

CANADA / JUDGMENT

R. v. Bilotta

2015 BCSC 181

COURT

Supreme Court of British Columbia

DECIDED

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2015 BCSC 181 R. v. Bilotta IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Bilotta, 2015 BCSC 181 Date: 20150210 Docket: 62664 Registry: Chilliwack Between: Regina Respondent And Anthony John Bilotta Appellant Before: The Honourable Mr. Justice Joyce On appeal from: A decision of the Provincial Court of British Columbia, dated July 28, 2014 (R. v. Bilotta, Abbotsford Docket Nos. 80941-1KA, 80941-2KA, 80941-3KA, 80941-4KA, 80941-5KA). Reasons for Judgment Counsel for the (Crown) Respondent: M.D. Smith Counsel for the Appellant: J.P. Reveley Place and Date of Hearing: Chilliwack, B.C. December 1, 2014 Place and Date of Judgment: Chilliwack, B.C. February 10, 2015

Introduction

- [1] On July 28, 2014, the appellant, Mr. Bilotta, pleaded guilty and was sentenced on six counts of breaches of various court orders. He received a total sentence of 114 days' incarceration to be followed by two years' probation.
- [2] The appellant appeals his sentence on a number of grounds. He has already served the custodial part of his sentence, so that part of his appeal is moot. However, he appeals the length of the probation order, taking the position that the two-year order is unfit and should be replaced by an order of six months' probation. He also submits that the no-contact provision in the probation order should be removed.

Background

- [3] In September 2013, Mr. Bilotta was charged in Alberta with mischief and uttering threats involving the mother of Ms. Karen Parsons, who is Mr. Bilotta's common-law spouse. Mr. Bilotta was released on an undertaking to appear and a no-contact order with regard to Ms. Parsons and her mother. Mr. Bilotta came to British Columbia in January 2014. Ms. Parsons came to British Columbia soon thereafter and they took up residence together, with their young baby. On February 23, 2014, the police were called to the residence in connection with some sort of dispute. At the residence, they found Ms. Parsons and Mr. Bilotta, who was quite belligerent to them. The police learned that Mr. Bilotta was subject to a no-contact order, but did not arrest Mr. Bilotta at that time. On or about April 30, 2014, Mr. Bilotta was

charged with breach of the no-contact condition (Abbotsford Provincial Court File 80941-1KA). He was released on May 1, 2014.

- [4] On May 12, 2014, the police attended at a residence in response to an alleged domestic disturbance. Karen Parson's answered the door and denied that Mr. Bilotta was in the residence. When the police did a sweep of the residence to ensure Ms. Parson's safety, they found Mr. Bilotta hiding under a chair. Mr. Bilotta was arrested and charged with breach of an undertaking (File 80941-2KA), but was released in court the same day.
- [5] On May 16, 2014, the police again attended to a domestic dispute involving Mr. Bilotta and Ms. Parsons. The appellant was arrested on May 26, 2014 and, again, charged with breach of the no-contact order with Ms. Parsons (File 80941-3KA). On May 29, 2014, Mr. Bilotta was detained on all three files by the Honourable Judge Point, of the Provincial Court of British Columbia.
- [6] On July 3, 2014, Mr. Bilotta had a bail review in Supreme Court at which time he was released on his own recognizance on the condition that he reside at VisionQuest, a residential treatment facility in Chilliwack, and undertake drug counselling there; and, on the condition that he have no contact with Ms. Parsons. Apparently, after one day at the facility, Ms. Parsons arrived there in a taxi, picked up Mr. Bilotta and they returned to Abbotsford.
- [7] On July 7, 2014, the police attended at a residence in Abbotsford in answer to a report of a person having overdosed on drugs. They discovered Mr. Bilotta and Ms. Parsons at the residence. Mr. Bilotta was charged again with breach of the no-contact order (File 80941-4KA), as well two other counts, namely breach of his reporting condition and breach of the residency condition (File 80941-5KA).
- [8] Mr. Bilotta pleaded guilty to all of these charges on July 28, 2014 and received a sentence of 114 days in jail, calculated as follows: Charge Actual Sentence Credit for time in Custody Effective Sentence 80941-1KA Breach of no-contact 11 days (consecutive) 3 days 14 days 80941-2KA Breach of no-contact 16 days (consecutive) 5 days 21 days 80941-3KA Breach of no-contact 1 day (concurrent with 4KA and 5KA) 60 days 61 days 80941-4KA Breach of no-contact 87 days (concurrent with 5KA) 33 days 120 days 80941-5KA Breach of reporting Breach of residence 87 days (concurrent with 4KA) 33 days 120 days Global actual sentence 114 days
- [9] In addition, the sentencing judge imposed a two-year probation order to all of the sentences, which includes a condition that Mr. Bilotta have no contact with Ms. Parsons.
- [10] At the sentencing hearing, the Crown sought a global sentence of 48 days, taking into account 64 days of pre-sentencing custody. The Crown also sought a probation order, but did not make a submission as to the length of the probation order.

