

CANADA / JUDGMENT

R. v. Cook

2024 BCSC 1841

COURT

Supreme Court of British Columbia

DECIDED

28 June 2024

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Cook,

2024 BCSC 1841

Date: 20240628

Docket: 35572-2

Registry: Cranbrook

Rex

v.

Renn Broe Cook

Before: The Honourable Madam Justice Lyster

Oral Reasons for Sentence

Counsel for the Crown:

K.J.A. DeJong

Counsel for the Defence appearing via videoconference:

M.A. Patterson

Place and Date of Trial:

Cranbrook, B.C.

July 5-7, 2023

Place and Date of Judgment:

Rossland, B.C.

June 28, 2024

[1] THE COURT: These are my oral reasons for sentencing in this matter.

Introduction

[2] On July 11, 2023, I convicted Mr. Renn Cook, after trial, of break and enter with intent to commit an indictable offence, contrary to s. 348(1)(a) of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. At trial, it was admitted that Mr. Cook had, on August 3, 2021, entered the Rosenberger residence through the unlocked front door. He was naked, waving his hands and screaming, saying that "God's wrath is upon you" and "you will be punished". Mr. Rosenberger told Mr. Cook to leave, and he did. This was the break and enter for which Mr. Cook was convicted.

Background

- [3] The background to the offence was that Mr. Cook had become obsessed with Sarah Rosenberger. He had formed the fixed view that it was God's will that she marry him. Starting in December 2020, he had pursued Ms. Rosenberger in person and through her family and their mutual friends. Ms. Rosenberger told Mr. Cook, on December 19, 2020, that she did not want any contact with him, and, despite that, he persisted, which led her to ask a police officer, who was present at the time, to intervene. The police officer spoke to Mr. Cook and gave him a warning for criminal harassment.
- [4] Despite being told by Sarah that she had no interest in him, and the warning from the police officer, Mr. Cook repeatedly attended at the Rosenberger residence, where Mr. Rosenberger, on a number of occasions, made it abundantly clear that Sarah had no interest in Mr. Cook and that they did not want him on their property. On at least one occasion, Mr. Rosenberger called the police because he was afraid for his daughter and wanted her to be safe. Mr. Rosenberger did not know what Mr. Cook might do and he was worried about what role he might think he had in bringing God's wrath down upon his daughter and his family.
- [5] The police warned Mr. Cook about his conduct on several occasions. None of that had any impact on Mr. Cook. Sometime shortly before the break and enter, Mr. Cook sent a mutual friend a message, in which he wrote:

As for Sarah, if she continues to resist God in responding to me, then I will make a public example of her on Facebook, my next visit being accompanied with God's wrath. I'm sorry but I have patiently done all I could, but she has continued to resist me in deceiving people, and I've had the cops come to me a total of 4 times now. My next visit I will be arrested. I am willing to both die and be imprisoned for her, if this be the Lord's will. I am ready to sacrifice myself both for her and the church of Creston. You can tell Sarah to expect me unless she repents and wants

to start working with me. I understand her emotions towards me at the present. Sorry but yes, it has come to this. My next visit there will be no knocking on doors. It's God's power, and will lay no hand on anyone.

