
CANADA / JUDGMENT

R. v. Chappell

2019 BCSC 644

COURT

Supreme Court of British Columbia

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2019 BCSC 644 R. v. Chappell

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Chappell,

2019 BCSC 644

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105154-1-T; 105154-2-T; 105155-1-T; 105155-2-T

Registry: Kamloops

Regina

v.

David Lee Chappell

Before: The Honourable Madam Justice Matthews

Oral Reasons for Sentence

Counsel for the Crown:

B.L. Macdonald

Counsel for the Accused:

A.P. Watt

Place and Date of Trial/Hearing:

Kamloops, B.C.

December 18, 2018

Place and Date of Judgment:

Kamloops, B.C.

March 15, 2019

Table of Contents

Overview.. 4

The Charges. 4

The Issues. 6

The Facts. 7

Circumstances of the Offences. 7

Theft Under \$5,000. 7

Criminal Harassment and Mischief 8

Failing to Appear and Failing to Report to his Bail Supervisor 9

November 6, 2017. 10

Circumstances of Mr. Chappell 14

Impact on the Victim and/or Community. 18

Positions of the Crown and the Defence. 20

The Legal Principles. 22

Consecutive and Concurrent Sentences. 26

Totality Principle. 27

Credit for Time Served. 28

Gap Principle. 28

Reasons. 29

The Significance of Rehabilitation in this Case. 29

Mitigating and Aggravating factors. 31

Consecutive or Concurrent Sentences. 32

Theft Under \$5,000 from Walmart 32

Criminal Harassment and Mischief 33

Failing to Appear (Two Counts) and Failing to Report to Bail Supervisor 33

Theft from Mailboxes and Possession of Identity Documents. 34

Attempted Robbery, Robbery, Using an Imitation Firearm during Robbery, Kidnapping, Using an Imitation Firearm during Kidnapping, Resisting Arrest, and Two Counts of Failing to Stop with Intention to Evade. 34

Determination of the Sentences for each Concurrent Sentence Grouping. 36

Theft Under \$5,000. 36

Criminal Harassment and Mischief 37

Failing to Appear on Criminal Harassment and Mischief and Breach of Bail on Criminal Harassment 39

Theft from Mail and Possession of Identity Documents. 40

Resisting Arrest and Two Counts of Failing to Stop Motor Vehicle to Evade a Peace Officer 41

Attempted Robbery, Robbery and Kidnapping. 42

Use of an Imitation Firearm.. 46

Totality Principle. 47

Decision, Ancillary Orders and Restitution. 49

[1] THE COURT: These are my reasons for sentence in this matter. I am delivering them orally. If any party or entity requests a transcript, I will edit them without changing the substance.

Overview

The Charges

[2] David Lee Chappell pleaded guilty to 16 criminal charges based on events that occurred in the spring and summer of 2017 in Alberta and in November 2017 in British Columbia. The Alberta charges were waived into this proceeding for the purpose of a comprehensive guilty plea and sentencing.

[3] The Alberta charges are as follows:

- (a) theft of an electric toothbrush and clothing not exceeding \$5,000.00 in value from Wal-Mart in Sylvan Lake, Alberta, on May, 16, 2017 contrary to section 334(b) of the Criminal Code R.S.C. 1985 c. C-46;
- (b) criminal harassment of Renée Maloney on June 6, 2017 in Dayton Valley, Alberta, contrary to Section 264(1) of the Criminal Code;

- (c) mischief causing damage property of a value not exceeding \$5,000, a Chrysler 300 belonging to Renée Maloney, on June 6, 2017 in Dayton Valley Alberta, contrary to section 430(4) of the Criminal Code;
 - (d) failing to appear in court on a promise to appear, in Red Deer, Alberta, on July 19, contrary to section 145(5)(b) of the Criminal Code;
 - (e) failing to report to a bail supervisor on August 2, 2017, at or near Wetaskiwin, Alberta, contrary to Section 145(3) of the Criminal Code; and
 - (f) failing to appear in court on in breach of a recognizance in Red Deer, Alberta, on August 15, 2017, contrary to section 145(5) of the Criminal Code.
- [4] Two Alberta charges were stayed.
- [5] The British Columbia indictment consists of 11 counts. Mr. Chappell pleaded guilty to Counts 1 and 3 through 11. Count 2 was stayed. The counts to which Mr. Chappell pleaded guilty are as follows:
- a) Count 1: stealing letters sent by post on November 6, 2017 in Clearwater British Columbia, contrary to s. 356(1)(a)(i) of the Criminal Code;
 - b) Count 3: possessing identity documents of another person on November 6, 2017 in Clearwater British Columbia, contrary to Section 56.1(1) of the Criminal Code;
 - c) Count 4: resisting or wilfully obstructing Constable Hall, a peace officer in the execution of her duty, on November 6, 2017 in or near Avola, British Columbia, contrary to Section 129(a) of the Criminal Code;
 - d) Count 5: while operating a motor vehicle pursued by a peace officer operating a motor vehicle, failing, without reasonable excuse and in order to evade the peace officer, to stop the vehicle as soon as was reasonable in the circumstances, on November 6, 2017 at or near Avola, British Columbia, contrary to s. 249.1(1) of the Criminal Code;
 - e) Count 6: attempting to commit robbery of Amandeep Singh Dhillon, on November 6, 2017 at or near Blue River, British Columbia, contrary to s. 344 and 463(a) of the Criminal Code;
 - f) Count 7: committing robbery of Robert Price, on November 6, 2017 at or near Blue River, British Columbia, contrary to s. 344(1)(b) of the Criminal Code;
 - g) Count 8: using an imitation firearm while committing the indictable offence of robbery of Robert Price, on November 6, 2017 at or near Blue River, British Columbia, contrary to s. 85(2) of the Criminal Code;
 - h) Count 9: kidnapping Robert Price, with intent to cause Robert Price to be confined against his will, on November 6, 2017 at or near Blue River, British Columbia, contrary to s. 279(1)(a) of the Criminal Code of Canada;

- i) Count 10: using an imitation firearm while committing the indictable offence of kidnapping Robert Price, on November 6, 2017, at or near Blue River, British Columbia, contrary to s. 85(2) the Criminal Code; and
 - j) Count 11: while operating a motor vehicle pursued by a peace officer operating a motor vehicle, failing, without reasonable excuse and in order to evade the peace officer, to stop the vehicle as soon as was reasonable in the circumstances, on November 6, 2017, at or near Kamloops, British Columbia, contrary to s. 249.1(1) of the Criminal Code.
- [6] The events of all of the charges to which Mr. Chappell pleaded guilty relate to a period in Mr. Chappell's life when he was using crystal methamphetamine, to which he is addicted. Although the events occurred over a lengthy period of time in 2017, compared against his life as a whole they are out of character. He committed the crimes in furtherance of obtaining funds to buy crystal methamphetamine and as a consequence of the effects that crystal methamphetamine had on his behaviour.
- [7] Since being in custody on these charges, even though he was in pretrial custody until December 2018, Mr. Chappell has engaged in significant rehabilitation, including cognitive behavioural modification therapy.

The Issues

- [8] This case is about a fit sentence for a person who became addicted to an addictive substance, committed several serious crimes while in the throes of the addiction, and is now undertaking rehabilitation, notwithstanding that he has not yet been sentenced. The Crown acknowledges the rehabilitation efforts, but says nonetheless that deterrence and denunciation must feature significantly in determining a fit sentence. The Crown has grouped some of the offences as appropriately deserving of concurrent sentences, but seeks consecutive sentences for many of them.
- [9] The defence argues that deterrence should not be a sentencing consideration where the disease of addiction is the cause of the offences. The basis for this argument is that even if addiction as a disease is not necessarily universally accepted, once a person is addicted, he or she no longer has control over the drive to feed the addiction. Deterrence does not work for addicts. Accordingly, the defendant argues that neither specific deterrence nor general deterrence are served by a sentence that focuses on deterrence.
- [10] In my view, determining a fit sentence in this case involves:
- a) consideration of the appropriate ranges for each of the offences, taking into account the facts and circumstances, including the aggravating and mitigating factors;
 - b) determining the appropriate balance of deterrence, denunciation, and rehabilitation on the facts of this case;

- c) determining which offences are suitable for concurrent sentences and which for consecutive sentences;
- d) consideration of the totality principle; and
- e) applying credit for time served.

The Facts

Circumstances of the Offences

Theft Under \$5,000

- [11] On May 16, 2017, Mr. Chappell stole an electric toothbrush and clothing from a Walmart store in Sylvan Lake, Alberta. He was arrested and released on a promise to appear in court in Red Deer.
- [12] According to his counsel, he stole the items to sell them to raise money to buy crystal methamphetamine, because he was in the throes of a very serious addiction. The value of the items was \$395.68.

Criminal Harassment and Mischief

- [13] Renée Maloney is Mr. Chappell's former intimate partner. She ended their relationship in the spring of 2017. She ended the relationship because she could not cope with his addiction to crystal methamphetamine. At that time she was pregnant with their child.
- [14] In early June 2017, Ms. Maloney contacted the RCMP in Drayton Valley because Mr. Chappell was calling her and texting her incessantly. During these calls and texts, he was describing her using profane language and calling her a whore and a liar. He was also calling her employer to ask where she was. Ms. Maloney was in the second trimester of her pregnancy. The RCMP advised her that they did not have enough evidence to charge Mr. Chappell with criminal harassment, but they were able to assist her in attaining an emergency protection order.
- [15] On June 16, 2017, Ms. Maloney called the RCMP and said that she had received a text from Mr. Chappell in which he communicated to her that it was not over and that she would never date another guy. As a result of this text, the RCMP escorted Ms. Maloney to her parents' home. At five o'clock on that day, Ms. Maloney went back to her home and found that there was gasoline on her front lawn, the windshield of her vehicle was smashed, and her video surveillance system had been remotely wiped. She received another text from Mr. Chappell expressing anger about being dumped by her. Later that evening, Ms. Maloney advised the RCMP that Mr. Chappell was sending her suicidal messages. Still later on the same evening, Mr. Chappell was seen throwing burning detritus under Ms. Maloney's parents' vehicle. Mr. Chappell was eventually located and pulled over by the RCMP. He exited his vehicle screaming and then jumped back into his vehicle and drove for 20 feet. He indicated to the police that he wanted to commit suicide, and asked them for 15 minutes so that he could

finish himself off. The RCMP found knives, a police scanner, and empty bottles of propane taped together in his vehicle.

