

CANADA / JUDGMENT

R. v. Basran

2023 BCSC 1514

COURT

Supreme Court of British Columbia

DECIDED

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2023 BCSC 1514 R. v. Basran

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Basran,

2023 BCSC 1514

Date: 20230907

Docket: X083239

Registry: New Westminster

Regina

v.

Jasman Singh Basran

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Before: The Honourable Madam Justice Devlin

Oral Reasons for Sentence

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Place and Date of Hearing:

New Westminster, B.C.

August 24, 2023

Place and Date of Judgment:

New Westminster, B.C.

September 7, 2023

THE COURT: This decision was delivered in the form of Oral Reasons. The Reasons have since been edited for publication.

Introduction

- [1] Jasman Singh Basran is before the court for sentencing following his guilty plea to one count of obstructing justice, between November 11 and 12, 2019, contrary to s. 139(2) of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. Mr. Basran was previously charged with being an accessory after the fact to the murder of Andrew Baldwin. Mr. Baldwin was killed in the home of his friend, A.B., on November 11, 2019, in Surrey, BC.
- [2] The Crown proposes a custodial sentence of 18 months. The defence proposes a custodial sentence of 15 months' imprisonment, and seeks to have Mr. Basran serve his sentence in the community by way of a conditional sentence order ("CSO"). The Crown neither joins nor opposes the defence's proposed CSO. They acknowledge that, in the circumstances of this case, the court may be satisfied that a CSO is appropriate.

Circumstances of the Offence

- [3] The circumstances of the offence are detailed in the Agreed Statement of Facts ("ASF") filed for Mr. Basran's guilty plea. I will summarize the circumstances with reference to the ASF.
- [4] Mr. Basran was a friend of Jagpal Singh Hothi. On the afternoon of November 11, 2019, Mr. Basran received a call from Mr. Hothi asking for a car ride. Mr. Hothi was, at the time, involved in drug trafficking together with Jordan Bottomley and Munroop Singh Hayer. Mr. Basran did not associate with them and was not involved in their criminal activity.
- [5] Mr. Basran agreed to give Mr. Hothi a ride and then drove to the Scott Town Plaza in Surrey to pick him up. Mr. Hothi directed Mr. Basran to drive to the area of 12359 Old Yale Road, where they picked up Mr. Bottomley, who was a stranger to Mr. Basran. Mr. Bottomley then directed Mr. Basran to drive to a nearby location and parked on Lien Road, close to 124th Street, Surrey.

- [6] Both Mr. Bottomley and Mr. Hothi then got out of the truck. Mr. Basran observed Mr. Bottomley wearing gloves and a dark hoodie. After a brief period, Mr. Bottomley returned to Mr. Basran's truck and both he and Mr. Hothi got in. Mr. Basran observed that Mr. Bottomley was disoriented, and that he had blood on his person and was bleeding. It became clear to Mr. Basran that Mr. Bottomley had been involved in some kind of altercation. After driving a short distance, Mr. Basran kicked Mr. Bottomley out of his truck. Mr. Basran then drove to Mr. Hothi's residence, where Mr. Hothi cleaned the blood from the interior of the truck.
- [7] The next day (November 12, 2019), Mr. Basran attended Apna Car Care in Surrey to have his vehicle cleaned. In doing so, he admits that he obstructed justice, namely, by having the evidence of blood cleaned from his truck. Fortunately, the police were still able to collect valuable evidence from the vehicle. The same day, Mr. Basran became aware via news articles on his phone that a person named Andrew Baldwin was killed in the area and at the time of the events described above. Mr. Basran became concerned that his actions on the previous day were connected to the incident. On November 19, 2019, at the request of Mr. Hothi, he deleted text messages on his phone for the period of November 11 to 19.

Victim Impact Statements

- [8] I have read and considered the victim impact statements provided by Andrew Baldwin's parents and various relatives. They are profoundly moving and emotional. Ms. Julie Macdonald, Andrew Baldwin's mother, read her statement in the courtroom. She expressed the pain and anguish she suffers every day as a result of the death of Andrew. Ms. Macdonald also expressed her genuine forgiveness towards Mr. Basran, acknowledging that these events have had a devastating impact on his young life and on his family. A.B. also provided a victim impact statement in which he described the ongoing struggles he has faced since experiencing the loss of a close friend. The impact on A.B.'s life has been profound.
- [9] I recognize that Mr. Basran is not being sentenced for the death of Mr. Baldwin. However, I find these statements relevant to appreciating the impact of his role in the unfortunate sequence of events that culminated in Mr. Baldwin's homicide.

