

CANADA / JUDGMENT

R. v. Belcourt

2016 BCCA 507

COURT

British Columbia Court of Appeal

DECIDED

30 December 2016

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

2016 BCCA 507 R. v. Belcourt

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Belcourt,

2016 BCCA 507

Date: 20161230

Docket: CA43947

Between:

Regina

(Respondent)

And

Darren Clifford Belcourt

(Appellant)

Before:

The Honourable Chief Justice Bauman

The Honourable Madam Justice Kirkpatrick

The Honourable Mr. Justice Fitch

On appeal from: An order of the Provincial Court of British Columbia, dated August 17, 2016 (R. v. Belcourt, Richmond Registry Dockets 60608-1, 60713-1, 60729-1, 60784-1, 60811-1, 60845-1 and New Westminster Registry Docket 79645-1,2A).

The Appellant:

In Person

Counsel for the Respondent:

E. Campbell

Place and Date of Hearing:

Vancouver, British Columbia

December 15, 2016

Place and Date of Judgment:

Vancouver, British Columbia

December 30, 2016

Written Reasons by:

The Honourable Mr. Justice Fitch

Concurred in by:

The Honourable Chief Justice Bauman

The Honourable Madam Justice Kirkpatrick

Summary:

Appeal from a total sentence of 16 months' incarceration imposed on a prolific, non-violent, but significantly disadvantaged 33-year-old Aboriginal offender for: one count of break, enter and theft; six counts of theft under; one count of mischief under; one count of threatening to cause damage to personal property; and one count breach recognizance. Held: Application for leave to appeal granted, appeal dismissed. The sentencing judge committed no error in principle, properly gave effect to the totality principle and imposed a total sentence well within the appropriate range.

Reasons for Judgment of the Honourable Mr. Justice Fitch:

- [1] This is an application for leave to appeal and, if leave be granted, an appeal from a total sentence of 16 months' incarceration to be followed by 18 months' probation imposed on the appellant on August 17, 2016, following his plea of guilty to: one count of break, enter and theft in relation to commercial premises; six counts of theft under; one count of mischief causing damage under \$5,000; one count of threatening to cause damage to personal property; and one count of breach recognizance.
- [2] The sentencing judge would have imposed an 18-month period of incarceration but gave the appellant 60 days' credit for approximately 40 days that he spent in pre-sentence custody.

- [3] The Crown proceeded by indictment in relation to the break and enter count, but summarily in relation to the other nine counts. The appellant has only initiated appellate proceedings in this Court. Pursuant to s. 675 (1.1) of the Criminal Code, R.S.C. 1985, c. C-46, the appellant may, if leave is granted, appeal to this Court from the sentences imposed on the summary conviction offences together with the sentence imposed on the indictable offence. I would grant leave for the purposes of facilitating consideration of the fitness of the total sentence imposed in relation to all of the counts.
- [4] The appellant is a 33-year-old significantly disadvantaged Aboriginal offender. He is a member of the Kelly Lake Cree Nation. He has a grade 11 education. He was introduced to drugs by a family member at a very young age and has a long-standing addiction to crystal methamphetamine. When the appellant was 14 years old, he suffered a significant head injury in a motor vehicle accident. That injury continues to manifest itself in poor impulse control. In addition, the appellant suffers from unaddressed mental health challenges, possibly related to his drug abuse.
- [5] Since 2004, the appellant has amassed a lengthy and unenviable criminal record that is largely attributable to his addiction to crystal methamphetamine. Prior to the commission of the offences in the case at bar, the appellant had been convicted of criminal offences on 48 occasions. His record includes: 18 convictions for theft; 15 convictions for breaches of court orders; two convictions for threatening; two convictions for breaking and entering; three convictions for fraud-related offences; and three convictions for drug-related offences, including one count of trafficking in a controlled substance. In 2005, the appellant was sentenced to six months' incarceration for break and enter. In 2010, he was sentenced to nine months' incarceration for a second break and enter.
- [6] It is fair to say that the appellant is a prolific, non-violent offender. He has served many short terms of incarceration over the past seven years. There appears to be a break in the appellant's pattern of criminal offending between 2010 and 2013. The appellant attributes this to in-patient treatment he received in Burnaby for individuals coping with addiction and mental health challenges. It is clear that the appellant has derived benefit from highly structured and supportive interventions in the past. Unfortunately, the latest series of offences demonstrates that he has been unable to derive lasting benefit from previous terms of incarceration, community supervision or residential treatment programs.
- [7] The circumstances of the offences may be briefly stated. All of the offences were committed between January 1, 2016, and July 18, 2016. A number of the "theft under" counts reflect low-level criminal offending involving relatively small sums of money or relatively inexpensive merchandise that the appellant shoplifted. In one case, the appellant stole a bait bicycle. The mischief offence was committed when the appellant broke the glass door of a public transit bus in the course of a dispute with the bus driver. The threatening to cause damage to personal property relates to the appellant's threat to break his landlord's cell phone. The breach recognizance offence was committed when the appellant was found using public transit contrary to a police-imposed term of release. Not all of the offences, however, can be