- [16] Mr. Chappell was admitted to the psychiatric ward of the local hospital.
- [17] Mr. Chappell's explanation for harassing Ms. Maloney was that his behaviour was a direct result of him not having the drugs he needed to satisfy his addiction. His counsel describes it as "classic addictive behaviour" and contrary to the type of person he really is.
- [18] According to Mr. Chappell's counsel, Ms. Maloney remains supportive of Mr. Chappell in his efforts to get better. As a result, Mr. Chappell left Alberta to get treatment so that he would be clean and sober by the time their daughter was born. However, he was mentally unstable and he attempted suicide twice after he left Alberta and before the events of November 6, 2017.

Failing to Appear and Failing to Report to his Bail Supervisor

- [19] Between July 2017 and mid-August 2017, Mr. Chappell failed to appear in court in relation to the Walmart theft charge and failed to report to his bail supervisor in relation to the criminal harassment charge.
- [20] On August 15, 2017, Mr. Chappell failed to appear in court in Drayton Valley in relation to the charges of criminal harassment.
- [21] According to Mr. Chappell's counsel, at this time Mr. Chappell was still in the throes of his addiction and did not care about consequences. His sole focus was looking for his next fix.
- [22] On September 15, 2017, Mr. Chappell was sleeping or passed out in a car in Surrey. There was another man in the car. The police looked into the vehicle and asked Mr. Chappell for his driver's licence. While the police were querying the licence plate of the vehicle, Mr. Chappell heard the query come back indicating the vehicle was stolen and he took off on foot. He was apprehended. He pleaded guilty to possession of stolen property. He was sentenced to one day in custody. Those charges obviously have been dealt with and are not before me.

November 6, 2017

- [23] The events giving rise to the counts in the British Columbia indictment all took place on November 6, 2017. Mr. Chappell was out of crystal methamphetamine. His daughter had been born in Alberta, and he wanted to get back to Alberta to get drugs and to see his daughter. According to Mr. Chappell's lawyer, Mr. Chappell was associating with a fellow who had successfully obtained treatment for drug addiction but had then relapsed. This individual allowed Mr. Chappell to use his van. According to Mr. Chappell's lawyer, unbeknownst to Mr. Chappell, the van was stolen, although Mr. Chappell's friend had been in possession of it the entire time Mr. Chappell had known him.

- [24] The events that gave rise to the charges in the indictment began when the Clearwater police became aware that mailboxes had been pried open and some mailboxes had been damaged. Mr. Chappell has no recollection of breaking into mailboxes and stealing mail, although the stolen van that he was driving was filled with mail and identification of other people.
- [25] Around 4:30 p.m. on November 6, 2017, Constable Hall observed a grey van at the Wire Cache rest area near Clearwater. Mr. Chappell was slumped over in the driver's seat of the vehicle and appeared to be unconscious. As Constable Hall approached the vehicle, Mr. Chappell roused and indicated that he thought he was dreaming. The constable thought he was impaired and noticed an overwhelming smell of gasoline. She saw a wallet in the pocket of the driver's side door of the vehicle which contained various pieces of identification, none of which belonged to Mr. Chappell. Constable Hall slid open the door of the minivan and noticed that it was filled with various items, including a gas canister, a pump, and tubing. Mr. Chappell physically resisted Constable Hall when she directed him to get in the police car. He got back into the van and drove off northbound on Highway 5.
- [26] The sliding door of the van was still open. There were a number of S-bends in the road. Constable Hall followed Mr. Chappell in her police vehicle, but did not activate her lights during several portions of the chase because she was concerned that if Mr. Chappell accelerated the van, oncoming traffic would be endangered. Mr. Chappell was swerving as he was driving the van and items were flying out of the van onto the highway. Constable Hall tracked his speeds at between 90 and 148 kilometres per hour. Southbound vehicles, including a tanker truck, had to hit their brakes to avoid colliding with Mr. Chappell's van. When they reached a straight stretch, Constable Hall turned on her lights and sirens, but after a few other near accidents, once again silenced her sirens while continuing to follow Mr. Chappell. A few kilometres south of Blue River, Mr. Chappell pulled over at a truck rest stop and exited the van. He ran to the driver side door of a blue pickup truck and tried to get in. While Mr. Chappell was out of his vehicle, Constable Hall tried to drive her vehicle next to his to prevent him from getting back in, but he was able to get back in and drove away in a manner that disabled the police vehicle.
- [27] Mr. Chappell approached the West End of Blue River and pulled into a truck pullout area. Amandeep Singh Dhillon was in a transport truck in the pullout and saw Mr. Chappell. Mr. Chappell got out of the van with a silver revolver in his hand. The evidence shows that this weapon is a carbon dioxide air shot weapon, which is not a firearm within the meaning of s. 2 of the Criminal Code, but rather an imitation firearm. Mr. Chappell knocked on the door of Mr. Dhillon's transport truck. Mr. Dhillon refused to open the door. Mr. Chappell smashed the window and told Mr. Dhillon he was taking his truck. Mr. Dhillon got out of the truck and Mr. Chappell got in the driver's seat but could not get the truck into gear. Mr. Dhillon managed to disconnect the vehicle air line and told Mr. Chappell that the truck was broken down. Mr. Chappell accused Mr. Dhillon of lying.

- [28] Mr. Chappell then crossed the highway to a transport truck that was pulled over on the other side. The driver of that vehicle was Robert Price. He was on the telephone at the time Mr. Chappell approached. Mr. Price's vehicle was a Super B-train setup, which consists of a tractor, a lead trailer, and a pup trailer. The trailers were loaded with 90-foot-long pieces of lumber. Mr. Price drives this tractor trailer for three weeks at a time and lives in it when he is on those three week driving missions. All of his possessions were in the tractor.
- [29] Mr. Price observed Mr. Chappell pull into the truck stop and saw the interaction between Mr. Chappell and Mr. Dhillon. He locked the doors of his transport truck as a result of what he saw. When he saw Mr. Chappell at his tractor door he did not realize that he was the same person he had seen with Mr. Dhillon. Mr. Chappell told Mr. Price he needed a ride. Mr. Price told him that he was out of hours to drive and was shutting down the truck to sleep. Mr. Chappell pulled out a gun and put it in the driver side window frame and told Mr. Price that he could either give Mr. Chappell his truck or he could drive it for Mr. Chappell. Mr. Price decided to drive, because he saw his vehicle as a deadly weapon if in the hands of the wrong person.
- [30] Mr. Price said that Mr. Chappell was handling what appeared to be a firearm in a way that indicated to Mr. Price that Mr. Chappell was not afraid to use it. Mr. Chappell had no look of fear on his face and Mr. Price's impression that he was not being asked, rather he was being told.
- [31] During this exchange, Mr. Price had left his telephone on and the person to whom he had been talking could hear what was going on. That person was trying to tell Mr. Price not to accede to Mr. Chappell's demands. Mr. Chappell got in Mr. Price's tractor and asked Mr. Price if he was going to Alberta. Mr. Price said he was not going to Alberta, he was going in the other direction, to Abbotsford. Mr. Chappell said that was okay with him.
- [32] Mr. Price left his phone on during the initial exchange with Mr. Chappell. He then ended the call. The person to whom he had been speaking called Mr. Price's boss and told him what he had heard. Mr. Price's boss called the RCMP and had the RCMP on one line while he called Mr. Price on the other. When Mr. Price's phone rang, Mr. Price told Mr. Chappell that his boss was calling and he had to take the call, otherwise his boss would think there was something wrong. When Mr. Price answered the call from his boss, his boss told him that he had the RCMP on the other line and in this manner information was relayed back and forth between Mr. Price and the RCMP.
- [33] In the meantime, Mr. Chappell was nodding off in the tractor-trailer. Mr. Price confirmed to the RCMP that Mr. Chappell had a gun. Mr. Price commented on matters while they were driving that conveyed information about where they were, but at the same time did not alert Mr. Chappell to the fact that he was communicating their location to the RCMP. Mr. Chappell nodded off on more than one occasion for about 15 to 20 minutes at a time. In the meantime, the police prepared to intercept Mr. Price's B-train at the Kamloops weigh station on Highway 5. RCMP members were following the B-train at a long distance.

- [34] The RCMP instructed Mr. Price to, if possible, pull over at the weigh scales south of Kamloops. Mr. Price told Mr. Chappell that he had to pull over because the weigh station is mandatory and if they did not, they would likely be pulled over by highway patrol. Unbeknownst to Mr. Chappell, Highway 5 had been shut down in both directions to facilitate the interception of the B-train. When Mr. Price drove into the weigh scale station, Mr. Chappell had once again nodded off. Mr. Price stopped the B-train, got out of the tractor, and ran towards the RCMP. As he was running, the emergency response team was shooting out the tires of the B-train. Mr. Price thought he was being shot at. He was terrified.
- [35] Mr. Chappell remained in the B-train tractor for 10 minutes after Mr. Price exited the vehicle. He had been ordered out by the RCMP but did not get out. The RCMP could see him moving around in the tractor cab. They deployed tear gas into the tractor. After the third round of tear gas, Mr. Chappell got into the driver's seat of the tractor and started to drive towards Highway 5. He drove for about 100 metres before he lost control of the B-train and it slid down an embankment.
- [36] After rolling down the embankment, Mr. Chappell got out of the tractor and started walking away. The RCMP told him to stop, drop his bag, and put his hands up. He dropped his bag and started putting his hands up and then took them down. An RCMP dog was deployed. It took Mr. Chappell down and bit him. Mr. Chappell was yelling and shouting. He said that he hated his life. When he was interviewed subsequently, he said the first thing he remembered of that day was the RCMP dog biting him. The CO2 revolver was found in the cab of Mr. Price's tractor. Mr. Chappell's DNA was on it.
- [37] Mr. Chappell's counsel said that Mr. Chappell was trying to get back to Alberta, to his drug dealer, and to see his baby. Mr. Chappell had picked up a hitchhiker earlier in the day who had given him some pills. The pills were found in the van. Mr. Chappell's counsel submits that the fact that Mr. Chappell highjacked Mr. Price's B-train and kidnapped Mr. Price, even though Mr. Price was going in the opposite direction that Mr. Chappell was trying to go, shows how far out of control Mr. Chappell was.
- [38] The damage to the B-train tractor, lead trailer, and pup trailer, as well as its cargo, less salvage costs for the tractor and cargo, total \$201,613.37.

