
CANADA / JUDGMENT

R. v. Chappell

2020 BCSC 536

COURT

Supreme Court of British Columbia

DECIDED

13 March 2020

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2020 BCSC 536 R. v. Chappell

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Chappell,

2020 BCSC 536

Date: 20200313

Docket: 102757-2

Registry: Kamloops

Regina

v.

Brandon Clayton Chappell

Before: The Honourable Mr. Justice Marchand

Oral Reasons for Sentence

Counsel for the Crown:

A.G. Varesi

Counsel for the Accused:

J. Jensen

Place and Date of Hearing:

Kamloops, B.C.

February 26, 2020

Place and Date of Judgment:

Kamloops, B.C.

March 13, 2020

Introduction

- [1] On August 12, 2019, Brandon Clayton Chappell entered guilty pleas to three counts of possessing proceeds of crime in excess of \$5,000, and one count of possessing MDMA, also known as ecstasy, for purposes of trafficking. One count dates to December 2016 in Merritt, the other counts date to January and March 2017 in Kamloops.
- [2] Normally these offences would call for a fairly lengthy jail sentence, but Mr. Chappell submits that the circumstances are so exceptional that I should suspend the passing of sentence and place him on probation for three years.

The Circumstances

- [3] The police received information from a confidential informant that associated Mr. Chappell to the Red Scorpions gang. Members of that gang are well known to have been involved in serious crime in the community, including drug trafficking and violence. Mr. Chappell was believed to be involved in handling the proceeds of the gang's criminal activities.
- [4] Police surveilled Mr. Chappell's home and primary vehicle from October 2016 to January 2017 and searched his garbage on five occasions. Mr. Chappell was observed associating with the local leaders of the Red Scorpions, including Konaam Shirzad and Erwin Daigle. His garbage included score sheets with information regarding the distribution of cocaine, heroin and methamphetamine to lower-level drug traffickers in amounts ranging from five ounces to 1.4 kilograms. In their search of Mr. Chappell's garbage, the police also found a small amount of cocaine and various bank deposit receipts.
- [5] In the meantime, on December 1, 2016, a male attended Mr. Chappell's residence in the Sahali neighbourhood of Kamloops. Mr. Chappell let the male in. The male subsequently left with a duffel bag. The male was later observed with a man named Gregory Wilson. The police subsequently arrested Mr. Wilson in Merritt. Mr. Wilson was found in possession of proceeds of crime totalling \$90,415 that had been placed in Save-On-Food bags. Inside the Save-On-Food bags were Ziploc bags marked "briefs" and "shirts". According to the Crown, "briefs" represents methamphetamine and "shirts" represents cocaine. The Ziploc bags contained \$36,780. Mr. Chappell's fingerprints were found on one Ziploc bag marked "briefs" and on the Save-On-Food bags.
- [6] On January 13, 2017, the police obtained a search warrant for Mr. Chappell's home. The police arrested Mr. Chappell shortly before executing the search warrant. In their search of Mr. Chappell's home, the police located the following:

- 17 bundles of Canadian currency, a 12-gauge shotgun, ammunition, and soft body armour in the master bedroom;
- score sheets and a money counter on the kitchen table;
- a container with 220 grams of MDMA having a value of \$8,000 in a container in a cupboard above the stove;
- Canadian currency in a Ziploc bag marked "pants", meaning heroin, in another kitchen cupboard; and
- further score sheets on an island in the kitchen.

[7] The proceeds of crime totalled \$23,535 Canadian.

[8] Finally, on March 30, 2017, Mr. Daigle was observed moving a large suitcase from his residence. Mr. Daigle then met with Mr. Shirzad. The two were arrested in their vehicle as they were approaching Mr. Chappell's residence. Each was found in possession of approximately \$5,600.

[9] The police obtained a further search warrant for Mr. Chappell's home. On executing the search warrant, the police located a cardboard box under the dining room table containing bundles of cash totalling \$50,000.

[10] In total, the police seized \$163,950, plus 220 grams of MDMA that was associated to Mr. Chappell.

Impact on the Community

[11] The illicit sale of drugs such as cocaine, heroin, and MDMA takes a heavy toll on individuals, families, and the community as a whole.