- [11] Defence counsel sought a sentence of "time served". In making his submissions at the sentencing hearing, defence counsel submitted that:
- (i) the Appellant and Karen Parsons had been in a relationship for 8 years and had a child together: T. p.15 (29-34); (ii) Karen Parsons initiated contact in at least two of the breaches: T. pp. 14 (12-15, 38-44); (iii) Police had informed the Appellant that they would not be enforcing the Alberta conditions: T. p. 14 (16-27); (iv) the Appellant was ordered by a judge to reside across the street from Karen Parsons prior to the third breach; T. p. 15 (19-29);
 - (v) the Appellant attempted to return to the Vision Quest treatment centre, but was unable to due to lack of transportation: T. p. 16 (21-40); (vi) the Appellant suffered from a mental illness that was in the process of being diagnosed and treated: T. pp. 16-17 (35-20); (vii) the Appellant has support in the community and employment prospects: T. pp. 15 (35-41) and 20 (12-15).
- [12] [Mr. Bilotta's record included one conviction for failing to appear in 2004.] Errors alleged
- [13] The appellant submits that the sentencing judge made five errors that led to his imposing an unfit sentence:
1. Failing to consider the principle of totality.
 2. Overemphasizing the principles of denunciation and deterrence.
 3. Failing to consider mitigating factors.
 4. Failing to provide reasons for the length of sentence.
 5. Imposing an unreasonable probation condition. Reasons of the sentencing judge
- [14] It is obvious that the sentencing judge was concerned with the pattern of breaching the no-contact orders engaged in by Mr. Bilotta. After imposing an effective sentence of 14 and 21 days respectively for the first two breaches, the sentencing judge dealt with the third breach at para. 8, as follows:
- [8] KA3, that is the one where, as I say, the breach is right after he has been released, he has perfected his cash bail, goes back and breaches. On that matter, because it was again the third subsequent breach so quickly on there has just been no regard shown for the court orders, the sentence will be 60 days. But I take into account on that one that he had served 40 days in custody, and again I am crediting him with the time served at a rate of time-and-a-half of 60 days, so the net result will be no further time on that breach. I suppose the record will have to show one day, but the net result is intended to be no further time.
- [15] The sentencing judge then turned to the last three breaches, which he clearly considered to be a very serious continuation of the utter disregard by Mr. Bilotta of court orders deserving of a serious penalty. At para. 9, the sentencing judge said:

- [9] The last three breaches I am going to treat them as one incident because while they are three separate breaches they essentially arise from his failing to take advantage of what I think was a very generous bail provision by Justice Brown of the Supreme Court where he left VisionQuest, did not report to his probation officer, breached the no-contact and so forth. It was very blatant, and with all due respect to Mr. Reveley, I think it certainly was very egregious at that stage and time where a detention order had been made and a successful appeal is made, and then that order is promptly breached. That is one for which the Crown I think justly could call for the maximum penalty of six months, but I have to give Mr. Bilotta some credit for having entered guilty pleas on that matter. I also take into account some of the other factors that Mr. Reveley has mentioned, including his age and so forth. On that matter he has done, by my count, a total of 22 days in custody. I am going to credit him with time-and-a-half of 33 days. On those breaches, again these are going to be concurrent one with the other but consecutive to the other sentences, there will be a sentence of 120 days or four months, less the 33 days that he has spent in custody which I calculate to be another 87 days.
- [10] So when the smoke all clears, that is going to be an extra 114 days in addition to the time that he has spent in custody. I think that is certainly as generous as anyone can be for these circumstances, because breaching four court orders, I think enough is enough.

