

---

CANADA / JUDGMENT

## R. v. Charette

2016 BCSC 1275

---

COURT

Supreme Court of British Columbia

DECIDED

5 May 2016

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

---

2016 BCSC 1275 R. v. Charette

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Charette,

2016 BCSC 1275

Date: 20160505

Docket: 63296-2

Registry: Chilliwack

Regina

v.

Delphis John Charette

Before: The Honourable Mr. Justice N. Brown

(appearing by videoconference)

Oral Reasons for Sentence

Counsel for the Crown:

S.J.K. Gill

Counsel for the Accused:

J.P.A. Reveley

Place and Date of Hearing:

Chilliwack, B.C.

April 21, 2016

Place and Date of Judgment:

Chilliwack, B.C.

**May 5, 2016**

- [1] THE COURT: Mr. Charette has been convicted of two counts of possession for the purposes of trafficking a controlled substance on March 21, 2016. His sentencing was originally scheduled for an earlier time, but he failed to appear as scheduled for reasons explained by counsel.
- [2] Mr. Charette, now 44, was engaged in low-level drug trafficking at the time of the offence. Analysis of the contraband seized confirmed 5.3 grams of crack rock, 1.5 grams of crack cocaine, a total of 2.1 grams of heroin distributed between seven small bags; and the remaining bags believed to contain heroin not sent for analysis. Also found was 0.03 grams of marihuana. The drugs had a street value in the range of approximately \$740. Also found in his possession was a crack pipe, bottles of liquor, and a sock filled with rocks.
- [3] The offence occurred in what had been referred to in Abbotsford at the time as the "warm zone", a high crime area, particularly with respect to drugs, that encompassed several square blocks of Abbotsford in which a women's resource centre was the main focus.
- [4] Mr. Charette's detention and arrest occurred after the arresting officer entered an alley adjacent to the centre and saw Mr. Charette engaged in what he believed was a drug transaction. He later saw the drugs in plain view when he conducted a safety pat-down of Mr. Charette.
- [5] Mr. Charette is currently 44. Some of his personal history is set out at paras. 36 to 38 of the voir dire reasons. To some extent, they have more sense of immediacy than some of the Pre-Sentence Report information.
- [36] Mr. Charette suffered a serious head injury in a car accident several years ago.
- [6] I should note, for the record, I do not have any medical reports or records to that effect, but I am accepting that for the purpose of sentencing:
- [36] He underwent two years of physiotherapy after his release from hospital. He [testified he] had to learn to read and write again. He told the court he lost his employment, his wife, and his social standing. Before he was injured, he said he had worked in the oil industry, in both the Alberta oil patch and overseas. He [said he] travelled because he was skilled in his field and sought after by employers. He explained his brain injury had caused him to forget his former skills and prevented a return to his former work. He had to relearn the skills of everyday living, lost his driver's license, and his personality changed. He started to swallow pills and descended into what he characterized as a "spiral" in 2005/2006. He stated his injuries affected his ability to remember things.