characterized as petty, nuisance-type offences. For example, in one of the theft under counts, the appellant stole almost \$5,000 worth of jewelry from a business premises. The break and enter offence was the last in time. The appellant forced his way into a restaurant in the early morning hours of July 18, 2016, and stole \$2,200 in cash and an iPhone. The appellant was arrested for this offence on July 19, 2016, and remained in custody until his sentencing on August 17, 2016.

- [8] When the appellant committed the first two offences in time - theft under and mischief - he was subject to a four-month conditional sentence order that was imposed on November 17, 2015, for the offence of theft under. He was subject to a probation order when the other eight offences were committed. A number of offences in the case at bar were committed while the appellant was on judicial interim release with respect to some of the other offences before us.
- [9] The appellant was represented at the time of the plea and sentencing proceedings. He was denied legal aid for this appeal and brought, but later abandoned, an application for the appointment of counsel.
- [10] Although the sentencing judge did not have the benefit of a pre-sentence report, the appellant's personal circumstances were addressed in detail by his counsel. In addition, the appellant put before the sentencing judge a letter in which he apologized for his behaviour, expressed remorse for his conduct, and pledged his determination to come to terms with the causes of his criminal behaviour. The judge accepted that the appellant was remorseful for his conduct. On the hearing of the appeal, the appellant, to his credit, reiterated his acceptance of responsibility for these offences, his understanding that consequences would flow from the commission of them, and his resolve to address the underlying issues that have historically brought him into conflict with the law.
- [11] The Crown submitted that consecutive sentences totalling 33 months' incarceration would be appropriate but acknowledged that the sentence would have to be reduced to take into account the totality principle and ensure that the overall sentence actually imposed was proportionate to the appellant's degree of culpability. If the total sentence resulted in a period of incarceration of two years or less, the Crown also sought a probation order in the range of 18 months.
- [12] Counsel for the appellant conceded that while a sentence of two years' incarceration would not be outside the appropriate range, a total sentence of "a year or under" would also be sufficient to meet the applicable principles of sentencing having regard to the appellant's status as an Aboriginal offender and the significant disadvantages and challenges in daily living he has experienced in the past, including at the time of the commission of these offences.
- [13] With respect to the calculation of time served by the appellant in pre-sentence custody, the sentencing judge asked counsel to use a break in the sentencing proceedings to review the record and confirm the number of days for which credit should be given. After the break,

Crown counsel advised the sentencing judge that she had reviewed the BC Corrections Cornet record and was in a position to confirm that the appellant had served a total of 39 days in pre-sentence custody attributable to all 10 offences. Counsel for the appellant advised the sentencing judge that while his client took issue with that calculation, "I couldn't find anything on the record that contradicts what my friend says".

- [14] In delivering reasons for sentence, the judge noted the appellant's difficult upbringing and personal circumstances and his status as a disadvantaged Aboriginal offender. She recognized his early plea of guilty, expression of remorse, and efforts while incarcerated not to consume drugs that were available to him in the institution. She also took into account that the appellant suffered a head injury at the age of 14 which left him with a tendency to act impulsively. She accepted the position of the appellant's counsel that some of the offences should be treated as "a spree" because of their close temporal relationship. Despite the appellant's lengthy criminal record, the judge did not discount the goal of rehabilitation. Rather, she considered it together with the principle of specific deterrence and the need to protect the public from the commission of further offences by the appellant.
- [15] As noted earlier, the judge imposed a total sentence of 16 months' imprisonment after giving the appellant credit for 60 days by applying a ratio of 1.5 to 1 for the 40 days he actually spent in pre-sentence custody. In imposing sentence, the judge noted this Court's judgments in *R. v. Mack*, 2008 BCCA 520, *R. v. Drake*, 2007 BCCA 204, and *R. v. Gibbs*, 2007 BCCA 241, as examples of cases in which mid-level provincial sentences were upheld for relatively minor property-related offences committed by prolific offenders, including sentences imposed on Aboriginal offenders with substance abuse problems.
- [16] To give effect to the totality principle, the sentence actually imposed on each count was broken down as follows: for the break and enter, the appellant was sentenced to three months' incarceration in addition to the two months' credit given for pre-sentence custody; on three counts of theft under, the appellant was sentenced to three months' consecutive, four months' consecutive, and four months' consecutive, respectively; on the remaining three counts of theft under, the appellant was sentenced to four-month concurrent periods of incarceration; on the mischief count, the appellant was sentenced to two months' to be served concurrently; on the breach recognizance and on the uttering threat counts, the appellant was sentenced to one month consecutive for each count. In addition, the judge imposed an 18-month probation order that requires the appellant to attend all counselling, including any drug, alcohol and mental health counselling, as may be recommended by his probation officer.
- [17] The appellant filed lengthy written submissions in support of his appeal. He supplemented those submissions with an additional written submission filed on the hearing of the appeal together with institutional documents attesting to his determination to pursue programming addressing the root causes of his criminal behaviour.