- [6] It was on the basis, essentially, of that evidence that I determined that Mr. Cook had the requisite mens rea when he broke into the Rosenberger home. I found that he intended to engage in criminal harassment in breaking into their home.
- [7] There is no doubt that Mr. Cook's behaviour was triggered, in whole or large part, by his, at that time, undiagnosed and untreated mental health challenges. Since his arrest on August 3, 2021, and his subsequent detention, including at the Forensic Psychiatric Institution, he has been diagnosed with schizophrenia. It does not appear that Mr. Cook accepts that diagnosis, as, according to the pre-sentence report, he continues to attribute his conduct to having been summoned by the Lord to hold Sarah Rosenberger accountable for her sins and to cleanse her of the devil.
- [8] Nonetheless, during the 501 days he was in custody, prior to being released on bail on December 16, 2022, and in the approximately 18 months since that time, there is no evidence that Mr. Cook has attempted to contact Sarah Rosenberger or her family or that he has otherwise been in breach of the conditions the court has imposed upon him.
- [9] The circumstances of this offence and this offender create real tension between Mr. Cook's undoubted mental health issues and the assessment of his moral blameworthiness and, ultimately, the determination of a fit and proper sentence in this case.
- [10] The Crown submits the appropriate range for an offence of this kind is 18 to 24 months. Given the amount of pre-trial custody that Mr. Cook served, a sentence in the range proposed by the Crown would not result in any more custodial time. In addition, the Crown proposes three years of probation, including a Rogers Order, to which Mr. Patterson indicates, in the course of submissions, Mr. Cook consents.
- [11] Mr. Cook submits that the court should impose a conditional discharge, together with 18 months' probation, including a Rogers Order. In doing so, counsel for Mr. Cook emphasizes the role that mental illness played in Mr. Cook's offending behaviour; the fact that he has complied with all conditions imposed upon him to date; and the negative collateral consequences which a custodial sentence would impose on Mr. Cook, such as preventing him from travelling to the United States with his parents, or on his own, or volunteering with children with his church.
- [12] As submitted by the Crown, there are a number of aggravating circumstances present in this case. Mr. Cook's harassing conduct leading up to the break and enter took place over a protracted period of time. Mr. Cook ignored Sarah Rosenberger's direct communication that she wanted nothing to do with him, as well as the warnings he received from Mr. Rosenberger and the police.

- [13] There is the fact referred to in the cases that were relied upon by the Crown, being *R. v. Sweder*, 2023 BCPC 267, and *R. v. McCannell*, 2022 ABPC 251, that criminal harassment is a gendered offence.
- [14] There is also the statutory aggravating factor, under s. 348.1 of the Code, that the Rosenberger home was occupied (in particular, by Richard, Cheryl, and Sarah Rosenberger) at the time that Mr. Cook broke in, and Mr. Cook knew that the home was occupied.
- [15] There are also mitigating circumstances. Mr. Cook has no previous criminal record. He has, as I have said, complied with all conditions imposed upon him by the court. Most importantly, his offending behaviour was clearly strongly influenced by his then undiagnosed and untreated mental illness. This does distinguish the case at bar from the offenders in the Sweder and McCannell cases.
- [16] In both of those cases, the offenders also suffered from mental illness, but, in both cases, the court held that mental illness did not play a significant role in reducing their moral culpability. By contrast, in the case at bar, I am satisfied that Mr. Cook's moral culpability is significantly reduced by the effect of his mental illness.
- [17] Mr. Cook is, I believe, 34 years of age. He was raised in a loving and closeknit family. He remains very close to his family, especially his parents, who are strongly supportive of him. Mr. Cook and his family are deeply religious. His mother homeschooled him. He left school at approximately grade nine, and thereafter went to work for his father in the construction industry. He has his own home, which I understand he built himself. According to the pre-sentence report, he characterizes himself as living largely "off the grid". He has never used drugs or alcohol.
- [18] As I have mentioned, Mr. Cook was diagnosed with schizophrenia subsequent to his arrest and detention. I will refer to the pre-sentence report that was filed in this matter with respect to both to Mr. Cook's attitude towards his diagnosis and this offence, as well as the observations of his treating psychiatrist Dr. Grahn.
- [19] Referring to the pre-sentence report, under the heading "Behaviour Emotional Status", the report writer writes:

Mr. Cook states that he was diagnosed with Schizophrenia after being charged with the related offence and assessed in the Psychiatric Hospital. He describes himself as having an extremely high level of faith, and followed up by saying, "If you aren't careful, you can have discernment, and if the negative voices get in your head you open that door to the demonic realm". Mr. Cook indicates that he believes this is where his Psychosis stems from. The subject further stated that he has "the power of God to send those demonic voices away and not be controlled by them".

Dr. Randy Grahm, is a Mental Health Consultant with Creston Valley Mental Health and Addiction Services, who is very familiar with the subject's circumstances. Dr. Grahm states that he also familiar with the subject's parents and describes Renn's father as an extremely religious individual. He further noted that the subject's parents do not believe he has a mental illness, instead suggest that Renn experienced a spiritual breakdown, and the devil has intervened.