- [37] At the time of the offence, he testified he was deeply into addiction. He received a regular disability cheque, and between that and rent contributed by his roommate, he managed financially.
- [7] Therefore, he was not engaged in any trafficking out of necessity or to support himself as he had adequate financial means at the time.
- [8] He testified on August 26, 2013 that he felt very depressed and wanted to go into treatment again. That never took place.
- [9] The Ministry of Justice conviction list shows convictions for common assault on January 23, 2013; a suspended sentence and probation for 18 months imposed. On December 3, 2014, common assault, 30 days, less nine days' pre-sentence time credit, with concurrent 30 days' probation. He was also sentenced then, concurrently for mischief under \$5,000. On April 20, 2015, he was sentenced for assault causing bodily harm and sentenced to 119 days with credit of 200 days' pre-sentence time spent. On June 15, 2015, he was convicted and sentenced for breach of a probation order; the sentence imposed was 14 days and six months' probation. On February 1, 2016, he was sentenced for theft under \$5,000 and a conditional sentence of 60 days was imposed with probation for one year.
- [10] The Pre-Sentence Report includes other offences, including aggravated assault in Kelowna on April 20, 2015, with a sentence of 119 days and one year's probation imposed.
- [11] There is also reference in the March 30, 2016 Pre-Sentence Report to a breach of a conditional sentence order, I am not sure what the reference to "JD 15" is, whether that worked out to days already served or whether that was an additional sentence imposed, but does not concern us here.
- [12] Most recently, on June 24, 2016, Mr. Charette was convicted of theft under \$5,000 and a sentence imposed of one day, including pre-sentence time served of nine days.
- [13] Having regard to the circumstances of the offences committed and Mr. Charette's personal circumstances, the Crown seeks a sentence that addresses the principles of denunciation, deterrence, both specific and general, and rehabilitation. Crown seeks a jail term in the range of nine to 12 months, plus a 12-month probation order for counselling, including drug and alcohol counselling.
- [14] The Crown also seeks a mandatory 10-year firearms prohibition pursuant to s. 109(1)(c) of the Criminal Code, R.S.C. 1985, c. C-46, and that order goes.
- [15] The Crown, noting that both offences are secondary designated offences, also seeks a DNA order pursuant to s. 487.051(3) of the Criminal Code.
- [16] The Crown also seeks a forfeiture order pursuant to s. 16 of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 for the offence-related items, including the cellphones seized by the police in this investigation and marked as exhibits at trial.

- [17] Defence counsel submits that the pre-sentence time of 50 days, calculated at a rate of 1.5 days per day in custody, a total of 75 days' time served, is a fit sentence in the circumstances. He alternatively submitted that that time served plus a suspended sentence with conditions for treatment is a fit sentence.
- [18] Turning briefly to the principles of sentencing set out in s. 718 of the Criminal Code, the primary sentence objectives in this case are denunciation, general and specific deterrence, rehabilitation, and the promotion of a sense of responsibility in Mr. Charette, acknowledgment of the harm he caused the community through his drug trafficking.
- [19] Despite Mr. Charette's age, now 44, and his record, rehabilitation remains a significant sentencing objective. But it is not one that necessarily nominates a non-custodial or suspended sentence or residency in a treatment facility as a fit sentence. Mr. Charette's record of non-compliance with court orders and conditions, including his non-appearance, does not bode well for any sentence that would either see him serve a conditional sentence or be granted a suspended sentence on the expectation that he would comply with attached conditions and pursue treatment options.
- [20] Rehabilitation is not necessarily always best served by a sentence served in the community or by a suspended sentence in these circumstances. On the other hand, a custodial sentence that is longer than what is necessary to serve the objectives of sentencing can be dispiriting for an offender and discourage rehabilitation, which, though the prospects may seem dim, deserves weight in this case.
- [21] I accept Mr. Charette's brain injury poses some challenges for him, but as I mentioned in the voir dire, a significant level of intelligence was discernible in his testimony. His problem appears to be impulsivity, lack of a solid moral core, and his constant exposure to negative social influences, apart from his mother and other family members.
- [22] I take passing notice that a disproportionate number of offenders have suffered significant brain trauma, which in Mr. Charette's case likely has had some effect on his offending. This is not to say he did not know what he was doing at the time.
- [23] I note, as well, symptoms of brain injury may be treatable, but so far as the records show, he has not been receiving any treatment, Mr. Charette has only expressed some interest in that to the probation officer. This again gives pause for concern about his reliability and willingness to follow up on matters that are clearly in his own best interests.
- [24] Section 718.1 of the Criminal Code requires a sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender.
- [25] The principle of parity calls for similar sentences for similar offences committed in similar circumstances for similar offenders.