Circumstances of Mr. Basran

- [10] Mr. Basran was 20 years old at the time of the offence, and is now 24 years old. He has no prior criminal record. He was born and raised in Surrey, BC, where he lives with his mother, father, brother, and sister-in-law. He completed high school and has some post-secondary education, including attaining an appliance service technician certificate from Kwantlen College. He currently works full-time as a parts delivery driver at a truck manufacturing company. Mr. Basran enjoys playing sports in his spare time, including playing basketball on a weekly basis and various outdoor sports.

- [11] Mr. Basran was originally arrested in connection to this matter on January 25, 2020. He was released without charges the next day. He was re-arrested and charged on May 20, 2020, and subsequently released on various conditions, including a curfew. Mr. Basran has complied with all of the terms of his release order. Following his second arrest, Mr. Basran also provided a statement to the police regarding his involvement in the events described above, on and after November 11, 2019.
- [12] I have been provided with several letters of support from Mr. Basran's family and friends. These letters demonstrate that Mr. Basran enjoys the ongoing support of a broad, pro-social network. Mr. Basran's parents and his sister-in-law attended the sentencing proceedings. Mr. Basran also has the good fortune of having the forgiveness and support of Ms. Macdonald.
- [13] Mr. Basran addressed the court through a letter read by his counsel. Mr. Basran expressed his sincere remorse and took responsibility for his actions. He also apologized directly to Mr. Baldwin's family. I accept Mr. Basran's expression of remorse as genuine.

Positions of the Parties

- [14] As mentioned above, the Crown seeks a custodial sentence of 18 months, while the defence seeks a 15-month CSO. The defence submits that its position on sentence accounts for various mitigating factors engaged in this case, including the length of time Mr. Basran was subject to strict bail conditions.
- [15] While the Crown does not expressly agree to a CSO, I note that the cases they rely upon to support their position all deal with the imposition of a CSO in somewhat similar circumstances: *R. v. Nordman*, 2004 BCSC 1295 [Nordman]; *R. v. Wehbe*, 2012 ONCJ 653 [Wehbe]; and *R. v. J.J.D.*, 2014 BCPC 412 [J.J.D.]. The defence refers to these same authorities in support of its position on sentence. I found the cases of Nordman and Wehbe to be the most instructive, and will review them briefly now.
- [16] In Nordman, the offender was convicted of obstructing justice in connection to a stabbing death. He took and disposed of the knife that his friend had used to stab the deceased. Mr. Nordman did not know at the time of the offence that the victim had died of his injuries. He was, however, aware of the stabbing. He was 25 years old at sentencing. He had a history of steady employment and no criminal record. Mr. Nordman was sentenced to an 18-month CSO, of which 12 months were house arrest: Nordman at para. 13. The offender's obstruction was "very serious", not least because Mr. Nordman refused to cooperate with police even after learning that the victim had died: at para. 11. However, the sentencing judge noted that this was not a case of an offender who committed the underlying crime and then sought to cover it up. Nor did Mr. Nordman's offending involve a position of trust or threats of violence: at para. 10. Ultimately, the offender's conduct was characterized as "the wrong decision to cover up for a friend": at para. 12.

- [17] Like Mr. Nordman, Mr. Basran's offending was, effectively, the wrong decision to help a friend. He is similarly an otherwise law-abiding and productive member of society. Mr. Basran's offending also did not involve violence or a position of trust. That said, like in Nordman, Mr. Basran's offending is aggravated by his decision to continue obstructing justice after learning of Mr. Baldwin's death. However, I further note that Nordman did not involve a guilty plea.
- [18] In Wehbe, the offender pled guilty to an attempt to obstruct justice, relating to a homicide carried out by his cousin. Mr. Wehbe assisted with cleaning the interior of a vehicle connected to the homicide, in the early morning hours after the incident. Police later searched the vehicle. They observed blood on the back seat, and successfully recovered the victim's DNA. The offender's cleaning efforts did, however, compromise evidence of blood splatter, gunshot residue, and other DNA. Mr. Wehbe was 20 years old at the time of sentencing and had no criminal record. A pre-sentence report spoke positively of his family support, education and work efforts, pro-social values, remorse, and prospects for rehabilitation. The Crown sought a 12-month jail term. The defence sought a suspended sentence or, alternatively, a CSO.
- [19] Mr. Wehbe was sentenced to an 18-month CSO, informed by Nordman. There was no evidence that Mr. Wehbe specifically knew about the homicide, "but the amount of blood and circumstances were such he would have had to have known something serious had occurred": at para. 43. The same can be said of Mr. Basran's offending. Mr. Wehbe's youth, guilty plea, remorse, and rehabilitative prospects--as well as the lack of violence or abuse of trust in committing the offence--mitigated his sentence, among other factors: at para. 45.
- [20] Like in Wehbe, Mr. Basran comes before the court following a guilty plea, and as a youthful and otherwise law-abiding offender. His obstruction of justice involved the cleaning of blood evidence, the importance of which, as with Mr. Wehbe, would have been apparent to Mr. Basran.
- [21] In sum, both Nordman and Wehbe support the imposition of an 18-month CSO in circumstances similar to those arising in Mr. Basran's case.

