
CANADA / JUDGMENT

R. v. Chambers

2021 BCSC 1083

COURT

Supreme Court of British Columbia

DECIDED

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2021 BCSC 1083 R. v. Chambers

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Chambers,

2021 BCSC 1083

Date: 20210603

Docket: 41416

Registry: Campbell River

Regina

v.

Justin Michael Douglas Chambers

Before: The Honourable Madam Justice MacNaughton

Oral Reasons for Sentence

Counsel for the Crown:

T. Morgan

Counsel for the Accused:

S. Roy

Place and Date of Trial/Hearing:

Campbell River, B.C.

June 3, 2021

Place and Date of Judgment:

Campbell River, B.C.

June 3, 2021

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Introduction

- [1] On April 23, 2021, after a trial, I convicted Justin Chambers of one count of aggravated assault, two counts of assault with a weapon, and one count of dangerous driving under ss. 268(2), 267(a), and 249(1)(a) of the Criminal Code, R.S.C. 1985, c. C-46 [Code] respectively.

The Circumstances of the Offences

- [2] The circumstances of these offences are set out in detail in my trial Reasons for Judgment, indexed at R. v. Chambers, 2021 BCSC 799. I need only summarize them here.
- [3] In brief, in the early morning hours of January 12, 2018, after a disagreement at the end of night of drinking and smoking marihuana, Mr. Chambers knocked Mickey Balla over with his car and, while Mr. Balla was struggling to get up, hit him with an axe, causing a serious injury to his left arm, requiring surgery to insert pins and a plate and 27 stitches.
- [4] Mr. Balla and Mr. Chambers were not close friends. They lived in Campbell River in relatively close proximity to each other. They had socialized previously. At the time of the offences, they met on the evening of January 11, 2018, at a restaurant in Campbell River, to celebrate Mr. Chambers' birthday.
- [5] After leaving the restaurant, Mr. Chambers drove them to buy beer and then to visit Mr. Balla's friend who sold them marihuana. Mr. Chambers then drove them to his apartment. They continued drinking. In the early morning hours of January 12, Mr. Balla left and walked home. He did not have his keys and was unable to get into the house where he lived with his girlfriend. He returned to Mr. Chambers' apartment, and the two men continued drinking and smoked marihuana.
- [6] At about 3:00 a.m., Mr. Chambers became angry because he believed that Mr. Balla had taken some of his cigarettes. Mr. Balla described a dramatic change in Mr. Chambers' persona. Mr. Chambers accused Mr. Balla of drinking his beer and smoking his cigarettes. Things turned nasty. Mr. Balla reacted angrily to the accusations and got up to leave and walk home. As he was leaving, Mr. Balla threw a half-full beer can and hit Mr. Chambers, cutting his face. The walk from Mr. Chambers' apartment to Mr. Balla's home took between 12 and 16 minutes.

- [7] As Mr. Balla was heading home, Mr. Chambers drove up behind him and hit him with his car. Mr. Balla rolled over the front of the car, hit the pillar of the windshield, broke the passenger side mirror, and came to rest lying on the ground. As Mr. Balla was lying there, Mr. Chambers got out of his car, and approached Mr. Balla and said words to the effect of, are you still breathing Mickey Balla? He went back around to the driver's side of his car and returned with an axe.
- [8] While Mr. Balla was struggling to get up, and dazed from being hit by the car, Mr. Chambers swung at him with the axe. Mr. Chambers ran to try to get away, and Mr. Balla followed him, yelling that no one made him bleed on his birthday. Mr. Chambers struck Mr. Balla with the axe as he raised his arm to protect himself. He caused a deep wound. Mr. Balla suffered a broken ulna that required surgery and a plate and screws to repair. His arm required 27 stitches.
- [9] While Mr. Balla was being treated in hospital, Mr. Chambers sent him a series of tweets, taunting him. Those tweets give some insight into Mr. Chambers' thinking. He was clearly still angry. Particularly troubling was Mr. Chambers texting that he "loved the look on [Mr. Balla's] face when [he] chased [him]".