- [26] Section 718.2 of the Criminal Code requires a sentencing judge to consider all the available sanctions other than imprisonment that are reasonable in the circumstances, with particular attention paid to the circumstances of aboriginal offenders, which does not apply here.
- [27] In sum, a sentence must not exceed what is just and proportionate given the moral blameworthiness of the offender and the gravity of the offence.
- [28] The sentence must both speak out against the offence and punish the offender, but no more than is necessary to accomplish the objectives of sentencing.
- [29] Aggravating circumstances in this case include Mr. Charette's criminal record. His participation in drug trafficking at a time when he had conditions imposed for a prior offence is an aggravating factor. I note Mr. Charette participated at a low level of drug trafficking. He was not involved in what might be characterized as a sophisticated level of drug dealing, which diminishes his moral culpability to some extent.
- [30] The fact he had disability income sufficient to meet his needs belies necessity; that is, that he was trafficking just to subsist and support a habit.
- [31] Mitigating circumstances include a significant brain injury with cascading social losses that followed. Although he admittedly engaged in low-level drug trafficking during the trial, he has no prior record of drug trafficking convictions. However, he does have an extensive criminal record with some significant offences. He does not come before the court as a first offender. His addiction to drugs and alcohol is a mitigating factor.
- [32] Turning now to the range of an appropriate sentence.
- [33] *R. v. Datt*, 2014 BCCA 484 [Datt] is instructive in this case given some of Mr. Datt's personal circumstances, such as cognitive difficulties stemming from a brain injury. But Mr. Datt's trafficking activities were at a higher level, measured by the nature and extent of the drugs involved and his level of involvement. In that case, the trial judge imposed a sentence of 18 months, ruled out a conditional sentence, and stressed the need for specific and general deterrence within the community.
- [34] At para. 20, Justice Stromberg-Stein stated:
- [20] The appropriate range of sentence for an offender engaged in ongoing trafficking of Schedule I controlled substances in quantities ranging from the multi-ounce to the multi-gram level, with a previous criminal record (including but not limited to drug-related offences) and a drug addiction, is approximately 14 to 24 months in jail

- [21] There are a number of factors impacting Mr. Datt that suggest the appropriateness of the 14-to-24 month range, and specifically a sentence of 18 months, including: the multiple transactions involving three controlled substances for significant sums, ranging from \$1,760 to \$9,200; the controlled substances are dangerous [she went on to note], highly addictive, and socially destructive substances.
- [35] She noted, as well, that Mr. Datt stopped selling only because of police intervention, and had a prior, albeit unrelated, criminal record.
- [36] Again, the transactions in that case were multiple, involved three controlled substances as opposed to two in this case, and the sums were significantly greater. Nonetheless, other circumstances are similar to what we see in this case.
- [37] At para. 23, Justice Stromberg-Stein stated:
- [23] It is well-established that deterrence and denunciation are essential objectives in cases involving hard drugs such as cocaine, heroin, and methamphetamines. Other sentencing principles, including rehabilitation, must be considered in trafficking cases, and trial judges are not wrong to emphasize the sentencing goals of denunciation and deterrence to protect the community.
- [38] In *R. v. Lloyd*, 2016 SCC 13 [Lloyd], the Supreme Court heard constitutional arguments on the minimal sentence provisions, which had required a minimum sentence of one year for repeat drug trafficking convictions. The judge imposed a sentence of 12 months without any reference to the 12-month minimum sentence provision, which he then went on to strike down anyway as unconstitutional.
- [39] The appellant, as here, was a drug addict and dealer in Vancouver's Downtown Eastside, the Vancouver equivalent to the warm zone, one might say. He had been convicted of a number of drug-related offences.
- [40] A month after his release for a previous Schedule I trafficking conviction, he was again arrested and charged with three counts of possession for the purpose of trafficking of a Schedule I drug, namely crack cocaine, methamphetamine, and heroin. The Provincial Court judge convicted Mr. Lloyd on three counts found the appropriate range of sentence for Mr. Lloyd's offences was 12 to 18 months, and that the appropriate sentence for him was 12 months.
- [41] Defence counsel provided *R. v. Cisneros*, 2014 BCCA 154, in which the court indicated that the appropriate range of sentence for a first offender engaged in low-level trafficking is six to nine months. He also referred me to *R. v. Voong*, 2015 BCCA 285, which I have reviewed and considered, but will not delve into here.
- [42] In *R. v. Gill*, 2013 BCCA 320, the Court of Appeal summarized social concerns related to low-level drug trafficking, which would include dial-a-dope operations (not the case, per se, here). At para. 22, Neilson J.A. stated:

