

CANADA / JUDGMENT

R. v. Abbas

2024 BCSC 2391

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 2391 R. v. Abbas

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Abbas,

2024 BCSC 2391

Date: 20241010

Docket: 98199-2; 98610-1; 98770-1; 99066-1; 99136-2

Registry: Kelowna

Rex

v.

Saeed Abbas Abbas

Before: The Honourable Justice Hardwick

Oral Reasons for Sentence

Counsel for the Crown:

E.K. Miller

Counsel for the Accused:

K.K. Chase

(as Agent for M.A. Patterson)

Place and Date of Trial/Hearing:

Kelowna, B.C.

October 7 & 10, 2024

Place and Date of Judgment:

Kelowna, B.C.

October 10, 2024

- [1] THE COURT: These are my oral reasons for judgment in respect of the sentence of Mr. Saeed Abbas Abbas in respect of eight criminal offences. There are five separate criminal files before the court, two in Supreme Court and three in Provincial Court which have been brought forward to be considered in totality, with the consent of both counsel and the subsequent permission of the Court.
- [2] Mr. Abbas has entered guilty pleas on all eight of the offences on the various indictments and informations referred to. The guilty pleas on the indictable offences were previously taken in July of 2024. However, given that this was not a joint submission on sentencing, and for the purposes of having a comprehensive record, I had Mr. Abbas confirm said guilty pleas and enter further guilty pleas upon making the necessary inquiries under s. 606 of the Criminal Code (the "Code") earlier this week on October 7, 2024.
- [3] I am satisfied that Mr. Abbas made his guilty pleas freely and voluntarily with an acknowledgment that he was admitting the essential elements of the underlying offences and waiving his right to trial.
- [4] Specifically, I acknowledge that I conducted an abbreviated version of the s. 606 inquiry, but I am satisfied, given the number of counts, that Mr. Abbas's guilty pleas were appropriately received. I note that counsel for Mr. Abbas did suggest at first instance that the Court simply waive the reading of the counts, but the Court declined that suggestion. After making a comprehensive s. 606 inquiry in the first count in Indictment 98199-2, the Court concluded that a modified inquiry in respect of the remaining counts was appropriate and in compliance with the Court's obligations under the Code. Neither counsel for Mr. Abbas nor the Crown expressed concern about proceeding in this manner.

Brief overview of the circumstances of the offender Mr. Abbas

- [5] I will detail certain pertinent details regarding Mr. Abbas in the course of my review of the defence submissions. As an overview, however, it has been established, I accept, that Mr. Abbas is 44 years of age presently. He has been in and has remained in custody since January of 2023. I will address the exact calculations in due course, but this is obviously a significant period of incarceration.

- [6] Mr. Abbas has a long history of substance abuse and misuse. Although it cannot accurately be stated by this Court that all of Mr. Abbas's criminal behaviour is directly related to this substance abuse and misuse, there is a very strong correlation between this and his unenviable criminal record.
- [7] That criminal record is entered collectively as Exhibit 1, as it involves offences in more than one province and certain youth offences which are not relevant, includes some 25 convictions for what I will broadly describe as property-related offences, and 22 convictions for what I will describe as non-compliance offences. This has included significant periods of incarceration, certain of which were consecutive due to the nature of the offences.
- [8] Counsel for Mr. Abbas did not object to the admission of Exhibit 1, and so I accept this to be a fair, albeit abbreviated, summary of his admissible criminal record.
- [9] Mr. Abbas, to his credit, seemingly functions well while incarcerated. He has taken various courses available to him while in pretrial detention, as confirmed by the certificates entered by his counsel as part of Exhibit 2. I also accept from counsel's submission that Mr. Abbas has actually completed certain of these courses more than once, but that only one official certificate is given. This explanation is logical and I do not question its veracity. Mr. Abbas has been assigned a mentor role in his unit while incarcerated and has and may still have, as the submission on this point was, at least from my notes, slightly unclear, successfully worked in the laundry department of his present detention facility.
- [10] Consistent with this, there is no evidence submitted by the Crown that Mr. Abbas has been a problematic individual while detained in pretrial custody or an individual opposed to the concept of rehabilitation. The latter point, I will address, has been a practical struggle for Mr. Abbas whilst outside of the custodial setting.
- [11] Mr. Abbas has the support of his mother. His father, who has had health issues on an ongoing basis and has been long-separated from his mother since when Mr. Abbas was in or about 26 years of age, is currently hospitalized. While not incarcerated and in active addiction, Mr. Abbas has provided support to his father. I am prepared to infer that, but for his present circumstances, Mr. Abbas' father would confirm his support for Mr. Abbas and his efforts at rehabilitation.
- [12] Due to his addiction, substantive misuse and associated criminality, Mr. Abbas does not have a relationship with his two younger brothers.

Overview of the Offences

- [13] The following is a high-level summary of the eight counts to which Mr. Abbas pled guilty. I will go through the underlying facts below for context. However, as noted, the essential elements of the offences were all admitted by Mr. Abbas and his counsel did not challenge the Crown's submissions as to the circumstances, so a more detailed review is, in my consideration, unnecessary. I have specifically removed identifying names accordingly.

