

CANADA / JUDGMENT

R. v. Buchanan

2025 BCSC 2435

COURT

Supreme Court of British Columbia

DECIDED

28 November 2025

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2025 BCSC 2435 R. v. Buchanan

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Buchanan,

2025 BCSC 2435

Date: 20251128

Docket: 56889-2

Registry: Vernon

Rex

v.

Maxwell Erhardt Frederick Buchanan,

also known as Maxwell Echart Frederick Buchanan

Before: The Honourable Justice S. Wilson

Oral Reasons for Sentence

Counsel for the Crown:

T. Zanatta

Counsel for the Accused:

C. Simmons

(as Agent for L. McPheeters)

J. Pletsch, A/S

Place and Date of Trial/Hearing:

Vernon, B.C.

November 20, 2025

Place and Date of Judgment:

Vernon, B.C.

November 28, 2025

- [1] THE COURT: Mr. Buchanan is before the court today for sentencing. I convicted him after trial of:
- a) possession of an unloaded prohibited or restricted firearm along with readily accessible ammunition; and
 - b) possession of a firearm without being the holder of a registration certificate.
- [2] The circumstances of the offence are that Vernon police received a report of someone having waved a gun at people in Polson Park in Vernon. Mr. Buchanan was located some minutes later and was arrested. He was carrying a backpack which contained a sawed-off rifle. Ammunition was located on Mr. Buchanan's belt, although the gun itself was unloaded. Mr. Buchanan's defence was one of innocent possession, which I rejected after trial. My reasons from the trial may be found at 2025 BCSC 871.

Parties' positions on sentencing

- [3] The Crown's position on sentencing is that Mr. Buchanan should receive a jail sentence of three to four years. Crown argues that at the very low end of the range, such an offence will generally attract a sentence of 30 to 36 months for first-time offenders, even for those with less significant aggravating factors than are present in this case.
- [4] The Crown relies primarily on the Supreme Court of Canada's decision in *R. v. Nur*, 2015 SCC 15, and the Court of Appeal's decision in *R. v. Holt*, 2015 BCCA 302.
- [5] Counsel for Mr. Buchanan argues that a two-year conditional sentence order would be appropriate in these circumstances followed by three years of probation. The defence argues that there are significant mitigating factors in this case such that a conditional sentence would be appropriate.
- [6] The Crown does not dispute that a conditional sentence order would be available in the circumstances, but disputes that it would be appropriate in these circumstances.

Mr. Buchanan's circumstances

- [7] In terms of Mr. Buchanan, he was born 30 years ago in Vernon. His parents separated when he was young and he does not know his biological father. He had two stepfathers growing up, one until aged eight, which is the one he was closer to and the closest he had to a father figure in his life. The second stepfather came into his life when Mr. Buchanan was about 10 years old. This relationship was not a positive influence on his life. He reports he suffered regular physical, mental and sexual abuse, as did his mother.
- [8] Mr. Buchanan has had two serious relationships and has a child from each. He has a daughter, aged five. His daughter resides three days per week with Mr. Buchanan's mother. Mr. Buchanan lives with his mother in a trailer on her property and therefore sees his daughter regularly. His other child is a son, aged four. He does not see his son. The Ministry of Children and Family Development is involved with both children.
- [9] Mr. Buchanan completed high school and has worked sporadically, including as a cook.
- [10] Mr. Buchanan was experiencing homelessness at the time of this event and was living on income assistance. He was also using drugs at the time, in particular methamphetamine. His substance abuse started with alcohol in high school. He then turned to methamphetamine, then to heroin, and back to methamphetamine.
- [11] In terms of his mental health, Mr. Buchanan believes he has autism. While the author of the forensic presentence report does not find he displays sufficient of the symptoms to meet a formal diagnosis, I do accept that he has symptoms that are consistent with autism.
- [12] While on bail for this offence Mr. Buchanan went to VisionQuest, a recovery centre, to address his substance use issues. While there he was prescribed Vyvanse, which is commonly used for ADHD, and he has found it to be helpful. While he did not return to VisionQuest after the trial, he was resident there for several months.
- [13] He did not have a criminal record at the time of this offence, even though he has a record for some subsequent offences.

