
CANADA / JUDGMENT

R. v. Carpenter

2020 BCSC 1343

COURT

Supreme Court of British Columbia

DECIDED

27 July 2020

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Carpenter,

2020 BCSC 1343

Date: 20200727

Docket: 28281-2, 28281-3

Registry: Vancouver

Regina

v.

Michael Wayne Carpenter

Before: The Honourable Madam Justice Sharma

Oral Reasons for Sentence

Counsel for the Crown:

I. Keeley

Counsel for the Accused:

T.J. Russell

Place and Date of Trial/Hearing:

Vancouver, B.C.

July 27, 2020

Place and Date of Judgment:

Vancouver, B.C.

July 27, 2020

- [1] THE COURT: These are my reasons for sentence. Mr. Carpenter has pleaded guilty to committing aggravated assault contrary to s. 268(2) of the Criminal Code on or about July 14 in the City of Vancouver, B.C. The plea comes after nine days of trial, which were held in February 2020. A continuation was delayed because of the alteration to court operations due to the Covid-19 pandemic. That continuation was scheduled for a further 10 days in July and August 2020.
- [2] Defence and Crown presented a joint submission indicating that the appropriate sentence would be three years. Mr. Carpenter is entitled to enhanced credit at a rate of 1.5 days for each day already spent in custody, which was two years and 13 days. Thus, the actual time to be served under this charge, if I were to accept the joint submission, would be one day in jail.
- [3] In *R. v. Anthony-Cook*, 2016 SCC 43, the Supreme Court of Canada stated that trial judges should not lightly reject a joint submission. The test to be applied is the public interest test, meaning that a judge should not depart from a joint submission unless the proposed sentence would bring the administration of justice into disrepute or otherwise would be contrary to the public interest.
- [4] This reflects the vitally important role that joint submissions have in the criminal justice system. Plea resolutions, if properly conducted, benefit not only the accused, but also victims, witnesses, counsel, and more generally, the administration of justice as a whole. Crown and defence jointly submit that taking into account all of the circumstances, as I will be discussing, the sentence is appropriate and was arrived at after careful consideration. It was not entered into lightly. Specifically, the Crown is satisfied the sentence is wholly appropriate.
- [5] I am mindful that in imposing sentence, the applicable legal principles, which must guide the consideration, are articulated in s. 718 of the Criminal Code. Those include, among others, protecting society and promoting respect for the law and maintenance of a just and peaceful society. A number of objectives of sentencing are specifically listed in s. 718 including: denouncing unlawful conduct; deterring the offender and others from committing crime; separating offenders from society when necessary; assisting in rehabilitation; providing reparations, and; promoting a sense of responsibility in offenders.
- [6] In addition, s. 718.1 states that "a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender". That section includes other specific sentencing principles, including that a sentence should be similar to sentences imposed on similar offenders for similar offences in similar circumstances, but increased or reduced to

account for aggravating or mitigating circumstances. Also, an offender should not be deprived of liberty if a less restrictive sanction is appropriate, and all reasonable sanctions other than imprisonment should be considered with particular attention to the circumstances of Aboriginal offenders.

- [7] Notwithstanding the joint submission of counsel, I am obliged to determine whether the proposed sentence meets these principles and accords with the standard articulated in *R. v. Cook*. For the benefit of the public record and to conduct that assessment, I will review the circumstances of the offence.
- [8] Shortly before 5:00 p.m. on July 14, 2018, the victim, Bruce Dougherty, had finished work and left home on his way to a football game. He was walking past Harbour Lights, a facility on East Hastings Street which provides, among other things, residential units for people in treatment. Mr. Dougherty often worked at Harbour Lights as an electrician. He was walking westbound on the sidewalk immediately in front of Harbour Lights, which is located on the north side of the street.
- [9] Mr. Carpenter was walking eastbound on the same sidewalk holding a cup of coffee. As they passed each other, for some unknown reason, they clipped shoulders. Mr. Carpenter immediately lost his temper. With his fist, he punched Mr. Dougherty in his face. Mr. Dougherty immediately fell to the ground unconscious and remained immobile for a few minutes.
- [10] The incident was observed by James Chisholm, who only saw Mr. Carpenter for a few seconds. However, he recognized him, although he did not know his name.
- [11] Mr. Carpenter was a resident of Harbour Lights and a person under long-term supervision. Mr. Chisholm was a former resident at Harbour Lights and had been for a few months volunteering there. It is likely that they had seen each other when jointly present in or around Harbour Lights. Mr. Chisholm immediately told people and police that he knew who the person who struck Mr. Dougherty was and could identify him from a photo. He was shown a photobook of residents at Harbour Lights and did identify Mr. Carpenter as the person he saw hitting Mr. Dougherty.
- [12] After the punch, Mr. Carpenter continued down the street and turned the corner. He was seen shortly after on Harbour Lights CCTV entering the building without his shirt on. Because he was under long-term supervision, he was required to sign in and out whenever he left or entered Harbour Lights. Within five minutes, the CCTV captured him returning to the front desk wearing different clothes. He signed out for most of the rest of the day.