Circumstances of Mr. Chappell

- [39] Mr. Chappell was born on June 24, 1983. He was 33 or 34 years of age when he committed the offences to which he has pleaded guilty. He is now 35 years of age.

- [40] Mr. Chappell spent most of his early years in Nova Scotia. He was raised by his mother and stepfather. He had no problems with drug or alcohol in high school. He was an average student. He was raised to respect authority. He learned a strong work ethic from his stepfather and mother. During high school, he worked with his stepfather and learned to earn money to buy things he wanted, such as clothes and a dirt bike. He had some post-secondary education in Nova Scotia and New Brunswick.
- [41] Around the time of his post-secondary education, he had a serious relationship. His girlfriend became pregnant and had a child. Apparently they went their separate ways. Mr. Chappell has paid some child support towards that child, but has not been involved in the child's life.
- [42] Mr. Chappell was convicted of criminal offences in 2002 pertaining to break and enter and theft, as well as a failure to comply with a recognizance. In 2006, he was convicted of two counts of failing to comply with conditions of undertakings and one count of fraud over \$5,000.
- [43] Mr. Chappell moved to Alberta where he began working in the oil industry and built a successful and remunerative career. During this time, according to his counsel, he did not drink and rarely used drugs. At this time of his life, he began a relationship with a woman with whom he had two children. The relationship ended in 2012. Mr. Chappell's counsel advised that the relationship ended due to Mr. Chappell's work habits. Apparently he worked long and hard. In order to curb his work commitments, Mr. Chappell left the company he was working with and went to a different pipeline company where he earned significantly less. He and his spouse attempted to reconcile twice without success.
- [44] Mr. Chappell's counsel describes that breakup and his loss of contact with his children as the start of a psychological trauma that is the foundation for the events that give rise to the charges to which Mr. Chappell has pleaded guilty.
- [45] Mr. Chappell started using drugs at this time. He first started using ecstasy. He left the pipeline industry and worked for his brother's trucking company. He found that hard work meant he thought less about his former spouse and their children. He started using crystal methamphetamine and found that when he used it, he could work longer and harder. When he was not using it, he became angry and combative.
- [46] In April 2015, Mr. Chappell met Renée Maloney. They moved in together in September 2015. Mr. Chappell was using crystal methamphetamine. This habit cost approximately \$4,000 to \$5,000 per month. He tried to quit but found dope sickness too much to bear.
- [47] In February 2016, Mr. Chappell told Ms. Maloney about his use of crystal methamphetamine. Ms. Maloney tried to help him, but could not deal with the ups and downs of his addiction. In early 2017, Ms. Maloney became pregnant. In May 2017, she ended their relationship but nonetheless she continued to try to help Mr. Chappell.

- [48] Mr. Chappell's counsel characterizes the events that gave rise to the charges to which Mr. Chappell pleaded guilty as Mr. Chappell being under the complete control of his addiction. He points out that certain things that Mr. Chappell did are particularly nonsensical. For example, when Mr. Chappell was on his way to Alberta when he robbed Mr. Price and Mr. Price was going in the opposite direction, Mr. Chappell did not direct him to go to Alberta, but simply said that Abbotsford would do. Another example is that when he exited Mr. Price's B-train tractor after driving off the road just south of Kamloops, he walked away, notwithstanding that he was surrounded by armed uniformed RCMP officers yelling at him to get on the ground. According to his counsel, his behaviour is classic behaviour of those under the control of addiction and not in control of their behaviour.
- [49] Subsequent to his arrest, Mr. Chappell was engaged in a course of rehabilitation, notwithstanding he has not yet been sentenced. He has commenced cognitive behavioural therapy as part of the Right Living Community at the Kamloops Regional Correctional Centre. This is an eight-month program of which he had completed four months in December 2018. The Right Living Community is a Kamloops Regional Correctional Centre living unit with specific structures targeted towards individuals who have a desire to change their behaviours. They must live and work together in a respectful and prosocial manner or they are returned to the main correctional centre living unit.
- [50] Dr. Reid Webster, a psychologist who does contract work for Kamloops Regional Correctional Centre, testified. He developed a cognitive behavioural program called Eating Elephants, which everyone at the Kamloops Right Living Centre participates in. The name is based on the old adage that the way to eat an elephant is one bite at a time. Dr. Webster explained that it is a metaphor for the approach to rehabilitation that persons who have engaged in criminal behaviour must undertake. It is a lot of work and the person has to be committed to it for the long haul. He explained that Eating Elephants has 11 units based on established therapeutic principles that have been blended together in a unique way. It includes cognitive behavioural therapy, individual psychological treatment, and a risks-needs responsivity model. It is not designed specifically for addicts and it is not an addiction treatment program, but it meshes well with addiction treatment programs.
- [51] Dr. Webster testified that there are 10 men in the Eating Elephants group with Mr. Chappell. He testified that Mr. Chappell had a slow start, but has bought into the program and comes to the group prepared to work. He is prepared to discuss his past and link what he is learning to his past behaviour. He is motivated and not all the people in the group are.
- [52] Dr. Webster was asked about the different theories of the source of addiction. He agreed that the disease model is one accepted theory. Learned behaviour is another accepted theory. Another is that addiction is a failed coping strategy. Dr. Webster also agreed that there are a number of models to treat addiction.
- [53] Dr. Webster agreed that Corrections Canada has addiction programs and psychological programs.

- [54] The chaplain at Kamloops Regional Correctional Centre wrote a letter in support of Mr. Chappell, in which he stated that Mr. Chappell presents himself as sincere and intelligent, he demonstrates prosocial behaviour and he is a leader and a positive role model. The librarian at Kamloops Regional Correctional Centre also wrote a letter in which she stated that she is impressed by Mr. Chappell's expressions of remorse and shame for what he has done without blaming anyone else. She stated that she has observed him working hard to better himself and to be the type of person he can be proud of. The Native Liaison / Spiritual Support Worker wrote a letter detailing Mr. Chappell's participation in native programming and sweat lodge ceremonies. Parenthetically, I note that there is no discussion that Mr. Chappell is indigenous. The support worker stated that Mr. Chappell is sincere and compassionate. He stated that Mr. Chappell is disheartened about how he has let his family down and he has insight into the need to change in order to avoid generational harm with his children.
- [55] Mr. Chappell wishes to attend the Guthrie Therapeutic Community program at the Nanaimo Correctional Centre when he has finished the cognitive behavioural therapy. The Guthrie Therapeutic Community program requires a minimum four-month stay. He also requests a 36-month period of probation where he would live at Bridges to New Life for 24 months and be subject to a 10 pm curfew. He believes his transition from incarceration to life outside will be facilitated by being in a controlled environment.
- [56] Mr. Chappell provided a written statement of apology and remorse in which he apologized to all the individuals who were impacted by his criminal behaviours. He takes 100% responsibility. He stated that he alone made the decisions to act in a way which was in disregard for the law. He stated that he is doing everything in his power to change his criminal and cognitive addictive thinking.
- [57] In court, Mr. Chappell made apologies naming Ms. Maloney, Mr. Dhillon, and Mr. Price individually. He expressed shame and remorse for the harm he has done. He also acknowledged that his behaviour was detrimental to society generally. He said that it was not in character, and that he is working as hard as he can to rehabilitate and to regain the trust of the court. I accept that his words are a genuine reflection of what he feels and what he intends.

Impact on the Victim and/or Community

- [58] Ms. Maloney provided a victim impact statement to the RCMP approximately one week after the arrest of Mr. Chappell for criminal harassment. In it, she stated that it scares her that his behaviour is unpredictable and she was scared to live alone when she returned to her house. She was constantly checking her security cameras. She was also worried about the safety of her family. She put her car in storage because she felt that if it was visible, it was a marker of her whereabouts or a target for vandalism by Mr. Chappell or his friends. She said in her victim impact statement that her work life has suffered as a result of being absent and distracted. She said she felt embarrassed and ashamed that her personal life was negatively

affecting her coworkers and her work relationships. She said that she works two jobs and that she typically enjoys going to work. After the harassment by Mr. Chappell, she was having trouble getting out of bed most mornings. She was afraid of what the stress she was experiencing was doing to her unborn child. She was afraid that Mr. Chappell would further damage her property, her family's property or a family pet, because he knew how much the pets meant to them. She wrote that she feels that he would do any of those things to hurt her.

- [59] Ms. Maloney incurred out-of-pocket expenses in the amount of \$449.01 relating to her smashed car windshield, changing her lock on her mailbox, replacing her shed latch lock and chains, cleaning up the gasoline poured in her yard, and to attend the courthouse to extend her emergency protective order.
- [60] Mr. Chappell does not object to making restitution in this amount.
- [61] During the time when Constable Hall was pursuing Mr. Chappell between the Wire Cache rest stop and Blue River, there were several 9-1-1 calls made about his driving. One caller described Mr. Chappell's vehicle taking off the side mirror of another vehicle. One caller indicated that Mr. Chappell stopped his vehicle and got out with a gun in his hand and was yelling. The driver of the other vehicle drove away. Another caller described the van driving with its open side door and articles flying out of the vehicle as it swerved at high speeds along the highway.
- [62] It is obvious that Mr. Chappell's driving was endangering the users of the highway. Similarly, after he commandeered Mr. Price's B-train, users of the highway were at potential risk until the RCMP closed the Coquihalla Highway. At that time, Mr. Chappell's behaviour was responsible for shutting down one of British Columbia's major transportation routes between the southwest coast and the interior of the province.
- [63] Neither Mr. Dhillon nor Mr. Price provided victim impact statements. The experiences they had are gleaned from their statements to the police.
- [64] Mr. Dhillon described Mr. Chappell holding what appeared to be a firearm and ordering him out of his tractor-trailer. Mr. Dhillon said Mr. Chappell was calm and never really pointed the gun at him. Mr. Dhillon's impression was that Mr. Chappell was confused and that he seemed to be on drugs.
- [65] Mr. Price's account regarding the gun is more chilling. Mr. Price said that Mr. Chappell was handling what appeared to be the firearm in a way that indicated to Mr. Price that Mr. Chappell was not afraid to use it. Mr. Chappell had no look of fear on his face and Mr. Price's impression was that he was not being asked for a ride. He was being told that he would drive Mr. Chappell. As Mr. Price lived in his tractor-trailer, he kept most of his possessions in it. In this sense, Mr. Chappell's carjacking of it and kidnapping of Mr. Price was akin to a home invasion.