Impact on the Victim

- [10] As I have said, Mr. Balla suffered a significant injury to his left forearm requiring surgery. He is right handed. His arm is still visibly scarred.
- [11] In a victim impact statement, filed within weeks of the assault, Mr. Balla described being unable to do half of what he used to. He could not work or sleep, and was in pain all the time. He did not walk at night and was afraid to walk on the roadway.
- [12] At trial, Mr. Balla described that he has no feeling in his left forearm and it cramps and aches at night. The pins and plate have been removed. He described that he is right handed and is able to use a brush, but he may drop a paint can if he holds it in his left hand. He has, otherwise, recovered from his injuries.
- [13] At the time of the assaults, Mr. Balla was about to start a new job. He testified that he lost the opportunity due to his injuries. At trial, Mr. Balla testified that he was employed as a painter.

The Circumstances of the Offender

Personal Background

- [14] Mr. Chambers is currently 36 years old; he was 33 at the time of the offence. He was born in Campbell River. He has two sisters, one older and one younger. His younger sister, Savannah Hobson, attended the sentencing hearing to support Mr. Chambers and wrote a letter to the court in support of him.

- [15] Mr. Chambers' parents divorced when he was three, and he remained with his mother, who was a seamstress and ran a kids club for a local hockey team. His mother attended the sentencing hearing to support him. His father was employed at Raven Lumber.
- [16] When Mr. Chambers was eight years old, his father had a serious dirt-biking accident. As a result of his injuries, he was permanently disabled. He was unable to move from his waist down and had no use of his hands. Mr. Chambers' father spent a few years in Vancouver General Hospital, severely ill. For several years, Mr. Chambers travelled to visit his father in Vancouver.
- [17] Mr. Chambers eventually returned to Campbell River, where he lived with a paternal uncle. His father died in 2012.
- [18] Mr. Chambers, and his sister Savannah, entered the foster care system when he was nine years old. He had a tumultuous relationship with his mother. He spent his first five years in foster care in the same home. He was then returned to his mother's care. When that did not work out, and until he was 15 years old, Mr. Chambers was placed in a number of satellite or respite homes. At the age of 15, he became semi-independent, and, at 16, he began living alone with support from the Ministry of Children and Family Services.
- [19] Despite the uncertainty in his living arrangements, when he was 18 years old, Mr. Chambers completed his General Educational Development (GED) at an alternative secondary school in Campbell River. At the same time he was working at a restaurant in Campbell River. He then attended Discovery Community College in Campbell River and completed the first year of a carpentry program. He has worked as a carpenter ever since.
- [20] In 2012, Mr. Chambers met Ms. Hunt, the mother of his son who was born in 2014. A few weeks after his son's birth, Mr. Chambers had a mountain biking accident requiring extensive surgery and rehabilitation. He was on disability for two years. In 2016, his relationship with Ms. Hunt ended acrimoniously. After a custody and parenting dispute, he now shares custody of his son and has parenting time with him on weekends. The relationship breakup and his time on disability caused him severe financial stress.
- [21] Mr. Chambers' counsel described that Mr. Chambers was at the low point in his life in January 2018 when the offences for which he was convicted occurred.

Current Circumstances and Letters of Support

- [22] A few months later in 2018, Mr. Chambers met Ms. Anderson, to whom he is engaged to be married. Shortly after they met, Ms. Anderson moved to Campbell River to be close to Mr. Chambers, and they started living together about six months ago. Ms. Anderson was in court for the sentencing hearing and wrote a letter to the court explaining the significant role Mr. Chambers has played in her life and the lives of her two daughters.

- [23] By all accounts, Mr. Chambers plays an active role in all of the children's lives and has assumed the role of a father figure to Ms. Anderson's daughters, particularly to her youngest daughter who has no relationship with her biological father. He is a loving and committed father.
- [24] A number of Mr. Chambers' friends and family members wrote letters in his support. They were marked as Ex. 3 on the sentencing hearing. In summary, the writers describe a man who is a loving father, supportive of his friends and family, and generous with his time and skills. The writers describe being truly surprised at the conduct for which Mr. Chambers has been convicted, as they do not know him as aggressive or violent. They all describe Mr. Chambers' remorse about what happened between him and Mr. Balla.
- [25] Five of Mr. Chambers' family members attended the sentencing hearing. The courtroom protocols could only accommodate three visitors. The other two remained in the hallway outside of the courtroom.
- [26] Mr. Chambers is employed by Smits Construction Ltd. ("Smits"), a general contracting firm in Courtenay, BC. He began working with Smits in 2017 when they were involved in a construction project in Campbell River. Mr. Chambers now commutes between Campbell River and Courtney for work.
- [27] According to a letter from Nathan Smits, the owner and operator of Smits, Mr. Chambers is a dedicated and valued employee who works well with fellow employees and has a great rapport with customers. Mr. Smits describes Mr. Chambers as a hard working and reliable employee who pays high attention to detail. Mr. Smits says that he is close to Mr. Chambers and that parenting is important to both of them. Mr. Smits says that Mr. Chambers' children are a large part of his life and he works hard at being a good parent. Mr. Smits indicates that Mr. Chambers will have a job with him regardless of the outcome of the sentencing.
- [28] Ms. Anderson explained in her letter of support that she suffers from a number of mental health difficulties that prevent her from working. She describes how supportive Mr. Chambers has been in respect of her treatment and the steps towards her recovery, including parenting her daughters during Ms. Anderson's hospitalization in June 2020. A friend of Ms. Anderson's and Ms. Anderson's father echoed the comments about Mr. Chambers' emotional support for Ms. Anderson in the letters they wrote to the court.

