

CANADA / JUDGMENT

R. v. Albornoz-Vaca

2022 BCSC 2116

COURT

Supreme Court of British Columbia

DECIDED

21 November 2022

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2022 BCSC 2116 R. v. Albornoz Vaca

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Albornoz-Vaca,

2022 BCSC 2116

Date: 20221121

Docket: 27803-2

Registry: Vancouver

Rex

v.

Hasler Albornoz-Vaca

Restriction on Publication: A publication ban has been mandatorily imposed under s. 486.4(1) of the Criminal Code restricting the publication, broadcasting or transmission in any way of evidence that could identify a complainant or witness, referred to in this judgment. This publication ban applies indefinitely unless otherwise ordered.

Before: The Honourable Madam Justice W.A. Baker

Oral Reasons for Sentence

Counsel for the Crown:

M. Myhre

Counsel for the Defence:

M. Vayeghan

Place and Date of Hearing:

Vancouver, B.C.

October 11, 2022

Place and Date of Judgment:

Vancouver, B.C.

November 21, 2022

- [1] THE COURT: On May 24, 2022, I convicted the defendant of one count of sexual assault against the complainant, contrary to s. 271 of the Criminal Code, R.S.C. 1985, c. C-46, [Criminal Code] and one count of attempting to choke the complainant in the commission of a sexual assault, contrary to s. 246(a) of the Criminal Code.
- [2] The facts relevant to my decision are set out in my reasons for judgment, which are indexed at 2022 BCSC 1343.
- [3] In summary, I found the defendant came to the home of the complainant late one night. The complainant was a young single mother from a First Nations community in Bella Bella. She was living in supportive housing run by Atira, a women's organization. The defendant came to her apartment and engaged in a sex act with the complainant without her consent. During the commission of the offence, I found the defendant pushed the complainant's neck against the arm of the couch in such a way that her neck was injured and she had difficulty speaking afterwards. The defendant did not use any form of protection during the sex act, leaving the complainant vulnerable to an unwanted pregnancy and the transmission of sexually transmitted diseases.
- [4] The complainant was unable to provide a victim impact statement. Counsel for the Crown indicated that he approached her several times, but, as she was in and out of hospital due to a number of issues with her health, she did not feel able to prepare and provide a statement.
- [5] The circumstances of the offender are set out in the presentence report and the psychological evaluation entered on the sentencing hearing. The Crown did not dispute any of the facts set out in these documents.
- [6] The defendant is 28 years old. He was born in Colombia. In 2015, he fled Colombia with his father after witnessing guerilla murders of different people. Because he witnessed these murders, he became a target of guerilla groups. He initially fled to the U.S., but was caught by U.S. Immigration. He then came to Canada to live with his aunt in Coquitlam. He has been reporting to Canada Border Services Agency for four years. He was applying for refugee status at the time the charges in this case were laid.

- [7] A hearings officer with Canadian Border Services Agency in charge of the defendant's file reported to the probation officer who prepared the presentence report that the defendant will be deported to Colombia as a result of his conviction. If a custodial sentence is imposed, he will be deported at the conclusion of his sentence. If the defendant does not receive a custodial sentence, the deportation process will be initiated and Canadian Border Services Agency will issue a warrant to ensure he remains in custody pending deportation.
- [8] The defendant is in good health. Since he has been in Canada, he has worked in a variety of construction jobs. He has been successful in his work. In 2018, the defendant began a relationship with his current partner. They remain in a long-term relationship and are engaged to be married. The defendant stands in the role of father to his partner's 14-year-old son. The defendant has no substance abuse issues. He socially smokes marihuana and rarely drinks.
- [9] The defendant continues to deny responsibility for the offence. He maintains that false testimony was given at trial. He asked to be given a second chance. In the presentence report, it is stated that he expresses he is not interested in counselling for sexual offenders because he maintains his innocence.
- [10] Letters of support were admitted on the sentencing hearing from the defendant's friends and family. These letters all attest to the defendant being a loving, caring, compassionate person who is not a danger to anyone. The defendant's current partner describes how he has been a good father to her son since they met in 2018. The letter writers all ask for leniency in the sentencing of the defendant. The letters do not speak to any remorse demonstrated by the defendant or to any supports available to the defendant during or following his sentence. It is not clear from the letters whether the letter writers understand that not only has the defendant been charged with the offences but he has also been convicted of the offences.
- [11] The defendant has no prior criminal record.
- [12] The scope of the psychological assessment performed on the defendant was limited to his risk of reoffending. The defendant was noted as denying any wrongdoing as against the complainant and becoming focused on the injustices of the court process. The defendant described the circumstances under which he fled Colombia, including being shot at while on a motorcycle and witnessing the murder of a neighbour.
- [13] The defendant denied any violence in intimate relationships. The defendant's partner was interviewed as part of the assessment, and she confirmed that she has experienced no violation of her sexual boundaries.
- [14] The defendant denies having any difficulties with anger. While he has been in the North Fraser Pretrial Centre, he has been polite and positive.