[12] These substances are highly addictive. Users may commit property or other offences to support their habits. Perhaps worse, they may lose their jobs, their ability to care for their children, or in some cases, even their lives. Children may have to be taken into care. Families suffer financially and emotionally. The community loses the benefit of the contributions users would otherwise make and in fact are burdened by increased social, medical, policing, property insurance, and other costs.

[13] On top of these costs, drug trafficking is often accompanied by significant violence. Drug-related gang violence has been a significant concern in Kamloops involving serious injury and death, including to completely innocent bystanders.

[14] There is absolutely no socially redeeming value associated with drug trafficking. Anyone involved in facilitating drug trafficking shares the responsibility for all the associated social ills and human misery.

Circumstances of Mr. Chappell

- [15] Mr. Chappell was 29 years old at the time of his offences. He is 32 years old now. He self-identifies as Métis on his mother's side. The lives of members of Mr. Chappell's Métis family were disrupted by participation in sex trade work and/or instability. Mr. Chappell's mother's father left his family when Mr. Chappell's mother was young, just as Mr. Chappell's own father left his family when Mr. Chappell was young. As a result, both Mr. Chappell and his mother have abandonment issues.
- [16] Mr. Chappell was raised by his mother and his step-father. Mr. Chappell has a half-sister from his mother's union with his step-father. Growing up, Mr. Chappell felt his half-sister received all the attention while he felt left out. He dropped out of school and stepped out on his own at age 15. He tried to reconnect with his father. When that failed, it only exacerbated his feelings of abandonment.
- [17] Mr. Chappell entered the workforce at a young age. He worked at a pellet recycling plant and then in construction in the Lower Mainland. Eventually he relocated to Kamloops. He took a job with Northern Trailer, which became Horizon North Manufacturing, manufacturing modular work camp accommodations for the oil industry.
- [18] In 2011, Mr. Chappell began a plumbing apprenticeship. In 2013, he completed his Level 1 technical training at the top of his class with a 92-percent average. At about the same time, Mr. Chappell's son, [child's name omitted], was born. [Child's name omitted]'s mother had struggles so Mr. Chappell became a full-time parent while also holding down full-time work.
- [19] In late 2014, early 2015, there was a downturn in the oil industry and Mr. Chappell was laid off. Mr. Chappell was struggling, so approached the Ministry of Children and Family Development (the "Ministry") for assistance. Due to issues with his ex, meaning [child's name omitted]'s mother, [child's name omitted] was taken into care. Mr. Chappell was devastated to lose his job and, worse, his son.
- [20] Mr. Chappell was always interested in fitness. He started working part-time as a personal trainer. He befriended the wrong group of people at the gym, people who were heavily entrenched in a criminal lifestyle. This group offered Mr. Chappell money and a sense of belonging.
- [21] THE COURT: Do you need a box of Kleenex, Mr. Chappell?
- [22] THE ACCUSED: Yeah, sorry.
- [23] THE COURT: There is a box there.

- [24] This group offered Mr. Chappell money and a sense of belonging. Because he had a home, a good work history and no criminal record, he provided a perfect cover and front for a criminal enterprise. Mr. Chappell's house was used as a stash house for drugs and money. Mr. Chappell maintains that he was not involved in any direct purchases or sales of drugs, and there is no evidence to suggest otherwise.
- [25] When Mr. Chappell was arrested in 2017, he realized he had hit rock bottom. His criminal associates were either murdered or jailed for a long time. He was denied access to [child's name omitted]. He could not keep a job. Employment only lasted until the employer became aware of his charges.
- [26] Mr. Chappell worked hard with the Ministry to regain access to [child's name omitted]. In 2018, he found work with Hadwin's HVAC & Gas Inc. He re-registered to complete his apprenticeship. Two glowing reference letters demonstrate that he has become a valued and trusted employee at Hadwin's. He is now sharing custody of [child's name omitted] with [child's name omitted]'s maternal grandmother. [Child's name omitted]'s grandmother attests to the strong bond Mr. Chappell has with [child's name omitted] and the integral role Mr. Chappell plays in [child's name omitted]'s life. Mr. Chappell is even paying child support.
- [27] Mr. Chappell has provided a number of other reference letters from friends and family, including his new common-law partner. The theme is that Mr. Chappell is a good person who made poor choices during a rough patch in his life, but has completely turned his life around.
- [28] Mr. Chappell does not have a substance use issue, but he is receiving personal counselling from a local counsellor.

