

CANADA / JUDGMENT

R. v. Campbell

2023 BCSC 2015

COURT

Supreme Court of British Columbia

DECIDED

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Campbell,

2023 BCSC 2015

Date: 20231019

Dockets: 15953-2; 16852-2

Registry: Powell River

Rex

v.

Michael Gordon Campbell

Before: The Honourable Justice Caldwell

Oral Reasons for Sentence

Counsel for the Crown:

H.D. Pineo

Counsel for the Accused:

C.L. Hodson

Place and Date of Hearing:

Powell River, B.C.

October 19, 2023

Place and Date of Judgment:

Powell River, B.C.

October 19, 2023

- [1] THE COURT: Before me for sentencing is Mr. Campbell on two separate indictments relating to two separate incidents. I will simply summarize the two rather than read or quote extensively from them. The first of the matters that originally brought us here involved guilty pleas on an information arising out of April 2021 events, and relates to four charges: possession for the purpose of trafficking in fentanyl, possession for the purpose of trafficking methamphetamine, possession for the purpose of trafficking cocaine, and possession of a homemade gun for a purpose dangerous to the public peace.
- [2] While out on bail relative to those offences--and there were, I believe, three other charges on that indictment which the Crown either has or will be entering a stay of proceedings regarding. While on bail for those, a new matter arose relating to incidents in August 2022. That involved a new indictment relating to charges of possession for the purpose of trafficking fentanyl once again, possession for the purpose of trafficking methamphetamine, and possession of a stun gun for a purpose dangerous to the public peace. Again, today, guilty pleas, after discussion, have been entered on Counts 1 and 3 of that indictment. The Crown will be, I am told, entering a stay of proceeding with respect to Count 2.
- [3] This may seem a little out of order, but I think it works in terms of today's proceedings. I am going to review some of the background and information out of the presentence report. I will then move into the sentencing which is somewhat common in terms of the position taken by counsel and then we will move on to the main issue here.
- [4] On review of the presentence report and on hearing submissions from counsel, I am advised that Mr. Campbell is a 47-year-old man and of interest to the court and to this overall proceeding is the fact that he has, essentially, no prior convictions. He has made it about 47 years without accumulating a criminal record. He does have one minor mischief matter that arose in the last couple of years, but it is completely unrelated to the matters that are before me and I am told he got a conditional discharge on that. So I consider him as a person before me with no criminal record.
- [5] He had a difficult upbringing. His parents are both deceased. His mother passed away from cancer when Mr. Campbell was a teenager. His natural father died of a suicide by firearm within the last couple of years and his stepfather passed away fairly recently. He has, essentially, no family support. He has two siblings, both brothers. They reside, I believe, on Vancouver Island, but he is estranged to both of them and he acknowledges in the presentence report that arises as a result of his involvement in the drug lifestyle. He has four children, two from a previous marriage of some longstanding. They are aged 27 and 22. He has two younger children from two subsequent liaisons, one 14 years of age and one four years old.