- [15] Contrary to the presentence report, in the psychological assessment it is reported that the defendant was supportive of accessing therapy. However, the defendant does not speak English; he speaks Spanish, and he does not have sufficient English fluency to allow him to participate in the forensic sex offender program.
- [16] The risk for sexual violence protocols were evaluated for the defendant. He was found to have seven out of 22 factors present. These included the violence used in the assault; the fact that he was not in a relationship at the time of the assault; the potential that he witnessed violence in his parents' relationship and his home community; the lack of Spanish language treatment programs; and his denial of responsibility, which may create a barrier to treatment.
- [17] The report states that the defendant's plans to manage his risk (namely, to stay off dating sites; not looking for other women, other than his partner; and avoiding parties) were commensurate with his risk. The defendant was assessed to be at a relatively low risk for future sexual assault. However, should his current relationship end, the defendant would be at increased risk of sexual violence. The examiner noted concerns with the defendant's use of strangulation in the assault at issue, indicating serious or lethal violence could occur if the scenario was repeated.
- [18] The Crown seeks a custodial term of 35 months for the assault convictions, followed by a consecutive term of six months for the attempted choking offence. The Crown emphasized denunciation and deterrence as the most important sentencing objectives in this case.
- [19] The Crown submits that there are a number of aggravating factors, including vaginal penetration and choking of the complainant; the fact the complainant was a vulnerable person living in supportive housing, where the assault took place; and the contemptuous actions of the defendant, which were designed to humiliate her.
- [20] The Crown acknowledges a number of mitigating factors, including that the defendant has no criminal record and has been compliant with his bail conditions.
- [21] The Crown submits that the range of sentence for the sexual assault is two to six years. The Crown notes that the defendant has never taken responsibility for his actions, and so the Crown submits that custodial time must be longer than the minimum of two years because of his failure to take responsibility for his actions, along with the aggravating factors in place. More than two years is necessary to support the objective of denunciation.
- [22] With respect to the choking offence, the Crown notes the complainant was not rendered unconscious, which might have supported a longer sentence. Nevertheless, the Crown submits the choking was significant and six months is appropriate.
- [23] The defence seeks a custodial sentence of a total of 30 months for all offences. The defence submits that the collateral consequences of the defendant's likely deportation following the completion of his sentence are severe and should be taken into account in fashioning the appropriate sentence. The defence submits that the defendant is supported by his family, he

is in a stable relationship, and he is at low risk of reoffending. The defence also submits that the defendant was a youthful offender at the time of the assault, as he was 23 years old at that time. The defence submits that the defendant's age and his risk of deportation are both mitigating factors that should be taken into account.

