
CANADA / JUDGMENT

R. v. Billyboy

2011 BCSC 366

COURT

Supreme Court of British Columbia

DECIDED

14 January 2011

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

2011 BCSC 366 R. v. Billyboy

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Billyboy,

2011 BCSC 366

Date: 20110114

Docket: 30352

Registry: Williams Lake

Regina

v.

Frisco Tweedie Billyboy

Restriction on Publication: An Order has been made in this case pursuant to Section 486.4(1) of the Criminal Code that prohibits any information that could identify the complainant being published, broadcast or transmitted

Before: The Honourable Mr. Justice Savage

Oral Reasons for Sentence

Counsel for the Crown:

S. Morrison

Counsel for the Accused:

R. Kaiser

Place and Date of Trial:

Williams Lake, B.C.

August 16-20, 2010

Place and Date of Judgment:

Williams Lake, B.C.

January 14, 2011

I. Introduction

- [1] This matter comes before me for sentencing following a trial in which I found Mr. Billyboy guilty of the offences charged of as charged of robbery, unlawful confinement, uttering threats and sexual assault, so that offences against section 344(1)(b), 279(2), 264.1(1), and 271 of the Criminal Code are made out. The maximum penalties for those offences range from 5 years to life imprisonment.
- [2] The parties agree that, based upon the principles in Kienapple, Count 3 is incorporated into the other offences, so I will be sentencing only on Counts 1, 2, and 4.
- [3] Both counsel in their submissions referred only to a global sentence, so I will provide a global sentence on those three counts.
- [4] I have had the benefit of submissions by counsel and have reviewed the Pre-Sentence Report prepared by Alex Miller, a report dated October 5, 2010 prepared by Dr. Mel Stangeland of the Ministry of Health Forensic Psychiatric Services, and an earlier Presentence Report prepared by Ms. Carmelo Bartella.
- [5] I have also received and reviewed a separate and recent "Gladue Pre-Sentence Report", prepared by N.J. Stump. The Crown filed a victim impact statement which I have read and considered.

II. Circumstances of the Offence

- [6] The offences occurred on November 30, 2009. The offences appeared unplanned and to some extent opportunistic, that is, the victim was unknown to Mr. Billyboy, there was a chance encounter at the 7-Eleven, she was followed by him from the 7-Eleven as she walked to her place of work near midnight. As she walked past Boitanio Park she was grabbed from behind, dragged into the park, money was demanded, she was held against her will, threatened, and sexually assaulted by Mr. Billyboy.
- [7] The facts concerning the offences are fully set out in R. v. Billyboy, 2010 BCSC 1227, so I will not repeat them here.

III. Circumstances of Mr. Billyboy

- [8] Mr. Billyboy was born July 31, 1991, so at the time of these offences was 18 years old. He has a Grade 9 education. He was primarily raised by his grandmother because his mother had alcohol problems. He returned to his mother and, according to the pre-sentence reports, that is when his more serious problems began.
- [9] He is a single man, and a member of the Anaham (Tsihqot'In) First Nation. According to the pre-sentence report his family and peers are for the most part involved in the criminal justice system, and Mr. Billyboy is a member of the "712" a local gang.
- [10] At the time of the pre-sentence reports, Mr. Billyboy denied that he had committed the offences.
- [11] Mr. Billyboy admitted to a criminal record at trial as follows: June 2007 convicted of stolen property under \$5000; November 26, 2008 guilty of breach of undertaking or recognizance; December 4, 2008 failing to comply with sentence, possession of stolen property under \$5000, flight from a police officer, 2 counts of breach of undertaking; June 2008 failing to comply with sentence, possession of stolen property under \$5000; and June 24, 2009 failing to comply with a sentence, possession of stolen property under \$5000, breach of undertaking or recognizance.
- [12] Mr. Billyboy's criminal record indicates a person who has difficulty complying with the rules of community supervision. He has no prior convictions for sexual offences. Although he has not admitted to the offences, somewhat incongruously he acknowledges that persons convicted of such offences "need help", and is not adverse to taking sex offender programs.

IV. Principles of Sentencing

- [13] The relevant principles of sentencing that I must consider are set out in s. 718, 718.1, and 718.2 of the Criminal Code. Section 718 provides that:
718. The fundamental purpose of sentencing is 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;
 - (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;
 - (e) to provide reparations for harm done to victims or to the community; and
 - (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

...

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

718.2 A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, ... [NONE OF THE DEEMED AGGRAVATING CIRCUMSTANCES APPLY HERE].
- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
- (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 should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

[14] The fundamental purpose of sentencing is 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.

[15] In reviewing these factors, I am mindful of the admonition of the Supreme Court of Canada in *R. v. C.A.M.* (1996), 105 C.C.C. (3d) 327, [1996] 1 S.C.R. 500, at para. 82, that the relative weight and importance of these factors will vary depending on the nature of the crime and the circumstances of the offender.

[16] The overarching duty of the sentencing judge is to draw on all legitimate principles of sentencing to determine what is just and appropriate and reflects the gravity of the offence committed and the moral blameworthiness of the offender.

