

CANADA / JUDGMENT

R. v. Coons

2021 BCCA 116

COURT

British Columbia Court of Appeal

DECIDED

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2021 BCCA 116 R. v. Coons

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Coons,

2021 BCCA 116

Date: 20210308

Docket: CA46505

Between:

Regina

Respondent

And

Brandon Alexander Guy Coons

Appellant

Before:

The Honourable Madam Justice Saunders

The Honourable Mr. Justice Frankel

The Honourable Madam Justice DeWitt-Van Oosten

On appeal from: An order of the Supreme Court of British Columbia, dated July 26, 2019 (sentence) (R. v. Coons, 2019 BCSC 1487, Rossland Docket 22149).

Oral Reasons for Judgment

Counsel for the Appellant (via videoconference):

T.J. Russell, appearing as agent for B.S. Lynskey (March 8, 2021)

B.S. Lynskey (March 5, 2021)

Counsel for the Respondent (via videoconference):

S. Gillespie

Place and Date of Hearing:

Vancouver, British Columbia

March 5, 2021

Place and Date of Judgment:

Vancouver, British Columbia

March 8, 2021

Summary:

The appellant was sentenced "globally" to seven years' imprisonment for six offences, some of which involved assault, weapons, threats and intimidation for the purposes of recovering allegedly stolen marihuana. The appellant was also in possession of drugs for the purposes of trafficking. Although only 24 years of age, he had a criminal history of violence, including a prior conviction for manslaughter. He appealed his global sentence on the bases that the judge committed errors in principle and seven years' imprisonment is unduly harsh in his circumstances. Held: Appeal allowed, but only to the extent necessary to ensure that the sentences imposed for individual counts are consistent with their requirements under the Criminal Code. The overall length of sentence remains intact. The judge did not commit errors in principle that affected the sentence and a cumulative seven years' imprisonment is not a demonstrably unfit sentence.

DEWITT-VAN OOSTEN J.A.:

Introduction

- [1] The appellant, Brandon Coons, pleaded guilty to six offences: (1) assault with a weapon; (2) use of an imitation firearm in the commission of an offence; (3) uttering threats to cause death or bodily harm; (4) possession of a prohibited weapon (brass knuckles); (5) possession of cocaine for the purposes of trafficking; and (6) possession of ammunition while prohibited. The first five offences proceeded by indictment. The Crown elected to prosecute the sixth offence by summary conviction.

- [2] The Crown sought a cumulative sentence in the range of six to nine years' imprisonment. Having already spent the equivalent of 29 months in pre-sentence custody, Mr. Coons sought a conditional sentence of 12 to 15 months, to run from the date of sentencing, followed by three years of probation.[1]
- [3] Sentencing took place in July 2019. The judge imposed a "global" sentence of seven years' imprisonment (84 months) on the six counts, with 843 days' credit for time served in pre-sentence custody.
- [4] Mr. Coons says the judge committed errors in principle that affected the total length of his sentence. He also says a global seven years' imprisonment is demonstrably unfit in his circumstances. He contends that the errors in principle and a clearly excessive sentence displace the highly deferential standard of review that governs appeals from sentence and allows for interference by this Court: *R. v. Agin*, 2018 BCCA 133; *R. v. Lacasse*, 2015 SCC 64; *R. v. Friesen*, 2020 SCC 9. Mr. Coons asks that we vary the global sentence by reducing it to four and one half years.