Efforts towards Rehabilitation

- [29] As Mr. Chambers was constitutionally entitled to do, he pled not guilty to all four counts in the indictment. He mounted a defence at trial based on Mr. Balla being the aggressor and him acting in self-defence. I did not find his evidence credible for the reasons set out in my trial judgment.

- [30] There was no evidence during the trial demonstrating the Mr. Chambers had any real insight into his conduct, and there was no evidence at this sentencing hearing that, after being convicted, Mr. Chambers took steps to understand his conduct.
- [31] Mr. Chambers read an emotional apology to the court, a copy of it was marked as Ex. 4 on the sentencing hearing. He apologised to Mr. Balla, to his family and friends, and to the court. I accept that his apology was sincere.

Criminal Record

- [32] Mr. Chambers has had no prior negative involvement with the criminal justice system with the exception of a breach of his bail terms which I will discuss later in these reasons.

Crown and Defence Positions on Sentencing

Crown's Position

- [33] The Crown seeks a global sentence of three years in custody with the following attribution to the various counts:
- (a) Count 1 - aggravated assault - three years;
 - (b) Count 2 - assault with a weapon (axe) - two years concurrent;
 - (c) Count 3 - assault with a weapon (motor vehicle) - two years concurrent; and
 - (d) Count 4 - dangerous driving - a \$1,500 fine together with an 18-month driving prohibition under s. 259(2)(b) of the Code.
- [34] In addition, the Crown seeks certain ancillary orders including: under s. 743.21 of the Code that Mr. Chambers have no contact with Mr. Balla while he is in custody; as aggravated assault and assault with a weapon are primary designated offences, an order under s. 487.051 of the Code for the taking of samples of bodily substances for DNA purposes; and as Mr. Chambers was convicted on aggravated assault and two counts of assault with a weapon, a ten-year weapons prohibition order under s. 109(2) of the Code.
- [35] Although the Crown sought, and the defence acceded to, a victim fine surcharge in the cumulative amount of \$800 for the four counts on which Mr. Chambers has been convicted, because the offence date was January 12, 2018, no victim surcharge may be imposed.

Defence Position

- [36] The defence submits that a fit and proper sentence in the circumstances of this case is a one-year custodial sentence, followed by two years' probation with Mr. Chambers being subject to a strict curfew during the first year.

- [37] The defence submits that the sentence should be attributed as follows: one year for aggravated assault; six months for each offence of assault with a weapon; and six months for the offence of dangerous driving, with all sentences to be served concurrently.

