

CANADA / JUDGMENT

R. v. Conn

2024 BCSC 2525

COURT

Supreme Court of British Columbia

DECIDED

13 August 2024

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

2024 BCSC 2525 R. v. Conn IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Conn, 2024 BCSC 2525 Date: 20240813 Docket: 23441 Registry: Rossland Rex v. Andre Robert Conn Before: The Honourable Justice Stephens Oral Reasons for Judgment for Sentence Counsel for the Crown: J. Burke The Accused, appearing in person: A. Conn Place and Dates of Hearing: Rossland, B.C. August 12 -13, 2024 Place and Date of Judgment: Rossland, B.C. August 13 2024 Table of Contents Introduction.. 3 Crown and Defence Positions on Sentencing.. 3 Circumstances of the Offence. 5 Victim Impact. 5 Circumstances of the Offender.. 6 Legal Framework.. 9 Sentencing Principles. 9 Offence-specific Provisions. 11 Assessment. 11 Aggravating and Mitigating Factors. 11 Case Authority. 12 Gladue principles /Sentencing Considerations for Indigenous Offenders. 12 Type of Sentence and Appropriate Sentence for Each Count 14 Count 1 - Assault with a Weapon. 14 Count 5 - Mischief (s.430 Criminal Code) 14 Consecutive or Concurrent Sentence?. 15 Credit for Pre-sentence Custody. 15 Sentence. 15 Probation Conditions. 16 Ancillary Orders. 16 Forfeiture Order.. 17

Introduction

- [1] On April 4, 2024, I convicted Andre Robert Conn of one count of the offence of assault with a weapon contrary to s. 267(a) of the Criminal Code (Count 1), and one count of mischief contrary to section 430 of the Criminal Code (Count 5).
- [2] Having reached a finding of guilt on Count 1, Count 2 of the Indictment was conditionally stayed under the Kienapple principle.
- [3] The charges relate to an incident on October 1, 2023 between Mr. Conn and a Grand Forks bylaw officer, and Mr. Conn subsequently damaging the bylaw officer's truck.
- [4] Sentencing was adjourned to allow for the preparation of pre-sentence, psychiatric, and Gladue reports. These are my reasons for sentence. Crown and Defence Positions on Sentencing

- [5] The Crown position on sentence for the offences are 30 months custody for Count 1, assault with a weapon, and 6 months consecutive for Count 5, mischief to property, for a global disposition of 36 months. This is set out in para. 8 of the Crown's written submissions which is Ex 3.
- [6] During the sentencing hearing Crown further submitted that if the court finds that Count 5 ought not be served consecutively, and instead concurrently, then a sentence of 36 months should be imposed for Count 1, with a concurrent term of 6 months for Count 5, and so there should still be a global sentence of 36 months.
- [7] In their submissions, Crown relies on *R. v. Ponticorvo*, 2009 ABCA 117 and *R. v. Schur*, 2015 BCSC 1406, and *R. v. Morine*, BCPC 2022.
- [8] Crown submits the 36 global month sentence should be reduced to reflect credit for time in custody Mr. Conn has spent since his arrest on October 1, 2023, being 168 actual days available as of and including August 13, 2024. At 1.5 to 1 enhanced credit, this would amount to 252 days to be deducted from any sentence imposed.
- [9] The Crown submits that should a sentence resulting in a term of less than two years be imposed on Mr. Conn, that any custodial sentence should be followed by a probation order for a term of no less than 2 years, and consideration should be given to the maximum term of three years.
- [10] The Crown position on credit for time in custody Mr. Conn has spent since his arrest on October 1, 2023 is as follows: The Crown calculates that Mr. Conn has 168 actual days available as of and including August 13, 2024. At 1.5 to 1 enhanced credit, this would amount to 252 days to be deducted from any sentence imposed.
- [11] The calculation of pre-sentence custody was obtained as follows. Mr. Conn will have been in custody from October 1, 2023, until August 13, 2024, which amounts to 318 actual days. Deducted from this was the pre-sentence credit applied to Mr. Conn's conviction on February 13, 2024, of 135 actual days plus the 15 days sentence imposed on that date, totally 150 days to be deducted. Thus 168 actual days of credit remains to be applied in the sentencing at bar.
- [12] The Crown seeks an ancillary order under s. 109 of the Criminal Code in the form of a weapons ban for life pursuant to s. 109(3) and s. 109(1)(a).
- [13] The Crown also seeks an order under section 487.051 of the Criminal Code, for an order in Form 5.03 authorizing the taking of the number of samples of bodily substances that is reasonably required for the purpose of forensic DNA analysis.
- [14] Crown also requests an order that the weapon used in this offence be forfeited to the Crown for destruction, pursuant to s. 491 of the Criminal Code.