Analysis

- [16] The appellant submits that the sentencing judge failed to consider the principle of totality, which arises from s. 718.2(c) of the Criminal Code of Canada, R.S.C. 1985, c. C-46, which provides that where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh. The principle was explained by Chief Justice Lamer in *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, where he stated at para. 42:
- [42] The totality principle, in short, requires a sentencing judge who orders an offender to serve consecutive sentences for multiple offences to ensure that the cumulative sentence rendered does not exceed the overall culpability of the offender. Clayton Ruby articulates the principle in the following terms in his treatise, *Sentencing*, supra, at pp. 44-45: The purpose is to ensure that a series of sentences, each properly imposed in relation to the offence to which it relates, is in aggregate "just and appropriate". A cumulative sentence may offend the totality principle if the aggregate sentence is substantially above the normal level of a sentence for the most serious of the individual offences involved, or if its effect is to impose on the offender "a crushing sentence" not in keeping with his record and prospects.
- [17] In determining whether the sentencing judge erred in failing to give effect to the totality principle, the appellate court must give considerable deference: *R. v. Joseph*, 2010 BCCA 525 at para.12.

- [18] In this case, the sentences for the first two breaches were consecutive to each other. The appellant does not suggest that these sentences were unfit. The sentences for the last four breaches were concurrent with one another but consecutive to the first two, resulting in a further consecutive actual sentence of 87 days and a total global effective sentence of greater than six months. The appellant submits that the total sentence was excessive.
- [19] The sentences for the last three breaches certainly appear to be on the high side of sentences for breach of conditions of a bail order based on the cases provided by the appellant. However, the circumstances in this case were quite unusual and involved a pattern of similar breaches involving a no-contact order over a very short period of time, with arrests and further judicial interim releases between the breaches. It would appear that the sentencing judge concluded that a significant sentence was required in order to bring home to Mr. Bilotta the importance of obeying court orders, as other less drastic measures had not been successful. The sentencing judge was well aware of the total sentence and, as he remarked at para. 10, after breaching four court orders "enough is enough".
- [20] In my view and giving the sentencing judge the deference to which he is entitled, I am not prepared to say that he made an error in failing to consider the totality principle.
- [21] The appellant says that the sentencing judge failed to explicitly deal with any of the principles of sentencing, other than brief reference to mitigating factors and that it can be inferred that the principles of deterrence and denunciation were overemphasized and the mitigating factors were not considered. With respect, the sentencing judge referred to the factors identified by defence counsel in his submissions and I am satisfied that he took them into consideration, including the fact that Mr. Bilotta entered guilty pleas to all of the charges. In my view, it does not constitute reversible error in the circumstances of this case to fail to expressly set out and deal with the defence submissions one by one.
- [22] The appellant submits that the sentencing judge failed to provide reasons for exceeding the submissions of the Crown and for the length of sentence he imposed.
- [23] The actual sentence imposed was more than twice as long as that proposed by the Crown. In his reasons, the sentencing judge did not refer to counsel's submission with regard to the appropriate length of sentence. Reading the sentences as a whole, I infer that he rejected the submissions because the number and nature of the breaches of the court orders, despite the opportunity that Mr. Bilotta had been given when he was released by Mr. Justice Brown, warranted a sentence above that suggested by the Crown. He was concerned not merely with the fact that contact had been made with Ms. Parsons, but that Mr. Bilotta seemed to have a complete disregard for the authority of the court.
- [24] I agree with counsel that the sentence was definitely at the upper end of what might be considered appropriate, but I am not persuaded, in all the circumstances, that it was unfit.
- [25] In any event, it appears to me that the issue of the length of the custodial portion of the sentence is now moot. Mr. Bilotta has in fact served that portion of his sentence

- [26] As for the probation order, the appellant submits that the no-contact provision in relation to Ms. Parsons is unreasonable and provides no benefit to either the safety of society or the appellant's successful reintegration into the community. I disagree. The breaches to which Mr. Bilotta pleaded guilty involved contact with Ms. Parsons where police were involved in response to domestic disturbances. It appears that Mr. Bilotta's association with Ms. Parson's may well be a contributor to his failure to maintain a stable, drug-free life. As I see it, the probation order does provide a benefit to Mr. Bilotta in terms of his rehabilitation and reintegration into society. He and Ms. Parsons have a child together but the child was in the care of the Ministry at the time of sentencing.
- [27] In the event that Mr. Bilotta and Ms. Parsons deal with their drug addictions and wish to pursue their relationship, including, perhaps, seeking the return of their child, it is open to Mr. Bilotta to apply for a change of the probation order. In my view, that is the time to consider whether and for how long a continuation of the no-contact provision is appropriate. However, I am not satisfied that the sentencing judge erred in making the order.
- [28] For the forgoing reasons, I dismiss the appeal. "B.M. Joyce J."

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