- [24] The principles of sentencing are set out in ss. 718 to 718.201 of the Criminal Code. These principles are summarized by the court in *R. v. Chambers*, 2021 BCSC 1083:
- [39] Under s. 718, the fundamental purpose of sentencing is to protect society and promote respect for the law and the maintenance of a just, peaceful, and safe society by imposing just sanctions. The objectives of these sanctions include denouncing unlawful conduct, deterring offenders and others from committing crimes, separating offenders from society where necessary, rehabilitating offenders, and promoting a sense of responsibility in offenders.
- [40] The relative weight and importance of these multiple factors will vary depending on the nature of the crime and the circumstances of the offender. In the final analysis, the overarching duty of a sentencing judge is to draw upon all legitimate principles of sentencing to determine a "just and appropriate" sentence which reflects the gravity of the offence committed and the moral blameworthiness of the offender.
- [41] Section 718.1 mandates that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. The principle, and its interplay with the sentencing objectives, and other principles was explained by LeBel J. in *R. v. Ipeelee*, 2012 SCC 13 at para. 37 and in *R. v. Lacasse*, 2015 SCC 64 at para. 53:
- [37] The fundamental principle of sentencing (i.e., proportionality) is intimately tied to the fundamental purpose of sentencing -- the maintenance of a just, peaceful and safe society through the imposition of just sanctions. Whatever weight a judge may wish to accord to the various objectives and other principles listed in the Code, the resulting sentence must respect the fundamental principle of proportionality. Proportionality is the sine qua non of a just sanction. First, the principle ensures that a sentence reflects the gravity of the offence. This is closely tied to the objective of denunciation. It promotes justice for victims and ensures public confidence in the justice system. As Wilson J. expressed in her concurring judgment in *Re B.C. Motor Vehicle Act*, 1985 CanLII 81 (SCC), [1985] 2 S.C.R. 486, at p. 533:

It is basic to any theory of punishment that the sentence imposed bear some relationship to the offence; it must be a "fit" sentence proportionate to the seriousness of the offence. Only if this is so can the public be satisfied that the offender "deserved" the punishment he received and feel a confidence in the fairness and rationality of the system.

Second, the principle of proportionality ensures that a sentence does not exceed what is appropriate, given the moral blameworthiness of the offender. In this sense, the principle serves a limiting or restraining function and ensures justice for the offender. In the Canadian criminal justice system, a just sanction is one that reflects both perspectives on proportionality and does not elevate one at the expense of the other.

- [42] Section 718.2 sets out a non-exhaustive list of secondary sentencing principles for the court to consider. Under s. 718.2(a), sentences are to be increased or reduced to account for any aggravating or mitigating circumstances. The section then sets out a number of circumstances that are deemed to be aggravating.
- [25] Section 718.04, which gives primacy to the objectives of denunciation and deterrence in offences against vulnerable persons, including Aboriginal women, was not in force at the time of the offence. The Crown argues that, while s. 718.04 was not in force at the time of the offence, it does not introduce a substantive change to the principles of sentencing in this case, referring to the persuasive decision of Judge Doulis in *R. v. P.M.M.*, 2019 BCPC 276, at paras. 36 to 39. I agree with the Crown.
- [26] In the case before me, the paramount principles are denunciation and deterrence. I am satisfied that rehabilitation is also an important principle in this case, although secondary to denunciation and deterrence: *R. v. G.M.*, 2015 BCCA 165, at paras. 17 to 18.
- [27] The defendant was convicted of an indictable offence pursuant to s. 271 of the Criminal Code. The maximum term of imprisonment is 10 years in this case. In addition, the defendant was convicted under s. 246 of the Criminal Code, which carries a maximum term of life imprisonment.
- [28] The Crown relies on *R. v. Lemmon*, 2012 ABCA 103; *R. v. P.M.M.*; *R. v. Smith*, 2018 BCSC 1972; *R. v. Jajja*, 2022 BCSC 467; *R. v. Lai*, 2018 BCSC 2441; and *R. v. Razak*, 2019 BCSC 1677.
- [29] In *Smith*, the offender was convicted under s. 271 of the Criminal Code. The offender was subject to potential deportation as a result of his conviction. He assaulted the complainant while pinning her arms so she could not move; he did not use a condom; he had a prior conditional discharge, with associated probation, and was found to be in breach of that order. The complainant in that case was not a vulnerable person. The court imposed a sentence of two years and seven months.
- [30] In *Jajja*, the offender was convicted under s. 271 of the Criminal Code. The offender was subject to potential deportation as a result of his conviction. The complainant was severely intoxicated at the time of the assault and was incapable of consenting to sexual assault activity. The offender did not use a condom. The assault left the complainant bleeding from her anus. The offender had a supportive family and no prior criminal record. He was sentenced to a three-year term of incarceration.

