

CANADA / JUDGMENT

R. v. Anderson

2017 BCSC 2407

COURT

Supreme Court of British Columbia

DECIDED

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2017 BCSC 2407 R. v. Anderson IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Anderson, 2017 BCSC 2407 Date: 20170215 Docket: X078489-2 Registry: New Westminster Regina v. Dustin Barry Anderson Before: The Honourable Madam Justice S. Griffin Oral Reasons for Sentence Counsel for the Crown: Crichton P. Pike Counsel for the Defence: Brian Coleman, QC Jeremy H. Fung Place and Date of Hearing: New Westminster, B.C. February 15, 2017 Place and Date of Judgment: New Westminster, B.C. February 15, 2017

Introduction

- [1] THE COURT: The accused, Dustin Anderson, was charged with committing manslaughter of Shaunce Ernest Poirier on June 16, 2014, contrary to s. 236(b) of the Criminal Code. Mr. Anderson entered a plea of guilty to manslaughter on January 24, 2017. He is before the court today for sentencing. Counsel have made a joint submission on the appropriate sentence. Circumstances of the Offences
- [2] The circumstances of the offence are set out in an agreed statement of facts marked Exhibit 1. In summary, in June of 2014 Mr. Anderson was addicted to illegal drugs, together with his common-law partner, Sarah Smith. They travelled from their home in Nanaimo to visit with Ms. Smith's parents in Surrey, B.C. While there, Mr. Anderson made contact with Mr. Poirier to purchase drugs off him. Mr. Poirier sold Mr. Anderson and Ms. Smith \$40 worth of illegal drugs on June 14, 2014.
- [3] On June 16, Mr. Anderson texted Mr. Poirier regarding another purchase. This time Mr. Anderson did not have the funds to make the purchase. He and Ms. Smith tried to come up with the funds, but did not do so. Mr. Poirier came to the building where they were staying. He and Mr. Anderson got in the elevator.
- [4] When they were in the elevator Mr. Anderson tried to negotiate getting drugs from Mr. Poirier by trading goods rather than money. A fight ensued between them.

- [5] During the fight, Mr. Poirier pulled out a knife that he was known to carry. Mr. Anderson did not have a weapon. Mr. Anderson punched Mr. Poirier twice in the head, causing Mr. Poirier to drop the knife. Mr. Anderson picked up the knife and then grabbed Mr. Poirier by his jacket at the back of his neck. He pulled the jacket right over his head and off of him. After that the two men continued to struggle.
- [6] Mr. Anderson then stabbed Mr. Poirier once in Mr. Poirier's left chest with the knife.
- [7] Mr. Poirier then left the elevator and Mr. Anderson then took the drugs from Mr. Poirier's jacket and the knife and left the elevator. Outside the building, Mr. Poirier collapsed unconscious on the sidewalk. He was never revived. He died of a single stab wound that penetrated his heart.
- [8] It appears from a text message at the time that Mr. Anderson sent to Ms. Smith that he did not realize he had killed Mr. Poirier. Mr. Anderson then initially lied to the police about what happened and denied any involvement. He was later arrested in Nanaimo on June 21st.
- [9] What is clear from the facts is that it was not a planned offence, it was sudden and it was in the tragic circumstances of the drug trade. Circumstances of Offender
- [10] Mr. Anderson has an extensive criminal record, including past acts of violence. He is 45 years old.
- [11] Despite his past, I have read three letters of support from family members: one from his mother, another from his father, and the third from his stepfather. It appears that Mr. Anderson's family members are all good members of the community. They all clearly recognize the seriousness and the tragedy of the crime.
- [12] I have little doubt that Mr. Anderson has made them feel deep shame. Having a son who has killed someone causes grief and loss. From what his family members have written, it appears to me they know that this is not the same degree of loss as having a son who was killed, but despite his terrible actions they do not abandon their son. They all believe at heart he is a good person who has made bad choices, and that he has remorse and shame for taking a life, and that he recognizes the pain he has caused Mr. Poirier's family. They believe he has genuinely tried to address his addiction issues and that relapse does happen to addicts. They believe that Mr. Anderson is sincere in genuinely wanting to change his patterns and have a crime-free life. They all believe that with long-term treatment he has been able to improve himself and will continue to do so, and they want to give him that chance. Impact on Community
- [13] There were several very moving victim impact statements, one read into court by Shaunce Poirier's mother, two written by his sisters, and one by his aunt. I thank all of these family members for telling the court what Shaunce was like as a son, brother and nephew, and how important he was to you and how devastated you are by his death.