[66] Canada Post provided a victim impact statement in which it explained that theft of mail is harmful and undermines important societal norms such as consumer confidence, privacy, and damage to the brand of Canada Post. It creates fear of fraudulent exposure and fear of identity theft. It causes loss of privacy, loss of business, and financial losses to Canada Post.

Positions of the Crown and the Defence

[67] The Crown seeks a global sentence of seven years and seven months as follows:

- a) theft under \$5,000: one day served by the December 18, 2018 appearance in court;
- b) criminal harassment and mischief: four months each, concurrent to each other and consecutive to other charges;
- c) two counts of failing to appear and one count of failing to report to the bail supervisor: three days for each consecutive to each other for a total of 90 days;
- d) theft of mail and being in possession of identity document of another person without lawful excuse: six months consecutive to all other sentences;
- e) attempted robbery of Mr. Dhillon: one year consecutive to all other sentences;
- f) robbery of Mr. Price, using an imitation firearm during the robbery, kidnapping of Mr. Price, and using an imitation firearm during the kidnapping: a four-year sentence, broken down as one year each consecutive to each other; and
- g) resisting arrest after the Wire Cache rest stop; three months concurrent to the counts of flight below, consecutive to all other sentences; and
- h) two counts of flight (one after the Wire Cache rest stop and the second in Mr. Price's B-train after the Kamloops weigh scales): 18 months for each, concurrent to each other and the resisting arrest and consecutive to all other sentences.

[68] The Crown also seeks standalone restitution orders:

- a) to the insurer of Mr. Price's tractor, lead trailer, pup trailer, and cargo; and
- b) to Renee Maloney in the amount of \$449.01 for the property damage done in relation to the mischief charges the criminal harassment and mischief charges.

[69] The Crown seeks the following ancillary orders:

- a) a mandatory 10-year firearm prohibition pursuant to s. 109 of the Criminal Code;
- b) a DNA sample pursuant to s. 487.4 of the Criminal Code; and
- c) a three-year driving prohibition pursuant to s. 259(2)(c) of the Criminal Code.

- [70] The defence says the appropriate sentence is two years less a day after deduction for time served. The defence does not break this sentence down by offence or group of offences. The defence acknowledges that prison time is warranted, but seeks this sentence to ensure that prison time is served provincially.
- [71] Mr. Chappell has been in custody since November 6, 2017. He has been engaged in cognitive behaviour rehabilitation and he plans to engage in drug rehabilitation within the provincial system. If he is sentenced to more than two years less a day after credit for time served, he will be incarcerated in a federal institution and will not be able to complete the specific programming he has begun.

The Legal Principles

- [72] In *R. v. Nasogaluak*, 2010 SCC 6, the Supreme Court of Canada described sentencing as a discretionary exercise in which the sentencing judge is charged with the responsibility of determining a sentence that is appropriate for the nature and circumstances of the offence and the offender, in accordance with principles and objectives of sentencing, and paying due regard to the ranges for certain offences set by case law.
- [73] Sections 718 and 718.2 of the Criminal Code codify the objectives and principles of sentencing. Section 718 provides that the fundamental purpose of sentencing is to protect society and to contribute to respect of the law and maintenance of a just, peaceful, and safe society. The objectives to achieve this fundamental purpose are set out in the section and are: denouncing unlawful conduct and its resultant harms; deterrence, both general and specific; separating offenders from society where necessary to protect the public; assisting in rehabilitation; providing reparation for harms done; promoting responsibility in offenders and acknowledging the impact of their conduct. None of these factors are inherently more important than the other. Rather, the sentencing judge must determine which are important and persuasive, given the circumstances of the case.
- [74] Section 718.1 mandates that the sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender. Section 718.2 provides for the consideration of aggravating and mitigating circumstances, the principles of parity and totality, and the instruction to consider all available sanctions other than imprisonment that are reasonable in the circumstances. The most fundamental principle is proportionality.
- [75] In *R. v. Ipeelee*, 2012 SCC 13, Mr. Justice LeBel for the majority said as follows about proportionality:

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] 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.

[76] In *R. v. M.(C.A.)*, [1996] 1 S.C.R. 500, the Supreme Court of Canada considered whether retribution plays a legitimate role in sentencing. At paras 79-82 of the judgment, the court explained that retribution plays a role along with denunciation, deterrence and rehabilitation by sanctioning the moral culpability of the offender. It is an element of the fundamental requirement that a sentence be just and appropriate. Retribution addresses the moral blameworthiness of the offender, while denunciation communicates society's condemnation of the conduct of the offender.

[77] The Court of Appeal has provided guidance on how to take rehabilitation for addiction into account in sentencing in a trio of cases: *R. v. Kukelka*, 2010 BCCA 180; *R. v. Hansen*, 2012 BCCA 142; and *R. v. Datt*, 2014 BCCA 484.

[78] In *Kukelka*, the appellant was addicted to drugs and had undertaken recent efforts to begin rehabilitation, including while he was incarcerated pending his trial. The court cited: *R. v. Preston* (1990), 47 B.C.L.R. (2d) 273 at 282, for the proposition that "it was right to conclude that the principle of deterrence should yield to any reasonable chance of rehabilitation which may show itself to the court imposing sentence".

[79] In *Hansen*, the Court of Appeal discussed the potential rehabilitation of individuals addicted to drugs at length at paras 25-27:

[25] In para. 38 of his reasons the sentencing judge stated:

The sentence which I am imposing is designed to protect the public. I know that it does not emphasize the rehabilitation of Mr. Hansen, but Mr. Hansen will either choose or not choose to use [drugs], and that is his choice.

[26] I am unable to agree with this characterization of the process of the potential rehabilitation of an individual addicted to drugs. Drug addiction is an illness. For an addict, using drugs is not a simple "choice" to be either made or not made, but an illness "characterized by a loss of control over the need to consume the substance to which the addiction relates": Canada

(Attorney General) v. PHS Community Services Society, 2011 SCC 44, [2011] 3 S.C.R. 134). Rehabilitation then, like the treatment of an illness, requires assistance in order to be effective, and is not a simple matter of "choice" for those afflicted.

- [27] Unfortunately, drug addiction is a factor that must all too often be addressed in crafting an appropriate sentence. In *R. v. Preston* (1990), 47 B.C.L.R. (2d) 273 (C.A.), this Court emphasized the importance of considering whether there is a reasonable chance that the offender may succeed in an attempt to control his addiction in order to avoid imposing a sentence that addresses the protection of the public at the expense of rehabilitation.
- [80] In *Datt*, but for Mr. Datt's rehabilitation efforts during the previous two years, the sentencing judge said he would likely have imposed a higher sentence. The judge also found that because Mr. Datt was an addict, he posed a risk to the community of relapse and re-involvement in the drug trade. Madam Justice D. Smith addressed drug addiction and rehabilitation prospects in sentencing in her concurring judgment. She stated that proportionality and the individualized nature of the sentencing process, including taking into account the circumstances of the offence and the circumstances of the offender, are such that denunciation and deterrence do give way to society's interest in rehabilitation. That is because incarceration is a matter of public protection and where the public is better protected by rehabilitation and incarceration will stand in the way of rehabilitation, then incarceration stands in the way of public protection. Smith J.A. cited *R. v. Pettigrew* (1990), 56 C.C.C. (3d) 390; *R. v. Preston*, [1990] B.C.J. No. 2886; and *R. v. Glickman*, 2011 BCCA 293, in reaching this conclusion.
- [81] Accordingly, the sentencing court must take into account the offender's attempts at rehabilitation, as well as any effect drug use may have had on the moral culpability of the offender. These considerations balance against the need for denunciation and deterrence, and will take priority insofar as this achieves a proportionate sentence. The more irrelevant that incarceration is to an offender's rehabilitation or where the incarceration may interfere with rehabilitation, the stronger the case for a reduced sentence. However, such considerations do not reduce deterrence and denunciation to irrelevance.
- [82] In this case, the defence argues that given that addiction was the root cause of all of the offences, and that Mr. Chappell has demonstrated that he is committed to rehabilitation and has made significant progress in that regard, deterrence and denunciation should be given little to no weight. The defence also argues that Mr. Chappell's moral blameworthiness is low because he had no control over his actions due to his addiction.
- [83] The Crown argues that this case involves the typical balance between deterrence and denunciation on one hand and rehabilitation on the other.

Consecutive and Concurrent Sentences

- [84] Section 718.3(4)(a) of the Criminal Code provides that the court shall consider directing sentences be served consecutively. Certain offences, as we will see, are directed by the Criminal Code to be served consecutively.
- [85] In *R. v. Li*, 2009 BCCA 85 at para. 100, the Court of Appeal described the test as to whether sentences should be concurrent or consecutive as "whether the acts constituting the offence were part of a linked series of acts within a single endeavour".
- [86] A court considering whether a set of facts is best characterized in this manner should consider "the nature and quality of the criminal acts; the temporal and special dimensions of the offences; the nature of the harm caused to the community or to victims; the manner in which the criminal acts were perpetrated; and the offenders' role in the crimes." See: *R. v. Potts*, 2011 BCCA 9 at para 89.
- [87] In some cases, courts have held that a crime spree fuelled by drug addiction over lengthy periods of time are appropriately the subject of concurrent sentences. For example in: *R. v. Thompson*, 2008 BCCA 350, Mr. Thompson committed 11 counts of robbery over three months in what was described as a drug-fuelled crime spree inspired by the need to acquire funds to feed his addiction. The offender provided a letter of remorse. The court held there was a reasonable prospect of rehabilitation for the 30-year-old who had a very troubled childhood, had entered an early guilty plea, and had a short criminal record with unrelated and not significant convictions. The Court of Appeal upheld the determination that the sentences should be concurrent, but reduced the eight-year sentence before deduction for time served to seven years. It is noteworthy that in Thompson all of the offences were robbery.
- [88] In *R. v. McCrea*, 2008 BCCA 227, the Court of Appeal explained that offences which arise out of a linked series of acts within a single endeavour may nonetheless be appropriately considered consecutive where the offences exist to protect different societal interests. In that case, the offender committed armed robbery of a gas station, fled on a bicycle, and then by car, and drove dangerously, despite marked police cars with lights and sirens in dispute. The trial judge identified four distinct events requiring consecutive sentences: the first robbery, the second robbery, dangerous driving, and resisting arrest. He applied concurrent sentences for the dangerous driving and failing to stop for a police officer. The offender appealed on the basis that the sentences for dangerous driving should have been concurrent with the other sentences. The Court of Appeal upheld the trial judge's decision and said that robbery, dangerous driving, and resisting arrest protect different societal interests. On this point see also: *R. v. Boyd*, 2016 ONCA 380.
- [89] Where there are different victims, even though the offences have temporal proximity, consecutive sentences may be appropriate: *R. v. Berry*, 2014 BCCA 7 at 53.