Indictment 98199-2

- [14] On September 24, 2022, at approximately 7:00 p.m., the Kelowna RCMP detachment, hereinafter collectively referred to as "the Police" unless otherwise specified, received a report of a break and enter from a cleaner at certain commercial premises located on Enterprise Way in Kelowna, British Columbia. The cleaner reported that they had located a broken window on the side of the building upon attending the subject premises to provide their contracted cleaning services. The Police attended the subject premises within approximately 20 minutes. The attending officers observed the broken window and located a large rock they believed was used to break the window.
- [15] A Porsche vehicle was parked outside the subject premises. Various papers in the name of the registered owner were strewn about on the ground nearby. Attending officers spoke with the registered owner of the Porsche who confirmed that the papers belonged to her and that her cellphone was missing. Police requested that the registered owner of the Porsche use the "Find My iPhone" application to ascertain the current location of her cellphone, if possible, and to provide that location to the Police.
- [16] The Police then contacted the manager of the business located at the subject premises to advise him of the incident, but had to depart shortly thereafter due to an urgent but unrelated call which had priority.
- [17] The manager attended at the subject premises in a reasonable amount of time and observed that two vehicles, a 2002 Dodge Ram pickup truck and a 2017 Dodge Ram pickup truck, were missing. The vehicles had been recently repaired and were left inside the otherwise secure subject premises with the keys in the ignition. The manager advised the Police of same.
- [18] Later that evening, the business manager personally located the 2002 Dodge Ram vehicle behind an unrelated business located nearby the subject premises. Police attended the scene and that vehicle was towed to a secure bay for processing by the Police Forensic Identification Section. The forensic examination of the vehicle did not yield any results. The vehicle was returned to the registered owner in due course and was not damaged.
- [19] Early in the morning of September 25, 2022, the registered owner of the Porsche contacted the Police to advise that she had, as directed, used the Find My Phone application to locate her cellphone, and that the cellphone was located using that said app at the Lake Country Inn situated on Highway 97 in Lake Country, British Columbia. The Lake Country detachment of the Police was notified accordingly.
- [20] Prior to the Police attending, a male friend of the registered owner of the Porsche attended at the Lake Country Inn in an effort to retrieve her cellphone. The friend followed the location of the cellphone using said app to a nearby business complex. Upon his arrival, the male friend observed a lone male occupying a white Toyota Yaris. The friend approached the vehicle and demanded that the male occupant of the Toyota Yaris return the cellphone. The male retrieved the cellphone from a backpack in the vehicle and returned it to the male

friend of the registered owner without any further conflict. The cellphone was not damaged.

- [21] The information regarding the interaction, however, was promptly relayed to the Police, along with a description of the male occupant in the Toyota Yaris vehicle. This allowed the Police to ultimately connect Mr. Abbas to both the vehicle and the Lake Country Inn. Video surveillance showing Mr. Abbas's quite distinctive arm tattoos was helpful in this regard.
- [22] Subsequent video surveillance provided of the subject premises on Enterprise Way also showed Mr. Abbas entering the Porsche vehicle and rummaging through its contents, as well as entering the subject premises on two occasions to drive the two Dodge trucks out of the building. Again, the quality of the surveillance video, combined with the distinctive tattoos of Mr. Abbas, helped the Police connect Mr. Abbas to what would later be described as a "spree" of criminal activities during the relevant period of time.
- [23] Although the 2002 Dodge Ram truck was promptly located with the assistance of the business manager, the 2017 Dodge Ram truck was never located. That vehicle, I accept, was valued at approximately \$30,000. That is a significant loss to the registered owner of the truck, which may or may not have been made whole by applicable insurance coverage. Even if it was made whole, minus any applicable deductible, the owner of the truck was entitled to have confidence when he took the vehicle in for repairs that it would not be stolen from otherwise secured business premises.
- [24] Skipping along in the chronology somewhat, as a result of combined police investigative efforts, which are also related to the other offences I will summarize, Mr. Abbas was arrested on October 10, 2022. Following that, on October 11, 2022, Mr. Abbas was released by the Honourable Judge Daneliuk of our Provincial Court with numerous conditions, including a curfew condition, namely 9:00 p.m. to 6:00 a.m., a condition prohibiting Mr. Abbas from occupying any motor vehicle without the registered owner's permission, and conditions prohibiting him from possessing break and enter tools or keys.

Indictment 99136-2

- [25] On October 10, 2022, at approximately 12:53 a.m., the Police received a report of a break-in at a self-storage compound also located on Enterprise Way in Kelowna, British Columbia. I will note a security/alarm company was monitoring the compound via a live feed when they observed a male individual, later identified as Mr. Abbas, enter in the compound through a hole in the fence. The alarm company immediately contacted the Police.
- [26] The Police quickly responded and arrived on scene within minutes. The attending officer intercepted Mr. Abbas as he was running eastbound nearby the identified location. The attending officer made specific note of Mr. Abbas's attire, which had some distinguishable characteristics. The attending officer arrested Mr. Abbas and provided him with his Charter rights and a police caution. Mr. Abbas declined to speak to counsel.

- [27] At approximately 1:13 a.m. on October 10, 2022, the Police received a report of an earlier break-in from the security guard at a car dealership, again located on Enterprise Way in Kelowna, British Columbia. The security guard informed the Police that an alarm had been activated at the subject premises and that he had located a shattered glass side door. This report was unknown to the Police at the time of Mr. Abbas's initial arrest, given the proximity in timing, and the time required for the security guard to attend at the business premises and confirm it was not a false alarm situation.
- [28] The Police were again dispatched to the report, arriving quite promptly on scene at approximately 1:22 a.m. The officers observed the broken door and located a rock nearby. The officers entered the building but did not locate anyone inside.
- [29] Effectively contemporaneously, the arresting officer was transporting Mr. Abbas to the Kelowna RCMP detachment. During the book-in process, Mr. Abbas made the spontaneous utterance, "I guess it would go better for me if I admitted to the other stuff I did." The arresting officer told Mr. Abbas that it was his choice if he wished to provide a statement, but advised Mr. Abbas he would make no promises in relation to the criminal process generally. In that context, the arresting officer then asked Mr. Abbas what "other stuff" he was referring to, and Mr. Abbas replied, "Like the rock I threw through the glass at the Volkswagen dealership."
- [30] Mr. Abbas was rearrested for this further offence and again provided with his Charter rights and a police caution by the arresting officer. Consistent with this voluntary statement to the Police, security camera footage provided to the Police by the general manager of the Volkswagen dealership in due course shows an individual breaking the glass door with what appears to be a rock and entering the business. The individual captured in the surveillance video is wearing very similar clothing to that worn by Mr. Abbas upon his arrest by the Police on October 10, 2022.
- [31] Although there was some cost associated to repair the damage to the glass door, there was no property identified to have been stolen.

