
CANADA / JUDGMENT

R. v. Bell

2017 BCSC 1741

COURT

Supreme Court of British Columbia

DECIDED

25 August 2017

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

2017 BCSC 1741 R. v. Bell

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Bell,

2017 BCSC 1741

Date: 20170825

Docket: 26770

Registry: Vancouver

Regina

v.

Alexander Bell

(also known as Garth Alexander Perry)

Before: The Honourable Madam Justice H. Holmes

Oral Reasons for Sentence

Counsel for the Crown:

M. Merry

Counsel for the Accused:

T.E. La Liberté, Q.C.

S. Lee, Articling Student

Place and Dates of Hearing:

Vancouver, B.C.

August 9, 11, 25, 2017

Place and Date of Judgment:

Vancouver, B.C.

August 25, 2017

- [1] THE COURT: Mr. Bell, you have pleaded guilty to four firearms offences relating to four different firearms. Three of the charges are for possessing a prohibited loaded firearm, contrary to s. 95(1) of the Criminal Code. The fourth is for occupying a vehicle while knowing that there was a firearm in the vehicle, contrary to s. 94(1) of the Code. You committed all four of the offences while you drove a Cadillac vehicle in downtown Vancouver on April 5, 2014, late in the evening.
- [2] The task now is to determine the appropriate sentences.

THE OFFENCES

- [3] Mr. Bell came to the attention of the police because of two driving infractions. When they pulled him over and asked for his driver's licence, he appeared very nervous but showed no signs of impairment by alcohol. Thinking, therefore, that Mr. Bell might be under the influence of drugs, one of the police officers administered roadside tests for impairment by drugs. During those tests, the police noticed a shoulder strap under Mr. Bell's clothes, searched him for safety reasons, and discovered that he was wearing a double holster with two loaded handguns, one on each side.
- [4] One of the handguns in the holster was a Heckler & Koch semi-automatic pistol, a prohibited weapon, and one that had been smuggled into Canada from the USA. It had a cartridge in the chamber, and nine rounds in the magazine.
- [5] The other handgun in the holster was a Para-Ordnance semi-automatic pistol, also a prohibited weapon. It too was loaded, with one cartridge in the chamber, and eight cartridges in the magazine. That weapon was manufactured in Canada, but made its way to the USA and was likely smuggled back to Canada.
- [6] Mr. Bell also had on his person a black knife, \$1,268 in cash, two cell phones wrapped in tin foil, a secure digital memory card, and two key cards for the Fairmont and Hyatt hotels.
- [7] The other two firearms were in a gym bag on the back seat of the Cadillac.
- [8] One of these firearms was a Mossberg .22 semi-automatic rifle, with its barrel and stock cut down, making it a prohibited weapon. It had a cartridge in the chamber, and ten cartridges in the magazine.

- [9] The other firearm in the gym bag was a 9 mm Luger Kel-Tech rifle, which is neither prohibited nor restricted. That firearm was not loaded, but there were three suitable magazines in the gym bag which, together, had 28 cartridges in them.
- [10] Also in the gym bag was a small sunglass case containing a small number of rounds suitable for use in each rifle, as well as \$32,340 in cash.
- [11] Mr. Bell has never had the necessary licences or certificates to possess these four firearms or any others.
- [12] I will turn now to Mr. Bell's background and circumstances.

MR. BELL'S BACKGROUND AND CIRCUMSTANCES

- [13] A very useful pre-sentence report describes them.
- [14] Mr. Bell was raised by his mother and step-father, and had a stable childhood. He ran into difficulty in his early teens, when he began to use hard drugs. To his credit, and with the help of professional treatment, Mr. Bell has had no problem with drugs or alcohol for many years. His previous drug problems seem to have been in part as a result of opioid dependency after morphine was prescribed for pain resulting from a car accident.
- [15] Mr. Bell has a Grade 10 education and a sporadic employment history in different types of work, including dishwashing, construction, outreach, and trucking.
- [16] He has convictions for a variety of offences committed between his late teens and his later twenties. These include drug offences, driving over .08, dangerous operation of a motor vehicle, frauds, and mischief. Mr. Bell was not convicted of any offences after 2000, except for an offence of fraud under \$5,000 in September 2014 in Edmonton, for which he was sentenced to three days in jail. Previous sentences, for the offences much earlier, included jail for most of his offences, but never for periods longer than five months.
- [17] Mr. Bell has three children from a five-year relationship that began in 1991. However, he has never had a relationship with the children.
- [18] For several years, Mr. Bell has been in a close relationship with a new partner, a former social worker. In June 2017, he moved with her to Harrison Mills, near Agassiz, so that he would be well away from the downtown eastside. Mr. Bell credits his new partner with much of the success he has had in turning his life around.
- [19] Mr. Bell's partner has health problems, and depends heavily on him as a result. He is very worried about a sentence that would leave him unable to help her.