- [31] In *Lai*, the offender was convicted under ss. 271 and 246(b) of the Criminal Code. The offender drugged the complainant and sexually assaulted her anally and vaginally while she was unconscious. The offender had a supportive family. For five years prior to trial, the offender was under very strict bail conditions, including a curfew; reporting to a police high-risk offender unit; and a prohibition on entering any licenced premises; prohibition of owning anything capable of recording digital images; and a prohibition from being in the presence of a female in a private place, except a family member. The strict bail conditions were treated as a mitigating factor by the court, which imposed a sentence of two years for administering the drugs and 17 months and three days for the sexual assault, to be served consecutively.
- [32] In *Razak*, the offender was convicted under ss. 271, 246, 279, 344, and 264 of the Criminal Code. There is no question that the offences in *Razak* were significantly greater than in the case before me and included robbery, choking, sexual assault causing bodily harm, unlawful confinement, and uttering threats. The complainant suffered multiple injuries all over her body. I find *Razak* is not particularly helpful in establishing a comparative for an appropriate sentence in the case before me. The Crown relied on *Razak* primarily to establish the outside range of sentence, which, in *Razak*, was 4.5 years, while acknowledging that the offender before me differed significantly from that in *Razak*.
- [33] In *Lemmon*, the offender was convicted under s. 246 of the Criminal Code. The offender rendered the complainant unconscious by choking. The court described the choking as an act of cruel domination met by sheer horror. Because the choking was so severe, the court imposed a sentence of five years.
- [34] The defence relies on *R. v. Skoyen*, 2020 BCSC 362; *R. v. O.K.S.*, 2019 ONCJ 482; *R. v. Lai*, that I have discussed; *R. v. Dorah*, 2011 ONSC 6503; *R. v. Munt*, 2012 BCCA 228; and *R. v. B.S.B.*, 2010 BCCA 40.
- [35] In *Skoyen*, the offender was convicted of sexual assault. The assault took place in two locations and engaged significant violence over and above the violence inherent in a sexual assault. The actions of the offender caused physical and emotional pain, were demeaning and contemptuous, and he disregarded the complainant's protests and personal integrity. The court balanced these aggravating factors against a number of mitigating factors, including that the offender had been a productive member of society with no prior criminal record; had engaged in counselling; been on bail conditions for some time; had stopped using recreational drugs and alcohol; and was assessed at a low to moderate risk to reoffend. The court imposed a sentence of three years' imprisonment.
- [36] In *O.K.S.*, the offender was convicted of sexual assault and assault. The offender was subject to potential deportation as a result of his conviction. The offender assaulted the complainant, his wife, by striking her and choking her. Later in the evening, he sexually assaulted her in a violent way in their bed. The assault had a significant psychological impact on the complainant. The offender had no prior criminal convictions and no history

of violence in domestic relationships. The court imposed a sentence of two and a half years for the sexual assault and four months for the assault, to be served concurrently.