The Governing Legal Principles of Sentencing

- [22] Sections 718 to 718.2 of the Code set out the fundamental principles and purposes to be considered by the courts in sentencing.
- [23] Section 718 of the Code provides that 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", with reference to six objectives. These objectives are: denunciation of unlawful conduct and the harm done to the victim or to the community; deterring the offender and other persons from committing offences; separating offenders from society, where necessary; assisting in rehabilitating offenders; providing reparations for harm done to victims or to the

community; and promoting a sense of responsibility in offenders and acknowledging the harm done to victims or to the community.

- [24] In all cases, pursuant to s. 718.1 of the Code, a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender: see *R. v. Parranto*, 2021 SCC 46 at paras. 11-12 [Parranto].
- [25] As well, s. 718.2 of the Code sets out a number of specific principles that a court must take into consideration in sentencing. One important principle is that a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender: s. 718.2(a).
- [26] Another important principle is parity of sentence, which requires the sentence imposed to be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances: s. 718.2(b) of the Code.
- [27] Section 742.1 of the Code permits sentencing judges to order that an offender serve their sentence of imprisonment in the community in certain circumstances. An offender may receive a CSO if the court imposes a sentence of less than two years and the Court is satisfied that service of the sentence in the community would not endanger the safety of the community and would be consistent with the principles of sentence set out in ss. 718 to 718.2, discussed above.
- [28] When considering these principles, I am not to lose sight of the individualized nature of the assessment before me--an assessment that requires me to weigh the objectives of sentencing in a manner that best reflects the circumstances of this case and of this offender: *Parranto* at paras. 11-12; *R. v. Nasogaluak*, 2010 SCC 6 at para. 43.

Application of the Sentencing Principles

- [29] In determining the appropriate sentence for Mr. Basran, the question is whether the imposition of a CSO would properly reflect the seriousness of the offence, the moral blameworthiness of Mr. Basran in committing the offence, and the need to impose a sentence that addresses the principles of deterrence and denunciation.
- [30] There are several mitigating factors that support the imposition of a CSO. Mr. Basran is a youthful first-time offender with no criminal record. Mr. Basran entered a guilty plea, acknowledging responsibility for his actions and expressing genuine remorse. He also provided a statement to the police regarding his knowledge of the incident.
- [31] Mr. Basran's involvement in the circumstances of the offence was unplanned. I accept that the seemingly benign act of giving a ride to his friend, Mr. Hothi, suddenly turned into involvement in an extremely serious matter. To be clear, this does not excuse Mr. Basran's actions. I simply consider it important to remain mindful of how the events at issue unfolded in this case, in sentencing Mr. Basran.

- [32] Mr. Basran has the ongoing support of his family and friends, as well as the support of Ms. Macdonald which, as I will discuss, will assist with his rehabilitation.
- [33] The aggravating fact in this case is that Mr. Basran's actions resulted in destruction of evidence related to a very serious crime. It should have been obvious to Mr. Basran that the blood in his truck was evidence of some sort of altercation. While it is acknowledged that there was no obligation on him to report this to the police, it is also expected of law-abiding members of our community that they not intentionally destroy evidence. The fact that Mr. Basran then continued to behave obstructively by deleting text messages from his phone, as directed by Mr. Hothi--after the truck had been seized and after he learned of Mr. Baldwin's death--is also an aggravating factor.
- [34] As I have already mentioned, Mr. Basran has good prospects for rehabilitation. He has the benefit of a pro-social network of family and friends. He also benefits from the remarkable support of Ms. Macdonald. Since his arrest, he has attended college and obtained full-time employment.
- [35] I conclude, in light of the factors reviewed above, that a custodial sentence of 18 months is appropriate in this case, as suggested by the Crown. This finding means that Mr. Basran qualifies for a CSO, if appropriate.
- [36] To that end, I am satisfied that it would not endanger the community to permit Mr. Basran to serve his sentence in the community. In my view, he poses little risk of reoffending. There is no need to separate Mr. Basran from society, as contemplated in s. 718(c) of the Code.
- [37] I am also satisfied that permitting Mr. Basran to serve his sentence in the community would be consistent with the sentencing principles I have discussed. As set out in *R. v. Proulx*, 2000 SCC 5, a CSO can satisfactorily serve the principles of deterrence and denunciation, particularly when the CSO contains onerous and punitive conditions for a period of time: see paras. 102 and 107.
- [38] Mr. Basran was a young man who was suddenly thrust into the midst of a very serious situation. I accept that he made a bad decision which impaired, to a certain degree, a police investigation into a murder. I accept that his youth and immaturity at the time of the offence played a role in that choice. Since the offence, Mr. Basran has gained insight into his behaviour, has expressed sincere remorse, and has demonstrated he is capable of complying with community-based supervision. Indeed, but for this one unfortunate incident, Mr. Basran has demonstrated that he is capable of maintaining a pro-social lifestyle.