- [15] Mr. Conn was asked but declined to and did not make a statement or make submissions prior to the court determining the sentence to be imposed. Circumstances of the Offence
- [16] In the afternoon of October 1, 2023, Mr. Conn was sitting at a picnic table with two other individuals in Gyro Park in Grand Forks, British Columbia, when he was approached by a Grand Forks bylaw officer (Mr. Jon Wilson) who told the group to leave the park since they possessed alcohol.
- [17] Mr. Conn abruptly stood up from his seat at the picnic table and displayed a saw in his hand and walked toward the bylaw officer. The bylaw officer told Mr. Conn to back up and sit down. Mr. Conn instead approached the bylaw officer and yelled a series of words including, "I am the territorial sovereign" and "get in your vehicle and drive on." Shortly after, Mr. Conn approached the bylaw officer with greater speed, jogging towards him, while the bylaw officer retreated.
- [18] Subsequently, the two briefly made contact, although the saw blade did not touch Mr. Wilson's body.
- [19] Mr. Wilson then retreated across a road. A passerby's vehicle then came between Mr. Wilson and Mr. Conn, and then Mr. Conn returned back to Mr. Wilson's bylaw truck and smashed the windows of the truck with a golf club.
- [20] A witness, who testified at trial, had witnessed this incident when he was riding his bike nearby the park with his daughter.
- [21] Throughout, Mr. Conn had approached Mr. Wilson in an aggressive and threatening manner. Mr. Conn accosted Mr. Wilson with a saw in his hand, walking in a threatening manner, -- and then jogging towards him.
- [22] The trigger to this incident was Mr. Wilson's intervention directing Mr. Conn to leave the park. Victim Impact
- [23] The complainant Mr. Jonathan Wilson, the bylaw officer, made a victim impact statement to the court.
- [24] Mr. Wilson was shaken as a result of the event which is the subject of the offences, and in particular the aspect of the offences when Mr Conn had a saw and was pursuing him and when they made contact.
- [25] Mr. Wilson states that he experiences trauma-based anxiety because of this event. Mr. Wilson continues to experience anxiety as a result of this incident. He describes that he experiences vivid nightmares of being attacked, which has materially interfered with his home life, and also interferes with his work life and he noted that he now wears additional protective equipment. He says that during the day he thinks about the event which occurred with Mr. Conn.