- [20] Mr. Bell has recently taken up skydiving with great passion. He has accumulated more than 350 hours. As he explained in his personal statement to the Court, in only 15 months he has nearly reached the highest level of qualification. Skydiving has also led Mr. Bell to part-time employment at the airport, tying down planes and in other similar work. I was told this morning that his employer, who knows about these proceedings, has now given him full-time employment.
- [21] The probation officer who prepared the pre-sentencing report identified some rationalization in Mr. Bell's attitude toward the offences.
- [22] Mr. Bell told the probation officer that he accepted responsibility for the offences, and would have made different choices if he could go back in time. He attributed his offences to poor judgment and poor decision-making. I do not doubt any of those statements, which are borne out by Mr. Bell's personal statement to the Court and his demeanour in the courtroom during the sentencing proceedings.
- [23] However, Mr. Bell's additional explanation was, in the evident view of the probation officer as well as in mine, somewhat unconvincing. He said that he had good intentions, and merely wished to transport the guns to another place to store them safely there. He told the probation officer that he bought the firearms "off the street" and used the holsters and the bag for the rifles because these were the easiest way to transport the guns from his apartment to the other location. During the sentencing proceeding, the defence added the more specific information that the guns were to go to a warehouse with a safe.
- [24] These explanations do not account at all for the facts that three of the guns were fully loaded, and that two of the loaded guns, the two prohibited handguns, were in a holster on Mr. Bell's person, each with a round in the chamber. Nor do the explanations sufficiently account for the other unusual items found by the police. The obvious inference is that, for reasons best known to Mr. Bell, he is to this day unwilling to speak openly about what led him to the offences. He is not obliged to do so, but his guardedness causes me to view the turn-around in his life with a measure of caution, although I do not doubt that he has taken the impressive steps he describes. In my view, the rehabilitation process is not complete.
- [25] A number of people wrote letters showing their appreciation or support for Mr. Bell. He was evidently appreciated as an employee in Vancouver. His efforts at the skydiving club are recognized, and his volunteering is valued. Mr. Bell has the continued love and support of his mother, who has seen significant changes in him. Two officers of the Vancouver Police Department's Organized Crime Section speak positively of Mr. Bell's compliance with his bail conditions, and of his attempt to make positive changes in his life. Those officers, who have conducted approximately 75 curfew checks on Mr. Bell since August 2014, note that he has removed himself from past associations, and has left employment opportunities that would have required him to work in the downtown eastside where he is at risk of resuming his previous lifestyle. In the view of these police officers, Mr. Bell has demonstrated that he has the ability to continue to make positive decisions, and to be a positive member of society.

POSITIONS OF THE PARTIES

- [26] The Crown seeks sentences of 45 months' imprisonment for each charge under s. 95(1), and 42 months for the charge under s. 94(1), all to be served concurrently, after credit for the 32 days Mr. Bell spent in pre-sentencing custody.
- [27] The defence acknowledges that, given how seriously society views firearms offences, a jail sentence is not inappropriate. However, the defence says that a sentence of approximately two years, followed by probation, would satisfy the sentencing objectives.
- [28] The defence submits that the sentence of imprisonment is appropriately served in the community, in light of the remarkable steps Mr. Bell has taken to rehabilitate himself since the offences. Mr. Bell himself is willing to comply with any conditions the court may impose, such as a period of house arrest followed by a curfew for the remainder of the sentence.

