

CANADA / JUDGMENT

R. v. Brophy

2025 BCSC 968

COURT

Supreme Court of British Columbia

DECIDED

23 May 2025

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

2025 BCSC 968 R. v. Brophy IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Brophy, 2025 BCSC 968 Date: 20250523 Dockets: 99846-2C; 99858-2; 100275-1; 99847-2C; 99848-1; 99849-2C Registry: Kelowna Docket: 50387-2 Registry: Penticton Docket: 57411-2 Registry: Vernon Docket: 23857-1 Registry: Rossland Rex v. Kevin Andrew Brophy Before: The Honourable Madam Justice Forth Oral Reasons for Sentence Counsel for the Crown: T. Sicotte Counsel for the Accused: M. Patterson B. Belcher Place and Dates of Hearing: Kelowna, B.C. April 29, May 1, and May 13, 2025 Place and Date of Judgment: Kelowna, B.C. May 23, 2025 Table of Contents Introduction.. 3 The Facts. 5 Circumstances of the Offences. 5 Circumstances of the Offender 5 Personal background, character, and current circumstances. 5 Attitude towards the Offences/ Efforts towards Rehabilitation. 9 Criminal Record. 10 Impact on Victims. 10 Crown and Defence Positions. 10 Legal Framework.. 12 A. Principles of Sentencing. 12 B. Aggravating and Mitigating Circumstances. 14 Range of Sentences. 14 Determining the Appropriate Sentence. 15 Terms of Sentence. 17

Introduction

- [1] The following are my oral reasons for sentencing. Kevin Brophy, the offender, was charged on nine indictments, or informations, for a total of 18 counts in four different registries.
- [2] On December 16, 2024, the offender plead guilty to count 1 on Penticton Reg. No. 50387-2, for possession of a stolen vehicle valued in excess of \$5,000 on October 18, 2023 contrary to s. 355(a) of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. The same day, the offender plead guilty to count 2 in Vernon Reg. No. 57411-2, for theft of an enclosed utility trailer valued in excess of \$5,000 on September 19, 2023 contrary to s. 334(a) of the Code.
- [3] On March 6, 2025, the offender plead guilty to counts 1 and 2 on Kelowna Reg. No. 99849-2C for breaking and entering for the purpose of committing an indictable offence on October 21, 2023 contrary to s. 348(1)(a) of the Code, and having in his possession without lawful excuse an instrument, namely a grinder, for the purpose of breaking into a place contrary to s. 351(1) of the Code.

- [4] On April 29, 2025, the offender plead guilty to the following before me: Kelowna Reg. No. 100275-1 · Count 1 - breaking and entering for the purpose of attempted theft of a motor vehicle on August 28, 2023 contrary to s. 348(1)(b) of the Code. Kelowna Reg. No. 99847-2C · Count 2 - possession of stolen property of a value not in excess of \$5,000 on September 28, 2023 contrary to s. 355(b) of the Code. Kelowna Reg. No. 99848-1 · Count 2 - theft of a safe and contents of a value not in excess of \$5,000 on October 14, 2023 contrary to s. 334(b) of the Code. Kelowna Reg. No. 99846-2C · Count 2 - theft of a trailer and contents of a value in excess of \$5,000 on October 12, 2023 contrary to s. 355(a) of the Code.
- [5] I heard sentencing submissions on April 29, 2025 and reserved my reasons to May 1, 2025. However, upon my review of the defence request for a conditional sentence order ("CSO"), I determined that I needed further submissions from counsel on the availability of a CSO in the circumstances of this case.
- [6] On May 1, 2025, I provided to counsel a memorandum asking that counsel provide further submissions on whether a CSO was available to Mr. Brophy and scheduled a continuation of the sentencing submissions for May 13, 2025.
- [7] On May 13, 2025, counsel agreed that a CSO was not available in the circumstances of this case. The defence withdrew its submission for a CSO.
- [8] The Crown submits that an appropriate sentence would be a total of 36 months, being 1,080 days of custodial time. In addition, upon release, the Crown seeks two years of probation with a number of conditions.
- [9] As noted above, the defence initially sought a 20-month CSO, followed by 24 months of probation, both with conditions for Kelowna Reg. No. 100275-1 and Vernon Reg. No. 57411-2. This submission was later withdrawn. For the rest of the files, the defence sought time served to date.
- [10] The defence sentencing submissions were amended on May 13, 2025, where the defence requested jail time of 12 months for Kelowna Reg. No. 100275-1 and six months and 13 days applied to Kelowna Reg. No. 99846-2C. In addition, the defence sought a three-year suspended sentence and two years probation with conditions for the other files.
- [11] As of today, Mr. Brophy has spent 382 days in custody. In my view, it is appropriate that he receive one-and-a-half days' credit for each of these days, so with the enhanced credit, he has served 573 days. The Facts Circumstances of the Offences
- [12] The salient facts of the offences are that Mr. Brophy went on a spree of property offences in the late summer and fall of 2023. The Crown provided a detailed summary of the various offences for which Mr. Brophy plead guilty.

