

CANADA / JUDGMENT

R. v. Alexander

2008 BCCA 181

COURT

British Columbia Court of Appeal

DECIDED

22 April 2008

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

2008 BCCA 181 R. v. Alexander COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Alexander, 2008 BCCA 181 Date: 20080422 Docket: CA035608 Between: Regina Respondent And Victor William Alexander Appellant Before: The Honourable Madam Justice Newbury The Honourable Mr. Justice Hall The Honourable Mr. Justice Tysoe Oral Reasons for Judgment P.D. Angly Counsel for the Appellant M.T. Ainslie Counsel for the (Crown) Respondent Place and Date: Vancouver, British Columbia 22 April 2008

- [1] HALL, J.A. This is an appeal by the appellant from a sentence of eight years imposed in April last year consequent upon a conviction that he did on 12 December 2006 break into a dwelling house in New Westminster and commit the indictable offence of theft.
- [2] At trial the appellant testified that he had attended at the premises at the invitation of a member of the household, but the trial judge did not accept that. The appellant was discovered by the adult female occupant of the premises who found him lurking in her bedroom. She was understandably very upset by this.
- [3] The appellant, who is now aged about 40, has a most unfortunate record going back to the time when he was a youth. His adult record starts when he was about 18 years of age in 1986. 19 February 1986 Aggravated assault 30 months 26 October 1997 Released on mandatory supervision 14 April 1988 Mandatory supervision violator recommitted 23 November 1988 Possession of narcotic 100\$ 5 December 1988 Break and enter 12 months 8 May 1989 Break and enter 6 months Possession of narcotic 150\$ fine 12 February 1990 Trafficking 1 day 26 March 1990 Break and enter 15 months and 18 months probation 26 June 1990 Break and enter 15 months and 18 months probation 7 November 1990 Escape lawful custody 30 days consecutive to sentence serving 20 March 1991 Escape lawful custody 3 months consecutive to sentence serving 8 July 1991 Break and enter (5 charges) 2 years and 6 months on each charge concurrent, but consecutive to sentence serving 21 September 1993 Statutory release 29 October 1993 Attempted break and enter 9 months consecutive to unexpired sentence 2 December 1993 Statutory release violator recommitted 2 June 1995 Statutory release 12 July 1995 Statutory release violator recommitted 1 November 1995 Rescue from custody 2 months concurrent to sentence being served 12 August 1996 Break and enter Break and enter Unlawfully in dwelling house 18 months (concurrent) 18 November 1997 Break and

enter 5 years consecutive to sentence being served 26 February 2003 CDS s. 4(1) possession of controlled substance Time served 13 May 2003 Robbery 2 years 19 January 2005 Break and enter 3 years

- [4] The appellant has been what I would describe as a very persistent burglar and has a large number of break and enter convictions as well as convictions for possession of drugs and a recent robbery conviction in 2003.
- [5] It is pretty clear from what was before the learned sentencing judge who had heard evidence on the background of the appellant at trial that this man has a drug problem that has never been successfully addressed. The appellant has a history as shown in the record of breaching statutory release conditions and being recommitted to serve sentence remanets. As he noted in his testimony in the instant case, he had been out for jail only a couple of days when he committed this offence. We find this at p. 84, line 18 of the transcript in an excerpt from his testimony: A. I'd just - - I had just gotten out of jail. I'd only been out of jail a couple days.
- [6] The appellant has been almost continuously in custody since 2003, and in fact, going back to the year 1996 he has been out of jail very seldom over the past twelve years.
- [7] I think it would be appropriate to note particularly two matters that I see as very significant here relative to the disposition of this sentence appeal. The first is that this was a breaking and entering of a residential property in the night time hours. The burglary occurred around 8:30 p.m. in December of 2006. That is in the hours of darkness in this jurisdiction. I want also to refer to a portion of the judgment of this Court in *R. v. Arsenault* (1999) 130 B.C.A.C. p.136, a judgment of this Court given by Mr. Justice Esson:
- [7] It sometimes seems to be lost sight of that a break and enter of residential property is a very serious offence from the point of view of the victims of that offence. It can in some circumstances have a shattering effect upon people but, short of those extreme cases, it is a significant invasion of their privacy and of their sense of having a refuge that is immune from intrusion.
- [8] A further significant factor that I want to make note of in this case, is the circumstance that Mr. Alexander has previously been before this Court on an occasion when he appealed a 1997 disposition which was dealt with on 25 June 1998 in this Court. The case can be found at 111 B.C.A.C. 148. In that case, we find the following passage in the reasons for judgment of Madam Justice Huddart:
- [8] At the sentencing hearing, defence counsel submitted that two years less a day plus three years probation with the strict conditions recommended in the pre-sentence report would be appropriate. The Crown argued that this was a situation where a life sentence might be considered because there was no evidence of any real possibility of rehabilitation. The trial judge refused to accept that submission, and as I said, sentenced Mr. Stern to five years.

- [9] I note the appellant sometimes has used the name "Stern". I make reference to this earlier case because on the occasion of that of sentencing it was noted that the Crown had made a submission that a life sentence might be considered for the appellant because of the lack of possibility of rehabilitation as demonstrated by past his history. The appellant therefore is an individual who knew many years ago that he faced more serious penalties if he repeated this type of offence. That case was heard about 10 years ago and here we are in 2008 with the appellant not apparently having heeded that warning. The instant offence occurred after he was released from custody in December 2006. He has been an unusually persistent offender who seems to promptly relapse into further criminal conduct upon release from custodial sentences.
- [10] This sentence is somewhat higher than we often see in these cases. The range is sometime said to be not much higher than six years at the upper end. However, this offender as I see it is an individual who has shown himself to be about the worst type of offender from a perspective of his record and his history of being recommitted while on parole. In other words, he does not seem to respond at all to sentences or to be able to perform on parole.
- [11] A circumstance that I think is significant is that this was the breaking and entering of a dwelling house occupied by older people in the hours of darkness. The appellant was found as an intruder in the bedroom of that premises. The Crown at sentence noted that the event had been very upsetting to the homeowners. Although as I noted, this sentence is a very substantial one, it seems to me that the sentence is a fit one having regard to the circumstances of the offender and the offence and that of course is the ultimate consideration that has to be kept in view by this Court when we are hearing an appeal from sentence.
- [12] Mr. Angly has said what can be said on behalf of the appellant, but not much can be said, I am afraid. In the circumstances here, I am simply not of the view we should interfere with the sentence of eight years imposed by the learned trial judge. It seems to me that the prime consideration in a case like this must be protection of the public and it is difficult to envision how the public can be protected from the depredations of this man other than by the imposition of a very lengthy sentence.
- [13] Accordingly, I would dismiss the appeal from sentence.
- [14] NEWBURY, J.A.: I agree.
- [15] TYSOE, J.A.: I agree.
- [16] NEWBURY, J.A. Leave to extend the time for the filing of the appeal is granted; leave is granted and the appeal is dismissed. "The Honourable Mr. Justice Hall"

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/CA/08/01/2008BCCA0181.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-alexander-2008>

Prepared on 29 October 2026 · Esheria