Dr. Grahm was clearly quite concerned for the subject's mental wellbeing. He states that Renn has made such suggestions about wanting to go through life naked, as he is a special prophet and can cast the devil out of others. Dr. Grahm is aware of his Schizophrenic identification from his Psychiatric Assessment at Colony Farm Psychiatric Hospital, although he is not quite sure if he would label him Schizophrenic long term or if a Psychotic illness might be more appropriate.

Dr. Grahm states that the subject is currently being prescribed a low dose of Olanzapine, which is an anti-psychotic medication used to treat psychotic symptoms. The subject was lowered from 5 mgs to 2.5 mgs after complaining that the medication was "an assault on his mind", so he demanded Dr. Grahm to lower it. However, Dr. Grahm feels this is definitely not having the intended effect for the subject's needs and he is not even confident that the subject is taking his medication, or just acting as if he is but spitting it out.

[20] Finally, I will note, in the pre-sentence report, under the heading "Attitude and Understanding Regarding Offence", the report writer writes:

Mr. Cook verbally did accept responsibility for his actions although continues to stand by his intense religious belief to justify his behaviour. He stated that he was being summoned by the Lord to hold Sarah Rosenberger accountable for her sins and he was sent to cleanse her of the devil. The subject had very little insight into how his attitudes and behaviour impact either himself or others, which is quite concerning for both Mr. Cook's wellness, as well as public safety.

Analysis

[21] The cases put forward by the Crown support a typical sentencing range of 18 to 24 months in a case of this kind. However, I must carefully consider the sentencing considerations set out in the Code to determine a fit and appropriate sentence for this offence and this offender: s. 718.1 of the Code, which provides that:

Fundamental principle

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[22] I must consider both deterrence and denunciation, as well as rehabilitation.

[23] I find that Mr. Cook's moral culpability is reduced, by reason of the role mental illness played in his offending behaviour. Mr. Cook's behaviour was disturbing and frightening to the Rosenbergers, as it would be to anyone that was subjected to it. General deterrence and denunciation would tend to indicate that a custodial sentence is appropriate in this case.

- [24] Counsel for Mr. Cook submits that specific deterrence is not a concern here, given Mr. Cook's compliance with the no-contact orders to which he has been subject. There is merit to this submission, although I am concerned about Mr. Cook's continuing lack of insight and attempts to justify his behaviour as being the product of God's will.
- [25] Mr. Cook's counsel urges the court to impose a conditional discharge. In considering whether a conditional discharge under s. 730 of the Code is appropriate, two conditions precedent must be met.
- [26] The first condition precedent is whether a conditional discharge would be in the best interests of the accused. This generally pre-supposes that the accused is a person of good character, without prior convictions; that it is not necessary to enter a conviction against them in order to deter them from future offences or to rehabilitate them; and that the entry of a conviction against the accused may have significant adverse repercussions.
- [27] The second condition precedent is that a conditional discharge would not be contrary to the public interest. The term "public interest" encompasses more than deterrence, and includes an offender's mitigating circumstances and character; the community's attitude towards the offender's conduct; whether the crime was committed as a matter of impulse; the offender's moral blameworthiness; the offender's remorse; efforts at rehabilitation; and other factors.
- [28] In considering whether a conditional discharge would be appropriate in this case, I reviewed the decision of Justice Brundrett in *R. v. Li*, 2019 BCSC 648 [Li]. At para. 29, Justice Brundrett said:
- [29] As noted by D. Smith J.A. in: *R. v. Chatur*, 2012 BCCA 163 at para. 21, the granting of a conditional discharge is a discretionary order based on the weighing and assessing of many factors including the principles of sentencing and the public interest; see also: *R. v. Nasogaluak*, 2010 SCC 6 at para. 43. Thus, while deterrence is an important part of the public interest analysis, the inquiry also calls for a contextual assessment of the particular circumstances of the offender and the offence in light of the applicable principles of sentencing relevant to the public interest. Here, the omission to more fully consider public interest considerations amounted to an error in principle.
- [29] At para. 39, Brundrett J. commented upon the consequences of a conditional discharge being imposed there, in comparison to a suspended sentence:
- [39] The significance of a discharge as opposed to a suspended sentence is that pursuant to s. 730(3) of the Code, the offender is deemed not to have been convicted of the offence upon completion of the terms of the discharge. It would be wrong, however, to assume that a conditional discharge with appropriate terms can have no deterrent effect: *R. v. Sanders* (1993), 39 B.C.A.C. 157 (C.A.) at para. 11. For instance, a prior discharge can be taken into account when a sentence is imposed for another offence (*Jeremiah* at para. 18), if the offender reoffends during the attached probationary term the discharge can be revoked (s. 730(4)), and the imposition of a conditional discharge may restrict future travel or

employment.

