
CANADA / JUDGMENT

R. v. Crocker

2011 BCSC 1801

COURT

Supreme Court of British Columbia

DECIDED

1 December 2011

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2011 BCSC 1801 R. v. Crocker

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Crocker,

2011 BCSC 1801

Date: 20111201

Docket: 24469

Registry: Vancouver

Regina

v.

Larry Crocker

Before: The Honourable Mr. Justice Goepel

Oral Reasons for Sentence

Counsel for the Crown:

B. McKinley

Counsel for Mr. Crocker:

K.L. Neurauter

Place and Date of Hearing:

Vancouver, B.C.

October 13, 2011

December 1, 2011

Place and Date of Sentencing:

Vancouver, B.C.

December 1, 2011

INTRODUCTION

- [1] Following a ruling given in a voir dire held in these proceedings, Mr. Crocker has pled guilty to escaping from lawful custody (Count 1), possession of methamphetamines (Count 2), possession of cannabis marijuana for the purpose of trafficking (Count 4), making counterfeit money (Count 6), possessing a firearm without a license (Count 10), and impersonating another person with the intent to gain advantage for himself (Count 14).
- [2] The Crown submits he should receive a sentence in regard to the counterfeiting offence of four years and a total sentence of five years less credit for time served. The defence submits that the sentence for the counterfeiting offence should be between two to three years with a sentence of six to twelve months to be served concurrently for the other offences. The defence therefore submits a two to three year global sentence less time served is appropriate.

CIRCUMSTANCES OF THE OFFENCES

- [3] The circumstances concerning Mr. Crocker's escape from custody are detailed in the voir dire reasons which are indexed at 2011 BCSC 1361. Those reasons also provide details concerning various items seized from Mr. Crocker's apartment which underlie the remaining counts.
- [4] Following Mr. Crocker's arrest, the police recovered \$165,010 in counterfeit Canadian currency and \$1,900 in counterfeit U.S. currency. The police also seized various instruments used to make the counterfeit money.
- [5] The police found on Mr. Crocker's person 59 grams of marijuana and a further 5.5 kilos of marijuana in the residence. One hundred sixty-five grams of marijuana seed were found in his storage locker. Depending on how the marijuana was packaged for sale, its value was between \$24,000 and \$54,000.
- [6] In regards to Count 14, identification and bank records concerning an account opened in the name of Mr. Magalhaes were found in Mr. Crocker's possession. In addition to the bank account, Mr. Crocker had opened Telus and Bell Mobility accounts in Mr. Magalhaes' name and had applied for credit cards. Three fraudulent cheques totalling \$14,066 were deposited into the bank account.
- [7] Also found in Mr. Crocker's possession was 1.7 grams of crystal meth which is the subject of Count 2 and the rifle which is the subject matter of Count 10.

CIRCUMSTANCES OF THE OFFENDER

- [8] Mr. Crocker is 53 years old. A native of British Columbia, his family moved to Hawaii when he was 17 years old to escape an alcoholic and abusive father. For some years he was a successful businessman in Honolulu operating a commercial janitorial business. I am advised that while in Honolulu he became addicted to drugs. In June 1999, he was convicted in Honolulu of five counts of forgery, two counts of attempted theft, one count of theft, and one count of unauthorized use of a vehicle. He was sentenced to one year in jail together with five year's probation and a restitution order of \$1,100.
- [9] Mr. Crocker subsequently returned to Canada. He worked for some time as a stone mason in a business owned by his brother-in-law. He apparently would be still welcomed back to that employment.
- [10] Mr. Crocker has had an addiction to crystal meth for some time. While incarcerated, he has taken a substance abuse management program and he has been drug-free since August 2010.
- [11] Mr. Crocker's mother is 85 years old. She apparently is quite ill. Since Mr. Crocker was incarcerated, she has had a massive stroke and requires ongoing care and supervision. Mr. Crocker hopes, on his release, that his mother will be able to live with him and he will be able to take care of her. Not being able to look after his mother during her recent health difficulties has caused him considerable regret. He has expressed remorse for his actions.
- [12] Subsequent to his initial arrest in this matter in February 2007, Mr. Crocker was released on bail. He failed to appear in Provincial Court and was at liberty for several months before being apprehended in October 2007. When he was apprehended he was found in possession of counterfeit money.
- [13] Since being charged with these offences in February 2007, Mr. Crocker has committed several additional offences for which he has been charged and convicted. These offences include possession of counterfeit money, fraud over \$5,000, breach of undertaking, impersonation with attempt to gain advantage, possession of property obtained by crime, unauthorized use of credit card data, breach of a probation order, impersonation with intent to gain advantage, possession of stolen property, fraud and possession of forged documents. As a result of these various offences he has served several short jail sentences. When the last of those sentences ended in February 2011 he was denied bail on these charges and has been held in custody approximately 10 months on these charges.

POSITION OF THE CROWN

- [14] The Crown seeks a sentence of four years on the counterfeiting charges and an additional year on the remaining offence. In support of its sentencing submissions, the Crown has proved an affidavit that sets out in some detail the impact of counterfeiting on society and the impact counterfeiting losses can have on individuals and businesses.