- [26] He states that he struggles to deal with what happened and that he feels this will have a long-lasting effect on him.
- [27] I have considered the victim impact statement.
- [28] The court finds the offences have had a material negative impact on Mr. Wilson's mental health. Circumstances of the Offender
- [29] Sections 718 to 718.2 of the Criminal Code indicate that sentencing is a highly individualized exercise that, in addition to considering the circumstances of the offence, must also take into account the circumstances of the offender. In this respect, I have had the benefit of receiving and reviewing three reports in relation to Mr. Conn: a pre-sentence report from a probation officer dated July 30 2024 (the "Probation Officer PSR"); a Pre-sentence Report and Psychological/Psychiatric Assessment report written by a forensic psychiatrist dated August 8, 2024 (the "Psychiatric PSR"); and a letter dated June 18, 2024 entitled "No Gladue Report" (the "Gladue Letter").
- [30] Mr. Conn is 42 years old. He reports that he graduated high school and attended post secondary education, but has never obtained formal or full time employment.
- [31] The Psychiatric PSR and Probation Officer PSR state that Mr. Conn told the writers that he is an undercover police informant.
- [32] He reported to the forensic psychiatrist that he was homeless before his arrest last year.
- [33] He reported to the probation officer writer of the Probation Officer PSR that he had not had contact with his family in 14 years.
- [34] The Psychiatric PSR includes a Mental Status Examination and HCR-20 V3 Risk Assessment and states and expresses the following views, among others:
- Mr. Conn "describes a history of childhood traumatic experiences"
 - Mr. Conn "describes having a difficult upbringing, with trauma in early life, difficulties fitting-in in school, a poor work and relationship history".
 - "He acknowledged that he does have suicidal thoughts"
 - "He does have a history of problems with substance use, for though he does not see his substance use as problematic,"
 - "Mr. Conn appears to display signs and symptoms of delusional disorder. This is complicated at present by a major depressive episode, with ongoing thoughts of suicide."
 - "Mr. Conn may also have a history of problems with personality disorder"
 - "He also has a history of problems with treatment and supervision response."

- "his mood appears to be quite unstable just now with a prominent depressive symptoms and thoughts of self-harm"
 - "Despite Mr. Conn displaying prominent, delusional beliefs, he has not reached the threshold whereby his symptoms are so serious as to warrant compulsory treatment under the Mental Health Act."
 - "However, it is possible that his symptoms could deteriorate and reach that threshold in the future"
 - "The clinical picture is concerning in the sense that he has ongoing prominent delusional beliefs of a paranoid and grandiose nature, into which he has zero insight, and no desire to consider any kind of medication."
 - "he has ongoing depressive symptoms which may affect his ability to engage in any kind of treatment planning"
 - "Mr. Conn appears to have a cannabis use disorder dating back almost 20 years involving a high daily intake of high THC content cannabis-use"
 - "Mr. Conn has a history of violence and other offending, which he remains at risk of repeating. His risk of offending could be reduced if he were to engage with mental health services either in a custodial or community setting"
 - "Without any treatment, his risk of reoffending remains moderate to high"
- [35] Previous community supervision terms have resulted in breach submissions for failure to report, and the Probation Officer PSR recommends that Mr. Conn is not suitable for community supervision.
- [36] Mr. Conn reports that he has Indigenous background. However, the Gladue Letter states, "At this time, we are unable to prepare a Gladue Report for Mr. Conn because we are unable to verify his Indigenous ancestry and, even if his Indigenous ancestry could be confirmed or corroborated, we cannot address the effects of colonial interference in Mr. Conn's life".
- [37] I have also considered Mr. Conn's criminal record which dates back to 2012. An offender's criminal record is relevant to sentencing.
- [38] Mr. Conn's prior convictions include:
- (a) a conviction in 2014 for arson;
 - (b) breaches of probation order;
 - (c) a conviction in 2016 for wilfully resisting or obstructing a peace officer;
 - (d) a conviction for mischief in 2017;

- (e) an April 2019 conviction with an offence date of May 18, 2018 for aggravated assault with complainants who were security guards at an emergency evacuation shelter, for which he received a sentence of 944 days jail (which included 730 days for pre-sentence time), along with a concurrent term of 12 months jail for the offence of assault with a weapon; and
- (f) a conviction for assault relating to August 2023 incident involving a 14 year old complainant at Dairy Queen.

