
CANADA / JUDGMENT

R. v. Connelly

2014 BCSC 1484

COURT

Supreme Court of British Columbia

DECIDED

30 June 2014

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2014 BCSC 1484 R. v. Connelly

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Connelly,

2014 BCSC 1484

Date: 20140630

Docket: X077233-1

Registry: New Westminster

Regina

v.

Christine Ann Connelly

Before: The Honourable Mr. Justice Crawford

On appeal from: An order of the Provincial Court, dated March 11, 2014 (R. v. Connelly, New Westminster Docket # 77233-2C).

Oral Reasons for Judgment

Counsel for the Crown/Respondent:

N. Reithmeier

Counsel for the Accused/Appellant:

F. Arbabi

Place and Date of Hearing:

New Westminster, B.C.

June 30, 2014

Place and Date of Judgment:

New Westminster, B.C.

June 30, 2014

- [1] THE COURT: Ms. Connelly appeals from the conviction by The Honourable Judge Alexander on March 11, 2014.
- [2] At that time, Her Honour was dealing with the apparent breach of a conditional sentence order. That conditional sentence order had been put in place by the judge on the 27th of September, 2013. The outcome was the judge terminated the conditional sentence order and said Ms. Connelly could serve the balance of her sentence in jail.
- [3] On this appeal, Ms. Connelly argues the Court failed to adequately consider the original offences that gave rise to the 15-month conditional sentence order, that it was to be noted the 15-month conditional sentence order had three charges which had been proceeded with summarily and were only looking at a maximum of 18 months if a full sentence had been imposed, that had there been any Crown submission for jail rather than a joint submission as it was, it would have been less than 15 months, and that in the light of some like cases the termination of the conditional sentence order was unfit.
- [4] The leading case on conditional sentence orders is *R. v. Proulx*, [2000] 1 S.C.R. 61 and in the course of that decision, Mr. Justice Lamer noted that "where an offender breaches a condition without reasonable excuse, there should be a presumption that the offender serve the remainder of his or her sentence in jail. This constant threat of incarceration will help to ensure that the offender complies with the conditions imposed."
- [5] More recently in *R. v. Langley*, 2005 BCCA 478 the Court in considering a similar decision provided a summary of the factors a court at such a hearing i.e. regarding the breach of a conditional sentence order, had to consider the nature of the offence; the nature, circumstances, and timing of the breach; any subsequent criminal conduct and sentences for that conduct; changes in the plan for community supervision; the effect of termination on the appropriateness of the sentence for the original offence; and the offender's previous criminal record, in determining whether the presumption of termination for breach is to be applied.
- [6] In *Langley*, it was a situation of a young man receiving an 18-month conditional sentence order following a joint submission for residential break and enter and the problems had been the addiction of the young man. Three months later, the young man breached three of the conditions in the order.