- [90] While it is necessary to consider a proportional sentence for each offence, whether consecutive or concurrent, a sentencing judge should avoid piecemeal sentencing. Piecemeal sentencing occurs when the sentencing judge loses sight of the overall context and the importance of the balancing element of sentencing by imposing a sentence before taking into account all relative factors such as mitigating and aggravating factors or the Gladue principle, and then making an adjustment for such factors see: *R. v. Evanson*, 2009 BCCA 425 at 18-19; and *R. v. Biwer*, 2017 BCCA 424 at paras 20-27.

Totality Principle

- [91] Section 718.2 of the Criminal Code provides that where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh. This totality principle requires a sentencing judge who orders an offender to serve consecutive sentences for multiple offences to ensure that the cumulative sentence rendered does not exceed the overall culpability of the offender. A sentence must not be crushing to a particular accused given his age, circumstances, and prospects. The total sentence imposed must not extinguish the rehabilitation potential of the offender: *R. v. Craig*, 2009 SCC 23; and *R. v. Angelis*, 2016 ONCA 675 at para 51.
- [92] In *Berry*, our Court of Appeal added this at para 55:
- [55] When consecutive sentences are imposed, the final duty of the sentencing judge is to make sure that the totality of the consecutive sentences is not excessive. As this Court stated in *R. v. Abrosimo* and again, recently, in *R. v. K.V.E.*, 2013 BCCA 521, the most significant issue before this Court on sentencing appeals is not whether sentences imposed should have been consecutive or concurrent, but whether the global sentence is unreasonable or unfairly reflects the moral culpability of the offender. That requires us to consider whether the total sentence is in keeping with the offender's record and future prospects. In the case at bar, the offender argues that the sentence of 12 years for the two assaults offends the totality principle.

Credit for Time Served

- [93] Ordinarily an offender will receive 1.5 days for each day served prior to trial: *R. v. Taylor*, 2014 BCCA 304, applying *R. v. Summers*, 2014 SCC 26.
- [94] The Crown and defence agree that that ratio is appropriate in this case.

Gap Principle

- [95] As discussed above, Mr. Chappell's first criminal convictions occurred in 2002. He had others in 2006. They include an obstructing justice, fraud, and failure to comply with a recognizance. These convictions share features in common with some of the current charges.

- [96] Mr. Chappell's counsel characterizes Mr. Chappell's criminal record from before the charges that are before me as irrelevant and very long ago. He emphasizes that Mr. Chappell has lived almost his entire adult life as a responsible citizen, but for six months in 2017 when he was in the throes of a crystal methamphetamine addiction.
- [97] Eleven years passed between his most recent conviction and the present charges.
- [98] A period of time of good behaviour should be taken into account when passing sentence: *R. v. Georgiev*, 2014 BCCA 246; and *R. v. Mulvahill* (1991), 69 C.C.C. (3d) 1, (B.C.C.A.).
- [99] In *Georgiev*, Saunders J.A. held that the gap principle is not necessarily a mitigating factor. Whether it rises to the level as permitting the offender to be treated as "if not a first offender, then nearly a first offender" depends on the circumstances of the case. But a gap precludes the finding of a pattern of behaviour as an aggravating factor based on the behaviour that gave rise to the prior convictions.
- [100] In my view, the gap between Mr. Chappell's prior convictions is not such that I should consider the gap a mitigating factor, but nor are his prior convictions part of a pattern of behaviour that I should consider to be an aggravating factor.

Reasons

The Significance of Rehabilitation in this Case

- [101] Mr. Chappell argues for a sentence that keeps him in the provincial system, because he has planned and begun a comprehensive rehabilitation program. I accept that Mr. Chappell would have access to rehabilitation programming in the federal setting, and so a sentence of longer than two years less a day will not eliminate his rehabilitation potential.
- [102] I accept as a legitimate concern that he does not know what the federal rehabilitation programming would be, and so his strong preference is to stay in the provincial system where he understands the programming and has made a commitment to it. The evidence supports the assertion that rehabilitation demands a lifelong commitment, and I accept that one can commit to what one knows and understands, but it is much more difficult to commit to what one does not know or understand.
- [103] On the other hand, this is not a case where incarceration is unnecessary or counterproductive to rehabilitation. Indeed, on the facts of this case, although Mr. Chappell had been determined to get treatment prior to the events of November 6, 2017, he had not been successful. It was not until he was incarcerated that he commenced rehabilitation. If all went as expected when I heard submissions in December 2018, he has or will nearly have concluded the Eating Elephants therapy. The next step in his plan is addiction-specific treatment.

- [104] Dr. Webster's evidence also demonstrated that part of what Mr. Chappell is learning through the Eating Elephants therapy is that during rehabilitation, he may encounter some therapy or treatment that does not align completely with the Eating Elephants approach, but what he has learned during the Eating Elephants therapy will assist him in accepting the differences and continuing to move forward.
- [105] Accordingly, the evidence is that the Eating Elephants therapy he has been undertaking is not addictions treatment but meshes well with addictions treatment, and the participants are cautioned to have an open mind to different approaches in different programs. Although not exactly the same concept, this approach is such that Mr. Chappell should be able to adapt his expectations and commitment to rehabilitation to programs offered in the federal setting.
- [106] Accordingly, I find that a federal penitentiary sentence will not crush Mr. Chappell or eliminate his prospects of rehabilitation.
- [107] No cases were cited to me where the offender's commitment to a particular rehabilitation setting served to reduce a sentence to allow an accused to access provincial rehabilitation programming when a federal sentence would otherwise be appropriate.
- [108] Mr. Chappell has demonstrated an ongoing, committed effort to rehabilitation which is certainly a sentencing factor in his favour. However, there must still be a proportionate sentence, and given the seriousness of the offences he committed and the harm done, I must still consider deterrence and denunciation. In my view, the structure of the analysis is the same, but the strong evidence of the prospect of rehabilitation in this case means that sentences in a lower section of the range will be more proportionate in this case than in a case where there is not strong evidence of the prospects of rehabilitation.

Mitigating and Aggravating factors

- [109] The Crown cites aggravating factors which are specific to the various offences. I will address them as they arise in the consideration of each offence.
- [110] Some mitigating factors are applicable to each of the offences and they are:
- a) Mr. Chappell's guilty pleas;
 - b) the early stage at which he made the guilty pleas such that trial preparation was avoided;
 - c) the time he spent in custody awaiting resolution, which was due in part to the length of time it took for the charges to be waived back in from Alberta;
 - d) the admission of his criminal record;
 - e) the steps he has taken towards rehabilitation;
 - f) his shame and remorse; and

g) his addiction.

[111] Mr. Chappell pleaded guilty, saving his many victims from testifying at trial and saving the public purse the expense of a lengthy trial. Despite the havoc that Mr. Chappell wreaked and the damage he did in monetary terms and in human terms, his guilty pleas saved time, expense, inconvenience to his victims, and potential re-traumatization of his victims. Although his guilty pleas were entered in December 2018, I understand that he started the process to plead guilty very shortly after he was arrested in November 2017, but it took some time to arrange for the Alberta charges to be waived in for the purpose of a comprehensive sentence.

[112] I find his letter of apology and his statement in court to be a full and significant expression of genuine remorse.

Consecutive or Concurrent Sentences

[113] This case raises the issue of whether some or all of the 16 offences to which Mr. Chappell pleads guilty give rise to concurrent or consecutive sentences. I adopt the following approach described by the Manitoba Court of Appeal in: *R. v. Arbuthnot*, 2009 MBCA 106 at para 18.

- a) I will determine whether any or all of the sentences are to be served consecutively. If they are all served concurrently, there are no totality principle concerns;
- b) if some or all are to be served consecutively, then I must impose the appropriate sentence for each consecutive offence or group of consecutive offences in accordance with sentencing principles; and
- c) finally, I will consider the total of the consecutive sentences with a more focused look at proportionality: *M.(C.A.)*. This is not a reconsideration of sentencing principles, but rather a last look to ensure that the total sentence is not unduly long or harsh, considering the gravity of the offences, Mr. Chapell's moral culpability, and harm done to his victims.

[114] In my view, while Mr. Chappell's active addiction was a common element in all of the offences, they are not all temporally close enough or related enough to all be part of a single endeavour. In addition, some of the offences address distinct society harm, such that they should not all be grouped together. The Criminal Code requires some of them to be sentenced consecutively.

[115] I have determined that some of the offences should be grouped for the purposes of concurrent sentences. The sentences for each group will be consecutive to the sentences for each other group.

Theft Under \$5,000 from Walmart

[116] Mr. Chappell stole to get money for his active addiction. The same is true of him breaking in to the mail boxes and identity theft on November 6, 2017, but the offences were disparate in time, in activity, and with different victims. They are separated by the events of the late summer and fall of 2017, when Mr. Chappell decided to leave Alberta for British Columbia and get treatment. Although his quest to get treatment was not successful, he clearly had a sufficient period of clarity between the Walmart theft and the events of November 6, 2017 such that he decided to try to overcome his addiction. For all of these reasons, I conclude that the theft under \$5,000 is a different enterprise or transaction from the other offences.