- [13] In essence, Mr. Brophy broke into a number of properties, stealing or attempting to steal a variety of items. The most valuable item stolen was a semi-truck with a trailer containing lumber, valued at approximately \$300,000. Both the semi-truck and trailer were recovered by police (Penticton Reg. No. 50387-2). Mr. Brophy also stole a utility trailer filled with tools, including a generator, chainsaw, and other tools, all with an estimated combined value of \$20,000. The trailer and contents were not recovered (Vernon Reg. No. 57411-2).
- [14] He further stole a safe containing \$2,500 in cash and some cheques. The damaged safe was later located by police, but the cash and contents were not recovered (Kelowna Reg. No. 99848-1). Circumstances of the Offender Personal background, character, and current circumstances
- [15] The majority of the information about Mr. Brophy comes from a pre-sentence report ("PSR") filed February 20, 2025 prepared by Taylor Holman, probation officer, as well as a psychiatric assessment dated March 19, 2025 prepared by Dr. Georgia Walton.
- [16] Mr. Brophy is 45 years old and was born in Port Alberni, British Columbia. He moved to Saskatoon shortly after his birth, and then to Kelowna when he was 12 years old. He had a positive relationship with his father until his father died in July 2024 due to alcoholism. He has had a strained, "complicated" relationship with his mother, whom he described as "manipulative". However, at the sentencing hearing, he indicated that he now has a good relationship with his mother. He has a younger sister, with whom he has a positive relationship, and is also on good terms with his sister's children. He is estranged from his half-sister.
- [17] Mr. Brophy did not suffer any abuse in his childhood and was never in the care of the Ministry of Children and Family Development. His parents got divorced when he was a teenager, following which he began to associate with a negative peer group, consuming alcohol, illegal substances, and stealing. He has experimented with a number of substances including psilocybin, heroin, methamphetamine, ketamine, and cocaine. He claims to have stopped using methamphetamine and ketamine when he moved from Kelowna to Vancouver. He agreed that his cocaine use became a problem for him, impacting his relationships, employment, physical and mental health, and his freedom due to his involvement with the criminal justice system.
- [18] He started drinking alcohol around 17 years old. In 2022, while working a job at a mill, he began to drink significantly more.
- [19] Mr. Brophy met a woman named Candus in 2014 and began a relationship with her in 2015. She had two children from a previous relationship, who are currently 15 and 17 years old, and they had a son together. Their son is currently seven years old and is in the care of Candus.