- [30] Applying the applicable principles, I think that, in the present case, it is apparent that a conditional discharge would be in the best interests of Mr. Cook. He has no criminal record and he has an understandable and legitimate interest in keeping it that way. The real question is whether the imposition of a conditional discharge would not be contrary to the public interest.
- [31] Given the significant role his mental illness played in his offending behaviour, the absence of any prior criminal record, and the fact that, despite his apparent lack of insight, he has complied with the restrictions imposed upon him since his arrest, I have concluded that it would not be contrary to the public interest to impose a conditional discharge on Mr. Cook.
- [32] I will be imposing a probation term and, as Brundrett J. explained in *Li*, if Mr. Cook fails to comply with it, the discharge can be revoked. As in *Li*, at para. 45, I conclude that a conditional discharge, with a lengthier probation term, represents a proportionate sentence that appropriately balances the applicable principles of sentencing.
- [33] I am, therefore, going to order a probation term of three years. This will ensure that Mr. Cook's behaviour will continue to be monitored in the community, thereby fulfilling the public interest and ensuring that there is no repetition of the behaviour that brought Mr. Cook before this court.
- [34] I have considered the submission made by Mr. Cook's counsel that the customary no-go order should be modified so as not to require Mr. Cook to leave the Rosenbergers' presence immediately should he happen to see them. I am not prepared to do so. I have not heard of any difficulties encountered as a result of the usual no-go order being in place for the last 18 months.
- [35] Further, while the Rosenbergers have displayed uncommon grace and forgiveness in relation to Mr. Cook's behaviour, they deserve to be able to go about their daily lives, unconcerned that they will have to see or otherwise interact with Mr. Cook.
- [36] I am going to order the probation conditions that were set out in the Crown's proposal, which I will read into the record in a moment. One of those conditions is what we call a Rogers Order and, as I mentioned, Mr. Cook's counsel said, in the course of submissions, that Mr. Cook will consent to such an order, but I want to hear that directly from Mr. Cook.
- [37] Mr. Cook, would you please stand.
- [38] I am going to read you what we call a Rogers Order, and that Rogers Order is going to be a term of the probation that I am imposing upon you, and I need to know whether you consent to that order, okay?
- [39] THE ACCUSED (via video): Okay.
- [40] THE COURT: Okay.

[41] THE ACCUSED: Yeah.

[42] THE COURT: I am going to read it to you, and then I will ask you if you consent. You must do the following:

- report to Forensic Psychiatric Services or elsewhere for any intake, assessment, counselling or treatment as directed by your probation officer;
- attend all scheduled appointments with the professionals in charge of your mental health care;
- take all medications and medical treatment prescribed to you by those professionals;
- provide your probation officer with the names, addresses, and phone numbers of those professionals;
- give those professionals a copy of this order; and
- if you decide not to follow these directions, you must immediately report that fact to your probation officer.

[43] Do you understand what I just read out, Mr. Cook?

[44] THE ACCUSED: Um, yes. Yeah, I do. Um, the -- you know, I'm subject to Creston Mental Health -- Health and Dr. Grahn, and he's not part of Forensics, and I -- I have a bad taste in my mouth from the Forensics, and so I'd rather be subject to Dr. Grahn than to be subject to the Forensics, because they -- they mistreated me there, but

[45] THE COURT: Well, for me to impose the sentence that I am intending to propose, you have to consent to what I just read out, sir.

[46] THE ACCUSED: Um, okay, I -- I understand, and I suppose it's at the -- you know, I'm at the grace of the -- of the --

[47] THE COURT: Of the pro --

[48] THE ACCUSED: -- my probation --

[49] THE COURT: Of the probation officer. That is right. The probation officer will talk to you about these things, and it is the probation officer that will impose whatever particular requirements the probation officer imposes.

