

CANADA / JUDGMENT

R. v. Chester

2021 BCSC 1436

COURT

Supreme Court of British Columbia

DECIDED

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2021 BCSC 1436 R. v. Chester

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Chester,

2021 BCSC 1436

Date: 20210611

Docket: 41850-2

Registry: Campbell River

Regina

v.

Justin John Chester

Shelby Carol Paul

Docket: 43000-2

Registry: Campbell River

Regina

v.

Justin John Chester

Before: The Honourable Mr. Justice Williams

Oral Reasons for Sentence

Re Justin John Chester

Counsel for the Crown:

C. Gibson

The Accused appearing on his own behalf

via videoconference:

J. Chester

Place and Date of Trial/Hearing:

Nanaimo, B.C.

June 7, 2021

Place and Date of Judgment:

Nanaimo, B.C.

June 11, 2021

[1] THE COURT: These are oral reasons for sentence. In the event a transcript is requested and I expect that will probably happen, I will reserve the right to make minor editorial corrections. I will not change the substance of the reasons in any way.

[2] Justin John Chester is before this Court today to be sentenced. On May 10, he entered guilty pleas to two counts:

Count 1: On or about the 25th day of November 2019 at or near Port McNeill, he did unlawfully possess a controlled substance to wit fentanyl for the purpose of trafficking, contrary to s. 5(2) of the Controlled Drugs and Substances Act.

Count 2: On or about the 25th day of November 2019 at or near Port McNeill, he did possess a non-restricted firearm, a 12 gauge shotgun, without being the holder of a licence under which he is entitled to possess that firearm contrary to s. 91(1) of the Criminal Code.

[3] When the plea was entered, Mr. Chester was represented by counsel. The matter was adjourned to June 7, 2019 for sentencing. When the case came before me on June 7, Mr. Chester's counsel made application to withdraw. She advised that Mr. Chester had terminated the retainer. I granted her application to withdraw. I subsequently spoke with Mr. Chester and confirmed that he wishes to continue on his own. I further satisfied myself that he stands by the guilty pleas that have been entered, that he has the requisite understanding, and it is his wish to proceed to sentencing.

Circumstances

- [4] On November 25, 2019, Mr. Chester and another person were travelling in an SUV automobile on Highway 19 near Port McNeill. The vehicle in which they were travelling rear-ended a commercial vehicle travelling in the same direction. The driver of the commercial vehicle pulled over. The SUV in which Mr. Chester was travelling sustained significant damage and was disabled. The parties pushed the damaged vehicle to the side of the road. Evidently, Mr. Chester told the driver of the commercial vehicle that there should be no police involvement. Just about that time, a patrolling RCMP officer happened by the scene. As he pulled in, the officer said he saw Mr. Chester throw something into the nearby bushes and then heard a loud bang which sounded somewhat like a firearm discharging, but different. The officer apparently identified the sound as not the same as a shot from a firearm, but rather like a bear-banger.
- [5] The officer called an ambulance and other police assistance to the scene. He asked the offender what had been thrown in the bush, to which Mr. Chester replied that it was car parts.
- [6] Mr. Chester and his companion left shortly after in an ambulance and were taken to hospital in Port McNeill. The officer at the scene made other investigations, in the course of which he found two purses in the back seat of the vehicle and a substantial sum of money. Based upon that observation, he elected to seize the vehicle in order that it could be more thoroughly searched and he arranged to have it towed. The officer also made further investigation in the ditch where he found a shotgun with ammunition in the magazine. He determined that the discharged shot had been a bear banger and that there were four standard shot shells in the magazine of the firearm.
- [7] Mr. Chester was subsequently confronted by the police at the hospital and arrested with respect to the firearm. His response was to resist and run. He ran into a nearby forest area and was lost to the police. A perimeter was set and the police dog was brought to search. Approximately three hours later, Mr. Chester was located. In the course of being apprehended by the police dog, he sustained a bite wound and, as well, there was some physical altercation between himself and the police.
- [8] The police later searched the vehicle and a telephone under the authority of a warrant. In the vehicle was found a quantity of fentanyl, some 34.5 grams, together with evidence of drug dealing including scoresheets and baggies. They also recovered approximately \$10,000 in cash and a shotgun shell.
- [9] The value of the drugs depending upon the format of sale would be somewhere between \$4,000 and \$10,000.
- [10] Mr. Chester does not dispute those facts.