- [13] Because of the incident, the National Monitoring Centre issued a warrant against Mr. Carpenter. The police became aware of Mr. Carpenter's return to Harbour Lights later that day. Officer Rebecca Chandler with the Vancouver Police Department attended at Harbour Lights that evening and arrested Mr. Carpenter at that time. She entered his room to retrieve his wallet and, while there, retrieved a shirt which appeared to have coffee on it and shorts which appeared to have blood on it.
- [14] Mr. Carpenter was arrested. When being processed at the jail, it was noticed that he had cut fingers on his right hand, the hand that had been used to punch Mr. Dougherty. Mr. Carpenter said he had cut the finger at work. The appearance of the wound on his fingers at that time was consistent with a punch reopening a pre-existing wound.
- [15] During the trial, Mr. Carpenter admitted to certain facts regarding Mr. Dougherty's injuries. Mr. Dougherty was taken to St. Paul's Hospital by ambulance and assessed in the ER department. A medical examination revealed that he had the following injuries: a fractured and swollen nose; an orbital floor blowout (which is a fracture in the orbital bone); extensive bleeding and lacerations to the left upper lip, which required 12 stitches; a loose and damaged tooth; a large haematoma on the back of his head, and; intense neck, head, and face pain.
- [16] Mr. Dougherty completed a victim impact statement that confirmed he did not want to attend court or have his statement read out. The statement was entered as an exhibit in sentencing.
- [17] In addition, Crown counsel stated that it was evident to her in speaking with Mr. Dougherty that his tooth was loose and appeared droopy. He told her that he did not fix the tooth because he could not afford it. Additionally, the loose tooth affected his speech and Mr. Dougherty was self-conscious about this.
- [18] Mr. Dougherty described in his written statement that his life was changed by the attack from Mr. Carpenter. He noted that the injury to his lip was such that he could actually stick his tongue out of his cheek. He has required chiropractic and physiotherapy to cope with his injuries.
- [19] He is an electrician by trade, and self-employed. He suffers short-term memory loss, which has negatively impacted his business. He has difficulty undertaking multiple tasks each day and remembering them. He also suffers from dizziness, although that has improved somewhat.
- [20] Although he was not seeking restitution for his losses, he wanted the court to know that he estimated his wage loss to be over \$100,000. In addition to that, he has spent a lot of money on chiropractic and physiotherapy fees. He did receive some compensation from the Victims of Crime, but he does not feel he has been fully compensated.

- [21] More generally, Mr. Dougherty struggles to understand and cope with the consequences of the unprovoked attack on him by Mr. Carpenter.
- [22] Mr. Carpenter is 49 years old and has lived in the Lower Mainland most of his life. He completed high school and took some courses at Cariboo College.
- [23] Mr. Carpenter has an extensive criminal record. In his 20's, Mr. Carpenter committed many crimes. Particularly noteworthy are convictions for assault in 1990 and criminal harassment in 1994. In addition, he had a number of convictions for theft and break and enter. His criminal record appears to be clear between late 1999 and 2007.
- [24] However, in 2007, he was convicted of three counts of sexual assault and sentenced to 12 years on each charge concurrently. He was also sentenced concurrently on three charges of uttering threats and forcible confinement. The actual sentence imposed, after taking into account the enhanced credit for time served, was eight years.
- [25] These incidents were serious. The incidents giving rise to the convictions occurred over a period of seven months. He attacked cleaners in motels and hotels in a similar manner. The attacks involved his covering the woman's head, placing an object against her side, and threatening harm if she did not comply, and then sexually assaulting her. The third incident was particularly egregious. It involved a 13-year-old victim whom Mr. Carpenter digitally penetrated and forced to masturbate him.
- [26] Upon release, Mr. Carpenter was placed under long-term supervision and will remain so until August, 2025.
- [27] In terms of his personal background, Mr. Carpenter first experienced trauma when, at the age of 16, his mother was killed in a motor vehicle accident. He said that experience led him into addiction with drugs and alcohol. He said those addictions contributed significantly to criminal activities in his 20's.
- [28] However, when he was 29, he became clean and sober and remained so for about six years. This is reflected in his criminal record. His counsel emphasized the importance of that period of time. Mr. Carpenter believes that period taught him that he is capable of change and setting himself on the right track.
- [29] Obviously, the sexual offences in 2007 for which he was convicted demonstrate that change was incomplete and not permanent. Nevertheless, that period of being clean and sober gives Mr. Carpenter hope that he again will be able to move forward after this incident that led to the current charges.
- [30] While in custody for the sexual assaults, he was assaulted on many occasions by other inmates because of his status as a sex offender. The Crown referred to two specific incidents of Mr. Carpenter being assaulted. One of those was so serious that his eye bone was broken and the side of his face had to be surgically reconstructed. Defence counsel added that Mr. Carpenter was, in fact, repeatedly victimized, including being stabbed, but he did not report

