

CANADA / JUDGMENT

R. v. Beres

2025 BCSC 1583

COURT

Supreme Court of British Columbia

DECIDED

14 August 2025

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2025 BCSC 1583 R. v. Beres

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Beres,

2025 BCSC 1583

Date: 20250814

Docket: 27183-2

Registry: Nelson

Between:

Rex

Respondent

And

Csaba Beres

Appellant

Before: The Honourable Madam Justice Lyster

On appeal from: An order of the Provincial Court of British Columbia,

dated May 18, 2023 (R. v. Beres, Nelson Registry 26708-1K; 27183-1)

Oral Reasons for Judgment

Counsel for the Crown:

W. A. Westcott

Counsel for the Appellant:

J. Fernandes

Place and Date of Hearing:

Nelson, B.C.

June 2, 2025

Place and Date of Judgment:

Nelson, B.C.

August 14, 2025

Introduction

- [1] Csaba Beres appeals a restitution order made against him when he was sentenced in Provincial Court on May 18, 2023.
- [2] Mr. Beres had pleaded guilty to two counts on Nakusp Information 27183-1 on July 14, 2022. On April 19, 2023, Mr. Beres appeared for his sentencing hearing. The sentencing hearing dealt with both Information 27183-1, and a separate Information on which he had been found guilty after trial, involving a different complainant.
- [3] On May 18, 2023, the sentencing judge sentenced Mr. Beres to six months less a day on the separate Information, for assault causing bodily harm. With respect to Information 27183-2, he sentenced Mr. Beres to six months less a day on Count 1, assault causing bodily harm; and seven days on Count 3, committing mischief by wilfully damaging a motor vehicle. All sentences were to be served consecutively. Mr. Beres was further sentenced to 15 months probation.
- [4] In issue on this appeal is the stand-alone restitution order made by the sentencing judge, pursuant to which Mr. Beres was ordered to pay \$1,392.00 to the complainant within 12 months of completing his custodial sentence. Mr. Beres appeals on the basis that the restitution order fails to follow the principles set out in *R. v. Abdulahi-Sabet*, 2020 BCCA 213 [Abdulahi-Sabet]. He submits that the sentencing judge erred in law by merely noting his ability to pay restitution, and failing to consider the duration of incarceration as a factor in determining whether to order restitution or its amount.

Sentencing Proceedings as they relate to the Restitution Order

- [5] At the sentencing hearing, the judge had the benefit of a pre-sentence report which summarized Mr. Beres' work and financial status as follows:

Csaba is currently employed by Lonestar Construction, mostly doing interior and exterior painting. He reports earning an average of \$2000 per month, paid on a job-to-job basis. He relates his income satisfies his basic needs although he would like to rent or own a better space in the future.

His monthly bills consist of truck insurance; and a cellphone. Based on his living arrangement with his employer, he does not pay for rent or utilities. He reports having substantial debt, totalling approximately \$100,000. This debt is a combination of credit cards and lines of credit. He relates he is not currently making payments on this debt and is considering filing for bankruptcy. He reports the remainder of his income goes towards necessities. He reports no savings.

- [6] At paras. 15-16 of his reasons for sentence, the judge summarized the circumstances of the offences. The elderly complainant had hired Mr. Beres to install some car seats in a vehicle, and there was a dispute about payment. Mr. Beres broke the windshield of the complainant's car using his fist. The complainant then drove to the Nakusp RCMP detachment. Mr. Beres followed him and struck him in the face, causing him to fall to the ground. Mr. Beres walked away and then returned to kick the complainant several times while he lay on the ground. He walked away again and then returned a final time to stomp on the complainant's cell phone.
- [7] At the conclusion of his reasons for sentence, the judge waived the victim fine surcharge. In doing so, he stated at para. 78 he was waiving the surcharge because Mr. Beres was unable to pay it.
- [8] The Crown then noted that it had sought a restitution order in the amount of \$1,392, consisting of the \$300 deductible for the car windshield Mr. Beres broke, and the replacement cost of the iPhone he smashed. At para. 82, the judge ordered restitution in the total amount of \$1,392. There was then some discussion between the court and counsel, as follows:
- [83] THE CLERK: And Your Honour, is that payable to the Clerk of the Court for transmission to Dieter Otte?
- [84] THE COURT: Yes, through the Clerk of the Court. When? What timeframe?
- [85] CNSL C. PINE: Pardon me, Your Honour?
- [86] THE COURT: What timeframe, or just leave it as a judgment?
- [87] CNSL C. PINE: I'm content to defer to my friend, I suspect after a period of incarceration Mr. Beres would need a significant -
- [88] THE COURT: Twelve months after his release.
- [89] CNSL T. HINMAN: I was going to suggest the term of probation, 12 months.