- [22] It is well known that dial-a-dope operations enable a pervasive and rapid dissemination of illicit narcotics that wreak destruction to both the individuals who use them and to our community. The proliferation of these operations has significantly increased accessibility to these drugs, and their harmful effects. As a result, the courts have routinely recognized that the primary objectives in imposing sentences for trafficking in this manner must be deterrence and denunciation.
- [43] I note in passing that that while those concerns apply with particular force to dial-a-dope operations that does not diminish the serious nature of any drug trafficking offence, including low-level drug trafficking.
- [44] Mr. Charette's criminal and social history shows a constancy in committing offences, although there is a gap between 1997 and 2013, as pointed out by counsel. He is at risk of relapse without a long-term commitment to counselling and treatment; and, in the case of incarceration, a sentence that recognizes and imprints on his thinking the serious nature of the offence. But his history of breaches and non-compliance undercuts any basis on which the court could gather confidence Mr. Charette would comply with suitable conditions, such as pursuing treatment, with imposition of a suspended sentence.
- [45] I note Mr. Charette's appearance while in custody has improved compared to his appearance at trial.
- [46] At p. 2 of the Pre-Sentence Report, the pre-sentence officer noted:
- Mr. Charette is currently in custody at Surrey Pretrial Services Center. He indicates prior to his incarceration he was staying at a shelter in Abbotsford awaiting recovery at "Barb's House".
- [47] I note in passing that comment does not consist with Mr. Charette's testimony at trial in which he said he had a place to rent, had a roommate who paid him rent, and that he was subsisting well on his disability cheque of \$900 a month.

Prior to this, he reports being homeless for many years, most recently in the Downtown Eastside. Upon his release from custody, Mr. Charette reports he plans to attend Barb[']s Recovery House in Abbotsford or Mission while awaiting treatment at Maple Ridge Treatment Center (MRTC). However, this information is unconfirmed.

- [48] At p. 3, Ms. Martell, the probation officer, noted:

He reports he is not currently seeing a medical professional regarding his brain injury and memory problems because he has been "bouncing around too much". He was unable to recall any details regarding any medical professionals or specialists that he had worked with at the time of the accident but states he was seeing many doctors. He denies working with any community supports regarding his brain injury, past or present. He states in the future, he plans to get connected with community supports that can provide brain injury assistance.

- [49] Again, no follow through at times when he had full opportunity to do so.

[50] At p. 5, Ms. Martell noted:

Mr. Charette presents with a limited understanding of the factors that may have contributed to the commission of the offences, specifically substance abuse and mental health issues. He attributes the present offence to his drug and alcohol dependency and dealing with the end of a romantic relationship. The subject states that he takes responsibility for his actions however he appears to minimize the offence and lacks remorse into the impact of the offence on society. He does acknowledge that what he did was wrong and states that he doesn't want to further contribute to drug culture.

[51] That does not instill confidence in the fitness of a suspended sentence.

[52] The probation officer noted at the bottom of p. 5:

It appears substance use issues, mental health concerns, isolation from pro social influences, poor problem solving skills and a lack of insight have contributed to the offence presently before the Court.

[53] Although Mr. Charette has a considerable record of convictions, they relate mostly to offences of aggression and non-compliance with court orders.

[54] Although the same highly addictive Schedule I drugs were involved in this case as in Lloyd and Datt, Mr. Charette's level of participation was lower than what we see in Datt and the lock-step recidivist history we see in Lloyd is absent. I do not see this case falling into the range indicated in those cases, although the similarities in several aspects do weigh in determining what would be a fit sentence in this case.