Criminal Harassment and Mischief

[117] These charges arise out of the same string of acts by Mr. Chappell directed at Ms. Maloney and her family. They overlap in time and in substance, and in the substance of what Mr. Chappell was about. Ms. Maloney and her family experienced fear and property damage common to both offences. The societal harm these offences exist to address overlaps on these facts. I conclude that these offences should be sentenced concurrent to each other.

Failing to Appear (Two Counts) and Failing to Report to Bail Supervisor

[118] These charges relate to the arrest of Mr. Chappell on the Walmart theft and on the criminal harassment and mischief. They are closely related to those events and they are part of Mr. Chappell's failure to comply with the restrictions the law placed on him during this timeframe. Although Mr. Chappell's active addiction were common reasons for the underlying offences and the failures to appear and to report, I do not view the underlying offences and these offences as being appropriate for one concurrent sentence because failing to appear or report to a bail supervisor exist to address different societal interests than the underlying offences. Offences for failing to appear and failing to report are to compel compliance with and call into account failures to comply with the types of terms people are placed on when they are released after being arrested. If they were not subject to separate and/or additional consequences, the ability to rely on such terms to keep the community safe would be detrimentally affected. It is appropriate that they be treated separately. As against each other, however, I determine they should be the subject of concurrent sentences, because the failures took place over a one-month period with a common root cause and because the offences serve the same purpose.

Theft from Mailboxes and Possession of Identity Documents

[119] These offences overlap with each other in time and purpose. As the case law demonstrates, theft from mail is a special kind of theft taken very seriously because of the role that secure mail delivery plays in society. Identity theft also undermines the public's confidence in privacy and economic security. Both offences share common elements of theft and invasion of privacy interests. I conclude that they should be subject to concurrent sentences to each

other. They should be consecutive to the other offences on November 6, 2017, because they differ in purpose from the perspective of Mr. Chappell and from the perspective of the societal harms they address.

Attempted Robbery, Robbery, Using an Imitation Firearm during Robbery, Kidnapping, Using an Imitation Firearm during Kidnapping, Resisting Arrest, and Two Counts of Failing to Stop with Intention to Evade

- [120] All of these offences occurred after Mr. Chappell was first confronted by the RCMP on November 6, 2017. He undertook the actions that gave rise to these offences for the purpose of avoiding arrest. They were drug fuelled, like the other offences, but they have more in common with each other in that they were part of a common enterprise to avoid arrest.
- [121] In *R. v. McCrea*, 2008 BCCA 227, the Court of Appeal considered the sentencing for two convictions for robbery, wearing a facemask while robbing, dangerous driving, and resisting arrest all on the same day. After committing the first robbery, the offender fled in a car. He was pursued by police, which gave rise to the dangerous driving and failing to stop for police officer charges. In the course of flight, he carjacked a woman, giving rise to the second robbery conviction, and fled from police in a vehicle and then on foot, giving rise to the resisting arrest charge. The trial judge considered there to be four distinct events: the first robbery, the second robbery, dangerous driving and resisting arrest. The Court of Appeal upheld the decision on the basis that robbery, dangerous driving, and resisting arrest protect different societal interests. In its discussion on this point, the Court of Appeal noted that in *R. v. Saumer*, [1977] B.C.J. No. 586, the Court of Appeal held it appropriate to impose concurrent sentences for robberies and automobile theft committed during an attempt to escape. The Court in *McRea* noted that the different circumstances of the case explained the different outcomes.
- [122] In *R. v. Roberts*, 2005 ABCA 11 at paras 32-34, the Alberta Court of Appeal emphasized that the offence of failing to stop should rarely be the subject of a concurrent sentence with the offence that caused the offender to flee, because the offences have separate elements and purposes.
- [123] Imitation firearm offences under s. 85(2) must be served consecutively to any other punishment imposed on the person for an offence arising out of the same event or series of events and to any other sentence to which the person is subject at the time the sentence is imposed: see *R. v. Stauffer*, 2007 BCCA 7 at paras 15-21.
- [124] Applying these provisions, principles, and precedents to this case, I conclude that a common feature to the whole of the events from the Wire Cache rest stop to Mr. Chappell's arrest were about his attempts to avoid arrest. However, the offences of attempted robbery, kidnapping, and robbery protect common societal interests, that of personal and property, security of persons. The offences of resisting arrest and obstructing Constable Hall and failing to stop with intention to evade, while part of the same purpose from Mr. Chappell's perspective, protect different societal interests; i.e., complying with police authority.

- [125] The Criminal Code requires that the use of the imitation firearms must be sentenced consecutively.
- [126] Accordingly, notwithstanding that all these offences could be said to form part of the same endeavour of avoiding arrest, I have determined that the sentences for attempted robbery, robbery, and kidnapping should be sentenced concurrently to each other and consecutive to the other offences. Resisting Constable Hall and the two counts of failing to stop should be sentenced concurrently to each other and consecutive to the other offences, and the two counts of use of an imitation firearm should be sentenced consecutively to each other and consecutively to the other offences.

Determination of the Sentences for each Concurrent Sentence Grouping

Theft Under \$5,000

- [127] This count is charged under s. 334 of the Criminal Code which has a maximum sentence of two years.
- [128] The Crown referred to *R. v. Banville*, 2013 ABPC 335, in which the accused pleaded guilty to a number of charges including theft of a purse and contents valued under \$5,000. That offence was in the context of a mugging, a violent crime. The Court of Appeal, 2014 ABCA 228, held that its sentence should be two and a half years, concurrent with possession of a stolen vehicle and dangerous driving. The reasons of the Court of Appeal are very brief and do not permit a comparison of the shoplifting, theft under \$5,000 offence in this case, with the mugging described by the sentencing judge as violent purse theft in that case.
- [129] In *R. v. Westlake*, 2004 BCCA 417, on similar facts to this case, the Court of Appeal substituted a 20-month sentence to be served in the community on conditions for a 20-month custodial sentence levied by the sentencing judge. Cases from other jurisdictions where the value of the stolen item is low and involved no violence or other criminal conduct usually result in a conditional or absolute discharge or small fine: *R. c. L.(V.)*, 2011 QCCQ 5691; *R. v. Nguefang*, 2011 ABQB 615 and; *R. c. Brière*, 2016 QCCA 891.
- [130] Taking into account the similarity of *Westlake* in some respects, but the lower value of the items stolen in this case and other offences committed at the same time as this offence, an appropriate sentence would be a conditional discharge or a very short conditional sentence served in the community. However, given that Mr. Chappell will be serving significant time incarcerated, the Crown's submission of one day in custody satisfied by the December 18, 2018, appearance in court is appropriate. That sentence is consecutive to the other sentences I impose.

Criminal Harassment and Mischief

- [131] Criminal harassment is an offence pursuant to s. 264 of the Criminal Code. The maximum sentence is 10 years.

- [132] Mischief is an offence pursuant to s. 430 of the Criminal Code. The maximum sentence is two years.
- [133] Neither the Crown nor defence argued any cases specifically about mischief. I accept that the mischief sentence would be shorter than the criminal harassment sentence, given that the criminal harassment had a higher degree of gravity to it. Because the sentences are to be served concurrently, I accept that I can proceed without considering any cases specific to mischief.
- [134] The criminal harassment cases do not readily demonstrate a range of fit sentences because the circumstances in which criminal harassment is committed are broad ranging and, in particular, in terms of the gravity of the conduct. Factors that are significant to assessing the gravity of the offence are the length of time over which the harassment has occurred and the motive for it: *R. v. Campbell*, 2012 BCSC 904 at para 12.
- [135] In *R. v. Bates*, [2000] O.J. No. 2558 (C.A.), the Ontario Court of Appeal discussed the nature of criminal harassment and considerations on sentencing, including that stalkers are unpredictable and persons who end relationships are entitled to be left alone. It is appropriate for the court to emphasize general and specific deterrence in sentencing for those reasons which are applicable to this case.
- [136] Considering Ruby's Sentencing, 9th ed. (Aurora, Ont.: LexisNexis Canada, 2017) at paras 23.1002 - 23.1006, I conclude that the lower range is a conditional sentence under one year. A brief period of incarceration for less than six months is a typical sentence for criminal harassment for an accused with no previous convictions. The middle range of sentence for criminal harassment is between six months and two years. A sentence between two and four years is on the higher end of sentencing range and almost always involves violence or threats. Serious violence and threats of violence will merit a sentence between two and four years. This higher range is confirmed by British Columbia cases such as: *R. v. Campbell*, 2012 BCSC 904; *R. v. Taylor*, 2014 BCCA 304; and *R. v. R.D.C.*, 2016 BCPC 388
- [137] In *R. v. Beaulieu*, [2000] O.J. No. 3165, the court imposed a four-month sentence with three years' probation for an accused who had harassed his ex-wife. He had a history of repeatedly breaching conditions such that the court found he would be unable to follow the requirements of a conditional sentence. A sentence which did not include incarceration would thereby not meet the requirement of specific deterrence or meaningful protection.
- [138] With regard to aggravating and mitigating factors in: *R. v. Sherwood*, [2004] O.J. No. 5121, the accused received a six-month sentence with three years' probation. The main aggravating factors were that the accused had numerous breaches of court orders and an extensive criminal record with previous convictions for harassment. If a lengthy criminal record demonstrates an inability to follow court orders, the accused is more likely to receive a mid-range sentence: see *R. v. Fazekas*, [2001] O.J. No. 2992, *aff'd* [2001] O.J. No. 4128 (C.A.).

- [139] Mr. Chappell criminally harassed his former intimate partner at a time when there was a protection order in existence against him. That is an aggravating factor pursuant to s. 718.2(a)(ii) and s. 718.2(a)(iii.1) of the Criminal Code. Ms. Maloney's victim impact statement demonstrates how disturbing these events were to her. Mr. Chappell's damage to her property and that of her parents made her concerned that his behaviour would continue to escalate, and she was concerned for the safety of their pets and their persons. His conduct had a profound negative effect on her, notwithstanding that she has supported Mr. Chappell's efforts to get well.
- [140] While Mr. Chappell has previous convictions that include failure to obey court orders, they are, as noted, from many years ago. The circumstance of his addiction at the time of this offence is such that I accept that his behaviour is not part of a long-term pattern of behaviour of failing to heed courts' authority, but was part of a pattern of behaviour during 2017.
- [141] Mr. Chappell has, as noted, demonstrated significant remorse. His guilty plea has meant that Ms. Maloney and her family did not have to testify. These are mitigating factors.
- [142] Mr. Chappell's rehabilitation is necessary in order for him to ever play a positive role in their child's life. For the reasons given above, I accept that this factor means that the sentence should be at the low end of the range. In this case, I accept that it should be at the low end of a custodial range.
- [143] In my view, the appropriate sentence, balancing the seriousness of the offence, the necessity to deter other criminal harassers and persons who would commit mischief, but also to recognize the important role that rehabilitation plays in this case, is three months in custody on the criminal harassment offence and one month in custody on the mischief, served concurrently to each other and consecutive to all other offences.