Crown and Defence Positions on Sentencing

- [29] The Crown submits that Mr. Chappell was a mid-level drug dealer who was trusted with handling large amounts of money, who supplied money to others to purchase drugs, and who was in possession of a significant amount of MDMA. The Crown also notes that Mr. Chappell continued his criminal activities after his initial arrest. The Crown submits that denunciation and deterrence are the dominant sentencing principles. The Crown submits that a custodial sentence of 22 months is appropriate in the circumstances. The Crown also seeks a number of ancillary orders.
- [30] Mr. Chappell submits that he is reformed such that public safety will be better served by a non-custodial sentence. He specifically submits that a three-year probation order with one year of house arrest, followed by one year with a curfew and significant community work service hours can meet the sentencing objectives of denunciation and deterrence, while promoting Mr. Chappell's rehabilitation. Mr. Chappell takes no position on the ancillary orders.

Sentencing Principles

- [31] Sections 718 to 718.2 of the Criminal Code [Code] set out the purpose and principles of sentencing.
- [32] Under s. 718, the fundamental purpose of sentencing is to protect society and promote respect for the law and the maintenance of a just, peaceful, and safe society by imposing just sanctions. The objectives of such sanctions include denouncing unlawful conduct, deterring offenders and others from committing crimes, separating offenders from society where necessary, rehabilitating offenders, and promoting a sense of responsibility in offenders.
- [33] Section 718.1 sets out the fundamental principle of sentencing. Under s. 718.1, a sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the offender.
- [34] Section 718.2 sets out a number of other sentencing principles. Under s. 718.2(a), sentences are to be increased or decreased to account for any aggravating or mitigating circumstances. Section 718.2(b) sets out the parity principle that sentences should be similar for similar offences committed by similar offenders in similar circumstances. Finally, ss. 718.2(c) to (e) promote restraint in sentencing.
- [35] Under s. 718.2(c), the combined effect of consecutive sentences should not be unduly long or harsh. Under s. 718.2(d), offenders should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances. Section 718.2(e) provides as follows:
- (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.
- [36] In relation to Mr. Chappell's conviction for possession for the purpose of trafficking in MDMA, I must also take note of s. 10(1) of the Controlled Drugs and Substances Act which, without restricting the generality of the Code provisions on sentencing, provides as follows:
- 10 (1) . . . the fundamental purpose of any sentence for an offence under [Part 1 of the CDSA] is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation, and treatment in appropriate circumstances, of offenders and acknowledging the harm done to victims and to the community.

Gladue Principles

- [37] Given Mr. Chappell's Métis heritage, s. 718.2(e) of the Code deserves special attention.
- [38] Section 718.2(e) was introduced in 1996. Cases such as *R. v. Gladue*, [1999] 1 S.C.R. 688 and *R. v. Ipeelee*, 2012 SCC 13 make it clear that it is a remedial provision that was and is intended to deal with the crisis of over-representation of Indigenous offenders in the Canadian criminal justice system. Sadly the statistics are worse today than they were in 1996.

- [39] The crisis described by the Supreme Court of Canada has been driven by the alienation, poverty, substance abuse, lower educational attainment, lower rates of employment, and bias experienced by Indigenous Canadians as a result of Canada's colonial history and destructive assimilationist policies.
- [40] While these are broader societal issues, the Court in Gladue and Ipeelee has recognized that sentencing Indigenous offenders has a role to play in addressing their over-representation in the criminal justice system. Indigenous offenders are different from other offenders because, in the words of the Supreme Court of Canada, they "are victims of systemic and direct discrimination".
- [41] To help address the crisis, Gladue and Ipeelee changed the way Indigenous offenders are sentenced, though not necessarily the result. In sentencing an Indigenous offender, a sentencing judge must consider two factors:
1. The unique systemic or background factors which may have played a part in bringing the particular offender before the courts; and
 2. The types of sentencing procedures and sanctions which may be appropriate in the circumstances.
- [42] According to Gladue and Ipeelee, a sentencing court must take a holistic approach to imposing a fit sentence. A fit sentence is one that is proportional and appropriately balances the seriousness of the offence with the moral blameworthiness of the offender. In striking the appropriate balance, the unique systemic or background factors that may have played a part in bringing the particular offender before the court speaks to the moral blameworthiness of the offender. While a causal connection between systemic and background factors and the offence at issue need not be established, a link may be important or helpful in finding a fit sentence.
- [43] Finally, restorative sentences may be more appropriate for Indigenous offenders, but taking a restorative approach will not necessarily lead to a reduced sentence. Generally, the more serious or violent the crime, the more likely it will be, as a practical matter, that the terms of imprisonment will be the same for an Indigenous and a non-Indigenous offender.