- [37] In *Dorah*, the offender was convicted of sexual assault. The complainant was 17 years old and the offender was 26 at the time of the assault. The offence violated the complainant's trust and had a lasting psychological impact on her. The offender had no prior criminal record, although, prior to sentencing, had been convicted of a drug-related offence, for which he was required to attend counselling, but failed to do so. The offender's family, including his wife and children, supported him. He was well regarded by his employer. The court imposed a sentence of two years less a day.
- [38] In *Munt*, the offender was convicted of sexual assault; breaking and entering a dwelling house with the intent to commit an indictable offence; and breaking and entering a house and committing a sexual assault, contrary to s. 348(1)(b) of the Criminal Code. The offender broke into the complainant's house and sexually assaulted her while she was under the effect of a date rape drug she had unwittingly consumed earlier in the evening, which rendered her frozen and unable to resist or call out. The complainant suffered psychological trauma as a result of the offence. She was vulnerable as a result of the effects of the drug and could not express her consent. The offender had strong family supports, was employed, and had a young child at the time of trial. There was no evidence that he had engaged in any sexually deviant acts since the offence. He was 26 years old at the time of the offence, which the trial judge described as very young. He complied with his bail conditions. The court imposed a sentence of 30 months.
- [39] In *B.S.B.*, the offender was convicted of sexual assault. The offender took the complainant home from a bar, where she had become severely incapacitated by a drug or other intoxicant. The complainant vomited on herself on the way to the offender's home and in his home. She had no memory of how she got to his house or what happened that night. The next day she worried something had happened and was found to have suffered 19 injuries related to a sexual assault, which the court determined to be particularly heinous and violent. The court found that the psychological reports offered no explanation or insight into why the offender committed the assault for which he accepted no responsibility. The court imposed a custodial sentence of two years less a day.
- [40] In *R. v. G.M.*, 2015 BCCA 165 the B.C. Court of Appeal confirmed that the range of sentence for a sexual assault in a case like the one before me is typically two to six years. The defence relies on *Munt* and *B.S.B.* However, these cases predate *R. v. G.M.*, and so the ranges set out in those cases must be considered, in light of the more recent guidance from our Court of Appeal.

- [41] Similarly, the Ontario cases must be considered with caution, in light of the comprehensive commentary on past sentencing ranges by the Ontario Court of Appeal in *R. v. A.J.K.*, 2002 ONCA 487, at para. 70 and following. The Ontario Court of Appeal found the trial judge's range of four to seven years for sexual assault, in circumstances relevant to the facts in that case, was an appropriate range.
- [42] As such, I find that the range of sentence to be considered in the case before me is two to six years. The Crown points to the violence used by the defendant in the assault and submits that the lesser end of range, namely two years, is not appropriate. The Crown also submits that two years is appropriate in cases where there has been a guilty plea, sparing the complainant from testifying at the preliminary inquiry and trial. As there was no guilty plea in the case before me, the Crown submits the appropriate sentence must be longer than two years. I agree.
- [43] In *R. v. Smith*, the court summarized the paramount sentencing principles in the case of sexual assault. At paras. 21 and 22, the court said:
- [21] Sentencing principles are set out in ss. 718, 718.1, and 718.2 of the Criminal Code. Section 718 requires that a just sanction have one or more of these objectives: denunciation, deterrence, separation of offenders from society, rehabilitation, reparations, and promoting a sense of responsibility. Section 718.1 provides that the sentence "must be proportionate to the gravity of the offence and the degree of responsibility of the offender." Section 718.2(a) requires a sentence to "be increased or reduced to account for any relevant aggravating or mitigating circumstances". Section 718.2(b) provides that "a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances".
- [22] In *R. v. G.M.* . . . the court considered whether a 90-day sentence, to be served intermittently, along with a year of probation was a fit sentence in a sexual assault case. The court held it was not, and, in doing so, recalibrated the appropriate range of sentence. The court began by describing the paramount principles of sentencing in sexual assault cases at paras. 17 and 18:
- [17] In serious sexual assault cases, the paramount sentencing objectives are denunciation and deterrence; it is not an error in principle to give them primacy over other sentencing principles such as rehabilitation. . .
- [18] Absent exceptional or unique circumstances, it is incumbent on the sentencing judge to give primacy to the deterrence and denunciation when imposing a sentence for a serious sexual assault: *R. v. Garrett*, 2014 ONCA 734. . . [In *Garrett*, the court] stressed that ignoring pleas by a complainant to stop "in itself" constituted "demeaning behaviour and contemptuous disregard for the personal integrity of the complainant" that engaged "the predominant sentencing principles of denunciation and deterrence."