Information 98610-1

- [32] On October 18, 2022, at approximately 4:46 p.m., the Police received a report of theft of a Honda CRV from the Harmony Honda dealership, again located on Enterprise Way in Kelowna, British Columbia. The report was that a male individual, later identified as Mr. Abbas, had entered the Harmony Honda service bay to inquire about a job opportunity as a vehicle detailer. Mr. Abbas then surreptitiously removed the key fob to the Honda CRV from the desk, entered the vehicle, and drove away. The Honda CRV contained a wallet belonging to the spouse of the registered owner of the vehicle, who I will refer to as Ms. A.

- [33] Over the subsequent hours, Mr. Abbas used a credit or debit card belonging to Ms. A. to make fraudulent purchases at Triple-O's, Marshall's, B.C. Liquor Store, and Petro-Canada. The total value of those purchases amounted to some approximately \$305.
- [34] The Police obtained video and still images from the security cameras at these various locations and in due course concluded that Mr. Abbas was the same person captured in each of these places of business. Like the other targeted or involved businesses, Harmony Honda was also equipped with security camera videos. The following day, the Police obtained digital video recordings from the security cameras at Harmony Honda that capture the theft of the Honda CRV in the manner described above.
- [35] The Police recovered the Honda CRV and the associated vehicle key fob that same day, namely October 19, 2022. The licence plate of the CRV had been exchanged with a licence plate from a Honda Pilot vehicle belonging to a third party. Police investigators located the third party's Honda Pilot and, in so doing, recovered the licence plate for the Honda CRV. The Honda CRV had an estimated value of some \$27,000. The vehicle contained a number of personal belongings, some of which were not recovered. These included a booster seat and a car seat which Harmony Honda gratuitously replaced, prescription sunglasses, an iPad, unspecified vehicle accessories, gift cards, and at least one bank or credit card as noted above.

Information 99066-1

- [36] On October 19, 2022, at approximately 9:55 a.m., the Police received a report of a motor vehicle theft from a female individual who I will refer to as Ms. F.A. She has two different names in the course of the various documents. Ms. F.A. informed the Police that a 2017 Toyota 4Runner belonging to her father had been stolen from a residence on Quail Lane in Kelowna, British Columbia. Quail Lane is, by very broad description, in the general vicinity of Kelowna International Airport. It is principally located in a residential neighbourhood which is centred around a golf course. I am prepared to take judicial notice that the neighbourhood is somewhere between a 10- to 12-minute drive from the Enterprise Way, Kelowna, depending on traffic and the time of day. The exact travel time is not material, but it is relevant to the place of this offence outside of the proximity of the other offences and in a residential neighbourhood versus a commercial district.
- [37] Ms. F.A.'s debit card or cards were inside the Toyota 4Runner at the time it was taken. By the time Ms. F.A. became aware of this issue, the debit card or cards had been used to make purchases at multiple gas stations, Walmart, and London Drugs. Security camera video from Walmart and London Drugs again captured Mr. Abbas making the purchases using Ms. F.A.'s debit card or cards.

- [38] At approximately 11:11 a.m. on the same day, namely October 19, 2022, the Police received a second report from a concerned private citizen. This citizen informed the Police that she believed two individuals, one male and one female, were breaking into vehicles in the 1400-block of St. Paul Street in downtown Kelowna.
- [39] The citizen further reported that the male and female were linked to a "newer model" Toyota 4Runner vehicle and that they had been observed entering a residence at 1471 St. Paul Street. The concerned citizen was able to obtain a photograph and provided same to the Police. An officer was dispatched and promptly arrived on scene at 11:18 a.m. Approximately 30 minutes later, the officer observed an individual outside of 1471 St. Paul Street who appeared to match the person captured in a photograph provided by the concerned citizen. The individual was Mr. Abbas. The officer arrested Mr. Abbas for possession of stolen property and provided him with his Charter rights and a police caution.
- [40] Mr. Abbas initially provided a false name to the arresting officer. Within minutes, another officer arrived on the scene and immediately identified Mr. Abbas, based upon his prior personal knowledge. Mr. Abbas continued to deny his identity and insisted that Saeed Abbas was his brother. This somewhat, I will say, ludicrous nature of the explanation is further apparent when the Court considers that the name initially provided was quite obviously a patently false name in order to obstruct police efforts, and not a known or common alias of Mr. Abbas.
- [41] Mr. Abbas did not have the keys to the Toyota 4Runner in his possession at the time of his arrest. The Police attended at the apartment located at 1471 St. Paul Street in Kelowna, identified above, and knocked on the door. A female individual opened the door and informed the officers that Mr. Abbas had brought the Toyota 4Runner to her apartment. She then retrieved the key fob for the 4Runner and provided it to the Police. The Police tested the key fob on the Toyota 4Runner and confirmed that the key fob was able to lock and unlock the vehicle, and further located receipts from Walmart and a Chevron gas station, consistent with the above, inside the Toyota 4Runner vehicle. The Toyota 4Runner vehicle was returned to the registered owner. There was no damage to the vehicle.

Information 98770-1

- [42] On Sunday, January 15, 2023, at approximately 9:44 a.m., the Police received a third-party report of a break and enter in progress at a secure construction site of the Kelowna Mercedes Benz dealership, again located on Enterprise Way in Kelowna, B.C. The third-party informed Police that he could see an unidentified male attempting to break into certain trailers inside the construction site. The third party was observing the incident via a security camera system. Two Police officers were dispatched to the report and arrived on scene within approximately 12 minutes. The third party met with the officers, allowed them inside the construction site, and showed the security feed to the attending officers. The individual on the security camera could be observed breaking into the trailers at the construction site using a hammer as initially reported by the third party.