Range of Sentence

- [44] Sentencing is a highly-individualized process. The type of available sentence may be constrained by statutory provisions and the range of appropriate sentences is generally established through a consideration of sentences imposed on similarly-situated offenders who have committed similar offences in similar circumstances.

- [45] In this case, s. 355(a) of the Code provides for a maximum punishment of ten years for Mr. Chappell's possession of proceeds of crime. Section 5(3) of the CDSA provides for a maximum sentence of life imprisonment for Mr. Chappell's possession for the purposes of trafficking. As a result, under s. 742.1(c) and 742.1(e)(ii) of the Code, a conditional sentence order ("CSO") is statutorily not available in relation to any of Mr. Chappell's offences. Somewhat incongruously, a suspended sentence and probation is.
- [46] The Crown cites a number of cases in support of its submission that a custodial sentence of 22 months is appropriate.
- [47] In *R. v. Hernandez-Juarez*, 2010 BCSC 1284, the sentencing judge imposed a 12-month custodial sentence on a 23-year-old first-time offender convicted of possession for the purposes of trafficking in MDMA. Mr. Hernandez-Juarez was found in possession of \$3,500 worth of MDMA and was considered to be a mid-level dealer. At the time, MDMA was a Schedule III drug. It has since been reclassified to join the most serious controlled drugs in Schedule I.
- [48] In *R. v. Herrell*, 2014 BCCA 114, the Court upheld a six-month custodial sentence for possession for the purpose of trafficking a relatively small amount of MDMA imposed on a 39-year-old offender with a dated and unrelated record. At para. 23, the Court emphasized that a custodial sentence for possession for the purpose of trafficking in MDMA will attract a custodial sentence, unless exceptional circumstances are demonstrated.
- [49] *R. v. Lazeo*, 2000 BCCA 551, *R. v. Bui*, 2006 BCCA 245 and *R. v. Heidarian*, 2007 BCCA 288 were decided when a CSO was an available sentence for the possession of proceeds of crime. The Crown relies on these decisions for the proposition that a true custodial sentence and not a community-based disposition is appropriate in relation to Mr. Chappell's possession of proceeds of crime.
- [50] *Lazeo* and *Bui* involved convictions for money laundering, but I agree with the Crown that they are appropriate comparators. Like the money laundering in those cases, Mr. Chappell's possession of proceeds of crime was profit-driven and an essential aspect of the local drug trade.
- [51] In *Lazeo*, the offender made \$9,200 by assisting to launder \$310,000 that he was aware was related to drug activity. Relying on the decision of the Ontario Court of Appeal in *R. v. Tejani* (1999), 138 C.C.C. (3d) 366, the Court held that ordinarily a money-laundering conviction will attract a custodial sentence. The Court emphasized the need to deter such conduct. In the result, the Court reduced a 27-month sentence to two years less one day. The main reason for doing so was that at the time of sentencing, Mr. Lazeo had been convicted of a similar offence, but by the time of the appeal, the circumstances had changed. Mr. Lazeo's prior conviction had been overturned on appeal.