Aggravating and mitigating circumstances

Aggravating factors

- [14] In terms of aggravating and mitigating circumstances, both parties referred to various factors that could be taken into account but cannot agree on whether some of them are aggravating or mitigating, as the case may be, or simply neutral.
- [15] I do not accept that the fact that the rifle was sawed off is an aggravating factor simply because the fact that the barrel had been removed is what rendered it prohibited. Next, I do not accept that Mr. Buchanan had a knife on his belt is aggravating as I have no reason to draw any inferences with regard to the knife and whether or not it was a weapon.

- [16] Finally, I do not agree that the fact that the gun was concealed in Mr. Buchanan's backpack is aggravating. I agree with defence counsel's position that a factor should be considered aggravating if it renders the circumstances worse than if the factor were not there. In this case, Mr. Buchanan was convicted of possessing a prohibited weapon with ammunition available. It is difficult to see how circumstances would be better if Mr. Buchanan were holding the weapon in his hand as he went about town as opposed to having it in his backpack.
- [17] I do accept that possessing such a weapon in a residential area and in a busy local park is aggravating, and I also consider it aggravating that although the gun was in his backpack when he was arrested, the police were investigating because Mr. Buchanan had removed the gun from the backpack and brandished it at two people in the park. Mr. Buchanan agreed during his evidence at the trial that he did so, albeit with an explanation that he was put in a situation where he felt that he was outnumbered.

Mitigating factors

- [18] I accept that Mr. Buchanan was a relatively young first-time offender for the purposes of sentencing and that he had substance misuse issues at the time. I accept that he has good relationships with his brother and his mother, both of whom wrote letters of support. He also has a relationship with his daughter. I have also already referred to aspects of his upbringing which are unfortunate, including abuse by a stepfather. Presently he provides assistance to his mother who has her own health issues.

The law

- [19] The Supreme Court of Canada discussed the offence of possession of an unauthorized firearm with ammunition close at hand in *R. v. Nur*, 2015 SCC 15. The Supreme Court of Canada struck down the mandatory minimum three-year sentence for a conviction under s. 95(1), not on the basis of Mr. Nur's personal circumstances but rather on a hypothetical regulatory offender with little or no moral fault. The example was somebody who intended to comply with the licencing regime but failed to realize that the licence had expired.
- [20] The Court made it clear in *Nur* that in striking down the mandatory minimum sentence it did not mean to suggest that offences under s. 95 should be treated less seriously, and confirmed that denunciatory penitentiary sentences for the vast majority of offenders who are at the true crime end of the spectrum remained appropriate.
- [21] In Mr. Nur's circumstances, he had a loaded handgun that he tossed beneath a parked car when he was followed by the police. Mr. Nur was described as an exceptional student, an athlete who volunteered in the community, held part-time jobs and was headed to university. The handgun was in his possession for only a very brief period while he was outside of a community centre.