Legal Framework

Sentencing Principles

- [39] The duty of a sentencing judge is to determine a just and appropriate sentence that addresses the principles of sentencing as set out in s. 718 of the Criminal Code, and is proportional to the gravity of the offence committed and the moral blameworthiness of the offender.
- [40] Sentencing is a balancing process - no one objective trumps the others; it is a sentencing judge's role to determine which objectives merit the greatest weight given the circumstances of the offence and of the offender.
- [41] I must bear in mind the purposes and principles of sentencing set out in ss. 718 to 718.2 of the Criminal Code. As stated in s. 718 of the Criminal Code, the fundamental purpose of sentencing is "to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions". Just sanctions are those that are intended:
 - 1. To denounce unlawful conduct and the harm done to victims or to the community caused by unlawful conduct;
 - 2. To deter the offender and other persons from committing offences and where necessary to separate offenders from society;
 - 3. To assist in rehabilitating offenders;
 - 4. To provide reparations for harm done to victims or to the community; and
 - 5. To promote a sense of responsibility in offenders and acknowledgment of the harm done to victims or to the community.
- [42] Section 718.1 of the Criminal Code states that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Ultimately, the resulting sentence must respect the principle of proportionality.
- [43] Ensuring that a sentence reflects the gravity of the offence is closely tied to the objective of denunciation; it promotes justice for victims and ensures public confidence in the justice system.

- [44] Further, under s. 718.2 of the Criminal Code, a sentence should account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.
- [45] A sentence should also be similar to sentences given to similar offenders for similar offences committed in similar circumstances. This is described in the cases as the principle of parity: s. 718.2(b).
- [46] Section 718.2(d) requires that an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances.
- [47] Sentencing requires close attention to the particular circumstances of the case and characteristics of the offender. Section 718.2(e) requires that, "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".
- [48] I am particularly cognizant of s. 718.2(e). I have considered the Criminal Code and the principles outlined in *R. v. Gladue*, 1999 CanLII 679 (SCC), [1999] 1 S.C.R. 688 and *R. v. Ipeelee*, 2012 SCC 13. I have considered the principles from *Gladue*, as stated by the Court in *Ipeelee* at para. 59:
- [59] The Court held, that s. 718.2(e) of the Code is a remedial provision designed to ameliorate the serious problem of overrepresentation of Aboriginal people in Canadian prisons, and to encourage sentencing judges to have recourse to a restorative approach to sentencing (*Gladue*, at para. 93). It does more than affirm existing principles of sentencing; it calls upon judges to use a different method of analysis in determining a fit sentence for Aboriginal offenders. Section 718.2(e) directs sentencing judges to pay particular attention to the circumstances of Aboriginal offenders because those circumstances are unique and different from those of non-Aboriginal offenders (*Gladue*, at para. 37). When sentencing an Aboriginal offender, a judge must consider: (a) the unique systemic or background factors which may have played a part in bringing the particular Aboriginal offender before the courts; and (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage or connection (*Gladue*, at para. 66). Judges may take judicial notice of the broad systemic and background factors affecting Aboriginal people generally, but additional case-specific information will have to come from counsel and from the pre-sentence report (*Gladue*, at paras. 83-84).
- [49] Within the scope of s. 718.2(e), the court must still consider the matter on a case-by-case basis, considering the offence, the offender, the victim, and the community: see *R. v. Wells*, 2000 SCC 10, para. 44. Offence-specific Provisions
- [50] Section 267(a), assault with a weapon, carries a maximum term of 10 years of imprisonment.