Sentencing Principles and Ranges

Codified Principles of Sentencing

- [38] Sections 718-718.2 of the Code set out the purpose and principles of sentencing.
- [39] Under s. 718, the fundamental purpose of sentencing is to protect society and promote respect for the law and the maintenance of a just, peaceful, and safe society by imposing just sanctions. The objectives of these sanctions include denouncing unlawful conduct, deterring offenders and others from committing crimes, separating offenders from society where necessary, rehabilitating offenders, and promoting a sense of responsibility in offenders.
- [40] The relative weight and importance of these multiple factors will vary depending on the nature of the crime and the circumstances of the offender. In the final analysis, the overarching duty of a sentencing judge is to draw upon all legitimate principles of sentencing to determine a "just and appropriate" sentence which reflects the gravity of the offence committed and the moral blameworthiness of the offender.
- [41] Section 718.1 mandates that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. The principle, and its interplay with the sentencing objectives, and other principles was explained by LeBel J. in *R. v. Ipeelee*, 2012 SCC 13 at para. 37 and in *R. v. Lacasse*, 2015 SCC 64 at para. 53:
- [37] The fundamental principle of sentencing (i.e., proportionality) is intimately tied to the fundamental purpose of sentencing -- the maintenance of a just, peaceful and safe society through the imposition of just sanctions. Whatever weight a judge may wish to accord to the various objectives and other principles listed in the Code, the resulting sentence must respect the fundamental principle of proportionality. Proportionality is the sine qua non of a just sanction. First, the principle ensures that a sentence reflects the gravity of the offence. This is closely tied to the objective of denunciation. It promotes justice for victims and ensures public confidence in the justice system. As Wilson J. expressed in her concurring judgment in *Re B.C. Motor Vehicle Act*, 1985 CanLII 81 (SCC), [1985] 2 S.C.R. 486, at p. 533:

It is basic to any theory of punishment that the sentence imposed bear some relationship to the offence; it must be a "fit" sentence proportionate to the seriousness of the offence. Only if this is so can the public be satisfied that the offender "deserved" the punishment he received and feel a confidence in the fairness and rationality of the system.

Second, the principle of proportionality ensures that a sentence does not exceed what is appropriate, given the moral blameworthiness of the offender. In this sense, the principle serves a limiting or restraining function and ensures justice for the offender. In the Canadian criminal justice system, a just sanction is one that reflects both perspectives on proportionality and does not elevate one at the expense of the other.

- [42] Section 718.2 sets out a non-exhaustive list of secondary sentencing principles for the court to consider. Under s. 718.2(a), sentences are to be increased or reduced to account for any aggravating or mitigating circumstances. The section then sets out a number of circumstances that are deemed to be aggravating.
- [43] Section 718.2(b)-(c) set out the principles of parity and totality.
- [44] Finally, s. 718.2(d)-(e) promote restraint in sentencing by providing that an offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances, and to consider all available sanctions other than imprisonment that are reasonable in the circumstances and consistent with the harm to victims or the community. Particular attention is to be paid to the circumstances of Indigenous offenders. Mr. Chambers is not Indigenous.

Range of Sentence

- [45] Sentencing is a highly-individualized process. The available sentence may be constrained by statutory provisions, and the range of appropriate sentence is generally established through a consideration of sentences imposed on similarly-situated offenders who have committed similar offences in similar circumstances.
- [46] To craft a proportionate sentence in accordance with the purpose, principles, and objectives that the Code requires in each case has been described as one of the most delicate and difficult stages of the Canadian criminal justice process. Although the task is governed by s. 718 of the Code, and although the objectives set out in the subsections of s. 718 are clearly defined and guide courts in sentencing, sentencing nonetheless involves the exercise of the court's broad discretion in balancing all of the relevant factors in order to meet the objectives being pursued in sentencing: *Lacasse* at para. 1.

Principles of Sentencing Deserving of the Greatest Emphasis

- [47] I agree with the Crown that denunciation, and specific and general deterrence, must be emphasized to send a strong message that violence of the nature involved in this case will not be tolerated by society.
- [48] It appears that protection of the public will be well served by a custodial sentence in this case, and Mr. Chambers is not proposing otherwise.