- [22] At paragraph 120 of Nur, the Court stated the following:
- [120] It remains appropriate for judges to continue to impose weighty sentences in other circumstances, such as those in the cases at bar. For this reason, I would decline to interfere with the sentences that the trial judges imposed on Nur and [another accused].
- [23] In *R. v. Holt*, 2015 BCCA 302, the British Columbia Court of Appeal recognized a need to realign sentencing decisions pursuant to s. 95 of the Criminal Code with the rest of Canada. Mr. Holt was a 66-year-old first-time offender who had received an 18-month sentence from the trial judge. On appeal, the B.C. Court of Appeal confirmed that Mr. Holt was at the low end of the range and confirmed the following at paragraph 19:
- [19] In my view, the fact a 40-month sentence was upheld almost without challenge in the Nur appeals, the comments of courts in other recent appellate decisions, but most especially the proliferation of guns in the Lower Mainland generally, indicate that a re-alignment of the "range" is in order in British Columbia. I would say that Mr. Holt falls at the bottom end of the "criminal" range, and that a sentence of close to three years is called for. I am also persuaded that the sentence of 18 months' imprisonment was unfit given the seriousness of the offence.
- [24] Sentencing judges have repeatedly reaffirmed society's concerns with the increase in gun-related criminal activity which puts the safety of members of the community, including perfectly innocent people who are going about their daily business, at risk. The establishment of a presumptive sentence of 30 to 36 months for a first-time offender in those circumstances that fit the true crime end of the range reflects society's concern with the risks posed by unauthorized possession of weapons.
- [25] The Crown refers to the Court of Appeal's decision in *R. v. Maskell*, 2019 BCCA 352. The accused appealed a 42-month jail sentence he received for possessing a loaded handgun. He believed he needed the gun for protection and possessed it in his home. During an encounter with a tenant, who he mistakenly believed was armed, he fired the gun twice and shot the victim once in the abdomen. In *Maskell*, the Court, starting at paragraph 18, discussed the fact that sentences for true crime offences start at 30 months:
- [18] Although sentences for "true crime" s. 95(1) offences start at 30 months, they will increase from there to account for aggravating factors. Sentences of four years were imposed in *Guha* and *R. v. Endean*, 2017 BCCA 125. A 40-month sentence was upheld in *Nur*. In *Kachuol*, this Court set aside a conditional sentence order and substituted a three-year sentence described as being at the bottom of the range. And in *R. v. Do*, 2018 BCCA 229, a three-year sentence was substituted in respect of possession of an unloaded handgun (with readily available ammunition). In each case, there were a variety of mitigating factors, but the primary importance of denunciation and general deterrence was emphasised.

- [19] The established range reflects the seriousness of firearm-related offences, particularly the risk of harm to the public created by the illegal possession of firearms. It is for this reason the courts have consistently emphasised the paramountcy of denunciation and deterrence. That is not to say, however, as is well-recognised, that a range is anything other than a guideline. There may well be cases involving exceptional circumstances in which a fit sentence falls outside the range. . . .
- [26] The Court then went on to discuss its previous decision in *R. v. Williams*, 2019 BCCA 295, which included a reference to exceptional circumstances, a concept that is no longer found to be helpful in sentencing decisions. The Court in *Maskell* returned to the specifics of the case at paragraph 20:
- [20] In this case, it is apparent that the judge imposed a sentence within the range. She did so taking into account the mitigating circumstances and Mr. Maskell's personal circumstances. She concluded that to give effect to Mr. Maskell's submissions would be to give relatively greater weight to those mitigating factors than was justified given the paramount importance of denunciation, general deterrence and protection of the public. The judge recognised the tension created by the different principles she had to weigh and struck a balance. I cannot conclude that she erred in principle . . .
- [27] The Court rejected Mr. Maskell's appeal from his 42-month sentence.
- [28] It is not disputed that Mr. Buchanan's circumstances fall within the true crime range of cases, in that it is not suggested that his offence was regulatory in nature. The presumptive starting point is a term of imprisonment of 30 months.
- [29] Sentencing is an individualized process. As the Supreme of Canada has held, a court can order a sentence outside the range so long as it accords with sentencing principles.
- [30] A conditional sentence order is available for this offence, as I indicated earlier. In *R. v. Proulx*, 2000 SCC 5, the Supreme Court of Canada confirmed that conditional sentence orders are not the equivalent to probation and that conditional sentences should include both punitive and rehabilitative aspects. A restriction of the offender's liberty is appropriate because the offender is serving a sentence in the community.
- [31] A conditional sentence order is available if: (a) the sentence is less than two years; (b) the sentence would not endanger the safety of the community; and (3) the sentence is consistent with the fundamental purpose and principles of sentencing. As such a conditional sentence order is only available if the custodial sentence the court would impose is for a period of less than two years. The question is, therefore, whether the appropriate sentence here must be more than two years.
- [32] The accused refers to the following decisions in support of conditional sentence orders in circumstances of a conviction under s. 95(1): *R. v. Parker*, 2023 MBCA 51; *R. v. Saunders*, 2022 BCSC 2118; and *R. v. Canel*, 2025 BCPC 38.