Failing to Appear on Criminal Harassment and Mischief and Breach of Bail on Criminal Harassment

- [144] Mr. Chappell pleaded guilty to two counts of failing to appear pursuant to s. 145(5)(b) of the Criminal Code, and one count of failing to report to his bail supervisor, contrary to s. 145(3) of the Criminal Code. The maximum sentence is two years.
- [145] Neither the Crown nor the defence provided any authorities directly dealing with these offences. The Crown seeks 30 days in custody for each, served consecutively.
- [146] For the reasons given above, I am of the view that these sentences should be served concurrently to each other, but consecutive to the other sentences. I accept that 30 days for each is appropriate.

Theft from Mail and Possession of Identity Documents

- [147] Theft from mail is the subject of s. 356(1) of the Criminal Code. The maximum sentence is ten years.
- [148] Possession of identity documents of another person is the subject of s. 56.1 of the Criminal Code. The maximum sentence is five years.
- [149] Neither the Crown nor the defence referred to cases addressing sentencing for these two offences.
- [150] Because of the important public interest in the secure delivery of mail, theft from mail is a serious offence which, prior to the advent of conditional sentence, almost always required jail time: *R. v. Caparelli*, 1989 ABCA 226, [1989] A.J. No. 809; and *R. v. McConnell*, 2006 ABPC 128.
- [151] Most cases involve multiple counts of theft and possession of identity documents and/or other offences: *R. v. Robertson*, 2018 BCSC 521; *R. v. Thobani*, 2013 BCPC 372; *R. v. Ruth*, 2012 ABCA 168; *R. v. Petterson*, 2011 ABCA 123; and *R. v. McNeil*, 2018 BCPC 172. I conclude that an appropriate sentence range is one to six months in custody for a single count.
- [152] The mitigating factors are Mr. Chappell's guilty plea, remorse, and efforts towards rehabilitation.
- [153] In my view, the proportionate sentence is three months on each offence to be served concurrently to each other and consecutive to the other sentences.

Resisting Arrest and Two Counts of Failing to Stop Motor Vehicle to Evade a Peace Officer

- [154] Resisting or obstructing a peace officer is the subject of s. 129(a) of the Criminal Code. The maximum sentence is two years.
- [155] Failing to stop a motor vehicle while being pursued is the subject of s. 249.1 of the Criminal Code. The maximum sentence is five years.
- [156] In *McCrea*, discussed above, two of the charges were for dangerous driving and failing to stop. They were sentenced to two years each to be served concurrently to each other. The offender was sentenced to six months' in custody on the resisting arrest charge consecutive to the other sentences.
- [157] In that case, the court did not mention any mitigating factors. There was no discussion of an apology nor remorse. Mr. *McCrea* did not plead guilty. He was convicted after trial. He had a lengthy criminal record, including previous convictions for similar offences. He was on probation at the time the offences were committed. The sentencing judge noted that he had not responded to previous lenient sentences granted in part because of prospects of rehabilitation.

- [158] In *R. v. Brewer*, 2014 BCSC 1075, Mr. Justice Romilly canvassed several precedents on sentences for failing to stop or evading a police officer, demonstrating a range of 8 months to 18 months.
- [159] In *R. v. Evans*, 2007 BCCA 426, the offender led police on a chase through urban and residential New Westminster streets at up to 100-kilometres-per-hour speeds, going through stop signs, nearly causing collisions, before exiting the vehicle, fleeing on foot, and eventually being tracked down by a police dog. He failed to show himself after multiple police warnings to do so. He was sentenced to 12 months of incarceration.
- [160] The aggravating factors in this case are the multiple charges. Mr. Chappell resisted arrest and twice failed to stop for the police on November 6, 2017. The high speed chases significantly endangered the users of highways in British Columbia over a lengthy period of time and clearly severely frightened those who were in his path.
- [161] I consider two years for failing to stop to be the upper end of the range where there are no mitigating factors such as there are in this case. Balanced against the aggravating factors, and the significant mitigating factors of remorse, the prospects of rehabilitation and his guilty plea place him at the lower end of the mid range. In particular, *Evans* is a persuasive precedent.
- [162] I sentence Mr. Chappell to 3 months for resisting arrest, and 12 months each for the two counts of failing to stop, to be served concurrently.

Attempted Robbery, Robbery and Kidnapping

- [163] Robbery and attempted robbery are offences found in ss. 343, 344, and 463(a) of the Criminal Code.
- [164] The maximum sentence for robbery is life imprisonment and the maximum sentence for attempted robbery is 14 years.
- [165] Kidnapping is an offence pursuant to s. 279(1) of the Criminal Code. The maximum sentence is life in prison.
- [166] The Crown has referred to some cases of multiple offences of robbery, kidnapping, resisting arrest, and/or carjacking.
- [167] In *McCrea*, Mr. McCrea was convicted of two counts of robbery, having a face mask while robbing, dangerous operation of a motor vehicle, failing to stop for a police officer, theft of a motor vehicle, resisting a police officer, and assault. Mr. McCrea had a lengthy criminal record, including three prior robbery convictions and two prior dangerous driving convictions. He was on probation when he committed the offences which were before the Court of Appeal. Although he had expressed interest in rehabilitation, he had done so before and nevertheless lapsed into substance abuse. On this occasion, the court held that the sentencing judge was correct to prioritize public safety over rehabilitation. The first robbery, which was for gain, was sentenced to three years, while the robbery committed

while escaping was sentenced to three and a half years.

- [168] In *R. v. Biwer*, 2017 BCCA 424, Mr. Biwer was convicted and sentenced to 10 years of imprisonment on seven counts, including two counts of robbery and one count each of attempted robbery, using an imitation firearm while committing a robbery, assault causing bodily harm, possession of a stolen vehicle, and dangerous driving. The Court of Appeal upheld the sentence describing the gravity of crimes that can be characterized as carjackings as distinct from other forms of violent robbery. The Court of Appeal quoted from *R. v. Noor*, [2007] O.J. No. 4092, at para 22 as follows:
- [22] At the risk of stating the obvious, robbery is a very serious offence, as demonstrated by the fact that it is punishable by life imprisonment. Car-jacking is a serious type of robbery. The average person enjoys a degree of privacy and, more importantly, feels a sense of security while traveling in his or her motor car, as opposed to walking or using public transport. Although not so sacrosanct as the expectation to be secure in one's home, as the excerpts from the cases that follow make plain, the expectation to be able to travel about the community in safety in one's own vehicle is recognized as a fundamental value of Canadian society. This value is something to be assiduously fostered and protected.
- [169] The court upheld a 10-year global sentence in that case as within the range given limited mitigating factors and the priority that deterrence and denunciation needed to take in such a case. There is no discussion as to the individual sentences for the various counts.
- [170] In *R. v. Brogan*, 1999 BCCA 278, the accused terrorized a hostage and committed armed robberies at two separate gas stations while masked and armed with a handgun which he held to a hostage's head. In upholding the eight-year sentence, Madam Justice Ryan described the range of sentences for robbery with violence as between two years and nine years.
- [171] In *R. v. Brar*, 2014 BCCA 175, Mr. Brar participated in the kidnapping of a man over a \$400,000 debt. He was held from October 20, 2011, to October 21, 2011. The sentencing judge held that the kidnapping and extortion were planned and Mr. Brar participated in the planning and luring of the victim. He did not participate in the prolonged confinement or any violence. The trial judge sentenced Mr. Brar to three and one-half years. Others involved in the kidnapping received longer sentences reflecting their greater moral culpability.
- [172] On appeal, the Court of Appeal reiterated that there are not two categories of kidnapping, the "classic" form where a person is held for ransom, and the "technical" form of kidnapping where the person is confined for a short period of time for a specific purpose. Rather, relying on: *R. v. Deo and Mangat*, 2007 BCCA 626, the Court of Appeal said the full range of sentencing options is open to a trial judge to fashion a fit sentence by carefully considering all the relevant factors within any limits set by the Criminal Code. The Court of Appeal held that carefully planned kidnapping, confinement at another location, and extortion, even without a ransom demand, usually attracts a sentence of five to 10 years,

depending on the violence inflicted on the victim, among other factors. The Court of Appeal held that the trial judge's three and one-half year sentence for Mr. Brar's role in the planned kidnapping fell below the range and increased it to five years.