the assaults. Counsel stated that it is not uncommon for inmates not to report assaults committed on them by other inmates.

- [31] In addition to being assaulted while in the institution, he was also found to have committed a number of infractions.
- [32] The Crown referred to breaches of his long-term supervision order. In November 2015, he was found in a hotel which was a place which he was not supposed to be. For that breach, he was sentenced to 271 days, but the actual time served given enhanced credit was 189 days.
- [33] Mr. Carpenter informed the court that while that incident was clearly a breach of his order, it should not be viewed as a recurrence of his sexually offending behaviour. He was at the hotel with his now wife. However, he did not tell the probation officer about that at the time, and he admits that he breached his long-term supervision order.
- [34] Another breach occurred in April 2018. Mr. Carpenter was prohibited from accessing the Internet, but was found doing so while on a public computer in a library. For that breach, he was sentenced to 180 days and the actual time served was 120. Crown noted that the infraction happened mere months before the incident giving rise to these charges.
- [35] In relation to the sentence he was serving in the institution for sexual offences, a number of psychological reports were completed. Although the reports were not entered into evidence, Crown did review the pertinent information, only some of which I mention.
- [36] His Corrections file notes that Mr. Carpenter only made minimal or moderate gains during treatments offered at the institution. Despite this, Mr. Carpenter stated that he feels he has successfully tackled the deviance that led to his committing sexual offences. He believes he has worked very hard to do so and has been successful.
- [37] The reports also revealed a number of risk factors leading him to be a person characterized as having a very high risk for sexual offending and for violent recidivism. These risk factors included his impulsivity, poor coping skills, negative emotionality, and negative attitudes towards women. It was noted that he would require ongoing daily supervision upon release. The report also talked about his poor social interactions.
- [38] However, Mr. Carpenter is married and has been in a relationship with his wife for five years. He has some contact with her adult children and, in that sense, believes he is surrounded by a supportive family.
- [39] He and his wife were involved in a business prior to this incident running a retail store selling antiques. They work well together and hope to engage in another business venture. Defence counsel confirmed that he spoke with Mr. Carpenter's wife and she is very supportive of him. She attended court every day during the trial in February.

- [40] Crown also acknowledged that apart from the violence of the current incident, the nature of the offence was distinct from the other crimes for which Mr. Carpenter has been convicted. It was an unprovoked and spontaneous attack. That was not an element of any previous incidents that led to convictions.
- [41] It is also relevant to sentencing that Mr. Carpenter will continue to be under strict supervision by way of the long-term supervision order for another five years.
- [42] I agree with the Crown's statements that the following are aggravating circumstances. The assault involved a significant force and was unprovoked. Mr. Dougherty was hit from behind by a stranger with no warning; he had no ability to respond or protect himself. After the attack, Mr. Carpenter simply walked away without any concern for Mr. Dougherty.
- [43] The injuries on Mr. Dougherty are long-lasting and that must be considered as an aggravating circumstance pursuant to s. 718.2(iii.1) of the Criminal Code.
- [44] The offence was committed while Mr. Carpenter was on long-term supervision under strict conditions, including being under a curfew. The attack happened in a public place outside the very facility where Mr. Carpenter was living as a long-term offender and, although unknown to him, it was on someone who worked at the same facility.
- [45] Also significantly aggravating is his extensive criminal record, including convictions for serious violence.
- [46] I agree the following are mitigating circumstances. This is a guilty plea and, although it has not been entered early, I understand from the parties that the many sentencing considerations at play made it difficult to conclude a plea agreement any earlier. The plea does save considerable court time and resources. I note that the trial was set to continue with the conclusion of a voir dire relating to the exclusion of evidence, possibly followed by more days of evidence. Saving court time does, perhaps, have an increased prominence because of the current situation involving the COVID-19 pandemic, which was responsible for the delay in the continuation of the trial.
- [47] Lastly, the Crown accepts that Mr. Carpenter is remorseful and very much regrets his actions, noting that the remorse will be very meaningful for Mr. Dougherty. I will return to that factor, but I mention first other factors that are neither aggravating nor mitigating, but relevant to sentence.
- [48] This was a single punch, but occurring in circumstances where courts have seen in other cases, a single punch can lead to very serious consequences. Sometimes those consequences are more serious than suffered by Mr. Dougherty, including death. Mr. Dougherty was lucky that while he was seriously injured, it could have been worse.
- [49] Also, no drugs or alcohol or weapons were involved in this attack. It was not premeditated. It was not motivated by any personal animus towards Mr. Dougherty.