- [43] The officers entered the construction site and arrested Mr. Abbas. Mr. Abbas was observed to be holding a screwdriver and had a duffel bag in his possession. Mr. Abbas again falsely identified himself to the Police, this time with an entirely erroneous name and also provided an erroneous date of birth to frustrate or delay police efforts. The Police arrested Mr. Abbas for mischief and provided him with his Charter right and a police caution. Mr. Abbas declined to speak with a lawyer.
- [44] On a search of Mr. Abbas's duffel bag incidental to arrest, Police located a set of bolt cutters, a hand saw, and what appeared to be a revolver pistol. Mr. Abbas was rearrested for break and enter and unauthorized possession of a firearm. Mr. Abbas was once more provided with his Charter rights and a police caution. He again declined to speak with a lawyer.
- [45] Mr. Abbas was transported to the Kelowna RCMP detachment. During the book-in process. Mr. Abbas again asserted a false name. Mr. Abbas also stated that the firearm was not a real firearm. He informed Police that he had received the firearm from another person but did not name them. Mr. Abbas was then lodged in police cells.
- [46] While searching and securing Mr. Abbas's effects incidental to arrest, the booking officer located a key to a BMW vehicle which appeared to be the key for a vehicle that had been reported stolen the day prior. Additional tools, including a hammer, a hacksaw, butane torch, screwdriver, and bolt cutters were located in Mr. Abbas's effects.
- [47] Police examined the firearm they had located in Mr. Abbas's possession. The firearm had no serial number and the cylinder contained one round. The officer placed, I accept, a zap strap on the firearm to render it secure. The booking officer proceeded to seize the key, tools, the firearm, and secured them accordingly in an RCMP exhibit locker. Mr. Abbas, now in cells, was informed of the new charge for possession of stolen property in relation to the BMW key or key fob. Mr. Abbas yet again declined to speak with counsel.
- [48] While Mr. Abbas was in police custody, a local member of the detachment attended the cells where Mr. Abbas was being held. This particular member recognized the accused as Mr. Abbas from prior interactions. The Police then compared Mr. Abbas's tattoos to those retained in the Police system and observed that they were the same. Upon being confronted with this and being told to "tell the truth" with respect to his identity, Mr. Abbas confirmed his last name was indeed Abbas. Again, however, this was only accomplished through the efforts of the Police and Mr. Abbas' prior interactions with law enforcement.
- [49] Given the numerous charges, Mr. Abbas was rearrested on all charges collectively. Mr. Abbas was again provided with his Charter right and a police caution for a final time. Mr. Abbas yet again declined to speak with counsel.
- [50] Upon examination, the Police concluded that the firearm seized from Mr. Abbas was, in fact, a replica firearm. Although realistic, the firearm did not function.

- [51] The stolen BMW key/key fob was returned to the general owner of the targeted dealership. The vehicle key was tested and found that it could successfully unlock one of the vehicles at the dealership; again, the same vehicle that had been reported stolen and later recovered. The key had an approximate replacement value of \$700.
- [52] On January 16, 2023, Police investigators obtained digital video recordings from the security cameras which captured the break-ins at the targeted dealership. The video is entirely consistent with the nature and the timing of the events described above.
- [53] On January 17, 2023, a further police report was made that a television, a compressor, and a bin of goods had been taken from a secure room at the construction site. A second-floor entrance had also been breached by cutting a chain that secured the door with a lock. Two of the tools located on Mr. Abbas at the time of his arrest, a hammer and a Milwaukee Hackzall, were identified to have been removed from the secure room at the construction site at the material time.
- [54] Importantly, at the time of this incident on or about January 15, 2023, Mr. Abbas was bound by the release order made on October 11, 2022, by the Honourable Judge Daneliuk. As indicated, the release order, inter alia, prohibited Mr. Abbas from possessing tools capable for use for a criminal activity and from possessing keys to any vehicles or places which he was not lawfully entitled to access.
- [55] This is a broad summary but the important part is that Mr. Abbas was entitled to judicial interim release only on strict conditions.

Overview of the Crown's position on sentencing

- [56] The Crown seeks the following sentence:
- imprisonment for two years, 730 days;
 - two years of probation, 24 months, on specified terms; and
 - an order for Mr. Abbas's DNA, pursuant to s. 487.051 of the Code.
- [57] For greater clarification, and for the record, the Crown submits that the offences on Files 98199-2, 99136-2, 98610-1, and 99066-1 form a "spree" of offending and that the sentences on these files ought to be concurrent. The Crown's position on those files is imprisonment of 18 months, some 730 days.
- [58] The final file, 98700-1, is sufficiently disconnected in time from the earlier files, the Crown submits, and therefore the sentence on that file should be served consecutively. Accounting for the principle of totality, the Crown's position on File 98700-1 is imprisonment for 6 months, some 180 days.
- [59] A detailed breakdown of the Crown's sentence will be addressed in due course but this is, I believe, an accurate high-level summary.

Overview of defence position on sentencing

[60] The defence position on sentencing is as follows:

- a) imprisonment for 18 months, some 730 days;
- b) two years of probation, some 24 months, with minor modification to the terms proposed by the Crown; and
- c) the defence does not oppose an order for Mr. Abbas's DNA pursuant to s. 487.051 of the Code.

[61] The defence position is premised on the submission that, as acknowledged by the Crown, the offences on Files 98199-2, 99136-2, 98610-1, and 99066-1 form a "spree" of offending and that the sentences on these files ought to be concurrent. The defence's position on these files is, however, that imprisonment should be for a term of 12 months.

[62] Defence accepts the final file, 98700-1, is sufficiently disconnected in time from the earlier files and therefore the sentence on that file ought to be served consecutively, and also accepts the Crown's position, accounting for totality, that the appropriate imprisonment is 6 months on 98700-1.