- [20] Candus described the offender to the probation officer as being "amazing" when he is sober, stating that he was intelligent, kind, funny, reliable, and helpful. She asked him to leave their residence in June 2023 due to substance abuse. She has continued to visit Mr. Brophy while in custody three to four times a week. She confirmed that Mr. Brophy is welcome to return home, but this is his last chance, and she would not allow substances in the family home.
- [21] In her character letter to the Court, she described him as a "responsible, loving, energetic father that the kids miss every day." She explains that she has cerebral palsy which is very painful and affects her balance and range of motion. She has had nine surgeries on her legs. As such, any extra help around the home and property is missed.
- [22] Mr. Brophy graduated from Kelowna Secondary School. He described his school experience as difficult. He had behavioural issues, got into trouble, and had difficulty focusing. He was diagnosed with ADHD in elementary school, but his father refused to start him on medication. He began working while in high school as a full-service gas attendant. He attended college for audio engineering but never completed the program. He has had a number of construction jobs. He enjoys working and has a good work ethic when not using substances. He plans to work with Candus' brother or father who has a roofing and demolition company.
- [23] Mr. Brophy says he suffers from "paralyzing anxiety" and he believes he self-medicates for depression. He has never been under the care of a psychologist or psychiatrist. He describes having three panic attacks while incarcerated.
- [24] In a 2020 pre-sentence report, Mr. Brophy reported that he suffered significant head trauma throughout his life, including several skateboarding accidents, being struck on the head with a bat, and multiple motor vehicle accidents. He suspects that these incidents have caused some damage to his memory and problem-solving ability. He also suffers from chronic back pain.
- [25] He was assessed by Dr. Georgia Walton on February 26, 2025. The psychiatric report notes that between 2003 and 2007, Mr. Brophy attended three different treatment facilities. His participation was voluntary. He completed a program at the Kiwanis House in Kamloops and was participating in second-stage treatment when he relapsed, and then completed a 90-day program at Miracle Valley in Mission.
- [26] Mr. Brophy claims that he was abstinent from substances for about two-and-a-half years. He then relapsed with stimulant use and went on a spree of property offences in the spring and summer of 2008. He was convicted of several offences and served a federal sentence between 2009 and 2011. He was out of custody for about eight months before serving another federal sentence from 2012 to 2014 for a string of property offences he committed in 2011 in Cranbrook.

- [27] From late August through to October 2023, Mr. Brophy was involved in another set of property offences. He was arrested and attended a court-ordered 90-day treatment facility, the Hope Freedom Society ("Hope Society"). He was released from the treatment facility sometime around June 2024 and soon after relapsed with stimulant use.
- [28] There were a number of character letters from the Hope Society. A letter from Rebecca Friesen, Chaplain, dated September 19, 2024, noted that Mr. Brophy did well and functioned in a peer support role. A letter from Mark Foreman, Director of Client Care, dated October 11, 2024, noted the asset Mr. Brophy was to other clients and how Mr. Brophy has taken accountability for his actions and shown great remorse. Jessica Jennings, Program Director, commented on Mr. Brophy's personal growth and commitment to becoming a better person. She noted "remarkable progress" and "increased emotional maturity", coupled with a sincere desire to reintegrate into society. Finally, Janco Jensen, Intake Co-Ordinator, on November 5, 2024, commented on Mr. Brophy's willingness to participate in the program and how he became "exemplary to his peers in recovery". He became one of the drivers at Hope Society and provided peer support.
- [29] In November 2024, Mr. Brophy became acutely intoxicated with stimulants and was paranoid that his life was in danger. He was driving erratically when the police pulled him over and arrested him. He has been in custody ever since.
- [30] Dr. Walton diagnosed Mr. Brophy with stimulant use disorder, alcohol use disorder, and post-traumatic stress disorder ("PTSD") with panic attacks. Dr. Walton opined that the criminogenic risk factors that apply to Mr. Brophy include a severe stimulant use disorder. His PTSD also leaves him with an impaired ability to cope with stress and increases his risk of relapse for stimulant use. If he relapses into stimulant use, he is likely to engage in property offences to support his addiction. There is a lower likelihood of him perpetrating a violent offence, although it is possible he could engage in physical violence in the future.
- [31] Dr. Walton made the following recommendations:
1. Substance Use - an intensive substance use treatment, medication to decrease craving for alcohol, and re-engagement with AA and/or NA.
 2. Treatment for PTSD - pharmacology and psychotherapy.
 3. Psychosocial Rehabilitation - working in a steady and non-transient job that allows him to participate in substance use and mental health treatment on a regular basis.
 4. Supervision - he would benefit from some supervision with his family to help early detection of substance use and to provide support to his family if he were to become aggressive in the home. Attitude towards the Offences/Efforts towards Rehabilitation