- [6] He has a grade 12 education. He finished it somewhat late, having dropped out of school previously, but gone back to finish. He has over the years held various jobs in labouring and other endeavours, but has currently and for the last several years found himself on social assistance. He, in the presentence report, indicates that he is in a bit of a difficult way, and I suppose that might be an understatement, in that he owes other drug dealers money. I do not know whether that relates to the substances at issue here or not. That money is accruing significant interest and the indication is that he has thus far survived three shooting attempts on his life as a result of those debts.
- [7] He indicated to the presentence report writer that he suffers from ADHD and depression. He does not seek out or take medications by way of prescription from medical authorities, but rather prefers to self-medicate with street drugs, primarily methamphetamine. Although indicating that he only ingests methamphetamine, I have some doubt about that and it is pretty clear he probably is involved in other street drugs. He has been to rehabilitation six times in the past, beginning at age 19. I will say a little more about the self-medication.
- [8] It appears--and for reasons I will touch on in a few minutes, Mr. Campbell has been in custody now for 59 or 60 days and it appears that he is clearly not self-medicating with street drugs anymore and may be on a proper regime of medication. As I will comment on later, his physical appearance is much better today than it was when he was before the court several months ago, at the time of the original hearing.
- [9] It is also to be noted and this is one of the issues that arises, I suppose, in terms of sentencing, but it is also of interest, in looking back, and it is probably related to his drug situation, there have been a number of failures to appear at the behest--and on the behalf of, rather, Mr. Campbell. He has numerous noted fails to report to his bail supervisor. He failed to report for the first scheduled appointment for the preparation of the presentence report and, two or three months ago, he failed to attend the original sentencing hearing which was scheduled before me. A warrant--an unendorsed warrant was issued at that time and Mr. Campbell was subsequently taken into custody where he has remained for, I believe 59 or 60 days.
- [10] He said, in his presentence report, that he is not selling to support a habit. As I have already indicated, I find that only, in my view, to be partially true. It seems to me he was selling for a variety of reasons, but certainly partially to support his habit with respect to methamphetamine and probably other street drugs. He said, and I have commented on this with counsel, that he does not really deny selling drugs. He almost appears proud of the fact that he sells "to help people. If I sell to them, they won't die." He says further and I quote, "Ambulance don't get called when I sell drugs." So I said to counsel I do not consider that an aggravating factor in terms of a lack of remorse. It is simply a statement of fact and, if anyone were to consider it, I suppose that it might even be a mitigating factor that he has been quite honest in terms of his presentation for the presentence report.

- [11] Now, there have also been a variety of admissions. They are outlined and I will not read all of the admissions, but they are outlined in Exhibit 1 and Exhibit 2. I will highlight them for the purposes of these reasons. The first one, Exhibit 1, relates to admissions regarding the April 27, 2021, incident in Powell River. At that time, and in the exhibit, there are details as to exactly what was found in his residence, but the summary, I think, is usefully referred to where we get to para. 16. It says that, in total, the police seized 136.91 grams of methamphetamine, 39.05 grams of fentanyl, 31.13 grams of cocaine, five glass vials and 10 bottles of GHB. They also seized 3.09 grams of a fentanyl and methamphetamine mixture, nine tabs of LSD, about half a gram of MDA, 25 capsules of morphine, 67 capsules of buprenorphine, not one I am familiar with, 98 capsules of amphetamines, five capsules of Oxycodone, 83 tabs of clonazepam, and 57 other prescription drugs. They also seized at that time a black pellet gun resembling a handgun, a black Derringer-style handgun, with two rounds, located in a black plastic case, and two homemade improvised explosive devices. Along with that, there was just shy of \$6,200 in cash in Canadian currency, two cellphones, seven notebooks, and three scales. This was not a small operation. It was not huge, but it certainly was not a small operation.
- [12] Exhibit 2 outlines the admissions regarding the second incident. That is the one that occurred on August 26, 2022. Again, the details are outlined in the exhibit as filed, but in summary, para. 10 starts and outlines the total of the seizures. There were three vials of fentanyl and benzodiazepine with a total weight in the three vials being 21.5 grams, that is drugs and packaging; one vial with a total weight of 9.6 grams of methamphetamine; a baggie of fentanyl and benzodiazepine, total weight two grams; and one baggie containing other baggies, including five baggies of methamphetamine, two bags of suspected cocaine which was not analyzed, and a bag of unknown material. Again, there was significant cash. They have not added it up, but I think it comes to about \$1,200 give or take. There was also a digital scale with residue on it, a spoon, a bag of empty baggies, and again, weapons: a stun gun in a Velcro case and a four-inch knife in a sheath.
- [13] The Crown and defence counsel in this case are essentially agreed on the details of what an appropriate sentence would look like and would total. There is little, if any, dispute on what the starting point is and the cumulative sentence, when one adds up the individual sentences, which is a total of four years. That is made up as follows, out of the April 2021 indictment: Count 1 involving the fentanyl, two-and-a-half years; Count 2 involving methamphetamine, two years concurrent; Count 3 involving cocaine, one year concurrent; Count 5, the gun, 1.5 years concurrent, for a total sentence for the first indictment of two-and-a-half years. The second indictment arising out of the August 2022 incidents: Count 1, fentanyl, a 1.5-year consecutive sentence; and Count 3, the stun gun, a one-year sentence running concurrent with the Count 1 in that information, but consecutive to the ones in the previous.