Disposition

[39] The determination of a just and appropriate sentence is a highly individualized exercise that goes beyond a purely mathematical calculation: R. v. Lacasse, 2015 SCC 64 at para. 58. Considering all of the circumstances of the offence, Mr. Basran's personal circumstances, and the principles of sentencing, I am satisfied that a custodial sentence of 18 months, to be served in the community pursuant to a CSO, would be a just and appropriate sentence.

[40] Mr. Basran, please stand. I am sentencing you to an 18-month conditional sentence. The conditions are these:

1. You are to keep the peace and be of good behaviour.
2. You are to appear before the court when you are required to do so by the court.
3. You are to report no later than 4:00 p.m. on September 8, 2023, to a conditional sentence supervisor at 102-14245 56th Avenue, Surrey, BC, and thereafter as and when directed by your conditional sentence supervisor.
4. Upon first reporting, you are to provide your address and telephone number to your conditional sentence supervisor and you are not to change either without first notifying your conditional sentence supervisor. You are to promptly notify the court or your conditional sentence supervisor of any changes in your employment or occupation.
5. You are to remain within the jurisdiction of the court unless written permission to go outside the jurisdiction is obtained from the court or your conditional sentence supervisor.
6. For the first 9 months of the CSO, you will be subject to a curfew every day from 8:00 p.m. through to 5:00 a.m., during which you will only be allowed to leave your residence for the following purposes:
 - i. For travelling directly to and from and attending a healthcare facility because of a medical emergency;
 - ii. For travelling directly to or from your place of lawful employment or carrying out that employment;
 - iii. For scheduled in-person counselling sessions with a professionally-qualified counsellor;
 - iv. For scheduled medical appointments;
 - v. For travelling directly to and from and attending scheduled court appearances, counselling sessions, and medical appointments; and
 - vi. For travelling directly to and from and attending scheduled appointments with your conditional sentence supervisor.

7. For the last 9 months of the CSO (that is, months 10-18), you will be subject to a curfew every day from 11:00 p.m. through to 5:00 a.m., during which time you will only be allowed to leave your residence for the following purposes:
 - i. For travelling directly to and from and attending a healthcare facility because of a medical emergency;
 - ii. For travelling directly to or from your place of lawful employment or carrying out that employment;
 - iii. For scheduled in-person counselling sessions with a professionally-qualified counsellor;
 - iv. For scheduled medical appointments;
 - v. For travelling directly to and from and attending scheduled court appearances, counselling sessions, and medical appointments; and
 - vi. For travelling directly to and from and attending scheduled appointments with your conditional sentence supervisor.
 8. You must complete 20 hours of community work under the direction of your conditional sentence supervisor. Your community work service must be completed within the first 12 months of your CSO.
 9. You are to carry a copy of your CSO, either by paper or electronically, with you at all times while you are outside of your residence. You are to present the CSO to any peace officer, upon request.
 10. You are to have no contact, directly or indirectly, with Jagpal Singh Hothi, Munroop Singh Hayer, or Jordan Robert James Bottomley.
- [41] Pursuant to s. 737(2.1)(b) of the Code, I decline to order payment of a victim fine surcharge.
- [42] Mr. Basran, as a result of your poor choices you are now convicted of obstruction of justice, which is a very serious offence. You have the benefit of the unrelenting support of your family. You also have the kind forgiveness and support of Ms. Macdonald. I encourage you to continue with your efforts at rehabilitation and pursuit of a pro-social lifestyle. I wish you all the best as you move forward.
- [43] Thank you counsel for your assistance. We will adjourn.

"Devlin J."

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