The Offender

- [11] Mr. Chester is 32 years of age. My understanding is that his early years were spent living with family in a logging camp. His father was employed in that industry. When Mr. Chester was 16 years old, his father had a massive heart attack in Mr. Chester's presence. Although Mr. Chester made attempts to save his father's life, those were not successful.
- [12] Shortly after, his mother left such that Mr. Chester was left to fend for himself, together with two younger brothers.
- [13] According to Mr. Chester, and I have no reason to disbelieve his representation, his adolescence was chaotic and fraught with problems. He describes becoming involved with drugs and alcohol at a young age. He did not continue his schooling beyond the age of 15.
- [14] A criminal record has been filed by the Crown. That is marked as Exhibit 1 in this proceeding. The record is substantial and serious. The first entry dates from 2009 when he was convicted of trafficking in a Schedule I substance and sentenced to a term of incarceration. A similar conviction followed in January 2010. Also in 2010, Mr. Chester was convicted of assault with a weapon and dangerous operation of a motor vehicle.
- [15] In fact, the record of convictions runs quite continuously through to June 2019. The convictions include possession for the purposes of trafficking and possession of a scheduled substance, a number of convictions for flight from peace officer, resist arrest, obstruct peace officer, and escape lawful custody. There are also convictions for unlawfully in a dwelling house, possession of stolen property, possession of a prohibited or restricted weapon, and a great many convictions for failing to comply with court orders.
- [16] In many of those instances, Mr. Chester was sentenced to terms of imprisonment.
- [17] In short, the record is lengthy, serious, and persistent.
- [18] Mr. Chester advises that he was introduced to heroin while he was an inmate in jail and that he developed an addiction which has dogged his life for a long time.
- [19] Mr. Chester also reports that he has had some intermittent employment in his life in either roofing or logging. He advises that, although he is not married and he has no children, he is presently in a relationship which he finds to be supportive.
- [20] Mr. Chester advises the Court that he has made significant changes in his life during the present term of presentence custody he has served. He says that he has taken steps to come to terms with the addiction and trauma in his past. He has taken courses in life skills, substance abuse, and respectful relationships. He advises that he has remained in compliance with the institutional rules and regulations and has in fact spent a substantial portion of his time in custody in isolation as a means of avoiding undesirable influences and problems inside the institution. Mr. Chester says that the time he has served prior to sentence has been difficult. He notes that between March 2020 and February 2021, there were no visitors allowed in the institution because of the pandemic.

- [21] Mr. Chester has filed a number of inmate behaviour logs from his time on remand. Those have been marked as Exhibit 2. Each of those are favourable to him. They describe him as polite, having a positive attitude, that he is helpful and cooperative with staff.
- [22] In short, Mr. Chester advises this Court that he is bound and determined to make real changes in his life and to break his pattern of criminal offending. To that end, it is his request that the Court recommend that, in the course of serving his sentence, he be referred to a rehabilitation program which is operated in Nanaimo.

Position of the Crown and the Offender

- [23] The matter comes before the Court as a joint submission. The Crown seeks a sentence of four years' incarceration subject, of course, to adjustment for any time served prior to the imposition of sentence.
- [24] Mr. Chester concurs with that submission and supports the imposition of the sentence sought.

Discussion

- [25] Parliament has substantially codified the principles and purposes and objectives of sentence. Those are set out in s. 718 of the Criminal Code, R.S.C. 1985, c. C-46, and I do not intend to recite them chapter and verse here. Suffice to say they include the concepts of denunciation, deterrence, and protection of the public. They also include recognition of the importance of rehabilitation of an offender.
- [26] The first point to be addressed is with respect to the joint submission. The Supreme Court of Canada has made clear the procedure to be followed by a sentencing court. In short, a sentencing judge should not lightly reject a joint submission. The court should only do so where the proposed sentence would be such as to bring the administration of justice into disrepute or is otherwise contrary to the public interest.
- [27] With respect to quantum, Crown counsel has referred this Court to three authorities in support of the sentence sought. Those are *R. v. Desbiens*, 2020 BCSC 884; *R. v. Byrne*, 2020 BCSC 811 and *R. v. Smith*, 2017 BCCA 112.
- [28] In my assessment of this matter, I take into account that there are both aggravating and mitigating factors to consider. It is, in my view, mitigating that there has been a guilty plea and an apparent acceptance of responsibility by Mr. Chester, coupled with what I am prepared to accept is a genuine commitment to embarking upon a path of rehabilitation. Aggravating factors include the efforts made to defeat the police investigation, this offender's lengthy criminal record, and the fact that, at the time of the offence, Mr. Chester was subject to a court order prohibiting the possession of firearms. As well, it is a notorious fact that fentanyl is a drug which has caused enormous damage to the community.