- [32] Mr. Brophy explained that he feels guilty and is ashamed of his actions. He recognized the impact of his behaviour on himself as well as the victims and their families. The PSR notes that Mr. Brophy apparently attempted to minimize the impact his actions had on the businesses stating that "nothing was taken or damaged".
- [33] In court, he gave a heartfelt apology and expressed his embarrassment and shame for what he has done. I accept that he is deeply remorseful for his actions and recognizes the need to change his life and totally abstain from any drug use.
- [34] Mr. Brophy reported to Dr. Walton that his actions were influenced by his constant use of crack cocaine. He had been using constantly for two or three weeks. He became paranoid, hopeless, and desperate at the time of the offences which resorted in him stealing to support his addiction.
- [35] He previously attended counselling at East Kootenay Addictions Services, and he is interested in returning for more counselling. While on bail prior to his current incarceration, he reported consistently to his probation officer. He was allowed to leave the Hope Society to say goodbye to his father in Kelowna. He returned to the Hope Society without incident. He was eventually given more freedom and ultimately graduated from the program. Criminal Record
- [36] Mr. Brophy has a criminal record dating back to 2008. His convictions consist mainly of property-related offences and it appears that the timeline connects with Mr. Brophy's substance use. His only violent convictions were for uttering threats and resisting a peace officer in 2009.
- [37] I agree that his criminal record accords with his history of significant drug use. Impact on Victims
- [38] Mr. Brophy is primarily charged with property offences. The only direct information about the consequences of these offences is from one of the victims who described feeling angry and frustrated. It is clear the breaking and entering and stealing of other people's belongings negatively impacted the victims and the operation of their businesses. Crown and Defence Positions
- [39] The Crown's position is that Mr. Brophy should spend 1,080 days in custody for the offences for which he has plead guilty. In addition, he should receive a 24-month probation order after his release with certain conditions. One of the conditions sought by the Crown is an order banishing Mr. Brophy from being within a 50-kilometre radius of Kelowna, Vernon, Penticton, and Lake Country without prior written permission of his probation officer. Alternatively, the Crown seeks a no-go order to the certain addresses which were the properties subject to Mr. Brophy's criminal activities. The rest of the probation conditions are not disputed by the defence.
- [40] The Crown recommends the following breakdown:

1. Kelowna Reg. No. 100275-1 - 360 days in custody.
 2. Vernon Reg. No. 57411-2 - 120 days consecutive to the previous information.
 3. Kelowna Reg. No. 99847-2C - 120 days consecutive.
 4. Kelowna Reg. No. 99846-2C - 120 days consecutive.
 5. Kelowna Reg. No. 99848-1 - 120 days concurrent to Kelowna Reg. No. 99846-2C.
 6. Penticton Reg. No. 50387-2 - 360 days consecutive.
 7. Kelowna Reg. No. 99849-2C - 360 days concurrent to Penticton Reg. No. 50387-2.
- [41] The Crown submits that Mr. Brophy was not stealing food or small electronic items, but he was stealing large quantities of items and breaking into various businesses. The public needs to know that someone stealing lumber worth hundreds of thousands of dollars is someone whose actions are worth denouncing.
- [42] The defence position is that Mr. Brophy should receive a sentence for time served on Kelowna Reg. No. 100275-1 of 12 months and a sentence of six months and 13 days on Kelowna Reg. No. 99849-2C. For the other offences, he should receive a three-year suspended sentence with 24 months of probation with conditions. The conditions would include:
- a. the first six months under 24-hour house arrest and electronic monitoring;
 - b. the next nine months under a curfew from 10:00 p.m. to 6:00 a.m.;
 - c. the requirement that Mr. Brophy attend counselling and report to his probation officer regarding counselling, along with the right for the probation officer to obtain information directly from any treating counsellors;
 - d. a Rogers order with Mr. Brophy attending community forensic for his mental health issues; and
 - e. no alcohol or drug use.
- [43] Mr. Brophy agrees with the other conditions suggested by Crown, except for the banishment orders, which he submits should not be granted. The defence argues that there was no rationale offered to support the need for a banishment order, but accepts that a no-go order to the various addresses should be granted. On the issue of banishment, I agree with defence counsel and I see no basis to make that a condition of any probation.
- [44] The defence submits that while general and specific denunciation is important, it should not be the forefront such that the Court loses sight of the other aspects of sentencing. Of particular importance is rehabilitation, and whether Mr. Brophy's plans and the conditions attached to his release will manage his risk of reoffending while allowing him to live a pro-social life.