Sentencing Authorities

- [49] Both counsel have provided a number of authorities for my consideration, some for general sentencing principles and some for the sentences imposed in similar cases.
- [50] In particular, the Crown relies on: *R. v. Marsman*, 2007 NSCA 65; *R. v. Craig*, 2005 BCCA 484; *R. v. Kim*, 2010 BCCA 590; *R. v. L.I.*, 2017 BCCA 444; *R. v. MacDonald*, 2012 BCCA 155; *R. v. Montgomery*, 2018 BCCA 27; *R. v. May*, 2018 BCCA 391; and *R. v. Hamlyn*, 2016 ABCA 127. The Crown's cases address broad sentencing principles with respect to convictions for aggravated assault but do not address the particular facts and circumstances as they relate to Mr. Chambers.
- [51] The defence relies on *R. v. Dario*, 2015 BCSC 1149; *R. v. Fraser*, 2009 BCSC 1789; *R. v. Sakkat Elfoul*, 2015 ABQB 540; *R. v. Sultan*, 2007 BCSC 849; *R. v. Bazinet*, 2005 ABCA 388; and *R. v. Gorman*, 2008 ABCA 311. The defence cases involve convictions for aggravated assault and more directly relate to the parity principle. Of course, no two cases present the same factual matrix, but the defence cases involve injuries of significance, sometimes multiple victims, and with one exception--convictions after trial.
- [52] The Court of Appeal has suggested a range for the offence of aggravated assault in a number of cases and where cases should fit in the range. In *Craig*, Justice Kirkpatrick wrote:
- [10] [A] sentence of two years imprisonment for the commission of aggravated assault is at the low end of the range of sentences imposed on similar offenders in similar circumstances (*R. v. Chana* (1998), 115 B.C.A.C. 159, [1998] B.C.J. No. 2458 (C.A.) at para. 6). The range of sentence for similar offences was described as being between 16 months and six years in *R. v. Johnson* (1998), 131 C.C.C. (3d) 274 (B.C.C.A.), two years less a day to six years in *R. v. Biln*, [1999] B.C.J. No. 1411, 1999 BCCA 369, and, most recently, between 18 months and six years in *R. v. Willier*, [2005] B.C.J. No. 1746, 2005 BCCA 404. In determining an appropriate sentence within this broad range, an unprovoked attack with a weapon tends to result in the imposition of a sentence at the higher end while a consensual fight that has escalated with resulting injury tends to result in a sentence at the lower end. See in particular: *R. v. Willier*, at para. 22, and *R. v. Johnson*, at para. 10.
- [53] In *R. v. Kim*, 2010 BCCA 590, the Court of Appeal again discussed the range of sentences for aggravated assault. After referring to the ranges set out in *Craig*, it said:
- [39] However, as pointed out in *R. v. Nasogaluak*, 2010 SCC 6, [2010] 1 S.C.R. 206 at para. 44, and *R. v. Bernier*, 2003 BCCA 134, ranges of sentence are suggestions or guidelines. They are not rules. The sentencing of every accused is of necessity an individualized exercise, which must have due regard for the principles of sentencing in s. 718 of the Code, as well as the particular circumstances of the offences and the offender.

- [40] While a range of sentence is sometimes suggested as a guide, it should not be treated inflexibly. Crown counsel referred us to a number of cases where sentences for aggravated assault exceeded 6 years. The most recent are: *R. v. S.B.P.*, 2007 BCCA 541, where the sentence was 10 years; *R. v. Wallin*, 2003 BCSC 809, where the sentence was 9 years; *R. v. Armstrong*, 2003 BCSC 1057, where the sentence was 8 years; and *R. v. H.J.H.*, 2002 BCSC 1772, where the sentence was 8 years.
- [54] I note that in the three BC cases relied on by Mr. Chambers, the offenders were sentenced as follows: In *Dario*, to 18 months' imprisonment on two counts of aggravated assault, to be served concurrently, followed by two years probation; In *Fraser*, to 15 months' imprisonment for each of four counts of aggravated assault and 12 months' imprisonment for assault with a weapon, all to be served concurrently, followed by two years' probation; and in *Sultan*, to one year's imprisonment, followed by two years' probation. In each of those cases, the offender was sentenced after a trial.
- [55] The sentencing ranges discussed by the Court of Appeal in *Craig and Kim* were not discussed in *Fraser* or *Sultan*. They were discussed in *Dario*, and the sentence was at the low end of the range despite the fact that there were two victims of an assault both of whom were blindsided when they were hit in the head with a piece of wood. The first victim suffered a closed head injury, concussion, facial fractures, and multiple contusions. He lost the vision in his right eye. The second victim suffered a closed head injury, concussion, broken jaw and cheekbones, and four broken teeth. His jaw was wired shut for two months.
- [56] I have considered all of the cases and the factors and circumstances which informed the sentences in each. I have found *Dario* and *Fraser* to be the most helpful.

Sentence

Aggravating Factors

- [57] In this case, the aggravating factors include the following:
- (a) Although Mr. Balla appears to have recovered from his injuries, and they were not life threatening, his injuries were serious and involved the use of two different weapons: a vehicle and an axe.
 - (b) While there is an element of provocation here because Mr. Balla cut Mr. Chambers' face with a beer can, Mr. Chambers did not act spontaneously, in the moment, in retaliation. Rather, he made a series of choices, and took deliberative acts, leading to the assaults, during them, and following them. In particular: he left his apartment, likely taking an axe with him; while intoxicated, drove to the location where he expected to find Mr. Balla; struck Mr. Balla with his vehicle; and when Mr. Balla was dazed and struggling to get up, Mr. Chambers retrieved an axe from his vehicle and swung at Mr. Balla and missed him. He then chased Mr. Balla, and when Mr. Balla raised his left arm to protect himself, Mr. Chambers hit him with the axe.