- [29] As regards this offender's criminal record, it is indeed troubling. At the young age of 32 years, it would suggest that Mr. Chester's life has come to a revolving-door scenario, a series of offences, followed by convictions and jail terms. That has been the situation to date.
- [30] I am inclined to accept Mr. Chester's representation to the Court that he believes it is time to make serious changes in his life and that he is prepared to do that. If that is so and if he is able to embark upon a rehabilitated course of life, that will provide society its greatest protection. If he fails to do so, I have little doubt that he will be apprehended and that a substantial prison sentence will seem to be the only possible outcome.
- [31] In my view, the sentence which has been proposed in the matter at hand is not inconsistent with the authorities which have been cited and it is not one which this Court should reject. I am prepared to accept it and implement it.
- [32] In the circumstances, I impose the following sentence:
- a) Count 1, there will be a term of imprisonment of four years.
 - b) Count 2, there will be a one-year term of imprisonment, to be served concurrent to the sentence on Count 1.
- [33] A final determination of the prison term to be served requires adjustment to recognize time served prior to sentence. In this case, by my calculation, Mr. Chester has been in custody for approximately 18-and-one-half months. When that is adjusted by a factor of 1.5, the credit is approximately 28 months. The final sentence to be imposed must reflect that time served.
- [34] In the result, Mr. Chester is sentenced to a term of 20 months imprisonment that will be served in a provincial institution.
- [35] In accordance with Mr. Chester's request, I will include a sincere recommendation to the provincial correctional authority to have Mr. Chester classified to the Guthrie House Rehabilitation Program in Nanaimo.
- [36] In addition to the jail sentence, there will be three further orders:
1. There will be a lifetime prohibition of firearms and related substances, in accordance with s. 109 of the Criminal Code.
 2. There will be a DNA order in Form 487.051.
 3. There will be an order of forfeiture with respect to all items seized by the police which are offence related materials. That is in accordance with the agreement which underpins the joint submission. There is however, one exception, and that is with respect to the sum of \$10,000 currency which was seized by the police.
- [37] The Crown seeks forfeiture of that sum. Mr. Chester and I believe other third parties oppose the order of forfeiture. In the circumstances, a determination of that issue should be set down for hearing at some proper date.

- [38] Those are my reasons for sentence, Mr. Chester. I have accepted what you have said. I believe you are sincere. Maybe you are sincere because you have been sitting in jail for a long time and that is no fun. Maybe you have decided it is time to turn a corner. If you have, and I hope you have, you know and I know that is not an easy task. If you are honestly going to straighten out, it is going to be tough, tough, tough, and you are going to have to be one determined fellow to make that happen. If you do not, the future is not very bright for you at all, Mr. Chester. So take this chance and run with it, okay?
- [39] THE ACCUSED: Yes, My Lord, thank you very much for giving me a chance and I am going to put in as much work as I possibly can and I am going to put a request today to go to Guthrie House. So I really appreciate you giving me a chance.
- [40] THE COURT: Okay, good luck to you.
- [41] CNSL C. GIBSON: Thank you, My Lord, with respect to Indictment 41850-2, the Crown directs a stay of proceedings with respect to Shelby Paul on Count 1 --
- [42] THE COURT: Yes.
- [43] CNSL C. GIBSON: -- Shelby Paul on Count 2, and directs a stay of Count 3 in its entirety and Count 4 in its entirety.
- [44] THE COURT: Very well, those stays are noted.
- [45] CNSL C. GIBSON: Thank you, and with respect to File 43000-2, the Crown directs a stay of proceedings with respect to all three counts.
- [46] THE COURT: All right, those stays are noted.
- [47] CNSL C. GIBSON: Thank you. Thank you, My Lord, and I will just say to Your Lordship for Mr. Chester's benefit that I will be continuing discussions with Ms. Williams concerning the forfeiture order on the matter.
- [48] THE COURT: Very well. If there is a hearing required, then I would direct that you will make that arrangement through the Trial Scheduling office in Nanaimo.
- [49] CNSL C. GIBSON: Thank you.
- [50] THE COURT: Okay, is there anything further?
- [51] THE CLERK: My Lord, if I could just clarify the jail-time credit, is that to be applied to Count 1 on the 41850-2?
- [52] THE COURT: Yes, it is, and the second count runs concurrent to the time that he will serve on Count 1.
- [53] THE CLERK: Thank you.

[54] THE COURT: So, just to be absolutely clear, the warrant will show a sentence of 20 months on Count 1. Is that the way it is, ma'am?

[55] THE CLERK: Yes.

[56] THE COURT: Okay.

"Williams J."

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