Circumstances of the Offences

- [5] Mr. Coons pleaded guilty to his offences in the midst of a jury trial.
- [6] The first five offences formed part of one Indictment, containing seven alleged offences dated December 2017 and January 2018. Mr. Coons pleaded guilty to five of the seven offences after the victim testified. It was made clear at the start of the sentencing hearing that "all of the circumstances" underlying the Indictment were open for consideration by the judge.
- [7] The sixth offence was on a separate Information and brought forward for the purposes of sentencing once Mr. Coons elected to change his pleas on the Indictment. That offence was committed in January 2018 and prosecuted by summary conviction. We have appellate jurisdiction to review the sentence on the summary conviction matter, with leave, by virtue of the fact that it was imposed at the same time as the sentences on the Indictment: s. 675(1.1) of the Criminal Code, R.S.C. 1985, c. C-46.
- [8] The judge's oral reasons for sentence are indexed as *R. v. Coons*, 2019 BCSC 1487 ("RFJ"). The circumstances of the offences are set out at paras. 16-28 of the RFJ. For the purpose of these reasons, it is sufficient to summarize the salient points:
- The 20-year-old victim on the Indictment, BF, lived in Chilliwack and arranged for Mr. Coons to loan him money to travel to Trail to visit his family. They had known each other for about 10 years;
 - BF took a bus to Castlegar. Mr. Coons met him there, accompanied by a woman;
 - The three of them ate at a restaurant and then headed towards Trail. Mr. Coons was driving;

- Mr. Coons suggested that they pull over and smoke a joint. He stopped the vehicle in a "dark area" near a river;
- Two men wearing ski masks approached the vehicle and ordered BF to get out. He refused. The men pulled BF from the vehicle. They proceeded to punch him and kick him in the head. BF believes he was tasered by Mr. Coons or the masked men during the altercation. He had earlier seen a taser in Mr. Coons' vehicle;
- The purpose of this event was to scare and threaten BF until he admitted that he had wrongfully taken marihuana from Mr. Coons, who was engaged in illegal drug activity;
- After the incident with the masked men, BF, Mr. Coons and the woman travelled to Mr. Coons' apartment in Trail. Events in the apartment were video recorded. The video showed Mr. Coons pacing around the apartment. For most of that time, BF remained seated. In addition to Mr. Coons and the woman, three other men came and went from the apartment while BF was present. His backpack had been emptied and all of his belongings were taken from him, including his cellphone and wallet;
- The video showed Mr. Coons brandishing a revolver in the presence of BF soon after their arrival at the apartment. On occasion, the revolver was pointed at BF and Mr. Coons "spun the barrel". A taser was also in the apartment. At one point, it hung from Mr. Coons' waist. The appellant threatened to kill BF and his family in Trail;
- BF was eventually permitted to leave the apartment, but under the control of two men who attended to take him to Chilliwack. The purpose of the trip was to recover the allegedly missing marihuana. The two men left in a vehicle owned by Mr. Coons and he gave them the taser. They used the taser on BF while travelling. BF was kept in the front passenger seat to maintain control over him;
- At a service station outside of Kelowna, BF managed to get into a washroom, lock the door and separate himself from the two men. They eventually left and BF called police. An officer who responded to the call described BF as "bruised and swollen about his head with his eyes darting around as if looking for someone." He was afraid and wanted to get into the police vehicle as he considered it unsafe to stand outside;
- After these events, police searched Mr. Coons' residence. They found more than 33 grams of crack cocaine, 600 grams of marihuana and lesser amounts of fentanyl, psilocybin and resin. There was \$3,300 cash in the residence. The cocaine had been weighed, apportioned and organized in a fashion consistent with mid-level trafficking;
- Police also located in Mr. Coons' apartment brass knuckles; body armour; a collapsible baton; and firearm components with a live round of ammunition. At the time of the search, Mr. Coons was prohibited under s. 109 of the Code from possessing firearms and ammunition;

· BF provided a victim impact statement for the sentencing hearing. He sustained physical injuries from the offences and was "traumatized and in shock for a long time after." He had essentially "been in hiding" between the offences and sentencing, describing his life as a "complete struggle" because of what happened to him.

