonstrates the Offender's cynical and unrepentant attitude.

[17] The Report concludes as follows:

The Subject has a lengthy criminal record dating back to 1983. He has basically chosen a life of crime to support his lifestyle and his alcohol and drug dependency. His own family has given up on him, community supervision has been unsuccessful as have short gaol sentences. With respect to sentence, this writer respectfully recommends a lengthy gaol sentence.

[18] I turn now to the submissions. Mr. Ruttan, for the Crown, referred to a number of cases, including the Court of Appeal's decision in *R. v. Lackey* (1999), 130 B.C.A.C. 313, which he described as a more aggravated case. He submitted that the range of sentences applicable to the case at Bar is five to seven years; that the appropriate sentence here should be five years.

[19] He pointed out that since the Offender was unlawfully at large at the time of the robbery, he had to return to prison to serve out his earlier sentence; that the warrant expiry date was October 19, and that he would have had to serve his sentence to that date unless he was paroled again in the meantime. The time served then was less than eight months, as submitted by Mr. McMurray, and in any event, it is not obligatory that the Court double the time for the purposes of sentencing. I have decided that the time served credit to be given to the Offender should be one year.

[20] Mr. Ruttan reviewed the Offender's awful record, noting that he had been given many "breaks" by the Court in the past. He submitted that while the Offender had an unfortunate background, it was time to give him a stern sentence for direct deterrence purposes, if there is to be any hope for rehabilitation. He also emphasised that protection of the public from this man was primary.

[21] Mr. Ruttan said that he would have preferred to have had more materials about the Offender before the Court, but from sources other than the Offender himself. He pointed out that the matter had been put over for this purpose at the request of Defence Counsel, but that nothing had been brought forward from the family, the Reservation or other sources, other than what was said in the Pre-Sentence Report. He emphasised that there is no evidence before the Court to show that the Offender was on a path of rehabilitation, and that a lengthy period of incarceration may in fact contribute to his rehabilitation if he is serious about it and takes advantage of available counselling programs. Finally, he emphasised that the Offender was unlawfully at large at the time of the robbery.

- [22] Mr. Ruttan also referred briefly to s.718.2(e) of the Code and the Supreme Court of Canada's decision in *R. v. Gladue*, [1999] 1 S.C.R. 688, acknowledging the necessity of the Court to consider the background and systemic factors in sentencing this aboriginal Offender. He emphasised that when such factors are considered by the Court in the case of a serious offence, as is the case at Bar, it is likely that in the end the sentence would be the same as for any other Canadian citizen.
- [23] Mr. McMurray briefly reviewed the 33 year old Offender's background, emphasising his difficult youth, his alcohol and drug problems, and the fact that his family had written him off. He said that he was instructed by the Offender that he had been physically and sexually abused as a Grade 1 student in a Residential School; that he had great difficulty coming to terms with this, and thus had not told anyone about it in the past, including his family. He has been estranged from his family since he was a teenager.
- [24] Counsel suggested that the Offender's girlfriend or common-law wife, who was waiting for him on the Reservation, would head up a good support network, if and when he returned to the Reservation. I must say that I find this most difficult to accept, although there is some evidence that Ms. Hourie is now attempting to deal with her long standing drug problem. This network was never there before. The suggestion is that Ms. Hourie got the Offender involved in heroin and cocaine in the first place, and then shared their mutual problem. I have concerns as well with the submission that the Offender escaped the prison farm and robbed the Bank because he had heard that Ms. Hourie was having problems on the Reservation. Perhaps this is another example of the Offender blaming other persons or other things for his problems, and failing to come to grips with them.
- [25] Mr. McMurray had quarrelled earlier with what he said was a suggestion in the Pre-Sentencing Report that the Offender had never worked. He said his instructions were that the Offender usually worked in the fishing industry in the summer of each year, and "made a reasonable income". Also, that he had become involved in carpentry and native art work, some of which had been demonstrated to a previous Probation Officer. Counsel submitted that the Offender should not be written off by the Court, that he was not like Mr. Lackey, who was a 20 year addict; the Offender's period of drug abuse not being as long.
- [26] Mr. McMurray emphasised that there was no evidence of prior violence or robbery on the part of the Offender. He said that there was no risk of violence, or "accompanying threats" at the time of the robbery because the Offender did not have a gun, was not disguised, and so on. I observe that the fact that he did not actually have a gun, assuming that is the case, was unknown to the tellers, and that he did threaten to kill everyone as well as teller, Gill. His conduct was indeed menacing.

- [27] Mr. McMurray suggested that the range of sentences was three to four years, less the time in custody; that that time should be fixed at 16 months. He also referred me to a number of cases which, with respect, I did not find to be too helpful; although as usual they demonstrated that truly similar cases are rare. In this regard it would seem that the Lackey case is the closest case to the case at Bar, when adjustments are made to accommodate factors in both cases.
- [28] Mr. McMurray did not deal with s.718.2(e) of the Criminal Code, or the principles of Gladue in any detail. He simply acknowledged, and rightly so, that given the Offender's record, and the seriousness of the offence, the reasoning and considerations required by s.718.2(e), as interpreted by the Supreme Court of Canada, would unlikely result in a different sentence being fixed. In effect he reverted to his earlier position that the only real issue before the Court was the length of the Offender's period of incarceration.
- [29] In any event, I have given consideration to the principles set out in s.718, s.718.1 and s.718.2 of the Code, particularly sub-section (e), and Gladue and subsequent cases, including R. v. Armbruster (1999), 126 B.C.A.C. 283, (C.A.) in determining, on the whole of the evidence before me, that the appropriate sentence for this Offender, after taking into consideration the time in custody, was three and one half years. I also directed the usual mandatory firearm prohibition order for ten years pursuant to s.109(1) of the Code.
- [30] I see no reason to refer in detail to the numerous factors that I have considered. The Offender was at large when he committed the very serious offence. He has an awful record of convictions which did not deter him from stepping up to robbery. I doubt that his casual treatment of the law, and its casual treatment of him, has gone unnoticed, particularly in his community. Treating aboriginal offenders with some leniency, and much understanding, has been a policy of this Court for many years, and long before the enactment of s.718.2. However, in the case at Bar, the application of such principles has not been beneficial to this Offender. He has not been deterred, and I do not think that others would have been deterred in the circumstances.
- [31] Deterrence then, and denunciation, are important factors to be considered; as well as the protection of the public on the one hand, and the rehabilitation of the Offender on the other. As to the latter, if he is to be rehabilitated, a fairly lengthy period of incarceration, away from his peers and his usual surroundings, probably will be a major step in that direction. Finally, I should observe that I do not associate this man's problems of substance abuse with his community or with his family or with other, what I will call aboriginal factors, which in my view could cause me to fix a lesser sentence, or one which might be said to be more appropriate to an aboriginal offender.

"S.W. Hood, J."

The Honourable Mr. Justice S.W. Hood

Vancouver, B.C.

May 12, 2000

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