[55] I find an appropriate range of sentence in this case falls into the range of about seven to nine months. Denunciation and specific and general deterrence remain the dominant sentencing considerations, the sending of a strong message that drug trafficking in Schedule I substances, even at street level and in modest amounts, will attract a significant sentence of incarceration.

[56] But the objective of rehabilitation remains an active consideration in this case, keeping in mind that a fit jail sentence followed by a significant period of probation with appropriate conditions can serve the objectives of rehabilitation more effectively than a non-custodial conditional sentence, especially when the offender's history of non-compliance argues he would be setting himself up for further breaches.

[57] Mr. Charette, do you wish to say anything before I impose the sentence now?

[58] THE ACCUSED: I do, Your Honour. Like I don't know what that lady said in there about my Pre-Sentence Report, but I -- I clearly know that -- that what I did was wrong and I was -- and I was supporting my addiction with, you know, with the addictions of other people, and I regret that just as much as -- I understand what it is to be an addict. And you know, I've been fighting for my life for the past -- past few years and, you know, like I'm trying to get my life together, not further embitter it and become part of the system. And I'm -- I've been on a

gang unit in -- in pretrial, out of my element with -- with people who are truly -- like they're offenders and -- and that culture, it is being imposed on me in the jail system. And I've had multiple incidents where I've been in harm's way and I've had to protect myself. I've broke my hands twice in fights in prison because I've got a brain injury and I don't get along with other inmates because I'm different.

- [59] And -- and I'm trying to get my life together and it wasn't -- it wasn't -- I didn't have a roommate before I got in here where I was sitting comfortably. I've been homeless for the past few years, struggling. I haven't had an opportunity to sit in a recovery house. I haven't had an opportunity to do that. I sobered up on my own before this happened in the shelter, and I was waiting to get in a recovery house. I've been trying to take steps to get my life together and I've been slipping through the cracks.
- [60] And Your Honour, I've got everything but my financial statement made for -- for MRTC treatment centre. I -- I have to get that stamped by the Ministry because I'm on disability, but other than that, I'm ready to go into treatment. And I don't think like more -- more jail time is necessarily going to help me, because I'm only going to be around more criminals that are going to tell me to, you know, do things better or do things differently to not get caught. I don't think that's the way to go. I need to go back and I need to get a sponsor, I need to get in Alcoholics Anonymous. You know, I don't really think that what I -- like the punishment fitting the crime, yes, I did sell addicts narcotics and thank God nobody overdosed but, you know, like in the future, I don't plan to repeat the crime as it is. You know, I want to get my life straight, you know, not ruin other people's lives. Thank you.
- [61] THE COURT: All right. As I think you heard, Mr. Charette, I am interested in your rehabilitation and I have taken that all into account in coming to my determination.
- [62] I am going to impose a sentence on you of seven months' incarceration with credit of 75 days for time spent in custody, and the time spent is calculated at the rate of 1.5 days for each day served, 50 days' total credit, 75 days towards your sentence.
- [63] This is to be followed by a period of one year's probation with the following conditions. You can sit down, Mr. Charette.
- [64] THE ACCUSED: Thank you.
- [65] THE COURT: Thank you for your contribution to the hearing.
- [66] The usual statutory conditions. You do not have to remember these, of course, Mr. Charette, but I am stating them for the record.
- [67] You shall keep the peace and be of good behaviour.
- [68] Upon your release, you shall report to the probation services office in Abbotsford within 48 hours.

- [69] You shall provide your address and contact information, including any landline and cellphone numbers.
- [70] You shall not change your address or other contact information without notice to and the approval of your probation officer.
- [71] You shall report to your probation officer thereafter at their direction.
- [72] You shall attend AA meetings at the direction of your probation officer.
- [73] You shall abstain from alcohol and drugs.
- [74] On the first day of each month of your probation period, at the direction of your probation officer, you shall submit a hair sample for testing the presence of drugs in your system, the results of which shall be provided to your probation officer. If drugs are detected, that should not be deemed a breach of your conditions. That would have to be determined by a judge.