Appellant's Circumstances

- [9] At the time of sentencing, Mr. Coons was 24 years old. He had a criminal record, including a conviction for possession of drugs for the purposes of trafficking for which he received nine months' imprisonment (the offence was committed in 2013), and a conviction for manslaughter (committed in 2011). He received the equivalent of 48 months' imprisonment for the latter offence. The manslaughter resulted from an attempt by Mr. Coons to enforce a drug debt. He was 17 years old. Under the statutory regime then in place, the Crown successfully applied to have him sentenced as an adult. The manslaughter sentence was imposed in 2013 and Mr. Coons had not returned to the community for very long before he committed the offences now before this Court.
- [10] When the offences involving BF were committed, Mr. Coons was taking methadone to manage a drug addiction. He stopped using methadone while in pre-sentence custody and by the time of sentencing, he had ceased any form of drug use.
- [11] Letters of support from family members and friends were tendered at sentencing. They spoke to Mr. Coons' positive qualities and his potential for rehabilitation. While in pre-sentence custody, Mr. Coons obtained a welding certificate. He also took other courses, including Substance Abuse Management and Living without Violence. He attended inmate-led church services. He was polite and respectful with chaplains and volunteers.
- [12] Mr. Coons spoke at his sentencing hearing, telling the judge that since his incarceration, he had made "some major gains" in his life. He said he realized the wrongfulness of his conduct.

Reasons of the Sentencing Judge

- [13] The defence did not contest the factual circumstances surrounding the offences, as adduced in evidence before the jury and then supplemented by the Crown's submissions. However, Mr. Coons' trial counsel did argue that the inferences the Crown sought to have drawn from those circumstances were unjustified because of credibility concerns about the testimony of BF and other issues. In particular, the defence contended that the evidence did not establish Mr. Coons as the directing mind behind the events involving BF; the harm was not as serious as made out by BF; and the Crown's characterization of the circumstances was more sinister than was actually the case.
- [14] After hearing those submissions, the judge made a number of factual findings. These included, first, that Mr. Coons' conduct had a "very serious" and lasting impact on BF, as well as his family (RFJ at para. 11). Second, BF did not exaggerate his description of events (at

para. 12). Third, the incident in which BF was physically assaulted by two masked men was "planned by Mr. Coons" (at para. 23). Fourth, at the apartment, Mr. Coons was "in complete control of the events" (at para. 24). Fifth, Mr. Coons brandished a revolver in the presence of BF to invoke fear and to intimidate (at para. 25). Sixth, BF did not have a "realistic chance of escape" from the apartment in Trail and was "dominated by Mr. Coons throughout that period" (at para. 26). Seventh, what happened to BF after he left the apartment was "planned and directed" by Mr. Coons (at para. 27). Finally, throughout these events, BF "remained scared and frightened" (at para. 28).

- [15] On appeal, Mr. Coons does not allege palpable and overriding error in the judge's factual findings.
- [16] Once he made his findings, the judge instructed himself on the principles of sentencing. He was of the view that denunciation and deterrence were paramount in this case. At the same time, the judge recognized that he should not lose sight of the importance of rehabilitation and that Mr. Coons "ha[d] made significant efforts at rehabilitation" (RFJ at para. 29).
- [17] The judge reminded himself that in a case involving multiple offences, there is a specific analytical methodology to apply when imposing sentence. The court must first determine the appropriate sentence for each offence. Then, the judge must decide whether the sentences are to run consecutive or concurrent to one another. Finally, if the judge imposes consecutive sentences, the judge must ensure that the cumulative length of the sentences does not offend the principle of totality: *R. v. Li*, 2009 BCCA 85.
- [18] The judge next turned his mind to the aggravating and mitigating circumstances. Aggravating circumstances included: (1) Mr. Coons' prior record; (2) the seriousness of his offences; (3) premeditation for purposes of collecting on a drug debt; and (4) Mr. Coons being the directing mind of a plan to assault and frighten BF.
- [19] Mitigating circumstances consisted of Mr. Coons' demonstrated efforts at rehabilitation and, to a limited extent, the fact of his guilty pleas (the pleas came after the commencement of trial and did not relieve BF from having to testify).