- [51] Section 430 mischief to property carries maximum of imprisonment for a term not exceeding two years: s. 430(4)(a). Assessment Aggravating and Mitigating Factors
- [52] I find the following to be aggravating circumstances:
- (a) The complainant Mr. Wilson was a bylaw officer performing his duties at the time of the incident.
 - (b) Mr. Conn used a bladed weapon when he accosted Mr. Wilson.
 - (c) Mr. Conn has prior convictions for aggravated assault and assault on security personnel.
 - (d) Mr. Conn has a recent conviction for assault with an offence date of August 23, 2023.
- [53] I have also considered whether there are any mitigating circumstances. Mental illness that causes or contributes to the commission of an offence is a mitigating factor and a sentence may be reduced because the offender's moral culpability is attenuated: *R. v. Badhesa*, 2019 BCCA 70 at paras. 42 and 45. I have considered this in the context of the views expressed in the Psychiatric PSR about Mr. Conn's mental health. I find that Mr. Conn's mental health likely caused or contributed to the commission of the subject offences, and that the views expressed in the Psychiatric PSR serve as a mitigating factor on sentencing, reducing his moral culpability. Case Authority
- [54] I have considered *R. v. Ponticorvo*, 2009 ABCA 117. There, the court imposed a term of 30 months imprisonment for the offence of assault with a weapon. The offence of assault with a weapon involved the respondent swinging a knife at a peace officer. The peace officer was not physically injured. The accused's criminal record included two prior convictions for assault. Gladue principles /Sentencing Considerations for Indigenous Offenders
- [55] A Gladue report verifying indigenous identity is not necessary to attract Gladue considerations: *R. v. Reddick*, 2020 ONCA 786. Consideration should be given to whether and to what extent Gladue factors have touched this particular offender's life: *R. v. Nicholas*, 2018 ONSC 678 at para 25; and to what extent systemic or background factors as described in Gladue and Ipeelee operated in any way in the offender's life or affected his moral culpability for this crime: *R. v. Hamer*, 2021 BCCA 297 at para. 114. However, there must be some connection between the Gladue factors and the circumstances bringing the offender before the courts, i.e., the offence: *R. v. Nelson*, 2024 BCCA 72.
- [56] The Gladue Letter records that Mr. Conn reports he has Indigenous heritage on his father's side. The PSRs record that Mr. Conn believes he has been disconnected from his father since he was about 1-years-old. The Probation Officer PSR records that Mr. Conn stated that he has had no contact with his father since then.

[57] I have reviewed the PSRs and Gladue Letter, which provide information from Mr. Conn regarding his background as relayed to the pre-sentencing report writers. However, upon consideration of the available information, I find that there are no factors as described in Gladue and Ipeelee that have operated in Mr. Conn's life or affect his moral culpability for these offences.

Analysis

[58] In my view, the sentencing considerations that weigh heavily in my consideration are denunciation and deterrence, both deterrence specific to Mr. Conn and generally to others at large who might consider using violence and weapons when dealing with others (and peace officers specifically). The offence of assault with a weapon was a violent offence on a bylaw officer while on duty, and Mr. Conn has a past history of offences including offences of aggravated assault and assault with a weapon.

[59] The circumstances of the offences require a sentence to signal that an assault of a bylaw officer carries with it a substantial term of imprisonment.

[60] Mr. Conn has a history of prior offences involving violence.

[61] R. v. Ponticorvo, where a 30 month sentence was imposed for assault with a weapon (see para. 23), involved circumstances similar to those before me. However, in Ponticorvo, there were no considerations of mental health issues which served to reduce the offender's moral culpability.

[62] However, in Ponticorvo, there was evidence that assessed the offender's risk of re-offending as moderate: para. 6, while here, there is evidence in a PSR that "Without any treatment, [Mr Conn's] risk of reoffending remains moderate to high".

[63] Further, as a distinguishing factor from Ponticorvo, Mr. Conn has a past history of violence, including aggravated assault and assault with a weapon.

[64] Considerations of denunciation and deterrence, both specific and general, and Mr. Conn's past criminal history, militate toward a sentence of 30 months as in Ponticorvo-- despite the existence of the mitigating factor here regarding Mr. Conn's mental health which was not present in Ponticorvo. Type of Sentence and Appropriate Sentence for Each Count

[65] I find that jail sentence should be imposed for both Counts 1 and 5. I find that a less restrictive sanction would not be appropriate in the circumstances. Count 1 - Assault with a Weapon

[66] In my view a jail sentence of 30 months is a just and appropriate sentence for Count 1 for assault with a weapon.