- [173] In *R. v. Campbell*, 2014 BCCA 235, the offender was charged with use of an imitation firearm, kidnapping, unlawful confinement, assault, and theft of a motor vehicle. He pleaded guilty to use of the imitation firearm, unlawful confinement, assault, and theft. Mr. Campbell was high on drugs and was suffering from paranoia. He forced a woman to drive him at gunpoint with an air pistol, threatening to blow her brains out if she did not. She was confined for about 30 minutes before she escaped, but only after a physical struggle during which he tried to strangle her and tie her with a dog leash. His actions were not planned. He had a very lengthy criminal record and a troubled background. He was of aboriginal background. He was sentenced to one year for use of the imitation firearm, consecutive to four years for the unlawful confinement, which was sentenced concurrently with the assault sentence of two and one half years and concurrently with the theft sentence of six months.
- [174] The Court of Appeal reviewed the law pertaining to planning versus spontaneous kidnappings, and noted that unlawful confinement has a lower maximum sentence than kidnapping, a relevant consideration. The court also considered Mr. Campbell's aboriginal background in lowering the sentence for unlawful confinement from four years to three years.
- [175] Aggravating factors on this group of offences include the frightening circumstances to which Mr. Dhillon and Mr. Price were exposed, that Mr. Price was confined for several hours by Mr. Chappell who had a gun and Mr. Price believed that Mr. Chappell was prepared to use the gun on him. The aggravating factors also include that the kidnapping and robbery of Mr. Price was akin to a home invasion, and the necessity of a very high-risk takedown at the Kamloops weigh scales to end the confinement, including the risk to many RCMP officers and the closure of a major British Columbia highway in order to protect the safety of the public. Finally, the high value of the B-train tractor and its load which Mr. Chappell destroyed are aggravating factors.
- [176] The mitigating factors are those that I have already referred to: his guilty plea, his apology, his remorse, his addiction, and his rehabilitation.
- [177] Fit sentences for robbery in this case are at the bottom of the range described in *Brogan*, as the level of violence was low, Mr. Chappell does not have a significant record, neither the attempted robbery nor robbery were planned, he was not masked, and he has demonstrated a high possibility of rehabilitation. In my view, a fit sentence is significantly less than the three years and three and one-half years in *McCrea*, because in that case the offender had a lengthy criminal record and was on probation when he committed the offences. The Court of Appeal agreed that deterrence and denunciation had to be emphasized in that case, despite the offender's statement that he wanted to engage in

rehabilitation. In this case, deterrence and denunciation are relevant, in particular given the carjacking and home invasion nature of the robbery of Mr. Price, but rehabilitation also plays a large role, given the significant steps Mr. Chappell has already undertaken in this regard. An appropriate sentence for the robbery is three years.

- [178] Attempted robbery has a lower maximum sentence than robbery, which is an indication that, all things being equal, the sentence should be lower. In this case, the attempted robbery of Mr. Dhillon did not leave the impression with Mr. Dhillon that Mr. Chappell was serious about the weapon. Mr. Dhillon was able to rebuff Mr. Chappell. Mr. Chappell was more aggressive with Mr. Price, who formed the impression he would use the gun. Taking these circumstances into account, the appropriate sentence for attempted robbery is one year.
- [179] This case is factually similar to Campbell, except that in Campbell the guilty plea was to unlawful confinement, which has a lower maximum sentence, and there was considerable violence associated with the unlawful confinement. Mr. Chappell pleaded guilty to the more serious offence of kidnapping. Mr. Chappell's spontaneous actions were not for gain and were not as morally culpable as the planned kidnapping for gain in Brar where the three-and-a-half-year sentence was increased to five years on appeal. I consider that Mr. Chappell's guilty plea and remorse also differentiate him from the offender in Brar and mandate a lower sentence.
- [180] The appropriate sentence for the kidnapping is three years.

Use of an Imitation Firearm

- [181] Using an imitation firearm while committing robbery and while kidnapping is contrary to s. 85(2) of the Criminal Code.
- [182] The maximum sentence is 14 years and the minimum sentence is one year.
- [183] Neither the Crown nor the defence provided any precedents on these offences. The Crown seeks the minimum sentence of one year on each offence.
- [184] In *R. v. Nohr*, 2013 BCSC 2145, the offender was sentenced to 15 months' imprisonment for using an imitation firearm while committing or attempting to commit robbery. He hailed a cab, got into the front seat, and showed the cab driver what the driver took to be a pistol tucked into the waistband of his pants. It was, in fact, an air pistol. Mr. Nohr robbed the victim of \$230. Mr. Nohr was with the victim for about an hour and never pointed the pistol at him. He had a criminal record that included convictions for common assault, driving offences, a breach of recognizance, and other minor offences. He had had a significant drug and alcohol addiction for several years, but had managed to stay employed. He was described as a capable, reliable, and conscientious employee who was held in high regard by his coworkers. He was genuinely remorseful and was on the path to recovery and sobriety.

- [185] The aggravating factors in this case are that Mr. Chappell pointed the imitation firearm at Mr. Price in a manner that caused Mr. Price to conclude that he was not afraid to use it. Mr. Price was in a terrifying situation for several hours.
- [186] The mitigating factors are Mr. Chappell's apology, remorse, guilty pleas, addiction, and rehabilitation.
- [187] Given the similarity of the facts with Nohr, and taking into account that Mr. Chappell did point the gun at Mr. Price, but does not have a significant criminal record as Mr. Nohr did, I consider one year on each charge of using an imitation firearm to be appropriate, served consecutively to each other and consecutive to the other sentences.

Totality Principle

- [188] The total the sentences I have determined is six years and seven months.
- [189] As discussed already, the totality principle is part of the overall proportionality analysis, the aim of which is to fashion a sentence that is proportionate to the gravity of the offence, the degree of responsibility of the offender, and is in keeping with the offender's record and future prospects. This balances with the principle of parity, which requires a court to impose a similar sentence for a similar offence committed by a similar offender in similar circumstances.
- [190] I am of the view that a sentence of this length is too long in total, given that Mr. Chappell's moral culpability is low. He was acting in the throes of addiction over a period of months that stand out in stark contrast to the way in which he has conducted himself for most of his life. I consider his future prospects promising given his acknowledgment of responsibility and remorse, and the significant steps he has taken towards rehabilitation.
- [191] Mr. Chappell's counsel urges me to fashion a sentence that, after credit for time served, results in Mr. Chappell having a custodial sentence of two years less a day plus three years' probation. The submission is based on Mr. Chappell's efforts, prospects, and achievements to date on rehabilitation and his demonstrated determination to be a productive member of society. I acknowledge the work he has done. It is impressive, especially since much of it was done pretrial. His letter of remorse, his spoken apology in court, his stated intentions, the letters written by Kamloops Regional Correctional Centre staff, and the testimony of Dr. Webster convince me he is working hard with genuine determination and realistic, achievable goals.
- [192] In order to reduce the sentence to two years less a day after credit for time served, given that two of the sentences are one-year minimum sentences which must be consecutive, I would have to reduce many serious charges to levels far below the low end of the appropriate range, and I would have to effectively eliminate the principles of denunciation and deterrence from the sentence. I do not accept that deterrence plays no role for persons suffering from addiction and, in any event, the principle of general deterrence includes that the sentences serve to deter any person from committing such crimes, whether

suffering from addiction or not.

[193] In my view, Mr. Chappell's prospects of rehabilitation will not be crushed by a federal sentence. He can and must translate the things he has learned in the Eating Elephants program to the rehabilitation programs that will be available to him in the federal setting.

[194] I have determined that a fit and proportionate sentence, taking into account the very serious crimes that Mr. Chappell committed, the real harm he did to many members of society, and that he did this over several months while he was in the throes of addiction from which he is working hard to recover, is five years and six months.

[195] In the circumstances, and given the ranges of sentence I have considered, I am of the view that the sentences of theft from mail and possession of identity documents should be reduced from three months each to two months each, concurrent to each other. The sentences for robbery and kidnapping should be reduced by one year each, so that the group of sentences is one year for attempted robbery, two years for robbery, and two years for kidnapping, concurrent to each other. The total sentence is five years and six months.

Decision, Ancillary Orders and Restitution

[196] Mr. Chappell, please stand. I sentence you to five and one-half years before credit for time served as follows:

- a) Alberta Information 105154-1-T, Count 1, theft under \$5,000, one day time served by attendance in court on December 18, 2018;
- b) Alberta Information 105153-3, Counts 1 and 2, criminal harassment and mischief, three months for criminal harassment and one month for mischief, concurrent to each other and consecutive to all other sentences;
- c) Alberta Informations 105154-2-T, 105153-2-T, and 105155-1-T, failures to appear and failing to report to bail supervisor, 30 days each, concurrent to each other and consecutive to all other sentences;
- d) Count 1 and Count 3 of the British Columbia Indictment, theft from mail and possession of identity documents, two months each concurrent to each other and consecutive to all other sentences;
- e) Counts 4, 5, and 11 of the British Columbia Indictment, resisting arrest and two counts of failing to stop for a police officer, three months for resisting arrest and one year each for failing to stop, served concurrently to each other and consecutive to all other offences;
- f) Counts 6, 7, and 9 of the British Columbia Indictment, attempted robbery, robbery, and kidnapping, one year, two years, and two years, concurrent to each other and consecutive to all other offences; and

g) Counts 8 and 10 on the British Columbia Indictment, use of imitation firearm in the robbery and kidnapping of Mr. Price, one year each, consecutive to each other and consecutive to all other offences.

[197] Mr. Chappell, you have been in custody since November 6, 2017. Until and including today that is 495 days. I subtract one day for your sentence for theft under \$5,000. The term of imprisonment that I would have imposed before granting any credit is five and one-half years. I am granting credit at a rate of 1.5 days for each day served. The total credit I am granting you is 741 days.

[198] After credit for time served, the sentence is 3 years and 170 days.

[199] I make the following ancillary orders:

- a) pursuant to s. 109 of the Criminal Code, you are prohibited from possessing any firearm, other than a prohibited firearm or restricted firearm, and any crossbow, restricted weapon, ammunition, and explosive substance for a period of 10 years, and any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for life;
- b) robbery and kidnapping, Counts 7 and 9 of the British Columbia Indictment, are primary designated offences. Pursuant to s. 487.051(1), I make an order in Form 5.03 authorizing the taking of samples of bodily substances from you for the purpose of registration in the DNA National Data Bank. The samples will be taken from you while you are in jail and you must submit to the taking of the samples; and
- c) pursuant to s. 259 of the Criminal Code, you are prohibited from operating any motor vehicle on any street, road, highway, or other public place in Canada for three years.

[200] Pursuant to s. 738 of the Criminal Code, I order that you pay restitution to:

- a) Peace Hills Insurance at 300, 10709 Jasper Avenue, Edmonton, Alberta, T5J 3N3, in the amount of \$201,613.37 for the damage you did to Mr. Price's tractor, lead trailer, pup trailer, and cargo; and
- b) Renée Maloney in the amount of \$449.01 for the property damage done in relation to the criminal harassment and mischief charges.

[201] [Discussion between the Court and Counsel].

[202] Pursuant to s. 490(9) of the Criminal Code, I order that the carbon dioxide air pistol found in the possession of Mr. Chappell at the time of his arrest be forfeited to Her Majesty to be disposed of in accordance with the directions of the Attorney General.

[203] MS. MACDONALD: Crown enters a stay of proceedings on Count 2. And the Crown would enter a stay of proceedings on any count to which a guilty plea was not entered.

"Matthews J."

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