Issues on Appeal

- [20] Mr. Coons says the global seven years' imprisonment should be reduced because: (1) the judge erred in his application of the totality principle; (2) he imposed one or more sentences that do not conform with the Code; (3) he gave inadequate effect to the principle of parity; and (4) seven years' imprisonment is disproportionate and therefore demonstrably unfit.

Discussion

[21] I do not agree that the overall length of Mr. Coons' sentence is the product of errors in principle or is demonstrably unfit. However, the sentences for some of the counts do not conform to their Code requirements. As such, I would allow the appeal from sentence, but only to the extent necessary to correct the illegalities. The cumulative seven years' imprisonment would remain intact.

The Judge Respected the Totality Principle

[22] The RFJ demonstrate the judge understood his obligation to ensure that the cumulative length of Mr. Coons' sentence did not offend the totality principle (at paras. 30, 47). Section 718.2(c) of the Code provides that "where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh".

[23] Mr. Coons is correct that in reaching the global disposition, the judge did not follow the analytical methodology delineated in Li:

[28] there is a two-stage approach to sentencing an offender convicted of multiple offences. The first stage is to determine the appropriate sentence for each offence, and decide whether the individual sentences should be made consecutive or concurrent. If consecutive sentences are imposed, then the second stage is to determine whether the sentences, in the aggregate, offend the totality principle. If the sentence, as a whole, is unduly harsh or disproportionate, then the length of the individual sentences should be adjusted in order to arrive at an appropriate global sentence. See *R. v. P.P.H.*, 2003 BCCA 591.

[24] However, I am satisfied from the reasons as a whole, read in the context of the record, that the judge was mindful of the totality principle when imposing sentence. He settled on a global sentence that fell within the Crown's suggested range of six to nine years. The Crown advanced that range, and the judge accepted it, as one that took into account the need to ensure the total sentence was not disproportionate (RFJ at para. 30).

[25] In any event, I am of the view the judge achieved the outcome that Li is intended to facilitate, namely, he "fix[ed] an appropriate global sentence that reflects the specific circumstances of the offences and the unique circumstances of the offender": Li at para. 26. As such, the failure to follow the two-stage approach did not affect the total length of the sentence imposed and, in the circumstances of this case, does not constitute an error in principle sufficient to interfere with the judge's discretion.

Seven Years' Imprisonment Exceeds the Maximum for Two Offences

[26] It is clear that seven years' imprisonment exceeds the maximum allowable for two of the offences to which Mr. Coons pleaded guilty. The Code also requires in respect of a third offence that its sentence run consecutive to the other counts, rather than concurrent as ordered by the judge.

- [27] The offence of uttering threats to cause death or bodily harm, when prosecuted by indictment, carries a maximum five years' imprisonment (Code, s. 264.1(2)(a)). At the time of sentencing, possessing ammunition while prohibited from doing so, when prosecuted by summary conviction, carried a maximum imprisonment of six months (Code, s. 117.01(3)(b), s. 787(1)). Finally, using an imitation weapon in the commission of an offence carries a minimum penalty of one year's imprisonment and the sentence must be consecutive to any other punishment imposed for an offence arising out of the same event or series of events (Code, s. 85(4)).
- [28] Not adhering to the Li methodology risks the possibility of a global disposition that results in illegal sentences for particular counts, depending on the scope of their available penalty. That is what happened here. Illegal sentences are rectifiable on appeal. However, it is far better that they be avoided at first instance. This Court has repeatedly stressed the importance of not sentencing "globally". Rather, judges should focus on individual counts and then, where applicable, assess the cumulative effect of those sentences. See, for example, *R. v. Ivanic*, 2011 BCCA 158 at paras. 9-10; *R. v. Larocque*, 2012 BCCA 216 at para. 3; *Agin* at para. 127.
- [29] In this case, the Crown provided the judge with a suggested breakdown of sentences. Crown counsel also told the judge that the sentence for the s. 85 offence must run consecutive to the others. However, when the judge imposed the global sentence and directed that seven years' imprisonment apply to each of the six counts, concurrent, neither counsel raised an objection or provided assistance to the court on that issue. They should have.
- [30] However, I agree with the Crown that in the circumstances of this case, the allocation of seven years' imprisonment to each count was an oversight. The judge was aware of the governing principles and did assess for totality. In its effect, the oversight did not result in too long an overall sentence. The appropriate remedy is for this Court to rectify the situation by breaking down the global disposition and assigning individual sentences to the six counts, consistent with their statutory parameters. See, for instance, the approach taken in *R. v. Wallwork*, 2009 BCCA 43.
- [31] The Crown has proposed a breakdown. Although Mr. Coons says a cumulative seven years is excessive, he does not dispute that the sentences for the s. 85 offence, the drug offence, and the offence for possession of ammunition while prohibited should run consecutive to all other counts. The specifics of the Crown's proposal are set out at the end of these reasons. As I am of the view a total sentence of seven years' imprisonment is a fit sentence, I am satisfied the Crown's proposal is appropriate.