[63] The crux of the Court's sentencing decision today primarily is thus whether the sentencing on the files of 98199-2, 99136-2, 98610-1, and 99066-1 should be 12 months or 18 months (prior calculating for exact days).

[64] Before embarking on a review of the defence materials relied upon in their submission, the Court again repeats that this is not a joint submission to be considered in accordance with the principles articulated by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 4, and routinely cited by this Court and the British Columbia Court of Appeal. However, this Court is also cognizant of the cautions provided by the Supreme Court of Canada in *R. v. Nahanee*, 2022 SCC 37, namely at paragraph 4, that:

[4] . . . the public interest test adopted by this Court in *Anthony-Cook* does not, and should not, apply to contested sentencing hearings following a guilty plea, regardless of the amount of prior negotiation between the parties culminating in the plea. In such cases, however, if the sentencing judge is of a mind to impose a harsher sentence, in any respect, than what the Crown has proposed, they should notify the parties and give them an opportunity to make further submissions -- failing which, they run the risk of having the harsher sentence overturned on appeal . . .

[65] Upon consideration of *Nahanee*, I elected not to proceed with notifying counsel and the parties in this case of my reservations about the adequacy of the sentence proposed by the Crown, as I accept that the Crown, who diligently performed their role as counsel, has thoughtfully considered the jurisprudence, the circumstances of the offences, and the circumstances of the offender, which I will detail more below, and more importantly the principle of totality. However, in all the circumstances, I do consider the position of the

Crown to be very reasonable to the benefit of Mr. Abbas.

Defence materials

- [66] As indicated, the essential elements of the offences were all admitted to by Mr. Abbas. The defence thus primarily relied upon two reports in support of their submission on sentencing: a presentence report of Robert Porter filed September 6, 2024 (the "Presentence Report"), and an impact of race and culture letter dated September 3, 2024 (the "IRCA Letter").
- [67] The Presentence Report is largely not controversial. It details that Mr. Abbas was raised in the Islamic faith, that he has struggled with substance use and misuse since a young age, and has had a lengthy engagement with the criminal justice system due primarily to his challenges in maintaining sobriety. It also details that Mr. Abbas, as a result of these issues, ended up serving a quite significant federal sentence for robbery.
- [68] There is some inconsistency between the Presentence Report and the IRCA Letter, most notably about Mr. Abbas's childhood. In my view, they are not overly material and likely relate to the nature of the questions asked by the different report authors. I do not regard the inconsistencies to indicate that Mr. Abbas was not being truthful to either report author.
- [69] Importantly, Mr. Abbas's probation officer told Mr. Porter, the author of the presentence report, that Mr. Abbas has the potential to do well in the community, as long as he stays sober, and that his cycle of offending starts as soon as he relapses. This is consistent with what I noted regarding Mr. Abbas's conduct while incarcerated. The key for Mr. Abbas will be having a viable plan to maintain his sobriety once in the community.
- [70] In this regard, I note that Mr. Abbas does have his Grade 12 equivalency and certain vocational training in the automotive industry. During his periods of sobriety and abstinence from criminal activity, Mr. Abbas has held employment in his field with two different local employers for approximately four years collectively. Mr. Abbas's plan to return to work in this field is reasonable, although his predilection to target automotive businesses whilst engaging in criminal behaviours is almost certainly going to be a concern to future employers.
- [71] The IRCA Letter is intended to provide the Court with "further information and serve as a resource to assist in delivering an appropriate sentence while taking his social location as a Mediterranean Canadian male into consideration." It is, importantly, not a full report. This is expressly acknowledged in the IRCA Letter.
- [72] The IRCA Letter was not objected to by the Crown, but the Crown fairly pointed out, and the Court similarly observed, that unlike the presentence report, the IRCA letter strays, in portions, into advocacy on behalf of Mr. Abbas. It also contains certain quite bald assertions about stereotyping and racism, which are not necessarily supportable in Mr. Abbas's situation, the most obvious being the assertion that Mr. Abbas's inability to obtain a bed in a

detox facility in Calgary, Alberta, was due to stereotyping and racism as a Mediterranean Canadian male. As I expressed to counsel in the course of submissions, it is very unfortunate, knowing Mr. Abbas clearly recognized that he was in active addiction and to his credit wanted to seek treatment for this, that there were not options available to him at that time. This is a broader and more complicated issue due to the finite scope of resources and the much larger need for these services. However, it is, I find, pure conjecture to say that Mr. Abbas was denied a spot in detox for what I will describe broadly as cultural reasons. The weight of the IRCA Letter has to be considered accordingly.

- [73] The key portions of the IRCA Letter which I conclude are instructive relate to the history of displacement of Mr. Abbas's family and the lack of resources provided to Mr. Abbas during his formative years. Specifically, I accept that Mr. Abbas's parents were both in Palestinian camps but had to move to Syria as refugees. Mr. Abbas's mother married when she was only 17 and the parties were able to immigrate to Canada, where Mr. Abbas and his brothers were born.
- [74] As a result of their familial situation, limited financial resources in Canada, and other relevant circumstances, their life was not easy. The family spoke Arabic in the home, which contributed to Mr. Abbas's difficulties in school and represented an impediment for his mother, who was the primary caregiver, to access resources to assist him in this regard.

Principles of sentencing

- [75] Turning now to the principles of sentencing.
- [76] The essential principles for the Court to consider on sentencing are set out in ss. 718 to 718.2 of the Code. Section 718 provides that the fundamental purpose of sentencing is to protect society and contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful, and safe society by imposing just sanctions. This is done by reference to six objectives. They are:
- a) denunciation of unlawful conduct;
 - b) deterrence of the offender and other persons from committing offences;
 - c) separation of offenders from society where necessary;
 - d) assistance in the rehabilitation of offenders;
 - e) provision for reparations for harm done to victims or to the community; and
 - f) promotion of a sense of responsibility in offenders and acknowledgment of harm done to victims or to the community.
- [77] Pursuant to s. 718.1, a sentence must be proportionate to the gravity of the offence and the degree of the responsibility of the offender.