- [52] In *Bui*, the two offenders appealed their 18-month custodial sentences for laundering \$104,000. Both offenders were considered to be "minions" who had been preyed upon by sophisticated criminals. They both had families to support. They both also had prior related records. The Court rejected the offenders' submission that the trial judge had erred in failing to impose CSOs. The Court deferred to the trial judge's finding that a CSO would not be sufficient to express the condemnation of the community.
- [53] Finally, in *Heidarian*, the offender had pled guilty to possession of 81 pounds of marihuana for the purpose of trafficking and possession of proceeds of crime totalling approximately \$700,000. The Court set aside an 18-month CSO and a fine of \$50,000, and imposed a custodial sentence of two years less one day. Given the seriousness of the offences, the amount of drugs and cash involved, the presence of unlawful weapons, and the lack of mitigating factors, the Court held that a CSO and a fine would not adequately address the principles of denunciation and deterrence. The Court considered the circumstances much more aggravated than *Lazeo* and *Bui*.
- [54] In response, Mr. Chappell relies on the recently released decision of the Yukon Court of Appeal in *R. v. Aguilera Jimenez*, 2020 YKCA 5. In that case, the Court upheld the imposition of a suspended sentence with probation imposed on a 20-year-old (18 at the time of the offence) first-time offender who pled guilty to possession for the purposes of trafficking in cocaine by way of a dial-a-dope operation. The Court increased the period of probation from two years to three years and eliminated one probationary term that was found to be unenforceable.
- [55] The Court recognized the fundamental importance of general deterrence and denunciation in sentencing in the context of dial-a-dope operations, and that the usual range of sentence was six to 18 months of incarceration. Nevertheless, following *R. v. Voong*, 2015 BCCA 285, the Court also recognized that in rare and exceptional circumstances, a suspended sentence, accompanied by a probation order, might achieve deterrence and denunciation as well as rehabilitation.
- [56] At para. 56, the Court summarized as follows:
- [56] In summary, dial-a-dope trafficking in cocaine is a serious offence for which deterrence and denunciation are the primary sentencing principles for consideration. In the absence of exceptional circumstances, which are rare, the normal range of sentence for a first time dial-a-dope . . . trafficker is imprisonment for a period of between six to eighteen months, depending on the aggravating and mitigating factors. The term "exceptional circumstances" describes the kinds of circumstances which justify going outside the normal sentencing range in order to craft an appropriate individualised proportionate sentence. While there are no exhaustive criteria, they may include a constellation of factors such as no criminal record, significant rehabilitative steps, gainful employment, genuine remorse and an appreciation of the harm done to society. Most importantly, to qualify as exceptional in the dial-a-dope context the circumstances must show that an offender has genuinely turned

away from crime and that the public is best protected by a non-custodial sentence.

- [57] Mr. Chappell also relies on *R. v. Rathor*, 2011 BCPC 338 and *R. v. Manhas*, 2019 BCSC 1293 as examples of exceptional circumstances that resulted in community-based sentences rather than jail.
- [58] In *Rathor*, the offender pled guilty to one count of money laundering. Mr. Rathor had unlawfully converted \$560,000 U.S. into Canadian currency for two undercover police officers who he believed were drug dealers. The sentencing judge noted that in *Tejani*, a case involving a notorious money launderer, the Ontario Court of Appeal substituted a CSO of two years less one day for a two-year prison sentence. As noted earlier in my reasons, in *Tejani*, the Ontario Court of Appeal held that ordinarily a jail sentence would be appropriate in the circumstances. Nevertheless, in *Tejani*, the Ontario Court of Appeal focused on the personal circumstances of the offender in concluding that a CSO was appropriate.
- [59] In imposing a CSO of two years less one day, the sentencing judge in *Rathor* held as follows at para. 37:
- [37] . . . [I]n my view a conditional sentence is appropriate in the circumstances of this case. The combination of the very positive personal circumstances of the accused, the low likelihood that he will re-offend, the potential for him to make a strong contribution to society, the support that he continues to have in his family and in the community at large, all support the imposition of a conditional sentence. As well, and I include this, his remorse, his guilty pleas, his lack of criminal record, the relatively brief duration of his money laundering career mitigate the seriousness of the offence. In such circumstances, the objectives of general deterrence and denunciation can be addressed by means of a conditional sentence.
- [60] In *Manhas*, the offender was convicted of conspiracy to export 12.5 kilograms of MDMA. The sentencing judge concluded that a restrictive three-year probation order would be adequate to address the sentencing objectives of denunciation and deterrence in the exceptional circumstances of the case. In reaching this conclusion, the sentencing judge noted that:
- The offender had taken responsibility for her offence, acknowledged the harm to the community, and was far down the road to rehabilitation;
 - The offender had already suffered consequences as a result of her criminality, including with respect to her employment;
 - The offender had demonstrated since her arrest that she had herself been deterred from future criminality;
 - It was not necessary to separate the offender from society;
 - The offender's children needed her for financial support;
 - The community would benefit from having the offender perform work in the community;

- The offender's prosecution and conviction carried stigma; and
- The public interest would be better served by the offender receiving a non-custodial sentence.