DISCUSSION

Aggravating and Mitigating Circumstances

- [29] There are several aggravating circumstances.
- [30] Mr. Bell has a criminal record that has brought him before the courts many times before, although, with the exception of the fraud in 2014, most of his record is dated.
- [31] During these offences, Mr. Bell put the public at high risk by transporting the firearms in an extremely unsafe manner through the busy streets of downtown Vancouver. Three of the firearms were loaded either to capacity or close to it, and additional ammunition for them was in the vehicle. Two of the loaded firearms were readily accessible for use, in the holster on Mr. Bell's person.
- [32] There are also important mitigating circumstances.
- [33] Mr. Bell has pleaded guilty to these offences, taking responsibility for them. He has complied with the conditions of his bail since his arrest and release, including a curfew. As I have discussed, he has also taken very significant steps to rehabilitate himself, to make sure that he stays free of criminal conduct in the future.
- [34] Mr. Bell also takes responsibility for helping his new partner and shows a deep concern for and commitment to her.
- [35] I take into account also that in a civil forfeiture action, Mr. Bell forfeited the Cadillac he was driving at the time of the offences as well as the cash seized from it, subject to some relief in an amount not specified in this proceeding.

The Legal Principles

- [36] The maximum sentence for an offence under s. 95(1) is ten years' imprisonment. The three-year mandatory minimum sentence that used to apply, for a first offence, was struck down by the Supreme Court of Canada in *R. v. Nur*, 2015 SCC 15, because it could lead to cruel and unusual punishment in violation of s. 12 of the Charter. The available range of sentence allowed by the Criminal Code is therefore very wide.
- [37] However, case authorities have effectively narrowed the range, by explaining that certain of the sentencing objectives must be given greater weight than the others, given the danger that firearms offences of this type pose to society. Repeatedly it is said that the greatest emphasis must be given to the objectives of denouncing the offending conduct and deterring others from similar conduct. Nonetheless, the other objectives continue to play a part, including those of rehabilitating the offender, and of not depriving an offender of liberty where less restrictive sanctions are appropriate.
- [38] The majority in *Nur* discussed the wide range of conduct encompassed by s. 95(1), and described it according to a spectrum of sentences, relative to the three-year mandatory minimum that was under discussion:
- [82] Section 95(1) casts its net over a wide range of potential conduct. Most cases within the range may well merit a sentence of three years or more, but conduct at the far end of the range may not. At one end of the range, as Doherty J.A. observed, "stands the outlaw who carries a loaded prohibited or restricted firearm in public places as a tool of his or her criminal trade. . . . [T]his person is engaged in truly criminal conduct and poses a real and immediate danger to the public": para. 51. At this end of the range -- indeed for the vast majority of offences -- a three-year sentence may be appropriate. A little further along the spectrum stands the person whose conduct is less serious and poses less danger; for these offenders three years' imprisonment may be disproportionate, but not grossly so. At the far end of the range, stands the licensed and responsible gun owner who stores his unloaded firearm safely with ammunition nearby, but makes a mistake as to where it can be stored. For this offender, a three-year sentence is grossly disproportionate to the sentence the conduct would otherwise merit under the sentencing provisions of the Criminal Code.
- [39] The sentences of 40 months' imprisonment for Mr. Nur and (effectively) seven years' imprisonment for Mr. Charles were upheld because of the individual circumstances of the two offenders, demonstrating the principle that a sentence must be proportionate to the gravity of the offence and the moral culpability of the offender.
- [40] The decision under appeal in *R. v. Holt*, 2015 BCCA 302 was rendered before the Supreme Court of Canada issued its decision in *Nur*. However, the trial judge in *Holt* had held the mandatory minimum sentence to be constitutionally invalid, and the Crown's appeal from sentence proceeded on the basis that the sentence was unfit, even without reference to the mandatory minimum. Like the majority in *Nur*, the Court of Appeal in *Holt* referred to the spectrum of conduct described by Justice Doherty, and concluded that Mr. Holt's case lay at

the bottom end of the "criminal" range and, therefore required a sentence of close to three years, that conclusion described by the Court as involving a re-alignment of the range of sentences for this type of offence in British Columbia.