- [7] The Court of Appeal noted that it was important to the disposition the appellant's record of 15 previous breaches of court orders and undertaking not to mention his record for property offences, failing to appear and escaping lawful custody.
- [8] So I go back to the 27th of September, 2013 when Ms. Connelly pleaded guilty to four Criminal Code offences: mischief under \$5,000, contrary to s. 430 of the Criminal Code; breaking and entering, contrary to s. 348(1)(a); theft under \$500.00, contrary to s. 334(b); and breach of a probation order, contrary to s. 733.1(1).
- [9] With respect to the mischief, that involved the damaging of a lock on a parking garage. With respect to the breaking and entry, Ms. Connelly and Ms. Baird went into an apartment building where three vehicles and three storage lockers were broken into and a number of items stolen, and the theft charge (and these were all on different dates) in June and July of 2013. In the theft charge a compact disc case stolen from a vehicle in a parking garage next door to the second offence I have mentioned.
- [10] Ms. Connelly's criminal record came into play in the joint submission, but I will come back to that as one of the factors I need to consider. However, that did result in the joint submission that the Court accepted that there be five months for each of the property related offences for a total of 15 months to be served conditionally followed by a two-month probation order. The Court acceded to the joint submission. A term of the conditional sentence order was that Ms. Connelly not have any contact with Ms. Baird.
- [11] On the 11th of March, 2014, Ms. Connelly is back before The Honourable Judge Alexander regarding the breach of the conditional sentence order.
- [12] The circumstance had occurred on the 3rd of January, 2014. At 1:19 a.m., Ms. Connelly and Ms. Baird were in a vehicle that was stopped by the police at a truck stop in Hope. Initially, Ms. Connelly provided a false name. A search of the vehicle found stolen identification, credit cards, drugs, and breaking and entering tools. Ms. Baird and Ms. Connelly were taken to the police station. Ms. Connelly and Ms. Baird escaped police custody. Eventually they were found on the roof of a nearby hospital.
- [13] Thus on its face the conditional sentence order is breached not only in terms of curfew but the contact with Ms. Baird and in the circumstances show little regard for the law let alone the terms of the court orders.
- [14] By the time the matter appeared before Judge Alexander in March of this year, there was another conviction registered for possession of a stolen credit card.
- [15] The Crown sought the termination of the conditional sentence order. Ms. Connelly's counsel sought suspension and noted that Ms. Connelly had completed a program at a residential treatment facility and was doing well in the 98 days she was in the community serving her sentence. It was also noted that the conditional sentence order might have exceeded that which she might have received had she gone to jail in the first place.

[16] Section 742.6(9) reads:

- (9) Where the court is satisfied, on a balance of probabilities, that the offender has without reasonable excuse, the proof of which lies on the offender, breached a condition of the conditional sentence order, the court may
 - (a) take no action;
 - (b) change the optional conditions;
 - (c) suspend the conditional sentence order and direct
 - (i) that the offender serve in custody a portion of the unexpired sentence, and
 - (ii) that the conditional sentence order resume on the offender's release from custody, either with or without changes to the optional conditions; or
 - (d) terminate the conditional sentence order and direct that the offender be committed to custody until the expiration of the sentence.

[17] I have set out the circumstances of the original offences and sentence which was based on a joint submission and I have set out the circumstances of the breach which as I say show little regard for the judge's expectations of Ms. Connelly. At that time, The Honourable Judge said she believed that an underlying issue was her drug addiction which Ms. Connelly had taken responsibility for, and the goal was rehabilitation, and that at age 27 she had a future ahead of her and a plan to move forward and in that circumstance she acceded to the joint submission and a conditional sentence with terms.

[18] I note that condition 11 said she was not to possess any tools outside of home or place of work or employment and condition 12 not to touch a private motor vehicle unless she was with the registered owner. I have not heard any evidence on that.

[19] Mr. Arbabi in his submissions referred to the cases of R. v. Talman, 2005 BCCA 279 and R. v. Doucette, 2009 BCCA 411. Neither in my view are as serious in terms of the breach as this case.

[20] The disturbing thing that appears on the record which was before Judge Alexander is the sentencing record starting with a conditional sentence order in 2005; failure to comply with a recognizance or a probation order; and then later a breach of a conditional sentence order in 2006; dangerous operation of a motor vehicle while pursued by a police officer, possession of break-in instruments; in 2007 theft under \$5,000 and driving while disqualified; later in 2007 driving while disqualified and failure to comply with a probation order; in 2009 amongst other things carrying a concealed weapon.

[21] In other words, there seems to be little regard for the law and in spite of Judge Alexander's hope that at age 27 Ms. Connelly might see a different direction to take in her life, the circumstances of the breach reflect absolutely no regard for the judge's hopes.

[22] In my view, the Court considered all of the appropriate factors that were to be taken into consideration. I see no error in The Honourable Judge Alexander's exercise of her discretion and I dismiss the appeal.

"Crawford J."

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