The Appellant Has Not Established a Parity Error

- [32] The Crown prosecuted the two men who had control of BF from Mr. Coons' residence until BF escaped outside of Kelowna. At the time of Mr. Coons' sentencing, one of the men had received a sentence of two years' imprisonment. The other had pleaded guilty, but was

awaiting sentence. With respect to the latter individual, the Crown had agreed to a joint submission of three years' imprisonment. Mr. Coons says the disparity between the length of his global sentence and the imposed and anticipated sentences of his co-accused, reveals that the judge did not adequately consider the principle of parity. Section 718.2(b) of the Code embodies that principle: "a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances".

- [33] The reasons for sentence for the two co-accused are not before the Court. As such, we do not know the factual findings made in those cases; the personal antecedents given weight at sentencing; the determinations of aggravating and mitigating factors; or the sentencing judges' assessments of moral blameworthiness. Without that information, it is difficult (if not impossible) for this Court to assess the merits of Mr. Coons' assertion that the parity principle was not given meaningful effect. When counsel advance or defend a parity argument, whether at first instance or on appeal, they must support that position with an appropriate foundation.
- [34] Having said that, what is apparent from the RFJ is that the judge in this case found as a fact that Mr. Coons was the "driving force" behind the events involving BF (at para. 41). He was the "mastermind behind the planned [and] deliberate confinement, assault, and threats" against BF (at para. 41). Those findings necessarily attribute a high level of moral blameworthiness to Mr. Coons. Once combined with the number and nature of the offences to which he pleaded guilty, the aggravating features of the case, and his substantiated criminal history for violent offending, they also provide a justifiable basis for drawing a "clear distinction in culpability" between him and his co-accused: *R. v. Sidhu*, 2011 BCCA 246 at para. 20.
- [35] On the record before this Court, I see no error in principle on the issue of parity. The judge was alive to the principle (see para. 41 of the RFJ), but did not assign it much weight. That was a choice reasonably open to him in the context of the case, considered as a whole.

The Total Length of Imprisonment Is Not Demonstrably Unfit

- [36] It is a fundamental principle of sentencing that a sentence must "be proportionate to the gravity of the offence and the degree of responsibility of the offender" (Code, s. 718.1). Mr. Coons says the judge erred in his application of the proportionality principle and, as a result, imposed a global sentence that is clearly excessive and therefore demonstrably unfit.
- [37] In support of his position, Mr. Coons contends the judge failed to appreciate that the generally accepted range of sentence for crimes similar to those committed by him includes sentences as low as 24 months. Mr. Coons also says the judge gave inadequate weight to Mr. Coons' youth and to his prospects for rehabilitation. Finally, he contends the judge wrongly treated the case as one involving a conviction for unlawful confinement. Mr. Coons did not plead guilty to an offence under s. 279(1)(a) or (2) of the Code.