- [41] The Court increased Mr. Holt's sentence to 30 months, before credit for 24 days' time served. Mr. Holt, who was in his mid-sixties, had a loaded .22 calibre revolver in a backpack in his truck when he was stopped for a driving infraction in Burnaby. He was a heavy drug user with a single and dated criminal conviction, and no gang or criminal associations except in relation to his drug use.
- [42] The Crown submits that these cases and others support the sentences the Crown proposes, referring to *R. v. Endean*, 2017 BCCA 125, *R. v. Guha*, 2012 BCCA 423, and *R. v. Ellis*, 2016 ONCA 598.
- [43] The defence submits that many of the cases on which the Crown relies are markedly different because either the accused was clearly involved in additional criminal conduct at the time of the firearms offence, or the accused's claim of rehabilitation after the offence was unconvincing. It is true that no two cases are identical, whether for the offence or for the offender. However, in my view the case authorities send a clear message that because the sentence must have a strong denunciatory and deterrent effect, sentences such as those proposed by the defence in this case will not be appropriate.
- [44] The Court of Appeal recently made this clear in *R v. Kachuol*, 2017 BCCA 292. Like Mr. Bell, Mr. Kachuol was charged under s. 95(1) after he was stopped for a driving infraction in downtown Vancouver and a search of his vehicle revealed a loaded firearm. Mr. Kachuol had one firearm, an unregistered .357 Magnum handgun, a prohibited firearm. He had been prohibited from possessing any firearms after a previous drug conviction, and was also on probation.
- [45] The Court in *Kachuol* allowed the Crown's appeal from a conditional sentence of 23 months and 29 days, and substituted a sentence of three years' imprisonment, which the Court described as a fit sentence at the bottom of the range for "truly criminal" conduct on the continuum discussed in *Nur*. The Court had no doubt that Mr. Kachuol's offence was of that nature; "proof of a direct connection with other criminal activity was unnecessary to situate the offence at the "true crime" end of the s. 95(1) spectrum" (para. 28).
- [46] Like Mr. Bell, Mr. Kachuol had strong support in the community and good prospects for rehabilitation. Mr. Bell lacks Mr. Kachuol's advantage of being considered a youthful offender. However, he does not face the aggravating factors Mr. Kachuol faced, of being on probation at the time and subject to a specific firearms prohibition. Mr. Kachuol also increased the risk his offence posed to the community by being under the effect of alcohol at the time.

- [47] I view Mr. Bell's offences as, like those in Nur, within the "criminal" range on the continuum of offences. A significant period of imprisonment is therefore necessary to condemn the conduct and to send a strongly deterrent message to others. Unauthorized firearms, especially concealed handguns, are a huge and destabilizing threat to our community. There is every indication that Mr. Bell was -- at the very least -- facilitating the proliferation of these kinds of weapons for personal gain.
- [48] However, I agree with Mr. La Liberté that the sentences should recognize Mr. Bell's sharp about-turn in his life. On his own initiative and at his own expense, Mr. Bell has achieved much of what society hopes the correctional system will achieve through a sentence of imprisonment. Despite the reservation I have expressed about Mr. Bell's apparent guardedness, I view his positive steps as real ones and steps that he should feel motivated to continue.
- [49] I also agree with Mr. La Liberté that Mr. Bell's sentences must recognize not only his guilty pleas but also the rehabilitation he has undertaken, in order to send a message encouraging similar efforts, where appropriate, in others facing charges.

SENTENCE

- [50] Mr. Bell, will you stand, please.
- [51] For each of the charges under s. 95(1) (counts 3, 6, and 12) you are sentenced to imprisonment for a period of two years and nine months.
- [52] For the charge under s. 94(1) (count 8), you are sentenced to imprisonment for two years and six months.
- [53] These sentences will run concurrently.
- [54] You will have credit for the 32 days you served in pre-sentencing custody. At the usual 1.5 rate of credit, total credit is 48 days. For the offences under s. 95(1), this leaves two years, seven months, and 12 days remaining to be served, beginning today.

ANCILLARY ORDERS

- [55] You are prohibited from possessing any firearm, cross-bow, restricted weapon, ammunition or explosive for ten years. That order is made under ss. 109(1)(b) and 109(2)(a) of the Code.
- [56] You are also prohibited from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, or prohibited ammunition for life. That order is made under ss. 109(1)(b) and 109(2)(b) of the Code.
- [57] You are to provide a sample of bodily substance suitable for DNA analysis. That order is made under s. 487.051(3) of the Code because the offences are secondary designated offences.

[58] There will also be an order for the forfeiture of the four firearms and all the ammunition seized from you or from your vehicle, under s. 491(1) of the Code. I believe I was given that order to sign. Yes, and I will sign it. That is available, Madam Registrar.

[59] THE COURT: Is there anything else that we need to deal with?

[60] MS. MERRY: Simply that the Crown will direct a stay of proceedings on the remaining counts on the indictment.

"The Honourable Madam Justice H. Holmes"

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/17/17/2017BCSC1741.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-bell-2017>

Prepared on 28 October 2026 · Esheria