- [33] I find that the circumstances in Saunders were very different. There was an agreed statement of facts, significant Gladue factors, and the gun in issue never left Ms. Saunders' home. Moreover, she pleaded guilty in the case where it was possible that self-defence could have been raised to the underlying charge.
- [34] In Canel, the gun was found inside the accused's residence and as such it was not a case where there is an obvious risk to the public.
- [35] The question here is whether the mitigating factors are sufficient to take this case outside of what has been established by the courts as the presumptive range of appropriate sentence for this offence.
- [36] It is to his credit that Mr. Buchanan attended VisionQuest, a recovery centre, for a significant period of time prior to his trial and that he has the support of his mother, with whom he resides and with whom he would continue to reside should he receive a conditional sentence order.
- [37] Even though he was hospitalized for mental health issues following an event involving his brother, it makes some sense to me that living in a tiny underground basement suite would have negative impacts on someone's mental health, something which has been attenuated by the fact that he now lives in a trailer.
- [38] I accept that Mr. Buchanan was relatively young and had no criminal record at the time of the event and that he was using illegal drugs and was homeless at the time. I also accept that there were some underlying mental health issues. Mr. Buchanan has told me this morning that he now has an appreciation for the impact of his actions.
- [39] The aspect of this case that is the most aggravating is the fact that Mr. Buchanan removed the gun from his backpack and brandished it at two people in the park. This arguably renders it more serious than the cases that are at the lowest end of the range, including those where a conditional sentence order was granted. I do note that unlike the circumstances in Nur and Kachuol, 2017 BCCA 292, to which the Crown referred, Mr. Buchanan's gun was not loaded. While there was ammunition on his person that could have been used in the gun, it was not loaded at the time, nor was there any suggestion it was loaded at the time he had it in the park.
- [40] In order for a conditional sentence to be ordered, the sentence must be, as I said, for a period of less than two years and the conditional sentence order must not endanger the safety of the community.
- [41] In Kachuol, the Court confirmed that deterrence and denunciation are the primary sentencing principles when dealing with firearms-related offences:
- [25] In recent years, Canadian courts have become increasingly concerned by the proliferation of handguns, gun violence and the dire consequences for our society. Guns are inherently, often lethally, dangerous, all the more so when they are possessed for an illicit purpose. As a

result, their possession and use is highly regulated and, if unlawful, criminalized to ensure public safety, express society's condemnation and punish offenders. To the extent possible, courts strive to achieve these goals when imposing sentences for firearms-related offences by prioritizing deterrence and denunciation, following customary sentencing ranges in all but exceptional cases and fully accounting for aggravating factors where they exist.

- [42] In Kachuol, the Court went on at paragraph 26 to explain the rationale for exemplary sentences:
- [26] As Madam Justice Smith recognised in Guha at para. 30, when an offender possesses a firearm, particularly a handgun, for an illicit purpose, that purpose can only be to threaten or inflict serious bodily harm or death, if and when considered necessary. Common sense and human experience suggest no other reasonable explanation or lesser risk posed by possession of this sort. As Crown counsel aptly put it, most unlawful possession of loaded firearms represents nothing short of "tragedy in gestation". By criminalizing such conduct via s. 95(1), the law intervenes before someone is actually harmed or some other crime actually committed. By imposing severe exemplary sentences for possession simpliciter, courts support and advance the goals of this intervention.
- [43] While I recognize that the gun here in question was not a handgun, a rifle with a sawed-off barrel has similar characteristics in that it can be, and in this case was, concealed and it could have no purpose other than to injure, threaten or menace other people because in the absence of the barrel it no longer has any practical functionality for legitimate purposes such as hunting.
- [44] Kachuol was something of an unusual case because shortly before the sentencing hearing Mr. Kachuol suffered a traumatic brain injury as a result of a physical fight outside of a nightclub. The sentencing judge made a conditional sentence order which the Court of Appeal overturned and concluded that a fit sentence for him was three years' imprisonment, a sentence the court concluded was at the bottom end of the range. Mr. Kachuol was found to have a loaded handgun in the centre console of his car.
- [45] Notwithstanding the injuries suffered shortly before sentencing, the Court of Appeal concluded the conditional sentence order for Mr. Kachuol was not appropriate and found his circumstances were not unique or even favourably distinguishable from Nur or Holt, such that the conditional sentence order was therefore unfit.
- [46] I find the same principles apply here. There is nothing about Mr. Buchanan's circumstances that would leave me to conclude that a sentence below the normal range would be appropriate here having regard to the primary sentencing principles of denunciation and deterrence in the circumstances of illegal guns on our streets.