- [15] In addition, evidence was led by way of a will-say statement of Sergeant Mary Kostasuk of the RCMP Commercial Crime Section. She notes Mr. Crocker had a fully functional counterfeit plant operating at the time of the execution of the search warrant and, based on the amount of counterfeit currency seized and the dates the counterfeit bank notes were first observed in circulation, he had been operating the factory for some months. She provided evidence that some of the bills produced by Mr. Crocker have circulated and been passed to various merchants in British Columbia. She is of the opinion that the counterfeit bank notes were deceptive enough to be successfully passed to merchants.
- [16] The Crown submits that the range for counterfeiting offences is between two and seven years. It cited several cases in support of its submissions including *R. v. Le*, [1993] B.C.J. No. 165 (C.A.), *R. v. Grozell*, [2004] BCPC 502, *R. v. Kiss*, [1995] O.J. No. 5002, *R. v. Gorrick* (April 27, 2005) Vancouver 180896-2-C (B.C. Prov. Ct.), *R. v. Sponaugle*, [2006] BCPC 127, *R. v. Caporale*, [2005] O.J. No. 1509, *R. v. Chistophersen*, 2002 ABPC 173, *R. v. Haldane*, [2001] O.J. No. 5161, *R. v. Weber*, [2001] O.J. No. 6103, and *R. v. Paolinelli*, [2004] A.J. No. 1330.

POSITION OF THE DEFENCE

- [17] The defence acknowledges that counterfeiting is a serious offence. It submits that the sentence should be in the lower range for counterfeit cases. It suggests that most of the Crown cases concern individuals involved with more money or worse records. They cite *R. v. Piamonte*, [2006] O.J. No. 2814 and *R. v. Lindt*, 2011 BCPC 113 in support of that submission. The defence also submits that I should take into account the Charter breaches found in the course of the voir dire as a mitigating factor in sentencing: *R. v. Nasogaluak*, [2010] 1 S.C.R. 206.
- [18] In addition, the defence points out that Mr. Crocker's difficulties were largely driven by his addiction. The defence submits that now that he is free from drugs that he can be a contributing member of society. The defence acknowledges his criminal records but points out that Mr. Crocker has on many occasions lived his life within the law. The defence submits that his various terms of incarceration over the last few years have driven home to him the need to live as a law abiding citizen.

DISCUSSION

- [19] The principles of sentencing are set out in s. 718 to 718.2 of the Criminal Code. Deterrence, denunciation and rehabilitation are all important sentencing principles. Pursuant to s. 718.1, the sentence must be proportionate to the gravity of the offence and to the degree of responsibility of the offender. A fit sentence must take into account the nature of the offence, the character of the offender and the circumstances surrounding the commission of the offence: *R. v. Shropshire*, [1995] 4 S.C.R. 227 at 283. While past cases can provide guidance, a particular sentence depends on the specific circumstances of the particular case.

- [20] Aggravating circumstances include the vast quantity of material and equipment used to produce the counterfeit funds, the establishment of a grow op in a residential apartment building, the dangerous manner in which Mr. Crocker sped off while officers were attempting to arrest him and Mr. Crocker's possession of significant amounts of mail belonging to others.
- [21] Mitigating circumstances are Mr. Crocker's expressed remorse and his guilty plea, albeit made during the course of trial.
- [22] The numerous offences committed by Mr. Crocker following his apprehension on these charges distinguishes this case from those such as Lindt in which the accused's good behaviour in the period subsequent to arrest and prior to sentencing was a major consideration in the sentence imposed. Although Mr. Crocker professes to have turned a corner, his conduct subsequent to the bringing of these charges do not inspire confidence.
- [23] That said, I do recognize that Mr. Crocker has for significant period of times in his adult life been a contributing member of society. He may well be so again in the future. He is concerned about his mother and hopes to be able to look after her when he is released. He appears to have had some recent success in his battle against addiction. That success augers well for his possible rehabilitation and professed desire to live a changed life. These circumstances suggests that a sentence somewhat less than that proposed by the Crown may be appropriate.
- [24] As has been acknowledged in many of the cases cited to me, counterfeiting has an extremely negative impact on the community and businesses and on the community's faith in the use of currency. It is an offence against society as a whole and can adversely affect many parts of the economy. As noted by McEachern C.J.B.C. in *R. v. Le*, [1993] B.C.J. No. 165 (C.A.) at para. 6:

Counterfeiting is an offence for which, in my view, deterrence is a far more important factor than it is for many other offences. It requires pre-meditation and planning and is driven entirely by greed.

- [25] This was a sophisticated criminal activity. It takes time and planning to produce such quantities of counterfeit currency. Over \$165,000 in counterfeit currency was recovered. From Mr. Crocker's statement to the police, it is clear that he had been producing counterfeit money for some period of time and some of the currency he produced circulated in the community. Given the harm caused by these offences in our community, general and specific deterrence and denunciation must be of paramount consideration. The message must go out to those inclined to participate in this type of activity that such behaviour is not acceptable and those who commit it will face serious consequences.
- [26] Mr. Crocker, will you please stand?

- [27] Considering all the principles of sentencing and the totality of the circumstances in this case including the Charter breaches found during the voir dire and your plans for rehabilitation, taking into account that deterrence and denunciation are at the forefront of the sentencing principles in this case, and given consideration to the totality principle, I find that a fit sentence is three years in jail for the counterfeiting count, and a further sentence of one year globally on the other four counts to be served consecutively.
- [28] Mr. Crocker has been incarcerated for approximately 10 months with regard to this charge. These offences pre-date the recent amendments to the Criminal Code and, accordingly, I will grant Mr. Crocker two for one credit. In the result, I find that a fit sentence is a total of 48 months and having given the appropriate credit, I sentence you to a further 28 months in jail.
- [29] In addition, pursuant to s. 110 of the Criminal Code, I order a 10-year weapon prohibition. I also order, pursuant to s. 487.051, that Mr. Crocker provide a DNA sample. I find to do so is in the best interests of the administration of justice. I further order that all of the exhibits seized from Mr. Crocker's home be forfeited other than his wallet and any personal papers such as his birth certificate that may have been found in that wallet.

"R.B.T.Goepel J."

The Honourable Mr. Justice Richard B.T. Goepel

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