
CANADA / JUDGMENT

R. v. Davidson

2001 BCCA 47

COURT

British Columbia Court of Appeal

DECIDED

18 January 2001

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Regina v. Davidson

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Docket:

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Registry: Vancouver

COURT OF APPEAL FOR BRITISH COLUMBIA

ORAL REASONS FOR JUDGMENT

Before:

The Honourable Mr. Justice Lambert

January 18, 2001

The Honourable Mr. Justice Hall

The Honourable Madam Justice Saunders

Vancouver, B.C.

BETWEEN:

REGINA

(RESPONDENT)

AND:

DAWSON DAVIDSON

(APPELLANT)

R. Peck, Q.C. and

J. Ray

appearing for the Appellant

K. Ker

appearing for the Respondent

- [1] SAUNDERS, J.A.: This is a sentence appeal. The appellant Dawson Davidson seeks leave to appeal his sentence, and if granted, appeals the sentence imposed on August 4, 2000 for aggravated assault. The sentence imposed was four years incarceration.
- [2] I say at the outset leave should be granted and I address myself to the sentence appeal itself.
- [3] The circumstances are somewhat unusual in that Dawson Davidson had spent about one year in jail before conviction and about two years in jail after conviction, for a total of a little more than three years incarceration, plus ten months released on very strict terms reminiscent of house arrest, all this before he was sentenced.
- [4] He says through his counsel Mr. Peck that the sentencing judge did not adequately consider and credit him for his pre-sentence custody.
- [5] Dawson Davidson was initially charged with aggravated sexual assault and attempted murder of a prostitute in the early hours of August 4, 1996. In June 1997 the judge acquitted him of the two charged offences and convicted him of aggravated assault.
- [6] The Crown then advised the court that it would seek instructions to commence dangerous offender proceedings against Dawson Davidson and such proceedings subsequently followed. It would be fair to say they were prompted not just by the 1996 offence but several other serious offences committed by Mr. Davidson to which he pleaded guilty in 1986, which included offences of sexual assault in the nature of rape, for which Dawson Davidson had been sentenced cumulatively to eight years incarceration.
- [7] The progress of the dangerous offender proceedings was slow, in part because the judge became extremely ill, and thus the denial of the dangerous offender designation and sentencing on the offence did not occur until August 2000. In the meantime Dawson Davidson's liberty was deprived, or for the last ten months, seriously restricted.
- [8] The offence itself was serious. Dawson Davidson picked up a prostitute in the early hours of August 4, 1996. He negotiated with her for sexual activity in exchange for money and then drove to an alleyway. He there paid her the sum agreed and they moved into the back seat. He then picked up an object, a telephone transformer, and struck her violently behind the left ear, lacerating her ear. He struck her again on the right side of her head and the

complainant struggled, managing to open the door, pulling herself out and screaming. Dawson Davidson hit her head against the pavement. Help for the complainant arrived and after the appellant was struck a number of times he sat down and awaited the police. There is no doubt the attack was violent. Fortunately it was interrupted as a result of the efforts of the complainant herself and persons who responded to her need.

- [9] In sentencing the accused, the sentencing judge rejected the submissions that the appropriate range of sentence for the offence was five years. Emphasizing the criminal record of Dawson Davidson and the seriousness of the offence, he stated that in his view, the appropriate range of sentence was seven or eight years and he then said:

Stand up now, Mr. Davidson. The sentence here today is seven years imprisonment, giving you credit for the six years you've served. I'm going to round it off at six, the three years you've served, and there's a balance of four years imprisonment on this matter. Do you understand? He then added:

Okay. You're sentenced to a further period of imprisonment, taking into account the three years you have served, giving you credit for that, to a balance of four years in a Federal Penitentiary, with the recommendation that you get the treatment and therapy that you obviously require in order to deal with your underlying problems that contributed to the commission of these offences.

- [10] The sentencing judge then restated the sentence in these terms:

THE COURT: The sentence is seven years, giving him credit for the three years he served, which reduces it to four years. Not doubling up the three years so that it's six years, because he would have been entitled to parole et cetera if he was in prison serving that seven year sentence as of the 4th of August of 1996. So the sentence is seven, credit for three, balance four. Is that clear?

- [11] The question of the credit to be given a person convicted of an offence who has spent substantial time in pre-trial custody, is not susceptible to a rigid rule. There is often mentioned a rough rule of thumb of credit at a rate twice the time spent, recognizing that time spent in custody before trial is usually without the benefit of programs and counseling and without the possibility of credit towards the parole date or availability of remission mechanisms. The extent of the credit, however, is dependent on the circumstances. This court in *Regina v. Mills* (1999), 133 C.C.C.(3d)451 (B.C.C.A.) addressed this issue as did the Supreme Court of Canada in *Regina v. Wust* (2000), 143 C.C.C. (3d)129(S.C.C.).

- [12] In my view the transcript here reveals a certain degree of confusion and, considering the circumstances, the sentence imposed should be revisited.