- [78] Section 718.2 describes a number of specific principles to be considered in sentencing, including that a sentence should account for any relevant aggravating or mitigating factors. Of particular note in this case are subsections 718.2(b) and (e) of the Code.
- [79] Section 718.2(b) provides that sentences should be similar to those imposed on similar offenders committed in similar circumstances. Section 718.2(e) provides that all available sanctions other than imprisonment that are reasonable and consistent with the harm done should be considered for all offenders, with particular attention to the circumstances of Indigenous offenders.
- [80] In light of the numerous offences before the Court and Mr. Abbas's lengthy and related criminal record, I accept the Crown's position that denunciation and deterrence are the principles of sentencing that ought to be given the most weight in this case. The principle of rehabilitation, while very important for the reasons I have indicated about the connection between addiction and criminality in Mr. Abbas's circumstance, cannot, in this situation, be permitted to override the principles of denunciation and deterrence.
- [81] I also accept that there have been multi guilty pleas entered by Mr. Abbas. While not necessarily early guilty pleas, they were made in sufficient time to notify the various witnesses which would have been required to attend and avoid inconvenience to them. This is clearly a mitigating factor.
- [82] I further accept that it is common practice for sentences for multiple offences arising from a single transaction to run concurrently to one another and for sentences arising from a separate transaction to run consecutively. There are exceptions to this practice where multiple offences with the same gravamen are committed in a short period of time, such that they are or can be considered to have arisen from a single transaction. This is referred to, as I have noted in my above description, in the jurisprudence as a "spree".
- [83] As indicated in the Crown's submission, the offences on Files 98199-2, 99136-2, 98610-1, and 99066-1 constitute a spree of offending and the sentences on those counts should accordingly run concurrently. This is consistent with the caselaw expressly cited by the Crown and not opposed by the defence, and so I will not belabour these already lengthy reasons for judgment with the various case citations.
- [84] Turning now to the calculation of credit. The Crown and the defence agreed that the accused, Mr. Abbas, had 632 actual days of credit to apply. Applying the usual enhanced calculation of 1.5 days for every one day spent in presentence custody or pretrial detention, this resulted in 951 days of credit for presentence custody. However, this was to October 7th. Sentencing is October 10th, today. It must be adjusted accordingly.

- [85] By my calculation, that would adjust the actual days to 635 and the enhanced credit to 955.5 days. If counsel calculates that differently, I would ask them, at the conclusion of these reasons, to advise so we do not end up with a challenge or difficulty with Corrections over a calculation of a day or a day-and-a-half, as that does not change my overall conclusion that the Crown's submission on sentencing is generally accepted by the Court.

Sentence

- [86] In this regard, I confirm that I accept the Crown's global position of imprisonment for two years, followed by two years of probation, with both protective and rehabilitative conditions.
- [87] I will now provide a detailed breakdown of that sentence.
- [88] Mr. Abbas, this is quite long, so I will not require you to stand. If you wish to do so, you can, but you are not required to do so.
- [89] On 98199-2, on Count 1, that is contrary to 348(1)(a) of the Code, there shall be a sentence of 18 months converted to 548 days; on Count 2, which is contrary to s. 334(a) of the Code, there shall similarly be 18 months' concurrent sentence, namely 548 days; on Count 3, which I shall not read, there is a stay of proceedings; on Count 4, which is contrary to s. 334(b) of the Code, there shall be a six-month concurrent sentence of 182 days; on Count 5, there is a stay of proceedings.
- [90] On Indictment 99136-2, on Count 1, contrary to s. 348(1)(a) of the Code, there shall be 12 months concurrent, 364 days; on Count 2, there shall be a stay of proceedings.
- [91] On Information 98610-1, on Count 1, contrary to s. 333.1(1)(b) of the Code, there shall be a sentence of six months concurrent, namely 182 days; on Count 2, there shall be a stay of proceedings; on Count 3, there shall be a stay of proceedings.
- [92] On Information 99066-1, on Count 1, which is contrary to s. 335(a) [sic] of the Code, there shall be a six-month concurrent sentence of 182 days.
- [93] On Information 98770-1, in respect of Count 1, which is contrary to s. 348(1)(a), of the Code, there shall be a six-month consecutive sentence of 182 days; Count 2, there shall be a stay of proceedings; Count 3, which is an offence contrary to s. 355 of the Code shall be two months concurrent, namely 60 days; Count 4, there shall be a stay of proceedings; Count 5, there shall be a stay of proceedings; Count 6, there shall be a stay of proceedings; Count 7, there will be a stay of proceedings; Count 8, which is a breach of release contrary to s. 145(5)(a) of the Code, there shall be two months concurrent sentence, namely 60 days; and Count 9, there shall be a stay of proceedings.
- [94] I note, for the benefit of the record, that two of these charges were previously stayed, and so to the extent that my orders are redundant, I simply want to make sure that there is a clear record for Corrections in this regard.