[17] I have reviewed the following cases referred to me by counsel: *R. v. Myers*, [2000] O.J. No. 1787, *R. v. Richard* (1994), 94 C.C.C. (3d) 285, *R. v. Mooney*, [1993] B.C.J. No. 523 (C.A.), 23 B.C.A.C. 274, *R. v. French*, [1991] N.J. No. 80 (C.A.), 90 Nfld. & P.E.I.R. 358, *R. v. Khan*, [1994] B.C.J. No. 724 (C.A.), *R. v. Roper*, [1997] O.J. No. 305 (C.A.), *R. v. Wells*, 2000 SCC 10, *R. v. A* (D.M.), 2001 BCSC 557, and *R. v. B.S.B.*, 2008 BCSC 1526. Those cases indicate a range in sentencing from 3 to 8 years imprisonment. The Crown asks for 8 years imprisonment with credit for time served, based on 2 for 1. The defence suggests a sentence of 2 years less a day in addition to the time served plus a two-year period of probation.

- [18] Sentencing is, of course, fact specific. In addition to the circumstances of the offence the circumstances of the offender are also considered. In this case we have particular serious offences, involving a violent sexual assault on an innocent stranger in the downtown community very near law enforcement agencies and this very court house. The victim is a courageous and impressive young woman who was required to testify at the preliminary hearing and trial. Her statement expresses the effects this terrible event has had on her life. We also have a very young aboriginal offender with difficult antecedents.
- [19] I have earlier summarized the parties' respective positions on sentencing. What is troubling to me is that the offender has yet to take responsibility for his actions. Consequentially, the risk assessment of Dr. Stangeland does not present an optimistic picture, wherein the offender presents a high risk for sexual violence. Thus, he is a poor candidate for sexual offender therapy, and is noted to be poorly motivated to partake in such.
- [20] His existing record also suggests he is a poor prospect to comply with non-custodial orders.
- [21] That said, the cases presented by the Crown, although many are only sexual assaults, in my view involve longer periods of confinement and more violence as well as older offenders, some with more serious criminal records. I accept that the more serious the offence the less important the Gladue factors are, but I must also taken into account the fact you are aboriginal and your troubled upbringing.

V. Sentence

- [22] Mr. Billyboy please stand. In my view the most germane principles of sentencing here must be to denounce your conduct, to deter others, to promote a sense of responsibility in offenders, and to separate an offender from society and to a lesser extent, to give you access to the programs that you obviously need.

A. Period of Incarceration

- [23] In the circumstances I impose on you a sentence of 5 years imprisonment. Pursuant to section 719(3) of the Criminal Code, you are credited with the time you have spent in pre-trial custody which is, I am advised, 1 year and 1.5 months. Accordingly, you are to be credited with 2 years and 3 months, leaving a remaining sentence of 2 years and 9 months.
- [24] This term of imprisonment will allow you access to federal correctional programs for sexual offenders, anger management, and a variety of educational programs. I urge you to take responsibility for your actions, to advantage of those programs, and to create a plan to brighten your future.

B. Other Matters

- [25] Pursuant to s. 487.051(1) of the Criminal Code, you are required to provide bodily samples for the purpose of forensic DNA analysis as may be reasonably required for that purpose by means of the investigative procedures described in s. 487.06(1) of the Criminal Code.
- [26] The Sex Offender Information Registration Act requires that I shall on application by the prosecutor make an order that you comply with that Act because you have been convicted of a designated offence, in this case, s. 271 of the Criminal Code.
- [27] As no issue was taken with this, I am satisfied that the impact on your privacy or liberty would not be disproportionate to the public interest.
- [28] This requires:
1. You must report to the registration centre referred to in s. 7.1 of the Sex Offender Information Registration Act whenever required under subsection 4(2) of that Act.
 2. You must subsequently report to the registration centre referred to in s. 7.1 of the Sex Offender Information Registration Act whenever required under s. 4.1 or 4.3 of that Act for a period of 20 years after this order is made.
 3. Information relating to you will be collected under ss. 5 and 6 of the Sex Offender Information Registration Act by a person who collects information at the registration centre.
 4. Information relating to you will be registered in a database and may be consulted, disclosed, and used in circumstances set out in the Sex Offender Information Registration Act.
 5. If you believe that the information registered in the database contains an error or omission, you may ask the person who collects information at the registration centre referred to in s. 7.1 of the Sex Offender Information Registration Act.
 6. You have the right to appeal this order.
 7. You have the right to apply to a court to terminate this order and the right to appeal any decision of that court.
 8. If you are found to have contravened this order, you may be subject to a fine or imprisonment or to both.
 9. If you are found to have provided false or misleading information, you may be subject to a fine or imprisonment or to both.
- [29] Pursuant to ss. 490.012 and 490.013 of the Criminal Code, you are required to comply with the Sex Offender Registration Act for a period of 20 years.
- [30] Sexual assault is a violent act within the meaning of s. 109 of the Criminal Code. Thus you have been convicted of an indictable offence in the commission of which violence was used.

[31] Pursuant to s. 109(1) of the Criminal Code I prohibit you from possessing any firearm, for a period of 10 years from today, and any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for life.

[32] In light of your circumstances, the victim fine surcharge is waived.

"The Honourable Mr. Justice Savage"

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/11/03/2011BCSC0366.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-billyboy-2011>

Prepared on 29 October 2026 · Esheria