Legal Framework

A. Principles of Sentencing

- [45] The determination of a just and appropriate sentence is a highly individualized exercise that goes beyond any mathematical calculation. Many courts have recognized that imposing a just and proportionate sentence is one of the most challenging responsibilities for a judge. It involves a careful balancing of a variety of factors in the context of a particular set of circumstances in respect to a particular offender. This balancing process is to occur within the framework of s. 718 of the Code, as informed by common law principles.
- [46] Section 718 of the Code provides that 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". This purpose is achieved by imposing sentences that have, among others, the following objectives:
- a) denouncing the unlawful conduct;
 - b) deterring the offender and other persons from committing offences;
 - c) separating offenders from society, where necessary;
 - d) assisting in the rehabilitation of offenders;
 - e) providing reparations for harm to the victim and to the community; and
 - f) promoting a sense of responsibility in offenders and acknowledging the harm done to the victims and to the community.
- [47] An offender should be punished only to the extent equivalent to his moral culpability: *R. v. Nasogaluak*, 2010 SCC 6 at paras. 40, 42.
- [48] A sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. Further, "an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances": Code, ss. 718(b) and (d).
- [49] In the decision in *R. v. Robertson*, 2020 BCCA 65 at para. 77, the Court of Appeal recommended a three-step approach when dealing with sentencing on multiple counts:
- (1) Without regard to totality, determine the appropriate sentence of each count according to ordinary sentencing principles;
 - (2) Without regard to totality, determine whether any of the individual sentences should be made consecutive or concurrent; and
 - (3) Review the aggregate sentence having regard to the totality principle to ensure it is not excessive and, if necessary, adjust the individual sentences to arrive at an appropriate global sentence.
- B. Aggravating and Mitigating Circumstances

- [50] Section 718.2 of the Code stipulates that when imposing a sentence, the court shall take into consideration any relevant aggravating or mitigating circumstances related to the offence and adjust the sentence accordingly.
- [51] On the facts of this case, the following circumstances are aggravating: the seriousness of the property crimes in some of the instances, the losses to some of the victims, and Mr. Brophy's past criminal record.
- [52] The mitigating circumstances are: Mr. Brophy's guilty pleas with a resolution on all of his outstanding criminal files, his struggles with substance abuse and mental health challenges, his expression of remorse, his genuine efforts to address his substance abuse, and the ongoing support he receives from his common law wife.
- [53] The guilty pleas and Mr. Brophy's sincere expression of remorse are significant mitigating factors. As is always the case, a guilty plea saves the Crown and the Court time and expense. It also ensures that the victim is not re-traumatized by having to testify about the crimes committed against them.
- [54] I also accept that Mr. Brophy has taken steps towards rehabilitation, and has actively addressed his addiction issues. Range of Sentences
- [55] The Crown did not provide any case law in support of any specific sentencing range, but points out that Mr. Brophy received a 36-month custodial sentence for the seven break and enter offences he plead guilty to in October of 2011. For the break and enter he plead guilty to in February 2021, he received a 12-month conditional sentence, which included a six-month curfew from 9:00 p.m. to 6:00 a.m.
- [56] The defence also did not provide any cases respecting the range of sentences for these types of property offences.
- [57] I must craft a sentence that provides a just and appropriate punishment for this offender for the crimes he committed. Determining the Appropriate Sentence
- [58] In this case, Mr. Brophy has plead guilty to eight counts in seven different indictments or informations.
- [59] Mr. Brophy chose to enter guilty pleas. As the Crown explained, the result is a significant amount of time saved for the Court, the potential police witnesses, and the various other witnesses. The Crown explained that due to the use of tracking devices in the various investigations, some of the trials could have been lengthy and complicated.