- [13] The offence was serious and must be strongly denounced. Likewise deterrence requires a period of incarceration, in my view. However, the overriding object of the sentencing process is to move towards a safer community. Protection of the public is, in my view, the paramount consideration in this case. In this we must consider that Dawson Davidson will be released to the community and the court, in considering the sentence, should act to minimize the risk to the public.
- [14] There was substantial evidence before the sentencing judge that Dawson Davidson when imprisoned on the earlier offences, did not respond well to group counseling programs. While he was in the Vancouver pre-trial centre, he had some one-on-one psychoanalysis, but that was limited in amount. When he was released for the ten months before sentencing there was significant one-on-one psychoanalysis and a program of medication which was monitored by professionals. The evidence is he responded well to that program.
- [15] In my view, the protection of the public will best be served by reducing the period of institutional incarceration from four years to one year, and adding to that a three-year probation period, thus permitting a closely monitored continuation of the program that Dawson Davidson was involved in for the ten months before the sentencing. Considering the pre-trial custody period and the pre-sentencing custody period, this still represents a very significant sentence of imprisonment necessary for denunciation and deterrence and is fit, in my view, considering like sentences and like offenders.
- [16] This case is not appropriate, in my view, for imposition of a conditional sentence.
- [17] I would therefore grant leave to appeal, allow the sentence appeal and substitute for the sentence imposed, one year incarceration and three years probation on terms which must yet be discussed.
- [18] LAMBERT, J.A.: I agree with everything that has been said by Madam Justice Saunders. In all the circumstances of this case, particularly considering the protection of the public and Davidson's re-entry into the community, the sentence that was imposed was not within the acceptable range. I too would grant leave to appeal, allow the appeal and make the order proposed by Madam Justice Saunders.
- [19] HALL, J.A.: I agree that the appeal should be allowed on the terms proposed by Justice Saunders. If we may, we would like to hear you on the terms of probation you have discussed.
- (discussion with counsel)
- [20] LAMBERT, J.A.: Leave to appeal is granted. The appeal is allowed. A sentence of one year imprisonment plus three years probation is substituted for the term of imprisonment of four years.

[21] There should be an order prohibiting Davidson from possession of firearms or explosives or the other things covered by the prohibition. Having regard to his previous offences of violence that should be a life time prohibition.

[22] The terms of the probation order will be as follows:

CONDITION A. (STATUTORY). You must: [1] keep the peace and be of good behaviour;

[2] appear before the court when required to do so by the court; and

[3] notify the court or the probation officer in advance of any change of name or address, and promptly notify the court or the probation officer of any change of employment or occupation.

CONDITION 1: You shall report to a Probation Officer at 275 East Cordova Street in the City of Vancouver forthwith upon your release and no later than 24 hours after your release and continue to report to a Probation Officer at least once per week in person thereafter or in such a manner and frequency as directed by the Probation Officer. CONDITION 2: You shall reside with your mother and father at 2416 West 14th Avenue, in the City of Vancouver, Province of British Columbia and any other residence, which they own with notice to the parole office in advance of attending residence which they own other than at 2416 West 14th Avenue, Vancouver, British Columbia. CONDITION 3: You shall be bound by a curfew and not be found outside your place of residence between the hours of 8:00 p.m. and 6:00 a.m. except only for the purposes of attending work and travel to and from work, visiting a doctor, hospital, or other medical service, attending school, attending a gymnasium for the purpose of exercise, attending a place of religious observation, attending the probation officer, or attending counseling as directed by the probation officer in consultation with Dr. Roy O'Shaughnessy or his designate and/or Dr. Chris Davis or his designate. CONDITION 4: You will only be permitted to be outside your residence between the hours of 8:00 p.m. and 6:00 a.m. upon advising the probation officer in advance of the reason and location and upon permission of the probation officer for reasons other than stated in condition in number three. CONDITION 5: You shall remain within the jurisdiction of the court unless written permission to go outside that jurisdiction is obtained from the court or the probation officer; CONDITION 6: You shall notify the court or the probation officer in advance of any change of name or address and promptly notify the court or the probation officer of any change in employment or occupation; CONDITION 7: You shall notify the probation officer of the address of his place of work and notify the probation officer immediately of any changes in employment status or place of work; CONDITION 8: You shall appear before the court when required to do so by the court. CONDITION 9: You shall attend, participate in and complete any counseling, course of prescription medication or other course of treatment that may be directed by Dr. Roy O'Shaughnessy or his designate, Dr. Chris Davis or his designate and in consultation with the probation officer except that you shall not be required to submit to any treatment or medication to which you do not consent. CONDITION 10: If you do not consent to the form of medical treatment, medication or counseling which is prescribed or recommended, you shall forthwith report to your Probation Officer and thereafter report daily to your Probation Officer. If directed

to do so by your Probation Officer, you shall report to the Forensic Psychiatric Out patient Clinic, 300 - 307 West Broadway in the City of Vancouver for the purpose of being monitored with respect to a possible breach of Condition 11 below. CONDITION 11: You shall take reasonable steps to maintain yourself in such condition that: [1] your personality disorder will not likely cause you to conduct yourself in a manner dangerous to yourself or anyone else;

and

[2] it is not likely you will commit further offences

CONDITION 12: You shall provide your treating psychologist and psychiatrist and physician with a copy of this order and the name, address and telephone number of your Probation Officer. You shall instruct your treating psychologist, psychiatrist and physician that if you fail to take medications as prescribed by them or fail to keep any appointments made with any of them, they are to advise your Probation Officer and the parents immediately of any such failures.

CONDITION 13: If Dawson Davidson is in the residence at 2416 West 14th Avenue, City of Vancouver, Vancouver City Police attend, he is to present himself at the door to confirm his presence in the residence. CONDITION 14: You shall not apply for any passport or travel documents. CONDITION 15: You shall abstain from owning, possessing or carrying a weapon.

CONDITION 16: You shall have no contact with the victim Shari Allinot or any prostitutes. CONDITION 17: You shall report regularly to your Probation Officer as to your attendance with Dr. Davis or his designate and Dr. O'Shaughnessy or his designate. CONDITION 18: You shall carry a copy of this Probation Order with you at all times.

"The Honourable Mr. Justice Lambert"

"The Honourable Madam Justice Saunders"

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