Aggravating Factors

[61] In this case there are a number of aggravating factors, including:

1. the amount of money and MDMA involved;
2. Mr. Chappell's profit-driven willingness to inflict misery on the community;
3. Mr. Chappell's trusted position within a violent gang;
4. Mr. Chappell's possession of a firearm and body armour; and
5. Mr. Chappell's continued offending after his initial arrest.

Mitigating Factors

[62] There are also a number of mitigating factors, including:

1. Mr. Chappell's relatively young age and lack of criminal record;
2. Mr. Chappell's offending was out-of-character;
3. Mr. Chappell committed his crimes at a low point in his life when he had lost his son and his job;
4. Mr. Chappell has completely reformed himself and has been leading a pro-social life for the past several years;
5. the support Mr. Chappell has at work, within his family, and amongst his friends, which, together with the counselling he is undertaking, bode well for his prospects for maintaining a productive, crime-free lifestyle;
6. Mr. Chappell's remorse and acknowledgment of the harm he has caused to the community; and
7. Mr. Chappell's acceptance of responsibility by way of his guilty plea.

Principles of Sentencing Deserving of Greatest Emphasis

[63] The authorities are clear that denunciation and deterrence must be the primary sentencing objectives in the circumstances of this case. A fit sentence must send a clear message that involvement in gang-related drug trafficking will not be tolerated and will result in a significant loss of liberty.

[64] At the same time, it is not difficult to see how Mr. Chappell's Indigenous heritage has played a role in his coming before the courts. In their powerful report, the National Inquiry into Murdered and Missing Indigenous Women and Girls identified how the factors identified in Gladue, as well as gender-related biases, have made Indigenous women, girls, and

gender-diverse people vulnerable to violence, sexual violence, and exploitation. As a result, Indigenous women have been disproportionately involved in sex-trade work. Though Mr. Chappell may not know all the details, it seems clear enough that heritage-related instability has affected multiple generations of his family, including Mr. Chappell himself. As a result, he has a somewhat reduced level of moral blameworthiness.

- [65] In my respectful view, the circumstances demand that the court not completely sacrifice rehabilitation and restoration at the altar of denunciation and deterrence. Ending the cycle of inter-generational dysfunction is very obviously in the best interests of society in the short and long-term.

Sentence

- [66] The most difficult sentencing decisions involve serious crimes committed by offenders with a reduced level of moral blameworthiness. In such cases, the sentencing objectives of denunciation and deterrence may appear to collide with the sentencing objectives of rehabilitation and restoration. This is one of those cases.
- [67] Ordinarily, I would not hesitate to impose a custodial sentence in the range of 18 to 24 months as proposed by the Crown. The circumstances are, however, not ordinary. More specifically, the nature and number of mitigating factors are far more compelling than any such factors in the cases relied on by the Crown and more in line with those relied on by Mr. Chappell.
- [68] After carefully considering all of the circumstances, I have concluded that the circumstances are exceptional enough to justify a sentence outside of the normal range, but not so exceptional that a suspended sentence with three years of probation would be fit. In my view, a suspended sentence with probation would not adequately reflect the seriousness of Mr. Chappell's crimes, nor adequately achieve the primary sentencing objectives of denunciation and deterrence.
- [69] As required by s. 718.2(e) and the associated case law, I must exercise restraint and endeavour to reconcile the sentencing objectives of denunciation and deterrence with the sentencing objectives of rehabilitation and restoration. In doing so, I have concluded that the fit and appropriate sentences are concurrent sentences consisting of 90 days of jail to be served on weekends, followed by a lengthy period of probation with highly-restrictive and onerous terms.
- [70] These concurrent sentences will reflect the fact that Mr. Chappell has a reduced level of moral blameworthiness, no criminal record, gainful employment, genuine remorse, and an appreciation of the harm he has done to society.
- [71] These concurrent sentences will also reflect that Mr. Chappell has objectively demonstrated that he has reformed himself and genuinely turned away from crime. Critically, in order to put an end to the inter-generational instability that has plagued Mr. Chappell's family and

cost the community so dearly, these concurrent sentences will enable Mr. Chappell to make a contribution to society by continuing his employment and supporting his family, both financially and emotionally. The last thing the community needs is for Mr. Chappell to spend two years in jail causing the next generation of Mr. Chappell's family to suffer from the same feelings of abandonment that have already caused so much harm.