- [14] Addressing the concept of the total or global sentence, the Crown says that a total sentence in the global range of 3.5 years or 42 months is appropriate which is a six-month reduction from the four years. Counsel for the accused says there should be a one-year reduction from the four years to take it down to a sentence of 36 months. Both say that they agree that Mr. Campbell should be credited 1.5 days for each of the days he has spent in custody since he was arrested. That amounts to about 59 or 60 days and, thus, both counsel submit that 90 days' credit should be given with respect to whatever sentence is imposed.
- [15] First, I say that I accept counsel's assessment regarding the four-year cumulative sentences itemized. In my view, the most important of those seems to be the first offence. There was a significant amount of drugs found on that occasion, but this is a first offence and, as the Crown indicates, previous decisions, including the Court of Appeal in at least two of the cited cases, put the range for such a first offence at between 18 and 36 months. The proposal of about two-and-a-half years is, therefore, well within that range and I find it to be appropriate. The other offences which arise on that occasion are also in the range that would be appropriate in the circumstances. They were all involved in the same basic event and the running of those sentences as concurrent sentences is, in my view, appropriate. The second indictment involved lesser amounts. There had not been a conviction by that time. It is a stretch to call it a first offence, but it was still occurring before he had a record. It is in a related matter. The sentence proposed of one-and-a-half years consecutive for the fentanyl is, as I say, in the 18-month to 36-month range. It is at the low end, but I consider that the amounts seized and involved in the second occurrence are less than they were in the first and that the slightly reduced sentence is within the appropriate range.
- [16] Accordingly, I am prepared to start on the basis that the appropriate overall sentence is two-and-a-half years on the first indictment for the four events, as itemized above; and one-and-a-half years on the second indictment, also as itemized above, for a total of four years. In coming to that conclusion I have considered the following--and this is where I say I work back from that four years in a little bit of a different approach. In reaching that conclusion, I have looked at the aggravating factors which I find to be the nature of the offences. The substances involved here, particularly fentanyl, have been recognized by the courts as a scourge of death on the streets. I have referred to it as death on a stick. It is epidemic and it kills hundreds, if not thousands, of people every year. It kills children, it kills adults, it kills older people. Sometimes it kills them all at once, sometimes it kills them a little piece at a time. It is, as I say, an epidemic.
- [17] The quantities and the equipment involved, particularly in the first indictment indicate a fairly significant operation. It is not a warehouse full of this stuff, but it is well beyond a small operation.