- [18] By way of summary, the appellant asserts that the sentencing judge erred in principle in the following ways: by failing to fully consider his amenability to treatment; by giving too much weight to specific and general deterrence and insufficient weight to the principle of rehabilitation; by failing to grant appropriate credit for time served in pre-sentence custody; and, by imposing an illegal probation order. In addition, the appellant submits that the sentence imposed was excessive given his disadvantaged upbringing and personal circumstances and the fact that the offences were neither planned nor violent.
- [19] In my view, the appellant has not shown that the sentencing judge erred in principle in her approach to this case. She expressly recognized the mitigating factors that have been emphasized by the appellant on appeal. She appropriately weighed the goal of rehabilitation with the need to protect the public by interrupting the appellant's pattern of criminal behaviour. She crafted a disposition that emphasized protection of the public but, at the same time, made available to the appellant community-based treatment programs designed to assist in his rehabilitation. She gave appropriate credit for the number of days the appellant was in pre-sentence custody. The probation order is not illegal. The appellant was not sentenced to a period of incarceration exceeding two years. The length of the sentence imposed permitted the making of a probation order.
- [20] I turn next to address the appellant's contention that the sentence imposed is excessive. Absent error in principle, this Court is obliged to apply a deferential standard of review to appeals from sentence. A variation in the sentence should only be made if it has been shown to be unfit for the offence and offender, which is to say "clearly unreasonable".
- [21] In my view, the sentence imposed has not been shown to be clearly unreasonable or a marked departure from sentences imposed in like cases. While some of the offences committed by the appellant might properly be characterized as petty in nature, this cannot be said for all of them. The break and enter is particularly serious and represents the third occasion on which the appellant has committed this offence. In light of the appellant's significant and largely unbroken pattern of criminal behaviour and his failure to derive benefit from previous interventions, the judge was obliged to fashion a disposition that emphasized protection of the public. In my view, the sentence in its quantum reflects the exercise of considerable restraint by the sentencing judge. Given the appellant's related criminal record and the sentences previously imposed upon him for similar offences, the appellant could not reasonably have expected to receive a penalty less than that which was imposed.
- [22] Finally, the appellant submits that his good conduct and efforts toward rehabilitation while incarcerated warrant a reduction in sentence. I accept that the appellant's post-sentence institutional behaviour has been commendable. This augurs well for the appellant's future and is a factor provincial correctional authorities will no doubt take into account. In the circumstances of this case, however, it is not a consideration that could reasonably be expected to have affected the result: *R. v. Sipos*, 2014 SCC 47 at paras. 28-31, 43. For this reason, evidence of the appellant's post-sentence institutional behaviour cannot be taken

into account in determining the fitness of the sentence imposed. Put differently, even if evidence of the appellant's post-sentence conduct was admitted on appeal, it would not change my view that the sentence imposed was, in its totality, fit and appropriate.

[23] Before concluding, I wish to express my view that the appellant's best chance at rehabilitation turns on timely and effective pre-release and post-release planning and treatment interventions. To that end, early involvement in this difficult case by the appellant's probation officer to the end of accessing culturally appropriate services and treatment programs needed by the appellant to be successful in the community is highly desirable. To the extent that the risk of a service gap might arise in the eventual transition of the appellant from a custodial environment to community-based supervision, it is to be hoped that the potential for such a gap can be addressed by co-ordination between the appellant's institutional and community probation officers and service providers. I would ask that the Crown take steps to ensure that these observations are communicated to the appropriate provincial correctional authorities.

[24] In the result, I would grant leave to appeal but dismiss the appeal from sentence.

"The Honourable Mr. Justice Fitch"

I AGREE:

"The Honourable Chief Justice Bauman"

I AGREE:

"The Honourable Madam Justice Kirkpatrick"

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/16/05/2016BCCA0507.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-belcourt-2016>

Prepared on 27 October 2026 · Esheria