[EDITOR'S NOTE: Brown J. deleted this probationary condition at a hearing on July 4, 2016.]

- [75] At the direction of your probation officer, you shall participate in alcohol and drug counselling and such other behavioural counselling as your probation officer shall direct, and maintain your participation in that program until the end of your probationary period.
- [76] With the assistance of your probation officer and at their direction, you shall seek medical assessment from a physician regarding possible treatment for your brain injury symptoms, and you shall provide written consent to the physician for the probation officer to confer with that physician and they are entitled to know and shall be advised of any treatment recommendations.
- [77] At the direction and with the assistance of your probation officer, you shall take advantage of resources and participate in therapeutic and supportive activities available to you from the Brain Injury Association in Abbotsford.
- [78] I request that the warden make counselling and other such services as are available be made available to you while incarcerated.
- [79] I note that with the number of days you have served being credited and early release provisions, you are not going to be in so long that it is going to inhibit your rehabilitation in a meaningful way.
- [80] I neglected to mention that at the direction of your probation officer, and if you wish to continue to pursue the route of residential treatment at the Maple Ridge treatment facility, you shall, at the direction of your probation officer, pursue that program or such other program as is found most fitting for your circumstances.

[81] Mr. Charette, as I said before, you still have potential left in your life. I think if you pursue all the treatment and the options and programs that I have outlined for you and the probation officer, you can turn away from where you have been and arrive at a better place.

[82] Thank you, counsel.

[83] MS. GILL: Yes, My Lord, just a few housekeeping matters, My Lord. I know you mentioned the Crown seeking forfeiture and also the DNA, but I didn't -- I may have neglected to actually get a decision on those two points.

[84] THE COURT: Yes, I think I did in passing and your friend was agreeable to the DNA sample. He did not have any difficulty with the ancillary orders, so there was the DNA, the forfeiture, and also the weapons, as well.

[85] MS. GILL: Yes, I've got the weapons, thank you, My Lord.

[86] THE CLERK: My Lord, I just need the new time, the time remaining to be served.

[DISCUSSIONS WITH COUNSEL]

[87] MS. GILL: Thank you, My Lord, and also the victim fine surcharge, I don't think Mr. Charette has the ability to pay, so I guess my friend would be seeking payable forthwith and concurrent one day for the victim fine surcharge.

[88] THE COURT: There is not going to be any victim surcharge.

[89] MR. REVELEY: Your Honour, just for clarity, seven months minus 2.5 months of 75 days, should in fact be 4.5 new months. Does that seem correct to everybody? I think we need a calculator.

[90] THE COURT: I think so. It must be clear for Corrections.

[91] MR. REVELEY: No. If we're doing months, Your Honour, it is 4.5 months is seven months less 2.5 months.

[92] MS. GILL: Yeah, yeah, you're right.

[93] MR. REVELEY: Four point five months.

[94] THE COURT: All right. Therefore, the sentence remaining is 4.5 months after credit for 2.5 months (75 days') time served.

[95] THE CLERK: And how long is the firearms?

[96] THE COURT: Pardon me?

[97] THE CLERK: How long is the firearms prohibition?

[98] THE COURT: That is lifetime.

[99] THE CLERK: Lifetime.

[100] THE COURT: I think it is a lifetime prohibition, Ms. Gill, is that right?

[101] MS. GILL: It is 10 years for the first conviction, My Lord, 10 years.

[102] THE COURT: Oh, that is right.

[103] MS. GILL: Yes.

[104] THE COURT: This is his first conviction for this offence, so it is 10 years, Madam Registrar, thank you for reminding me.

"N. Brown J."

---

### Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE      <https://www.bccourts.ca/jdb-txt/sc/16/12/2016BCSC1275.htm>

CASE PAGE              <https://chat.esheria.ai/case-law/canada/r-v-charette-2016>

Prepared on 27 October 2026 · Esheria