[90] THE COURT: Yes, I do not want him to be breached. My concern, if I make it a term and he does not pay, he is breached. This way, it is a judgment. So within 12 months of his release from custody. Anything else?

Jurisdiction and Standard of Review

[9] In its factum, the Crown accurately summarized this court's jurisdiction on a sentencing appeal as follows:

9. The right to appeal from a summary conviction matter is governed by Part XXVII of the Criminal Code. Section 822(1) of the Code provides that in a summary conviction appeal pursuant to s. 813, ss. 683 to 689 relating to appeals of indictable offences, except s. 683(3) and s. 686(5), apply.
10. The powers of the court hearing a sentence appeal are set out in section 687 of the Criminal Code:

687.(1) Where an appeal is taken against sentence, the court of appeal shall, unless the sentence is one fixed by law, consider the fitness of the sentence appealed against, and may on such evidence, if any, as it thinks fit to require or to receive,

- (a) vary the sentence within the limits prescribed by law for the offence of which the accused was convicted; or
 - (b) dismiss the appeal.
- (2) A judgment of a court of appeal that varies the sentence of an accused who was convicted has the same force and effect as if it were a sentence passed by the trial court.
11. Sentencing is an inherently individualized process, there is no such thing as a uniform sentence for a particular crime (R v. M. (C.A.) 1996 CanLII 230 (SCC) at 92). The law is well settled that the sentence imposed by a trial court is entitled to significant deference. An appellate court can intervene to vary a sentence only if it is demonstrably unfit or if the judge made an error in principle that had an impact on the sentence: R. v. Lacasse, 2015 SCC 64, paras. 41,44.

Analysis

[10] Mr. Beres submits that the sentencing judge erred in law by merely noting his past and future ability to make restitution. He further submits that the sentencing judge erred in failing to consider the length of the custodial sentence in ordering restitution. Further, he submits that this crime was not one for profit or a breach of trust, but the sentencing judge failed to consider this in imposing restitution.

[11] The Crown submits that the sentencing judge was clearly mindful of Mr. Beres' circumstances and the effect of the custodial sentence in waiving the victim fine surcharge. Both the Crown and the judge invited defence counsel's input with respect to the terms of

the restitution order, and the Crown specifically referred to the potential impact of the custodial sentence. The Crown acknowledges that Mr. Beres did not profit from his offences, but submits that the complainant is vulnerable, and suffered the out-of-pocket expenses claimed.