- [50] Mr. Carpenter accepts his responsibility for what he did to Mr. Dougherty. He does not retreat in any way from the admission that this was an unprovoked attack. However, by way of trying to understand his own behaviour, he offered a possible explanation for what happened. He does so for the purpose of demonstrating that he has turned his mind to what happened, admitting that he struggles with what he did. He says he was surprised by his own behaviour and struggles to understand why he did it. Although not stated explicitly, I also infer from his explanation, combined with his personal statement, which I will come to shortly, that this explanation is at least some sign that he is capable of taking steps to move forward with his life.
- [51] As part of his explanation, he recounts an incident that happened about a week before the incident that led to these charges. He was riding the bus when a person who was a former inmate recognized him and approached him in an intimidating and aggressive manner. There was an altercation causing the bus to stop and be cleared of all passengers. Mr. Carpenter left the scene immediately.
- [52] Reflecting on that, he has come to believe that what must have happened when his shoulder clipped with Mr. Dougherty, is that he felt he was again under attack as he had been on the bus and many times in prison. He recalls the incident and believes that hot coffee spilled on his face, heightening his feeling of being under attack. While he does not dispute the submitted facts, he says things happened very quickly and he has little specific recollection of his exact movements after the punch. He does say his punch was an immediate reaction. He surmises that he must have sensed at some level in his own mind, that the person with whom he clipped shoulders could be another inmate wanting to attack him. He wonders whether he may be suffering from some type of stress disorder relating to the assaults he experienced in prison, possibly reignited by the incident on the bus.
- [53] Through his counsel and his personal statements made in court today, Mr. Carpenter expressed remorse for his actions. He said he is embarrassed by his behaviour and very sorry. He accepts that nobody -- and certainly not Mr. Dougherty -- deserves to get punched in that manner. Mr. Carpenter says he experienced dire thoughts about himself since that day and that he struggles to understand his behaviour.
- [54] Mr. Carpenter stated that he is committed to undergoing whatever psychological counselling can be made available to him. He stated to me in court that on his "own dime" and by his own arrangements, he will be seeking counselling when released. He stated he wants to devote as much energy to the task of tackling whatever led him to engage in this behaviour, as he did when he got clean and sober. He believes his success at that task gives him hope he can again improve his life and behaviour. He also believes that he has successfully tackled the deviance that led him to commit sexual assaults. Again, he is committed to expending energy and put in the effort to make the same type of progress with regard to what instigated this incident.