- [60] Of particular significance is that I accept that Mr. Brophy is truly remorseful for his actions and understands how his actions have impacted those around him. I have also not lost sight of the significant impact Mr. Brophy's incarceration has had, and will continue to have, on his family. As noted by the Ontario Court of Appeal in *R. v. Habib*, 2024 ONCA 830, a sentencing judge should not overlook the family separation consequences of imprisoning an accused. At para. 42:
- [42] As recognized in *R. v. Spencer* (2004), 2004 CanLII 5550 (ON CA), 72 O.R. (3d) 47 (C.A.), at para. 46, leave to appeal refused, [2005] S.C.C.A. No. 4, it is an unfortunate reality that sentencing defendants to prison often harms their families. Family members are deprived of the defendant's love and care and suffer the emotional pain of separation. They must often assume the added burdens of the breadwinning and caregiving responsibilities that the defendant formerly performed. Further, they may suffer financial hardship, educational deprivation, and even the loss of the family residence. See *R. v. Nikkanen* (1999), 1999 CanLII 7339 (ON CA), 140 C.C.C. (3d) 423 (Ont. C.A.), at paras. 14-15, leave to appeal refused, [1999] S.C.C.A. No. 624; *R. c. G.G.*, 2023 QCCA 305, 87 C.R. (7th) 383, at paras. 24, 33, 37 and 53. As well, being unable to care and provide for their families increases the severity of incarceration for defendants. See *R. v. Collins*, 2011 ONCA 182, 104 O.R. (3d) 241, at para. 41.
- [61] The particular impact on Mr. Brophy's family includes his separation from his young son and teenage step-daughter and the significant impact of his absence on his common law wife, who struggles with a significant physical disability.
- [62] A further consideration is that Mr. Brophy's criminal activities are clearly associated with his substance addiction. When he has his addiction under control, he is a responsible, contributing member of society. For a seven-year period after his release from the half-way house, he was not involved in any criminal activity. As Candus describes, when Mr. Brophy is sober, he is a responsible, loving, and energetic father. A substance use addiction is a medical condition. I accept that when an individual is in the throes of it they have difficulty controlling their actions.
- [63] The defence submits that a three-year suspended sentence is appropriate for the remaining files, after time served is credited to the Kelowna Reg. File Nos. 100275-1 and 99849-2C.
- [64] Sections 731(1)(a) and 732.2(2)(b) of the Code permits a court to impose a suspended sentence and direct that an offender be released on probation for up to three years if there is no minimum punishment prescribed by law. A suspended sentence is typically appropriate for less serious offences committed by an offender with a reduced level of moral blameworthiness: *R. v. Harry*, 2018 BCSC 2069 at para. 28. While it is unlikely to be appropriate where there are many previous criminal convictions, sophisticated criminality, or serious charges, none of these factors militate against it absolutely: Clayton C. Ruby, *Sentencing*, 10th ed. (Toronto: LexisNexis Canada, 2020) at §10.6. See also *R. v. Do*, 2018 BCCA 229 at para. 32.

- [65] A sentencing judge should consider whether there are "exceptional" circumstances that warrant a suspended sentence: *R. v. Voong*, 2015 BCCA 285 at paras. 22, 59.
- [66] I am not persuaded that in the circumstances of this case that the threshold of exceptional circumstances has been demonstrated.
- [67] Taking the sentencing principles into consideration and all of the offender's individual circumstances, in my view a fit sentence for the various counts would be a global sentence of 28 months, or 852 days, in custody.
- [68] In my view, each of these sentences should be served consecutively because they involved Mr. Brophy breaking and entering, or stealing, from a variety of businesses on different dates, involving multiple victims: *R. v. McCrea*, 2008 BCCA 227 at paras. 7-8; *R. v. Berry*, 2014 BCCA 7 at para. 53. I am not persuaded that the acts constituting the offences were part of a linked series of acts within a single endeavor: *R. v. G.P.W.* (1998), 106 B.C.A.C. 239 at para. 35, 38 W.C.B. (2d) 188.
- [69] The totality principle codified in s. 718.2(c) of the Code provides that "where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh". In my view, a sentence of 28 months is reflective of the overall culpability of this offender. There is no need to reduce the sentence to reflect the totality principle because the aggregate sentence is just and appropriate in all of the circumstances. Terms of Sentence
- [70] Mr. Brophy, please stand. I sentence you to imprisonment for 28 months, or 852 days, followed by 24-months of probation.
- [71] You have served 382 days in pre-sentence custody, with the enhanced credit this amounts to 573 days. The remaining time you must serve is 279 days. You may be seated.
- [72] In accordance with s. 719(3.3) of the Code, I must specify the appropriate sentence for each count, which are all to be served consecutively:
1. Penticton Reg. No. 50387-2 - Count 1 for the theft of a motor vehicle - 292 days
 2. Vernon Reg. No. 57411-2 - Count 2 for the theft of a utility vehicle - 120 days
 3. Kelowna Reg. No. 100275-1 - Count 1 for the break and entry into a fenced compound and attempted theft of a vehicle - 60 days
 4. Kelowna Reg. No. 99847-2C - Count 2 for possession of stolen property being a bicycle - 60 days
 5. Kelowna Reg. No. 99848-1 - Count 2 for theft of a safe and contents - 75 days
 6. Kelowna Reg. No. 99849-2C - Count 1 for break and entry and Count 2 for use of a grinder without lawful excuse - 65 days
 7. Kelowna Reg. No. 99846-2C - Count 2 for possession of a stolen trailer and contents - 180 days