[44] In the case before me, the Crown submits the following facts, all of which were proved at trial beyond a reasonable doubt, that should be considered aggravating in the sentencing of the defendant:

- there was violence in the assault, which included choking and left the complainant with pain in her neck and a hoarse voice the following day;
- no condom was used, leaving the complainant vulnerable to pregnancy and sexually transmitted disease;
- the complainant was an Indigenous woman;
- the assault took place in supportive housing; and, finally
- the defendant humiliated her, called her names, spit on her, and hit her on the head with his penis.

[45] The Crown submits the defendant's actions demonstrated a contemptuous disregard for the complainant.

[46] With respect to mitigating factors, the Crown acknowledges the following mitigating factors:

- the defendant has no criminal record;
- the defendant has been compliant with his bail terms, although the Crown points out the bail terms were a minimal simply to have no contact with the complainant.

[47] The defence submits the following additional mitigating factors ought to be taken into account:

- the defendant is a youthful offender and was 23 years old at the time of the offence;
- the defendant is subject to a potential deportation as a result of his conviction;
- the defendant did not know the complainant was Indigenous;
- the defendant has a community support that would help him re-enter society; and
- the defendant has been determined by a psychologist to be at low risk of reoffending.

[48] The Crown does not submit that the defendant's failure to accept guilt or responsibility is an aggravating factor. However, the Crown does submit that the defendant's continued denial of responsibility diminishes the psychological opinion as to the defendant's future risk, as discussed in *R. v. G.M.* at para. 29.

[49] The defendant's continued denial of responsibility does impact the psychological opinion provided. This is noted expressly in the report, where the examiner states:

His denial of the offence limits my ability to provide a formulation for his sexual violence, although risk factors such as the lack of an intimate relationship, potential stress from his somewhat recent immigration, and his relatively young age were present at the time of the offence.

- [50] The examiner states that the defendant is estimated to be at a relatively low risk of future sexual violence and in need of routine intervention. However, I find the difficulties expressed in the psychological assessment render the opinion of risk less helpful than it would have been had the examiner not felt the need to qualify her opinion.
- [51] In *R. v. Pham*, 2013 SCC 15, the Supreme Court of Canada confirmed that a court may consider the collateral consequences inherent in deportation when determining the proportionality of a sentence; the court may take collateral immigration consequences into account, provided that the sentence is ultimately proportionate to the gravity of the offence. In *Pham*, the offender was convicted of two drug-related offences. The issue was whether the sentence could be reduced from two years down to two years less a day, given the significant potential immigration consequences that flowed as a result of that one additional day.
- [52] In the case before me, neither the Crown nor the defence submit that an appropriate sentence is less than two years. I agree that an appropriate sentence will exceed two years. If I was left with the choice of sentencing the defendant to two years versus two years less a day, the latter of which might allow him to possibly escape significant immigration consequences, then this might be a case like that of *Pham*, where I could take the immigration consequences into account in fashioning the appropriate sentence. However, this is not the scenario before me. While I acknowledge that the defendant may suffer immigration consequences as a result of this sentence, nevertheless, the gravity of the offence requires me to sentence the defendant to a term in excess of two years.
- [53] As identified earlier, the primary sentencing objectives are denunciation and deterrence in this case. Both the Crown and the defence submit a custodial sentence is appropriate. The Crown submits 35 months for the sexual assault and a further consecutive six months for the s. 246 offence. The defence submits a global sentence of 30 months for both offences and makes no submissions on how the sentence should be allocated between the offences.
- [54] Similar to the cases of *Smith*, *Jajja*, and *Skoyen*, I find an appropriate range of sentence for the sexual assault in this case to be between 31 and 36 months. I accept the aggravating factors as outlined by the Crown. In addition, I find the fact that the defendant has no criminal record or prior history of violence, his good behaviour while in custody, his age at the time of the assault, and the support of his community to be mitigating factors.
- [55] The defendant submits that he did not know the complainant was Indigenous. However, I am not satisfied this is a significant mitigating factor. The complainant was Indigenous, and that is the aggravating factor which I have taken into account.