[72] At the same time, the concurrent sentences will severely restrict Mr. Chappell's personal liberty for longer than the custodial sentence proposed by the Crown which, assuming good behaviour, would have seen Mr. Chappell back in the community in about 15 months. Further, the stigma of the convictions, together with the restrictions and burdens of the concurrent sentences, reflect and adequately address the objectives of denunciation and deterrence.

[73] In short, it is my view that protection of the public will be best served by the balance I have attempted to strike between denunciation and deterrence on the one hand, and rehabilitation and restoration on the other.

[74] Mr. Chappell, you are sentenced to 90 days' imprisonment. You must serve this sentence intermittently from Fridays at 6:00 p.m. to Sundays at 4:00 p.m. on consecutive weekends starting a week from today, which is March 20, 2020, at the Kamloops Regional Correctional Centre here in Kamloops, B.C.

[75] At all times when you are not in custody on this order, and for 36 months, you are on probation with the following conditions:

- You must keep the peace and be of good behaviour.
- You must appear before the court when required to do so by the court.
- You must notify the court or the probation officer in advance of any change of name or address, and notify the court or the probation officer of any change of employment or occupation.
- You must report in person to a probation officer at Kamloops Community Corrections Office by 3:00 p.m. today, and after that, you must report as directed by your probation officer.
- You must live at an address approved in advance by your probation officer and provide them with your phone number. You must not change your address or phone number without prior written permission from your probation officer.
- For the first 12 months of this order, you must obey house arrest by being inside your residence or on its lot 24 hours a day every day.
- You must present yourself immediately at the door to your residence or answer the phone when any peace officer or probation officer attends or calls to check on you during the house arrest.

- You may be away from your residence during the house arrest with the written permission of your probation officer. Such permission is to be given only for employment or other compelling reasons. You must carry the permission, which can be in electronic format, with you when you are outside your residence.
- For the following 12 months, you must obey a curfew by being inside your residence or on its lot between 8:00 p.m. and 6:00 a.m. every day.
- You must present yourself immediately at the door to your residence or answer the phone when any peace officer or probation officer attends or calls to check on you during the curfew.
- You may be away from your residence during the curfew with the prior written permission of your probation officer. Such permission is to be given only for employment or other compelling reasons. You must carry the permission with you when you are outside your residence.
- You must provide your probation officer with the details of your employment. You must inform your probation officer within two business days of any change in your employment status.
- For the first 24 months of this order, you must not possess or consume alcohol, drugs, or any other intoxicating substance, except with a medical prescription.
- You must attend, participate in, and complete any intake, assessment, counselling, or education program as directed by your probation officer. This may include counselling or programming for mental health or parenting skills.
- You must complete 100 hours of community work under the direction of your probation officer. Your community work service must be completed by September 1, 2022.

[76] I must also make the following ancillary orders:

- In relation to Count 2, pursuant to s. 109 of the Code, you are prohibited from possessing: (a) 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 from today, and (b) any prohibited firearm or restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for life.
- Count 2 is a secondary designated offence. After considering the factors set out in s. 487.051(3) of the Code, I am satisfied that it is in the best interests of the administration of justice to authorize the taking of samples of bodily substances from you. This is for DNA purposes. You must attend at the Kamloops RCMP detachment on Battle Street on March 17, 2020 at 10:00 a.m., and submit to the taking of the samples. This order is valid until executed.

[77] So Mr. Chappell, just a couple of final words. You played a significant role in wreaking havoc in the community. As a result, you will be spending time in jail and your liberty will be severely restricted in the community for quite a long time. Normally you would be spending even more time in jail. The reason you are not is because of the exceptional progress that you have made over the last several years and because of [child's name omitted]. I know you want better for [child's name omitted].

[78] THE ACCUSED: Thank you. I do.

[79] THE COURT: The changes you have made are commendable. Please continue to dedicate yourself to being a better person, a better parent, and a better provider. Good luck.

[80] THE ACCUSED: Thank you. Thank you.

[81] THE COURT: Mr. Varesi, there is one outstanding count.

[82] MR. VARESI: Yes, stay of proceedings on Count 4.

"L.S. Marchand J."

MARCHAND J.

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