[50] THE ACCUSED: Okay. Will my probation officer be the same as what it is now?

[51] THE COURT: I do not know the answer to that question.

[52] THE ACCUSED: Okay. That's fine.

[53] THE COURT: Okay. So --

[54] THE ACCUSED: Okay.

[55] THE COURT: -- do you consent, sir?

[56] THE ACCUSED: Uh, if that's -- if that's what I need to do, then I -- I will.

[57] THE COURT: Thank you. Mr. Cook, I am imposing upon you a conditional discharge and a three-year probation order.

[58] You can be seated again. Thank you, Mr. Cook.

[59] What I am going to do is I am going to read into the record the terms of the probation order. I am going to impose the terms that were proposed by the Crown. So you must comply with the probation order for a term of three years.

- 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 promptly notify the court or the officer of any change of employment or occupation.
- You must report by telephone to a probation officer at 101-117 10th Avenue South, Cranbrook, B.C. by 3 p.m. on Tuesday, July 2, 2024 at 250-426-1210 or 1-866-800-5522. If the office is closed, you must continue calling daily during regular business hours until you have spoken to a probation officer and received further direction to report. After that, you must report as directed by your officer;
- You must have no contact or communication, directly or indirectly, with Sarah Rosenberger, Richard Rosenberger, or Cheryl Rosenberger;
- You must not go to any place where Sarah Rosenberger, Richard Rosenberger, or Cheryl Rosenberger lives, works, attends school, worships, or happens to be. If you see them, you must leave their presence immediately, without any words or gestures;
- You must not attend at or be within 100 meters of 329 10th Avenue North, Creston B.C.;
- Having consented in court, you must do the following:
 - o report to Forensic Psychiatric Services or elsewhere for any intake, assessment, counselling or treatment as directed by your probation officer;
 - o attend all scheduled appointments with the professionals in charge of your mental health care;
 - o take all medications and medical treatment prescribed to you by those professionals;
 - o provide your probation officer with the names, addresses, and phone numbers of those professionals; give those professionals a copy of this order.
 - o if you decide not to follow these directions, you must immediately report that fact to your probation officer. You have consented in court to those professionals notifying your probation officer if you fail to attend for an appointment or refuse to take the prescribed treatment or medication.

· You must not possess, directly or indirectly, any weapon as defined by the Code, including firearms and ammunition; crossbows, prohibited or restricted weapons or devices, or explosive substances; anything used, designed to be used or intended for use in causing death or injury to any person, or to threaten or intimidate any person; any imitation of all the above, including any compressed air guns or BB or pellet guns; or any related authorizations, licences and registration certificates, and you must not apply for any of these.

[60] There will also be an ancillary order, a DNA order made pursuant to ss. 487.04 and 487.051 of the Code.

[61] I did not hear from counsel with respect to victim surcharge, and I will hear from you on that if you wish to make any submissions.

[62] CNSL M. PATTERSON: Yes, Your Honour. Mr. Cook is still trying to get his feet back together, and a victim fine surcharge would pose an enormous financial burden on Mr. Cook. He is still being supported by his -- his parents.

[63] THE COURT: Thank you.

[64] CNSL K. DEJONG: Nothing to add, Justice.

[65] THE COURT: I am satisfied that it would cause undue hardship to Mr. Cook, given his current circumstances, and so I waive the victim surcharge.

[DISCUSSION WITH COUNSEL ABOUT LOCATION AND TIMING FOR A DNA SAMPLE TO BE PROVIDED]

[66] THE COURT: By no later than 4 p.m. on Friday, July 5, 2024, Mr. Cook is to report to the Creston RCMP detachment for the purposes of a DNA sample being taken.

[67] THE ACCUSED: Okay.

[68] THE COURT: Anything further, counsel?

[69] CNSL K. DEJONG: Nothing further --

[70] CNSL M. PATTERSON: Not from me, Justice.

[71] THE COURT: Thank you very much, counsel. I appreciate your submissions. I wish you the very best going forward, Mr. Cook. Thank you.

"L.M. Lyster J."

LYSTER J.

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