- [67] The Crown argued that 36 months would also be a just sentence, but Crown was not able to locate, and did not refer me to, any case authority where a sentence of 36 months was imposed for assault with a weapon in analogous circumstances.
- [68] I find that, like in *R. v. Ponticorvo*, a sentence of 30 months - which I calculate for sentencing purposes to be 900 days jail -- for Count 1 is a just, appropriate and fit sentence, and should be imposed. Count 5 - Mischief (s.430 Criminal Code)
- [69] I find that for Count 5, six months jail - which I calculate for sentencing purposes to be 180 days jail -- should be imposed for the offence. This was not an isolated act of mischief, or a benign act. It was wrapped up together with a violent act against a bylaw officer in a Grand Forks park when he was performing his duties. As an additional consideration militating toward a six month sentence, this is not Mr. Conn's first offence for mischief, since Mr. Conn has prior convictions for both arson and mischief.
- [70] I find that six months to be a just and appropriate and fit sentence for count 5. Consecutive or Concurrent Sentence?
- [71] The Crown submits the terms of imprisonment for Counts 1 and 5 should be served consecutively.
- [72] However, the acts constituting the two offences were part of a linked series of acts within a single endeavour. Since there is a relationship between the commission of these criminal offences, and they arise out of the same transaction or incident, the court should not impose consecutive sentences. Instead, I find that Count 1 and Count 5 should be served concurrently. Credit for Pre-sentence Custody
- [73] I find that Mr. Conn should receive 252 days for pre-sentence custody, receiving credit of 168 days in jail at a ratio of 1.5:1. Sentence
- [74] Mr. Conn, please stand. For the reasons I have given, I sentence you to 900 days imprisonment, less 252 days credit for 168 days of pre-sentence custody, for conviction on the offences in Count 1 and Count 5.
- [75] Specifically, for Count 1, assault with a weapon in s. 267(a) of Criminal Code, I order a net sentence of 648 days jail; and the total sentence would have been 900 days of jail before giving any credit for pre-sentence custody.
- [76] For Count 5, for mischief in s. 430 of the Criminal Code, I order a sentence of 180 days jail, to be served concurrently with Count 1. Probation Conditions
- [77] Following the conclusion of your custodial sentence, you must comply with a probation order for a term of three years. The conditions of your probation are: COMPULSORY CONDITIONS 2001 You must keep the peace and be of good behaviour. You must appear before the court when required to do so by the court. You must notify your probation officer in advance of any change of name or address and promptly notify the officer of any change in employment or occupation. REPORTING AFTER RELEASE FROM CUSTODY 2104 You

must report in person to a probation officer at Castlegar Community Corrections, 1472 Columbia Avenue, Castlegar, B.C. V1N 3K3, Telephone:

(250) 365-8598 or 1-(877)-365-8518 within two business days after your release from custody, unless you have obtained before your release from custody, written permission from a probation officer to report elsewhere or within a different time frame. After that, you must report as directed and in the manner directed by your probation officer. KNIVES
Exceptions 2616 You must not possess any knives (or axes, or any other sharp -bladed instrument) used, designed to be used, or intended to be used to cut things. The exceptions are:

- a. You can possess a knife when preparing and eating food.
- b. You can possess these items inside the place where you live and regularly sleep. Ancillary Orders

[78] You will also be subject to the following ancillary orders:

[79] As the conviction of assault with a weapon contrary to s. 267(a) of the Criminal Code represents a second conviction for this offence, you will be prohibited from possessing any firearm, crossbow, restricted weapon, ammunition and explosive substance for life, pursuant to s. 109(3) of the Criminal Code.

[80] Since assault with a weapon is a primary designated offence under s. 487.04 of the Criminal Code, I make an order under s. 487.051 of the Criminal Code, for an order in Form 5.03 authorizing the taking of the number of samples of bodily substances that is reasonably required for the purpose of forensic DNA analysis. Forfeiture Order

[81] I further make an order forfeiting the article seized in respect of the offences to the Crown, to be disposed of pursuant to s. 491. "Stephens 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/24/25/2024BCSC2525.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-conn-2024-bcsc-2525>

Prepared on 27 October 2026 · Esheria