- [38] Achieving a proportionate sentence is a case-specific endeavor that involves a multi-factorial analysis informed by the individual circumstances of the offence and the offender: *R. v. Nur*, 2015 SCC 15 at para. 43. The objective is to impose a just sanction that proportionately reflects the gravity of the offences and the offender's degree of responsibility. In achieving proportionality, the sentencing judge has considerable latitude.
- [39] In my view, the global seven years' imprisonment does reflect a proportionate sentence. Mr. Coons is young and has prospects for rehabilitation. The judge understood that fact and took it into account (RFJ at paras. 15, 29, 33, 47). He did not doubt the genuineness of the gains made by Mr. Coons while incarcerated and his stated desire to continue on that path.
- [40] However, Mr. Coons committed grave offences, including ones involving violence, weapons, threats to kill, and intimidation. The judge found that Mr. Coons orchestrated a set of circumstances that left BF injured and traumatized. In determining quantum, the judge was entitled to consider the whole of those circumstances, including the degree of control exercised over BF during the course of the events and the fact that he had no realistic opportunity to "escape" from Mr. Coons or his accomplices until outside of Kelowna. The absence of a conviction under s. 279(1)(a) or (2) did not preclude those aspects of the factual matrix from informing the sentencing analysis.
- [41] At the material time, Mr. Coons was involved in illegal drug activity that, standing alone, put the public at serious risk. The planned and deliberate actions taken against BF were in support of that activity. Mr. Coons was subject to a court-ordered prohibition at the time of his offences. His moral culpability was significant. He was not a first-time offender and his criminal history included a prior drug offence and a conviction for culpable homicide with a substantial sentence.
- [42] In these circumstances, the judge was right to emphasize the principles of denunciation and deterrence (both general and specific) and to assign those principles greater weight than rehabilitation. No one sentencing objective is determinative, and it appropriately falls to the sentencing judge to assess which objective or objectives merit the greatest weight given the particulars of the case: *R. v. Nasogaluak*, 2010 SCC 6 at para. 43. The deferential standard of review on appeals from sentence extends to that choice.
- [43] Mr. Coons says the judge wrongly thought that the bottom end of the generally accepted range for violent offences committed in furtherance of illegal drug activity was four years' imprisonment and that this misunderstanding resulted in a disproportionate sentence. He says there have been cases with shared or similar features in which courts have imposed less than four years. Mr. Coons cites *R. v. McCann*, 2013 BCCA 197, and *R. v. Chand*, 2013 BCSC 163 as examples.
- [44] As emphasized by the Supreme Court in *Friesen*, sentencing ranges function only as guidelines. They are not "binding in either theory or practice" (at para. 37). As a result, the fact that there may be cases with shared features that attracted a sentence below a particular range cited by a judge does not mean that the judge committed an error in

principle or imposed an excessive sentence. Sentencing is an inherently individualized exercise. I note that in *Chand*, for instance, the 51-year-old accused received a cumulative sentence of 30 months' imprisonment for offences involving threats and an imitation firearm. Like Mr. Coons, he had a prior conviction for manslaughter. However, the offences were "very brief" in duration, not committed to enforce a drug debt, and 31 years had passed since the manslaughter conviction. Those are significant distinguishing features.