- [56] I find that a sentence in relation to the sexual assault, which is proportionate to the gravity of the offence and which takes into account these aggravating and mitigating factors, is 31 months. This sentence takes into account the seriousness of the offence and the injuries suffered by the complainant; the vulnerability of the complainant; the fact the assault took place in her apartment, in supportive housing, which should have been a safe and secure place for the complainant; and the behaviour of the defendant against the complainant which was designed to humiliate her.
- [57] I find the defendant's risk of reoffending to be uncertain and reliant on maintaining his current relationship. While his partner has written a letter of support of the defendant, I find that relying on the continued relationship to be too risky to satisfactorily mitigate the risk in this case.
- [58] In addition, I am satisfied that a consecutive sentence of four months is appropriate and proportionate to the offence of attempting to choke. While the complainant was not rendered unconscious, the assault was serious enough that she felt her neck would snap, and the next day she experienced pain in her neck, her voice was hoarse, and she winced while swallowing. The emergency room doctor felt the signs of injury were serious enough to warrant a CT scan of her neck.
- [59] In conclusion, I am satisfied that a custodial sentence of 31 months for the sexual assault, with a further four months for the offence of attempting to choke, to be served consecutively, is appropriate and proportionate to the gravity of the offence. All of the factors described above support the principles of denunciation and general deterrence in this case.
- [60] May 24, 2022 was the date of conviction and the date the defendant was taken into custody. Today is November 21, 2022. The defendant has been in custody awaiting sentence for 181 days, or five months 28 days, which I round up to six months. Presentence time is credited at times 1.5 and is equal to nine months of credit for presentence custody.
- [61] Mr. Albornoz-Vaca, could you please stand. Thank you.
- [62] For the reasons I have expressed and taking into account credit for presentence custody, I sentence you to 26 months of incarceration from today's date.
- [63] I also grant the ancillary orders sought by the Crown:
- (1) Pursuant to s. 487.051 of the Criminal Code, I authorize the taking from Mr. Albornoz-Vaca the number of samples of bodily substances reasonably required for the purpose of forensic DNA analysis.
 - (2) Pursuant to 490.012(1) of the Criminal Code, I order Mr. Albornoz-Vaca to comply with the Sex Offender Information Registration Act, SC 2004, c. 10, for 20 years.

- (3) Pursuant to s. 109 of the Criminal Code, I prohibit Mr. Albornoz-Vaca from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition and explosive substances. As this is Mr. Albornoz-Vaca's first offence, the prohibition, as it applies to firearms other than prohibited firearms or restricted firearms and crossbows, restricted weapons, ammunition and explosive substances extends for 10 years; and, as it pertains to prohibited firearms, restricted firearms, prohibited weapons, prohibited devices, and prohibited ammunition, it extends for life.
- (4) Pursuant to s. 743.21(1) of the Criminal Code, Mr. Albornoz-Vaca is prohibited from communicating, directly or indirectly, with the complainant while he is in custody.
- [64] With respect to the victim surcharge, the defendant asks that the victim surcharge be waived, given the fact that he is in custody. The Crown does not oppose this order. I find it is fair, in the circumstances of Mr. Albornoz-Vaca, and particularly that he is in custody and unable to work and is in Canada as a refugee claimant, that the victim surcharge be waived.
- [65] THE CLERK: Order in court. This court is adjourned.

"W.A. Baker J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/22/21/2022BCSC2116.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-albornoz-vaca-2022>

Prepared on 29 October 2026 · Esheria