- [14] Shaunce Poirier's mother talked about his smile, laughter, sense of humour, his blue eyes and his scruffy beard when he kissed her cheek. She told how she used to get up to dance with him, and she still breaks down when she has a Shaunce-y moment and hears certain music, and then the loss that is always present is felt even more acutely.
- [15] It is trite to say there is no way to repair the harm to this family and no result which will bring Shaunce Poirier back.
- [16] The criminal justice system cannot impose sentences to bring people back. I recognize that it is a very bitter experience for family members of a person killed by a criminal to listen to submissions that talk about the criminal offender's future. But what courts are faced with is the tough choice of what to do with the person who caused this harm, understanding that as a society we choose to treat all people humanely and to do what we can to recognize the possibility of rehabilitation, even for people who commit terrible acts.
- [17] Here, the one tragic connecting factor between the victim and the offender was the drug trade, a trade which sows violence and death, a trade which addles brains and alters personalities. If, as a society, we are to come up with solutions to the destruction caused by the drug trade, it must be one that has some humanity in it for all those involved.
- [18] I watched Mr. Anderson's face when Mr. Poirier's mother read out her statement in court so gracefully and so clearly grief-stricken. Mr. Anderson did appear to understand and be upset by the pain he has caused her. In the courtroom, when asked if he wished to speak, Mr. Anderson turned and spoke to the family members of Mr. Poirier and apologized. He said he did not expect them to forgive him, but he did say with all his heart that he was sorry. Joint Submissions
- [19] I turn now to the submissions on sentencing. The Crown and defence have presented a joint submission on sentencing.
- [20] There can be many reasons for lawyers for the Crown and the defence to end up agreeing on what would be an appropriate proposed sentence, despite the fact that they are adversaries, each representing opposite parties. Some of these reasons may have to do with the risks that the parties might lose and the position that they would advance at trial if the evidence was contested. I do not suggest that any of these issues exist here, I simply point out that there are sometimes issues that can be in the background. This is why trial judges hearing joint submissions on sentencing will grant considerable deference to the submissions advanced by counsel.
- [21] The Supreme Court of Canada has recently commented on joint sentencing submissions in a case called *R. v. Anthony-Cook*, 2016 SCC 43. In short, the highest court in our country has stressed that there is a high threshold for a trial judge to depart from joint submissions, because they benefit the justice system as a whole.

- [22] For this reason joint submissions ought to provide for a high degree of certainty. A trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. The example of this would be where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system. Sentencing Principles
- [23] The Criminal Code of Canada sets out a number of guidelines that govern how a court is required to proceed when sentencing an accused.
- [24] Section 718 of the Criminal Code says this: The fundamental purpose of sentencing is to protect society and to 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 that have one or more of the following objectives:
- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
 - (b) to deter the offender and other persons from committing offences;
 - (c) to separate offenders from society, where necessary;
 - (d) to assist in rehabilitating offenders . . .
- [25] Section 718.1 of the Criminal Code says that: A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.
- [26] Section 718.2 of the Code says that: A court that imposes a sentence shall also take into consideration . . .
- (a) . . . aggravating or mitigating circumstances
 - (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances . . .
- [27] Which means courts should follow precedent. Section 718.2 also says:
- (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
 - (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders . . .
- [28] I am required by law to consider all of these principles and I do so.

Analysis

- [29] Sentencing a person for the offence of manslaughter is a difficult process. A life has been taken.
- [30] The circumstances of every case and every offender are different, but here the Crown and the defence have referred me to the precedent case of *R. v. McCulloch*, 2016 BCSC 2069, where in a stabbing and manslaughter case a sentence of six years and two months was imposed. The circumstances of that offence were more aggravating than here. Here, defence counsel emphasizes that Mr. Anderson did not plan on a killing, he did not bring a weapon to the incident, and he struck the victim one time, not several times, with the knife.
- [31] The reason to refer to these facts is not to minimize the horrible result that happened, but it is to say that this case is not like some other cases where there was planning and the person deliberately carried a weapon and stabbed the victim several times.
- [32] The joint submission proposes a sentence of six years. Because of the amount of time that Mr. Anderson has already served in custody, which is the equivalent to four years, they submit that the remaining sentence should be two years less a day, and one year of probation following that.
- [33] I have concluded that I will accept the joint submission. The sentence is in line with other cases where the facts are not too dissimilar. The total time served is a significant jail sentence.
- [34] Ordinarily, this would be a six-year sentence. However, Mr. Anderson has spent approximately 970 days in jail since his arrest in a remand centre. This is known as very hard time, because of the poor facilities and lack of programming. For this reason courts usually consider the time spent in remand facility to be equivalent to 1.5 times spent in custody. Both counsel agree this should be the approach here. I therefore credit Mr. Anderson with four years served in custody. Sentence
- [35] I will sentence - Mr. Anderson, if you could stand up, please - I will sentence you to an additional two years' imprisonment less one day.
- [36] In addition, I will sentence you to one year probation. There are a number of terms of that probation order. You will end up getting them in writing at some point. If you break any of them it is a crime and you will find yourself back in jail.
- [37] I pause to say you know already that the system has given you many breaks. This is your last break.
- [38] The terms of probation will be:
1. To report within 72 hours upon release from custody to the probation office in Surrey.

2. To provide your residential address to the probation officer and to not change it without prior written approval.
 3. To attend, participate and successfully complete any counselling as directed by the probation officer.
 4. Not to possess or consume any illegal drugs or controlled substances as defined in s. 2 of the Controlled Drugs and Substances Act.
 5. Not to possess any weapons as defined by the Criminal Code, including knives, except during preparation and consumption of food or during the course of lawful employment.
- [39] There are additional orders that the law requires me to make. One of them is with respect to DNA. You have to provide some DNA to a databank so it can be checked against future crimes. Pursuant to s. 487.051 I am making an order authorizing the taking of a number of samples of bodily substances that is reasonably required for the purpose of forensic DNA analysis.
- [40] In addition, pursuant to ss. (4) I am ordering that you will comply with the authorities' attendance when they attend for that purpose.
- [41] In addition, I am required to make an order that prohibits you for the rest of your life from possessing numerous kinds of weapons that are set out in ss. (3) of s. 109 of the Code, that is any firearm, crossbow, restricted weapon, ammunition and explosive substance.
- [42] Counsel - you may sit down, Mr. Anderson. Counsel, is there anything else that I have overlooked?
- [43] MR. PIKE: Nothing from Crown, My Lady.
- [44] MR. COLEMAN: No, My Lady. Thank you.
- [45] THE COURT: All right. Thank you. "The Honourable Madam Justice S. Griffin"

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