[95] Now turning to the probation conditions. Mr. Abbas, you will be required to comply with a probation term for a period of 24 months. Those conditions are:

- a) You must keep the peace and be of good behaviour.
- b) You must appear before the court when you are required to do so by the court.
- c) You must notify the court or the probation officer in advance of any change of name or address, and promptly notify the court or the officer of any change of employment or occupation.
- d) Turning to the reporting condition on File 002, I have modified this somewhat from what was submitted by the Crown, and that is that you must report by telephone to a probation officer at 1355 Water Street by 3:00 p.m. on October 11, 2024, and after that you must report as directed by your probation officer.
- e) You must have no contact, directly or indirectly, with the following individuals: Morgan Walkhom, Andrew White, Kent Miller, Bradley Lintunen, Adeel Islam Butt, Hafsa Adeel, Meaghan Ferguson, Fariha Ahsan, or Asahunal Haque.
- f) You must not go or be within 50 metres of any place where Morgan Walkhom, Andrew White, Kent Miller, Bradley Lintunen, Adeel Islam Butt, Hafsa Adeel, Meaghan Ferguson, Fariha Ahsan, or Asahunal Haque live, work, attend school, worship, or happen to be. If you see any of them, you must leave their presence immediately without any words or gestures.
- g) You must not go within 50 metres of Fix Auto located at 2450 Enterprise Way, British Columbia; Turner Volkswagen located at 2150 Enterprise Way, Kelowna, British Columbia; Harmony Honda located at 2550 Enterprise Way, Kelowna, British Columbia; or Kelowna Mercedes-Benz located at 2580 Enterprise Way, Kelowna, British Columbia.
- h) When first reporting to your probation officer, you must provide them with the address where you will live and your phone number. You must not change your address or phone number without notifying your probation officer in writing at least two days in advance of any change.
- i) You must attend, participate in, and complete any intake, assessment, counselling, or education program as directed by your probation officer. This may include, but is not limited to, counselling or programming for alcohol or drug addiction, mental health, or such other program as may be recommended.
- j) You must not possess any identification documents, including credit cards, debit cards, cheques, negotiable instruments, driver's licence, birth certificate, social insurance card, mail, invoices, or bills other than in your name.
- k) You must not possess any account information, credit or debit card data, or any electronic storage medium, including any credit or identification card with a data strip or security chip, that contains personal information other than an account with your information and data.

- l) You must not possess: (a) pry bars or bolt cutters; (b) hammers, screwdrivers, or pliers; (c) slim jims, lock picks, or bump keys; (d) ceramic rocks; (e) blow torches or grinders; (f) night vision goggles; or (g) any other tool capable of use for criminal activity.
 - m) You must not possess any keys for vehicles you are not lawfully entitled to access. There is an express exception to this provision that you are, in the course of your future employment, entitled to possess keys for vehicles belonging to third parties, provided that you have the permission of a manager of your employment or another employee designated by management to have authority to provide you that permission.
 - n) You must not enter or handle any part of any motor vehicle, other than public transportation, unless the registered owner or the person lawfully entitled to possess the vehicle is present in the vehicle, or you have in your immediate possession their prior written permission to be in the vehicle, which may be in paper or electronic format. There is again an express exception to this provision that you are, in the course of future employment, entitled to enter or handle vehicles belonging to third parties, provided that you have the permission of a manager of your employment or another employee designated by management to have authority to provide that permission.
 - o) Outside of the defined exception for employment purposes, if a peace officer finds you entering, inside, or handling any part of any motor vehicle and requests to see the permission, which is referred to above, you must show it to the officer.
 - p) You must not be in any parkade, parking lot, vehicle dealership lot, or property where the primary business is the repair, sale, or rental of vehicles and trailers, except with the prior written permission of your probation officer. If you are given permission, you must carry it with you at all times when you are in a prohibited area. There is again a clear exception: that you are, in the course of future employment, entitled to access these afore listed no-go locations provided that you have the permission of the manager of your employment or another employee designated by management to have authority to provide you that permission.
 - q) If a peace officer finds you in a prohibited area, other than in the course of your employment, as otherwise confirmed in writing or as authorized by the exception, you must show your permission to the officer.
- [96] The probationary conditions apply to all eight counts in the above-noted indictments and informations that I have detailed in the reasons for judgment.
- [97] The DNA order, which is not opposed, is applied to Counts 1 and 2 on Indictment 98199, Count 1 of Indictment 99136, and Count 1 of Information 98770, which on my review, unless there are further questions, leaves the confirmation of the day calculation and addressing the victim surcharge.

- [98] CNSL K. CHASE: Yes, Justice, in the circumstances, being that Mr. Abbas has been in custody since January of 2023, I would seek to have the victim fine surcharges waived. He does not have a form of income at this time and I do expect that it will take considerable time before he is back on -- back on his feet.
- [99] CNSL E. MILLER: No issue with the waiver of the victim fine surcharge, Justice.
- [100] THE COURT: The victim surcharge is waived.
- [101] CNSL E. MILLER: I just want to double check the calculation of credit. You indicated 635 actual days and 952.5 days of enhanced time, is that right?
- [102] THE COURT: No, I had 630 -- and if I read it wrong, I -- when I did the math, it was 635 actual days counting to today, which worked out to 955.5 days. No, that does not work.
- [103] THE CLERK: Well, the half day is going to be a problem. Can we just -- can we just round it up?
- [104] CNSL E. MILLER: When I do -- sorry, Justice, when I do 635 times 1.5, I get 952.5, which would be 953 days. I'm not sure if my friend got something else.
- [105] CNSL K. CHASE: No, I do have the same calculations.
- [106] THE COURT: All right. That is actually kind of Mr. Clerk's fault because he gave me this tool that -- it is like a log-in thing, similar to a court-interest calculator and that is what it told me. I did not actually do the math by hand. See, this is why I gave counsel the permission to make submissions. Ultimately, yes, all right, so we have 635 days that are, with enhanced credit, 953 days.
- [107] CNSL E. MILLER: Thank you.
- [108] THE COURT: The rest of my reasons for judgment went really well. I just cannot do math.
- [109] CNSL E. MILLER: Yes, Justice. And I just wanted to confirm a couple things with respect to the probation order.
- [110] THE COURT: Yes.
- [111] CNSL E. MILLER: Now, the reporting condition, I did realize when you were pronouncing the condition that Mr. Abbas is, in fact, still detained on a federal file.
- [112] THE COURT: I understood that.
- [113] CNSL E. MILLER: Okay.
- [114] THE COURT: But that is why I put it by telephone.
- [115] CNSL E. MILLER: Okay, and that is what -- I didn't catch the by telephone part.