- [18] Third, the presence of weapons on both occasions and of a variety of types. We have regular weapons, we have pellet guns, we have knives, and we have a stun gun. It supports the conclusion, in my view, of a serious operation which carries on business cognizant of possibly lethal defence or offence-enforcement-type situations arising. It ups the ante.
- [19] A further aggravating factor is that Mr. Campbell was on bail at the time of the second offence. He was on bail for the first and more serious offence when he was arrested for the second. The second involved the same types of drugs including fentanyl and, as I have indicated above, also involved weaponry.
- [20] Lastly, and this is also important, the victims in this type of crime are themselves vulnerable people. They are people who are somewhat like Mr. Campbell. Non-vulnerable people do not come looking for drugs. They are not a market for people like Mr. Campbell. Vulnerable people looking for an out are the people upon whom he preyed for his money and that cannot be ignored. The other victims of this type of crime, as well, are maybe a bit faceless. They are the people who wait for an ambulance because someone has overdosed on the street and the ambulance that should normally go to a 90-year-old grandmother who fell down stairs and broke her hip is on scene dealing with a fentanyl overdose. The doctors and nurses in hospitals providing healthcare who are not attending to people who are otherwise ill because there is an overdose situation in there. It takes millions of dollars and it takes, more importantly, thousands, if not hundreds of thousands, of human resource time with respect to our healthcare system, our criminal justice system, and all of the rest of it. That cost is huge. All people are vulnerable to this kind of thing.
- [21] Those are the aggravating factors. There are, however, some mitigating factors. It is true that this was a guilty plea on both matters and I also pay attention to the fact that it was not a guilty plea on only one count or two counts. It is indicative of the fact that Mr. Campbell, even in his previous state, perhaps compromised by drugs, was willing to stand up and stand responsibility and not just for a pittance, but for more than just one or two of the charges.
- [22] He is also to be applauded for the fact that he made it to age 47, essentially, without a criminal record. It may have been more good luck than good management, I do not know, but there is something to be said about making it that far without coming into contact with the police, particularly in this kind of situation. This milieu is one familiar with the police and people who are involved in this milieu do come to the attention of the police frequently.
- [23] You made it to age 47 without that happening.
- [24] I am also satisfied, in spite of his representations on the presentence report, that he struggles with addiction himself and I do not think it was just to methamphetamine. He has struggled with addiction since his teen years. He has, apparently, according to his presentence report, attempted rehabilitation on at least six occasions, starting as early as age 19. That is important because these kind of things are rarely beaten on the first occasion.

- [25] There are two other things that I note and I want to make clear. The first one I do not consider, really, to be an aggravating factor, but it is worth noting, and it arises from something I have already noted. In the PSR, he came across--and I note this was at a time when he was still under the ravages of street drugs, but he comes across as almost proud to be selling drugs to protect his customers. I could not help when reading it to think of a Robin Hood kind of approach. His counsel, however, in submissions tempered that somewhat and I am prepared to accept that, while that may have been his expressed view at the time of the presentence report, it was partly the drugs speaking, it was partly his condition speaking, and that now, and this will be canvassed a little bit in about 30 seconds when I deal with the second note, having cleared his head a bit, he is instructing his lawyer that those, really, were not the proper sentiments and that he recognizes the difficulty and the problems with this kind of sale of narcotics.
- [26] The second one, and it is kind of relates to what I have just commented on, I walked in here this morning at the beginning of sentencing submissions and I looked in the prisoner's box and I saw a person who looks entirely different than they did when they were here a year or so ago. He has been in custody for about two months and he looks significantly healthier than he was when he was in court before me last year. It is to be hoped, based on the submissions of his counsel, that that arises because he has, I suppose, in the vernacular, cleaned up, he is on proper medications for his mental health issues and other things, and he is being given an opportunity while incarcerated, even in presentencing custody, to stay clean and to seek counselling and proper medication. I think that speaks well of his pursuit of self-improvement.
- [27] I have considered all of those things that I have already listed and, as I say, the total that was suggested by counsel for all of these offences is four years. Both counsel agree on that and, as I have already indicated, I do, as well. The question they asked me or had me address is, is that four years unduly harsh or disproportionate to the circumstances of this situation?
- [28] I have considered your background, the information in the presentence report, and the submissions of your counsel. I have considered the submissions of Crown counsel. I have looked at the admission. I have looked at the quantities. I have looked at the circumstances. I have outlined those already. Having considered all of that and in light of all of those matters I have already referred to, I do find that four years is at least somewhat harsh and disproportionate, but I have to say, sir, I do not find it to be significantly so. In all of the circumstances, in my view, the position taken by the Crown is the appropriate one and I am prepared to reduce the global sentence overall to one of three-and-a-half years.
- [29] I do that specifically so that each of the counts can be addressed by leaving all but the first count on the first indictment with the sentences as previously suggested but reducing Count 1 in the April 2021 indictment to two years from two-and-a-half years. That results in a global sentence on the first indictment of two years and a global on the second of one-and-a-half years for a total of three-and-a-half years. I note in doing so that that two years for that count is pretty much smack in the middle or even on the low end of the 18 months to 36 months. It