- [55] Mr. Carpenter says that he came to realize that pleading guilty was the right thing to do. He accepts full responsibility for his actions.
- [56] I note that I observed during the sentencing hearing Mr. Carpenter demonstrated emotionality while making his statement. I also observed at other times his body language was consistent with that remorse, particularly when facts relating to the incident were recited in court.
- [57] I accept Mr. Carpenter's remorse is sincere and heartfelt.
- [58] Mr. Carpenter wants to write an apology letter to Mr. Dougherty. He is mindful that he may be under a no-contact order and, therefore, if appropriate asked for this Court to make a recommendation to allow an exception should such a no-contact order be made. I can see no reason why that recommendation is not appropriate and, though this is not binding on anyone, I do make that recommendation. I note that it may be particularly meaningful for Mr. Dougherty to receive an apology in writing from Mr. Carpenter.
- [59] The parties noted pursuant to s. 718 of the Criminal Code the following are of primary importance in this case: denunciation, deterrence, and protection of the public in terms of separating the offender from society. I agree with that assessment.
- [60] While rehabilitation is also relevant, Crown said given the uncertain success as reported in Mr. Carpenter's Corrections file, it is not the primary consideration. I do note for the record Mr. Carpenter's statement to this Court that he intends to pursue counselling whether or not it is provided to him by Corrections Canada and I hold him to that promise.
- [61] With regard to proportionality, although he has a long criminal record, including serious offences that related to violent conduct, I do note and agree that the incident in this case, while violent, had elements that made it distinct from his other convictions.
- [62] As noted by Crown, the maximum sentence for aggravated assault is 14 years. In addition, a conditional discharge and conditional sentence are not available as sentences for conviction under this offence.
- [63] The Crown did refer me to a number of cases that were helpful. Those cases establish a range that I do find applicable. The cases establish a range for offences of a similar nature between 16 months and six years. I am satisfied that range was demonstrated by those cases which were *R. v. Craig*, 2005 BCCA 484; *R. v. Nguyen*, 2016 BCCA 408; *R. v. Sidhu*, 2005 BCCA 178, and; *R. v. Woodward*, 2011 BCCA 251.
- [64] Crown counsel informed me that she did consider seeking the imposition of a probation order for about two years, specifically to implement protective conditions for Mr. Dougherty. However, she also informed me that due to the operation of legislation and the system in place for long-term supervision, such probation would only become operative after the expiry of the long-term supervision order. In those circumstances, I agree there was no purpose in seeking the two-year probation because the supervision order will be in place for

another five years.

- [65] Crown counsel also understood from the parole supervisor that the conditions on Mr. Carpenter under the long-term supervision order can be reviewed upon conclusion of this matter. In particular, there is an ability to add special conditions on an interim basis, but in order to have any conditions become regular conditions, an application has to be made to the parole board.
- [66] I did not understand there to be any opposition to my recommending conditions for his long-term supervision that would replicate the probation orders the Crown wanted to seek. I do find it appropriate in all the circumstances to make that recommendation recognizing that it is not binding. Specifically, I recommend that there be a condition that Mr. Carpenter have no contact with Mr. Dougherty, and stipulating that Mr. Carpenter not attend at Mr. Dougherty's place of work or residence of Mr. Dougherty, and specifically that he not attend, or be near Harbour Lights. Obviously, the latter recommendation is done on the assumption that he can be housed at a different facility for the purpose of long-time supervision.
- [67] Given all the preceding discussion, I am satisfied that the joint submission should be accepted and that the recommended sentence is fit, proper, and appropriate.
- [68] This was a single punch unaccompanied by other violence. It was serious and Mr. Dougherty suffered long-lasting injuries. However, it was unaccompanied by further contact and it was not precipitated by anything. Despite his long and serious criminal record, there is an important distinction between the manner of this particular offence and the previous offences.
- [69] I make note that the conviction in this case, based on what I heard at trial, was not inevitable and, in particular, Mr. Carpenter was in a position to argue a Charter application to exclude evidence. I also make note of his sincere remorse and I appreciate his attempt to understand his own actions and explain that to the court today. His explanation made sense and, as I said before, I hold him at his word that he intends to pursue counselling in order to assist himself with understanding and changing his behaviour.
- [70] I thank counsel for their very able submissions on this matter.
- [71] Mr. Carpenter, please stand.
- [72] Having pleaded guilty to the offence of aggravated assault, specifically, that on July 14, 2018, you did commit aggravated assault contrary to s. 268(2) of the Criminal Code, I impose a sentence of three years on you. You are entitled to enhanced credit at the rate of 1.5 days per days in custody. You have been in custody for two years and 13 days. Accordingly, the sentence as of today is one day.
- [73] Pursuant to s. 487.051, this sentence entails a mandatory requirement that you supply a DNA sample. I am informed that the police department requires 90 days' notice for you to do so. Accordingly, you are to report to the Vancouver Police Department at 2120 Cambie Street

sometime between October 28 and December 20, 2020, for the purpose of providing a DNA sample. I thank Madam Registrar who has confirmed that for people whose surname starts with a letter between A and F, your attendance can be at any Monday to Thursday starting at 11:30 at that facility.

[74] It is also my understanding that a firearm prohibition needs to be imposed for 10 years because of your conviction, and I so order.

[75] With regard to the victim surcharge, I accept both counsel's joint submission that because that legislation was struck down as of the date of the facts in this case, no such surcharge can be applied.

"Sharma J."

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