- [45] The question for us to decide is whether the sentence imposed in this case, given the circumstances surrounding Mr. Coons' offences, his moral culpability and his personal antecedents, is manifestly excessive and therefore disproportionate. I say it is not.
- [46] In determining sentence, the judge referred to the decision of this Court in *R. v. Ward*, *R. v. Thammavongsa*, 2009 BCCA 556. In that case, the perpetrators pulled the 19-year-old victim from his vehicle and brutally assaulted him for having stolen money and drugs from a dealer. The victim suffered severe and long-lasting injuries. Mr. Thammavongsa pleaded guilty to kidnapping and aggravated assault for his participation in the events. He was 21 years old at the time of his offences and had no criminal record. He was remorseful, had been a model prisoner while in custody, and, by the time of the appeal, he had been released on parole. This Court allowed a Crown appeal from sentence and increased Mr. Thammavongsa's sentence from three to five years' imprisonment.
- [47] No two cases will ever be exactly alike. The physical injuries inflicted in *Ward*, *Thammavongsa* were more severe than here. However, what that decision shows is that planned and intentionally violent conduct committed for the purpose of asserting power and authority in the context of illegal drug activity will generally attract a substantial penitentiary sentence, even for a first-time offender. See also *R. v. Lebrun*, 2011 BCCA 42.
- [48] Mr. Coons is not a first-time offender. In my view, a global seven years' imprisonment does not constitute a substantial and marked departure from other sentences imposed in like circumstances, particularly in light of the prior conviction for manslaughter, a second conviction for possession for the purposes of trafficking, and non-compliance with a court-ordered prohibition.
- [49] But for the principle of totality, the circumstances surrounding the drug offence, standing alone, could have attracted a considerably higher sentence than the consecutive 18 months proposed by the Crown, and still withstood appellate scrutiny. The judge quite rightly noted that the distribution of illegal drugs has a "drastic effect" on community safety (RFJ at para. 32). In small communities, that effect can be particularly significant, carrying a heightened need for general deterrence. See, for example, *R. v. Vaquerano*, 2000 BCCA 343.

Disposition

- [50] For the reasons provided, I would grant an extension of time to apply for leave to appeal from sentence to November 12, 2019, and grant leave to appeal from sentence on both the indictable and summary conviction offences.
- [51] I would also allow the appeal from sentence, but only to the extent necessary to ensure that the individual sentences do not exceed the maximum allowable under the Code.
- [52] To that end, I would vary the sentences on both the Indictment and the Information as proposed by the Crown, but leave the cumulative sentence of seven years' imprisonment intact:

Indictment 22149

Count 3 4 years' imprisonment, concurrent to counts 5 and 6

Count 4 1 year's imprisonment, consecutive to counts 3, 5 and 6

Count 5 4 years' imprisonment, concurrent to counts 3 and 6

Count 6 4 years' imprisonment, concurrent to counts 3 and 5

Count 7 18 months' imprisonment, consecutive to counts 3, 4, 5 and 6

Information 22150

Count 2 6 months' imprisonment, consecutive to Indictment 22149

- [53] Consistent with the sentencing judge's determination, I would confirm that the appellant is entitled to 843 days' credit for time spent in pre-sentence custody. I would assign this credit against counts 3, 5 and 6 of Indictment 22149, leaving 617 days to serve on each of those counts.
- [54] Finally, I would confirm and leave in place all of the ancillary orders imposed by the judge as set out at para. 49 of his oral reasons for sentence.
- [55] SAUNDERS J.A.: I agree.
- [56] FRANKEL J.A.: I agree.
- [57] SAUNDERS J.A.: There is an extension of time to apply for leave to appeal from sentence to November 12, 2019. Leave is granted to appeal from sentence on both the indictable and summary offences. The appeal from sentence is allowed and the sentences will be varied as follows:

On Indictment 22149:

Count 3 4 years' imprisonment, concurrent to counts 5 and 6

Count 4 1 year's imprisonment, consecutive to counts 3, 5 and 6

Count 5 4 years' imprisonment, concurrent to counts 3 and 6

Count 6 4 years' imprisonment, concurrent to counts 3 and 5

Count 7 18 months' imprisonment, consecutive to counts 3, 4, 5 and 6

On Information 22150:

6 months' imprisonment, consecutive to Indictment 22149

[58] The appellant is entitled to 843 days' credit for time spent in pre-sentence custody. That credit will be assigned to Counts 3, 5 and 6 on Indictment 22149. All other ancillary orders imposed by the judge as set out at para. 49 of his oral reasons for sentence are continued.

"The Honourable Madam Justice DeWitt-Van Oosten"

[1] At sentencing, the Crown pointed out that a conditional sentence was not available for one or more of the appellant's offences, pursuant to s. 742.1(b), (c) and (e) of the Criminal Code, R.S.C. 1985, c. C-46. The appellant does not take issue with that proposition on appeal.

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