- [12] Both parties referred the court to Abdulahi-Sabet for the following principles
- [13] A restitution order survives any bankruptcy, is there for life and should not undermine an offender's prospects for rehabilitation. For this reason, an offender's past and future ability to make restitution is an important factor to be weighed and considered, not merely noted, by a sentencing judge: Robertson at para. 8; Fast-Carlson at paras. 17-19. The shorter a custodial sentence, the more likely it will be that a manageable restitution order will be appropriate. However, as the period of imprisonment becomes longer, a restitution order may become increasingly futile or result in an excessive sentence: Nanos at para. 14; Fast-Carlson at para. 11.
- [14] Nevertheless, where the offence in question involves a breach of trust or is theft-related and stolen money is unaccounted for, the fact that an offender has limited ability to pay restitution will be given little weight. A breach of trust is a significantly aggravating factor and offenders should be deprived of ill-gotten gains: Nanos at para. 17; Fast-Carlson at paras. 20-21. Accordingly, the determination of what happened to the money is an important consideration in deciding whether and in what amount a restitution order should be made: R. v. Solleveld, 2014 ONCA 418 at para. 44.
- [15] Where there is no breach of trust and an offender does not profit from the offence, an inability to pay restitution will weigh more heavily. In such circumstances, a restitution order need not be for the full amount and it may be appropriate to order differing amounts for different participants in the offence: Fast-Carlson at paras. 21-26
- [13] The Court in Abdulahi-Sabet referred and relied upon R. v. Nanos, 2013 BCCA 339 [Nanos] at paras. 14-16 for what it called at para. 16 "a comprehensive review of the principles that guide the imposition of restitution orders".
- [14] In Nanos, the Court cited with approval the following passage from the decision of the Ontario Court of Appeal in R. v. Castro, 2010 ONCA 718 at para. 18:
- [43] The comment that a restitution order should be made with restraint and caution is sometimes taken out of context as a free-standing brake on the making of a compensation order. The comment by Laskin C.J. in Zelensky regarding restraint and caution was made in the context of a broader statement that the purpose of a compensation order should not be to enforce a civil obligation, particularly where the amount taken is unclear; rather, the purpose of a compensation order is as part of the sentence. See Zelensky at pp. 961-962. The fact that a restitution order provides a convenient, rapid and inexpensive means of recovery for the victim, especially a vulnerable victim, is one of the considerations in favour of the making of such an order.

- [15] Looking at the proceedings at the sentencing hearing, including the pronouncement of sentence, holistically, I conclude that the sentencing judge did not err in principle or impose a demonstrably unfit restitution order on Mr. Beres.
- [16] At para. 18 of *Abdulahi-Sabet*, the Court stated that it agreed with the Crown in that case that "the absence of articulated reasons for the imposition of the restitution order, standing alone, does not amount to a material error justifying a variation of sentence". An appellate court must adopt a functional approach to reviewing reasons in the context of the record and submissions of counsel.
- [17] Applying such an approach to the case at bar, it is apparent that the sentencing judge was alive to Mr. Beres' financial circumstances as summarized in the pre-sentence report. He asked counsel for their submissions with respect to the terms of a restitution order. In her submissions, Crown counsel referred to the effect of the period of incarceration on Mr. Beres' ability to pay. Defence counsel suggested he be given 12 months to pay. The judge's concern with respect to Mr. Beres' individual circumstances is made clear by his decision to make a stand-alone restitution order, rather than making restitution a term of his probation, in order to ensure that failure to pay would not result in him being found in breach of his probation.
- [18] Unlike in *Abdulahi-Sabet*, where a restitution order in the amount of \$35,607.09 was imposed, the restitution order in the case on appeal was modest, in the amount of \$1,392. Mr. Beres was making \$2,000 a month at the time he was sentenced. He was given 12 months to pay following his period of incarceration. It was reasonable, in these circumstances, for the sentencing judge to be satisfied that the restitution order would be within Mr. Beres' means to pay.
- [19] As submitted on behalf of Mr. Beres, this was not a theft or a breach of trust, which is a relevant factor. However, the vulnerability of the victim is also a relevant factor. In this case, the victim was 72 years of age. Mr. Beres assaulted the victim in what was described by the sentencing judge at para. 42 as an "explosion of aggression on a 72 year old senior citizen as he lay helpless on the ground by kicking him in the body and face repeatedly [that] amount to senseless and out of control vicious acts of violence."
- [20] The victim's vulnerability was reflected in the Victim Impact Statement read in by Crown counsel during the sentencing hearing. He said that he was terrified, and could constantly hear Mr. Beres' voice threatening him that "this is only the beginning. I will take your business down." He lost business data, including work contacts, information and pictures, due to the damage to his cell phone.
- [21] In *Castro*, the court stated that "the fact that a restitution order provides a convenient, rapid and inexpensive means of recovery for the victim, especially a vulnerable victim, is one of the considerations in favour of the making of such an order". That consideration applies with some force in the case on appeal.

[22] I conclude that the restitution order made by the sentencing judge was fit. I dismiss the appeal.

"L.M. Lyster J."

LYSTER J.

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