was not a lot of drugs, but it was a coordinated and significant operation, and I find that sentence in terms of a reduction of global amount to be appropriate.

- [30] Based on the submissions of both lawyers, I credit you one-and-a-half days for your time in custody. So that is a total of 90 days. By my arithmetic, that is three-and-a-half years times 365 days is 1,277 days. Taking 90 days off of that leaves you with 1,187 days.
- [31] Now, in addition to that, there are some ancillary terms which have been sought by the Crown and which have not been significantly opposed with one exception by Mr. Campbell.
- [32] I am prepared to deal with, first, the firearms prohibition which comes under s. 109 of the Criminal Code. For the first offence, it is a 10-year prohibition. For the second offence, it is a lifetime. So, pursuant to that section which is s. 109 of the Criminal Code, Mr. Campbell is prohibited from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, explosive substance for 10 years under the first indictment and, with respect to the second, for life.
- [33] There will also be an order, it is discretionary in these types of offences, but there will be an order that Mr. Campbell is to attend and provide a DNA sample pursuant to s. 487.051 of the Criminal Code. Were he out of custody, I would direct his attendance for that purpose, but I assume, subject to submissions, that there are mechanisms to have that taken while he is custody.
- [34] There is also the request for forfeiture of the various material. I have been provided with two forfeiture orders, one with respect to the items seized in the April 2021 events and one relating to the August 2022 events. Those forfeiture orders are appropriate. I have signed the orders that have been provided to me for that purpose.
- [35] The only remaining issue, I believe, is that of the victim surcharge. We are dealing with here a total, I believe, of six counts. They are all indictable and the charge would be for \$200 for each of those. The Crown did not make an overly aggressive submission with respect to those. The Criminal Code sections provide that, in the appropriate circumstances, if the court considers the imposition of a victim surcharge to be harsh or disproportionate, it can be reduced or waived. In that regard, I consider Mr. Campbell's circumstances while he was on the street and involved in these situations. While he had cash available to him on these occasions, it is clear that he was indebted to others at potential risk of his life. He was in receipt of social assistance and had been for some time.
- [36] He was unemployed and virtually unemployable. He is now going to be going to jail for a period of whatever it ends up being based on this three-and-a-half-year sentence. I do not know when he will qualify for parole. That will be a matter for internal decision, but he is likely to come out without financial resources. It appears at this time that he has little, if any, assets; little, if any, ability to generate income. I have already commented on how this kind of activity drains society. While there is no specific shining face of a victim here that I can point to and have the victim surcharge applied to, so many of the people who walk by on the

street out there are the victims of this kind of behaviour. I have considered your situation and it is with some reservations and some hesitancy that I will waive the victim surcharge in this case, and I do so for the reasons I have already outlined. You are and have been for some time if not homeless, then almost homeless. Your income and ability to pay is virtually nil. You will be in jail for a period of time and your employment situation when you get out is unknown. I do not want to push you into a situation where there is even a suggestion that you would have to return to this kind of behaviour to pay a victim surcharge. That is counterproductive. Accordingly, I will waive the need for a victim surcharge to be paid. There will be no victim surcharge.

[37] I think that covers everything. Is there anything further?

[38] CNSL H. PINEO: No, Justice, other than the Crown will enter a stay of proceedings to Count 4, 6, and 7 in relation to Indictment 15953-2 and to Count 2 on Information 16852-2.

"Caldwell J."

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