- (c) Although many of the letters filed in support of Mr. Chambers suggest that he is remorseful about what happened, there was no indication of any remorse at the time of the events in question. I did not accept Mr. Chambers' version of events at trial. Nonetheless, even on that version, Mr. Chambers did not offer Mr. Balla aid after striking him with his car or before or after striking Mr. Balla with his axe. Of course, a demonstration of remorse at trial would have been inconsistent with Mr. Chambers' position that Mr. Balla was the aggressor and that he only used the axe in self-defence.
- (d) Following the assaults, in text messages, Mr. Chambers continued to taunt Mr. Balla and texted about how he enjoyed the look on Mr. Balla's face as he ran.

Mitigating Factors

- [58] The primary mitigating factor is that Mr. Chambers has no criminal record and, but for some driving offences which are not criminal, he has had no negative involvement with the justice system.
- [59] Mr. Chambers is also a relatively youthful offender. He was 33 at the time of the offence.
- [60] Despite difficulties in his childhood, Mr. Chambers pursued an education and, since a young age, has shown a strong connection to the workforce. He has lived a pro-social lifestyle but for this one evening involving Mr. Balla.
- [61] As demonstrated by the letters filed in his support, Mr. Chambers has strong ties to his close and extended family, his community, and to the workforce. This speaks well for his chances for rehabilitation.
- [62] Mr. Chambers has also taken on the responsibility for his family's financial and emotional stability.

Conclusion

- [63] As explained in MacDonald at para. 52, in cases of aggravated assault, the extent of a victim's injuries is not determinative of where, in the range of available sentences, the appropriate sentence should fall. The severity of the injuries suffered by a victim is only one factor to be considered. It is the circumstances of the assault, including whether it was unprovoked, planned or spontaneous, or involved a weapon, that are the most relevant factors to determining where in the range a particular sentence should fall.
- [64] I have balanced all those factors in coming to my view of the fit sentence in this case. I have also considered that, while not mitigating, a custodial sentence is likely to have an adverse collateral impact on the financial and emotional well-being of Mr. Chambers' family and, in particular on Ms. Anderson and the three children. Mr. Chambers is the sole income earner for the family and provides considerable emotional support to Ms. Anderson. I was advised that, as a family, they have done their best to plan for the likelihood that Mr. Chambers would receive a custodial sentence. In his letter of apology, Mr. Chambers explains that he

has told his children that he must be punished for his behaviour.

[65] In my view, a fit sentence that balances the seriousness of Mr. Chambers' offences, the impact on Mr. Balla, and Mr. Chambers' circumstances, is a one-year period of incarceration, followed by two years of probation on the terms I will set out. While a one-year jail sentence is below the low end of the range discussed by the Court of Appeal, when combined with strict probationary terms during the first year of two years of probation, it:

- appropriately reflects the seriousness of Mr. Chambers' actions and their lasting impact on Mr. Balla;
- is necessary to make clear that violent attacks involving weapons and serious harm to victims will not be tolerated in our communities; and
- will enhance public safety as it will provide Mr. Chambers time to work on his rehabilitation while in custody.

[66] At the same time, the sentence will:

- reflect Mr. Chambers' remorse as expressed to the court and the fact that, but for this one incident, he has led an entirely pro-social life; and
- reflect Mr. Chambers' strong family and community support, making rehabilitation a real possibility.

[THE COURT]: Mr. Chambers, please stand.

[67] For the offence of aggravated assault, I sentence you to a period of incarceration of one year. For the offence of assault with a weapon, an axe, I sentence you to a period of incarceration of nine months. For the offence of assault with a weapon, a vehicle, I sentence you to a period of incarceration of six months. For the offence of dangerous driving, I sentence you to a period of incarceration of four months. All periods of incarceration are to be served concurrently.

[68] For the offence of dangerous driving, I have decided not to order a driving prohibition because your incarceration will have on your employment which would only be heightened by a license suspension. In any event, you may well face a suspension from the Superintendent of Motor Vehicles as a result of your conviction for dangerous driving.