[73] The credit for the pre-sentence custody will be applied on a pro rata basis for each of the files.

[74] The conditions of your probation order are that you must:

1. keep the peace and be of good behaviour;
2. appear before the Court when required to do so;
3. notify the Court or your probation officer of any change of name or address, and promptly notify the Court or the probation officer of any change of employment or occupation;
4. report to a probation officer at 101-117 10th Avenue South, Cranbrook, BC, phone number: 205-426-1210, within two business days after your release from custody unless you have written permission from the probation officer to report elsewhere or within a different time frame. After that, you must report as directed by your probation officer;
5. not go to the following addresses:
 - a. 460 Lougheed Road, Kelowna, BC;
 - b. 6984 Glenmore Road, Lake Country, BC;
 - c. 6252 Pleasant Valley Road, Vernon, BC;
 - d. 1340 Wilson Avenue, Kelowna, BC;
 - e. 827 Fuller Avenue, Kelowna, BC;
 - f. 1005 Edwards Road, Kelowna, BC; and
 - g. 2076 Enterprise Way, Kelowna, BC;
6. not possess or consume alcohol, or controlled substances as defined in the Controlled Drugs and Substances Act, S.C. 1996, c. 19, or any other intoxicating substance, except with a medical prescription;
7. must attend, participate in and complete any intake, assessment, counselling, or education program as directed by your probation officer;
8. having consented to in Court, you must attend, participate in and complete any intake, assessment, program or treatment or a full-time live-in treatment program as directed by your probation officer. This may include programing or treatment for:
 - a. alcohol or drug addition; and
 - b. psychiatric and psychological health;
9. having consented to in Court, you must do the following:
 - a. report to Forensic Psychiatric Services or elsewhere for any intake, assessment, counselling, or treatment as directed by your probation officer;

- b. attend all scheduled appointments with the professionals in charge of your mental health care;
 - c. take all medications and medical treatments prescribed to you by those professionals;
 - d. provide your probation officer with the names, addresses, and phone numbers of those professionals;
 - e. give those professionals a copy of this order;
 - f. if you decide not to follow these directions, you must immediately report that fact to your probation officer. You have consented in Court to those professionals notifying your probation officer if you fail to attend for an appointment or refuse to take the prescribed treatment or medication;
10. not possess:
- a. pry bars or bolt cutters;
 - b. hammers, screwdrivers, or pliers;
 - c. slim jims, lock picks or bump keys;
 - d. ceramic rocks;
 - e. blow torches or grinders; or
 - f. night vision goggles. The exceptions are that you can possess these items when doing maintenance work on the property you are residing at and for the purposes of any employment.

[75] Since Mr. Brophy has been in pre-trial custody for a long time and still has a remaining sentence to serve, I will waive the victim surcharge.

[76] This concludes my reasons. "Forth J."

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/25/09/2025BCSC0968.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-brophy-2025>

Prepared on 25 October 2026 · Esheria