- [47] While each case will necessarily turn on its own facts, and recognizing that the gun in this case was not loaded, Mr. Buchanan brandished it in a park in the downtown area of an urban centre for the purposes of intimidation. While I accept that Mr. Buchanan's explanation was that he was outnumbered, this does not excuse the conduct. In some of the authorities to which I was referred, the weapon never left the person's home. This is not the case here.
- [48] This case falls at the true crime end of the range of cases and, given that Mr. Buchanan took it to the park, it is not at the low end of the true crime range. I find that a conditional sentence order would not satisfy the community's need for denunciation and deterrence.

Conclusion

- [49] I conclude that these circumstances are such that a sentence within the established range of sentences for this offence is warranted because there is nothing unusual or untoward about the facts that would warrant deviation.
- [50] In the circumstances, Mr. Buchanan, please stand.
- [51] I conclude that the fit sentence in this case is at the bottom end of the range, being 30 months' imprisonment.
- [52] As for the other count, possession of a firearm without being the holder of a registration certificate, I accept that this arises out of the same delict and the sentence would therefore be concurrent with the one I have just ordered. I sentence Mr. Buchanan to six months' imprisonment currently on that count.
- [53] Finally, I make the mandatory s. 109 prohibition order and will order that a DNA sample be taken under s. 487.04; and that the firearm and the ammunition must be forfeited.
- [54] That concludes my decision.
- [55] CNSL T. ZANATTA: Thank you, Justice. I do note we should address the victim fine surcharge.
- [56] THE COURT: Well, unless he has any ability to pay it now, it is unlikely going to be appropriate.
- [57] CNSL T. ZANATTA: And the Crown is not taking any position on that.
- [58] THE COURT: All right. The other thing we need to do, then, is determine the credit.
- [59] CNSL T. ZANATTA: Oh, yes. The credit --
- [60] CNSL C. SIMMONS: I apologize, Justice. How long was the 109 prohibition? Is that a 10-year prohibition?
- [61] THE COURT: I think that is the mandatory one, is it not?

- [62] CNSL T. ZANATTA: Yes. As Mr. Buchanan did not have a record at the time, it is 10 years for non-restrictive firearms and life for restricted firearms. Sorry.
- [63] And as for credit, Mr. Buchanan has 104 days of real time in custody, which gives him 156 days of enhanced credit, but he has used 37 of those dates. So he has 119 days of credit to use --
- [64] THE COURT: By my calculations, then, that would -- based on a 30 days per month times 30 months, 900 days, less 119 for credit, leaves 781 days remaining, by my calculations.
- [65] CNSL T. ZANATTA: I can't do math that fast in my head.
- [66] THE COURT: I wrote it down.
- [67] CNSL T. ZANATTA: Thank you. I trust your math.
- [68] THE COURT: That is my calculation. If you tell me it is something else?
- [69] CNSL C. SIMMONS: No, I think that is --
- [70] CNSL T. ZANATTA: No.
- [71] CNSL C. SIMMONS: -- I would agree that that is the appropriate math.
- [72] CNSL T. ZANATTA: Thank you, Justice. And I have also prepared a draft forfeiture order. It is for all items that were seized by the police, and that is under s. 490 and 491 as it is a variety of different sections.
- [73] THE COURT: All right. Do you want to hand that to me. All right. Thank you.
- [74] Mr. Buchanan, I do recognize that you have taken some positive steps. It looks like you are probably heading in a good direction and I wish you all the best in the future. Thank you.
- [75] THE CLERK: Mr. Justice, is the -- does the accused need to sign?
- [76] THE COURT: I do not think there is anything to sign.
- [77] THE CLERK: Okay, thank you.

"Wilson J."

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Prepared on 25 October 2026 · Esheria