[69] I also make three ancillary orders.

[70] First, during your incarceration, you are to have no contact with Mickey Balla.

[71] Second, aggravated assault and assault with a weapon are primary designated offences. Pursuant to s. 487.051(1) of the Code, I authorize the taking of samples of bodily substances from you for the purposes of inclusion in the national DNA data bank. The samples will be taken from you while you are in custody and you must submit to the taking of the samples.

[72] Third, pursuant to s. 109(2) of the Code you are prohibited from possessing any firearm, crossbow, restricted or prohibited weapon, prohibited device, ammunition, and explosive substance for ten years.

[73] Following the completion of your incarceration, you must comply with a probation order for two years on the following terms:

2001

- You must keep the peace and be of good behaviour.
- You must appear before the court when required to do so by the court.
- You must notify the court or your probation officer five days in advance of any change of name or address and promptly notify the court or your probation officer of any change in employment or occupation.

2002

- You must have no contact or communication, directly or indirectly with Mickey Balla.
- You must not go to any place where Mickey Balla lives, works, attends school, worships or happens to be. If you see him, you must leave his presence immediately without any words or gestures.

2104

- You must report in person to a probation officer at 128-1180 Ironwood St, Campbell River, BC within two business days of your release from custody unless you have obtained, before your release from custody, 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.

2201

- When first reporting to your probation officer, you must provide them with the address where you live and your telephone number. You must not change your address or telephone number without notifying your probation officer in advance of any change.

2206

- You must not leave British Columbia unless you have the written permission of your probation officer, and you must carry the permission when you are outside the province.

2209

- For the first twelve (12) months of this order you must obey a curfew by being inside your residence between the hours of 9:00 p.m. and 6:00 a.m. each day.

You must present yourself immediately at the door to your residence or answer the phone when any peace officer or probation officer attends at your residence or calls to check your compliance with the curfew condition of this order.

You may be away from your residence during the curfew hours with the written permission of your probation officer. Such permission is only to be given for compelling reasons. You must carry the written permission when you are outside your residence during the curfew hours.

You may also be away from your residence during the curfew hours:

- While in the course of your employment, or when travelling directly to, or returning directly from, your place of employment. If requested you must provide your probation officer with details of your employment including location and hours of work.
- In the event of a medical emergency and then only while at a health care facility, or when travelling directly to, or returning directly from the facility. If requested you must provide your probation officer with written confirmation that you went to the facility, signed by a representative of the health care facility to which you went.
- You must carry a copy of this order and any written permission from your probation officer with you at all times when you are outside your residence. If a peace officer stops you for any reason, you must immediately provide the peace officer with a copy of this order and written permission without being requested to do so.

2402

- You must not possess or consume alcohol or any other intoxicating substance, except while inside your residence, or while transporting it sealed directly to your residence. You must not possess or consume alcohol or any other intoxicating substance, except while inside your residence, or while transporting it sealed directly to your residence. You must not be found in any public place in an intoxicated condition.

- [74] Having reviewed the conditions of your probation order with you, I must also advise you about how you can apply to vary your conditions and about the consequences if you breach the order or are convicted of another offence while out on probation.
- [75] Either you, your probation officer, or the prosecutor may apply to the court to make changes to your conditions. If that happens, a hearing will be set. You will be entitled to make submissions at the hearing. After the hearing, the court can make changes to your conditions, relieve you of your conditions, or shorten your probation order.
- [76] If you are convicted of any offence while on probation, the court has the authority to revoke the order and impose a jail sentence, make changes to your conditions, or extend the length of your probation order.

[77] If you breach or fail to comply with the probation order, you can be charged with an offence. If the Crown proceeds by indictment and you are convicted, you are could face up to four years in custody. If the Crown proceeds summarily and you are convicted, you could face up to two years less a day in custody, a fine of \$5000 or both.

[THE COURT]: Mr. Chambers, it is clear to me that the offences for which you have been convicted were out of character for you. I have considered your letter of apology and have relied on your assurance to me that you will take the steps necessary to ensure a happy and healthy future for you and your family without criminal behaviour. You would do well to take steps to try and understand what triggered your behaviour so that it never happens again. You are fortunate to have the support of your family, friends and your employer, and it is my hope that you will not disappoint them.

[78] I thank counsel for their helpful submissions.

"MacNaughton J."

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