- [116] THE COURT: Yes, that is why I modified that, is that so -- and I gave it until the end of the day tomorrow. I am more than prepared to move it more than tomorrow, if that is going to be a problem, but I just did not want to put him in a position of non-compliance.
- [117] CNSL E. MILLER: Yes, for sure.
- [118] THE COURT: So that is it. I can modify that date.
- [119] CNSL K. CHASE: Okay, my only concern is the -- the phone availability to Community Corrections. Because it's an automated system when they're phoning from OCC, I don't know that he'll actually be able to get through to Corrections from their -- from their phones.
- [120] THE COURT: That is why I put it to tomorrow, but again, in the circumstances, I am entirely open to suggestion -- would by the end of next week be realistic?
- [121] CNSL K. CHASE: That's agreeable in the --
- [122] CNSL E. MILLER: I'm in my friend's hands. I don't -- I'm not so familiar with that.
- [123] THE COURT: I know I have heard that it can be difficult to get through for individuals who are detained on other files. I just -- I did not want to -- I just do not want Mr. Abbas to be in non-compliance with something that he cannot actually - control.
- [124] CNSL E. MILLER: I'm content for it to go a bit further, just so that he has time to work out any issues.
- [125] CNSL K. CHASE: Yes. In the circumstances, I am content to have it go over to the 18th of October.
- [126] THE COURT: All right, we will modify it. Mr. Clerk, with respect to the -- on page 15 of what I provided to you, the 5002 report, I already modified it to say telephone, and instead of October 11th, we will put October 18th.
- [127] THE CLERK: Thank you.
- [128] CNSL K. CHASE: Thank you, Justice.
- [129] CNSL E. MILLER: And then the only other question I had was I think when you particularized the exception for occupying a motor vehicle with permission of the manager of his employer, I believe you said that he is permitted to possess keys under that exception, and I just want to confirm that he is permitted to occupy a motor vehicle with the permission of his --
- [130] THE COURT: Yes, occupy the motor vehicle and possess keys --
- [131] CNSL E. MILLER: Perfect.

- [132] THE COURT: -- belonging to third parties with the permission or another employee designated by management to have authority to provide that permission.
- [133] CNSL E. MILLER: Perfect, okay. And those are the only --
- [134] THE CLERK: So no change to -- to the wording?
- [135] THE COURT: In the event that I did not -- that I somehow missed that, so that is on the -- on page 17, it says it in my notes, but just to make sure, it is the occupying the motor vehicle and the possession of keys, which can be permitted either by a manager or an approved employee.
- [136] THE CLERK: Hang on just one second, I'm trying to find the condition. You must not enter or --
- [137] CNSL E. MILLER: It will be 2626.
- [138] THE COURT: It is 2626-2.
- [139] THE CLERK: Yeah, that's not helpful. If you just read the beginning of the -- of the term?
- [140] THE COURT: Sure, so I will -- let me read that back out. So you must not enter or handle any part of any motor vehicle, other than public transportation, unless the registered owner or the person lawfully entitled to possess the vehicle is present in the vehicle, or you have in your immediate possession their prior written permission to be in the vehicle which may be in paper or electronic format. There is an express exception to this provision that you may occupy a motor vehicle --
- [141] THE CLERK: That you may occupy a motor vehicle, yes.
- [142] THE COURT: Yes. Or be entitled to possess keys for vehicles belonging to third parties in the course of the - possess keys for vehicles belonging to third parties in the course of employment, provided that you have the permission of a manager. It is --
- [143] THE CLERK: Or entitled to possess. Thank you. That will suffice.
- [144] THE COURT: That will suffice, all right.
- [145] CNSL E. MILLER: And that is the only -- those are the only notes I had, Justice.
- [146] THE COURT: All right. Anything arising, Ms. Chase?
- [147] CNSL K. CHASE: Yes, my only concern was, and I'm not sure whether it was stated or not, there was a note in the Impact of Race and Culture Assessment, there might be some value to having counselling done with a Muslim counsellor. I'm not sure if that's something that can be specifically wrote into the counselling portion of the order or how feasible that would be, given of course that would need to be feasible in the circumstances. I don't know whether that --

- [148] THE COURT: I read that and did -- it made perfect sense to me, but I think that that is best dealt with through the probation officer, because I am simply not in a position to know what resources are available. So that would make very good sense if that is a resource to be utilized, but if that is not available, then other counselling, as directed by the probation officer is the term. So, I am not suggesting that that is not an appropriate recommendation, I just do not know, practically speaking, the resources. That is more of the hands-on-the-ground type of consideration.
- [149] CNSL E. MILLER: Yes, Justice.
- [150] CNSL K. CHASE: Yes, and that's very understandable in the circumstances, and that was my only comment, Justice.
- [151] THE COURT: Yes. Thank you very much. Yes?
- [152] CNSL E. MILLER: Sorry, Justice, there are a number of outstanding counts on the various indictments and informations. I'm just -- the Crown will direct a stay of proceedings on all of those.
- [153] THE COURT: I did that.
- [154] CNSL E. MILLER: Okay. I wasn't sure if I still needed to direct that stay of proceedings for all the remaining --
- [155] THE COURT: No, I was hoping to save you from having to go through that, so --
- [156] CNSL E. MILLER: Thank you. I did provide Mr. Clerk with a copy of these things, so he's aware of it.
- [157] THE COURT: Thank you, but yes, no, the stays -- as directed, the stays of proceeding, as I indicated there were two that had been previously entered, but I just, for the benefit of the record, I stayed all the other counts, other than the eight upon which were sentenced.
- [158] CNSL E. MILLER: Thank you very much.
- [159] THE COURT: Thank you, counsel.

"Hardwick J."

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