

CANADA / JUDGMENT

R. v. Demeter

2020 BCSC 1678

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 1678 R. v. Demeter

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Demeter,

2020 BCSC 1678

Date: 20200910

Docket: 40189-2,

Registry: Courtenay

Docket: 42216-1

Registry: Campbell River

Regina

v.

Mihai Demeter

Before: The Honourable Mr. Justice Thompson

Oral Reasons for Sentence

Counsel for Federal Crown:

J. Rutherford

Counsel for Provincial Crown:

T. Morgan

Counsel for the Offender:

J. Arndt

Place and Date of Hearing:

Campbell River, B.C.

September 10, 2020

Place and Date of Judgment:

Campbell River, B.C.

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- [1] THE COURT: On the morning of the second day of what was scheduled to be a 20-day trial on a ten-count indictment, Mr. Demeter changed his pleas on four counts. He entered a guilty plea on Count 1, a kidnapping charge; to Count 3 as amended, which is break and enter a hotel room and commit assault causing bodily harm; to Count 8, a wilful attempt to obstruct, pervert or defeat the course of justice by attempting to dissuade a person by threats, bribes or other corrupt means from giving evidence; and Count 10, a wilful attempt to obstruct, pervert or defeat the course of justice by counselling a person to give false evidence. The events comprising Counts 1 and 3 occurred in Campbell River on 6 January 2018. The obstruction of justice offences occurred on 3 August 2018 while Mr. Demeter was on remand at Vancouver Island Regional Correctional Centre.
- [2] Mr. Demeter has also pleaded guilty to simple possession of small amounts of cocaine and methamphetamine. These offences occurred on 7 January 2018. The substances were uncovered during a search of the premises by police.
- [3] Mr. Demeter has applied to appear at this sentencing proceeding by videoconference from VIRCC. No evidence of a witness was taken during this hearing. I am satisfied that Mr. Demeter understands that he has a right to be present in person and has chosen for sensible reasons to appear by video. In making this choice, he has made a fully informed waiver of his right to be physically present.
- [4] I did ask Mr. Demeter whether he had anything to say before sentence was passed upon him, and he had taken the time and trouble to prepare detailed remarks which I found to be thoughtful and insightful in their entirety.
- [5] I begin with a recitation of the circumstances with the break-and-enter and kidnapping offences. The break-and-enter complainant was holed up in a hotel room in Campbell River with his girlfriend and another friend. He was hiding out from Mr. Demeter. He believed that Mr. Demeter wanted to exact revenge on him for speaking to the police about an earlier event.

- [6] A close friend of the complainant knocked on the hotel room door and asked to be admitted. Unbeknownst to the complainant, this friend had been kidnapped by Mr. Demeter to be used as a prop to gain entry to the hotel room. The kidnapping victim was released and fled. Mr. Demeter and three associates burst into the hotel room. Mr. Demeter was armed with a pistol, and he struck the complainant with the pistol multiple times, causing bruising and significant lacerations. One of Mr. Demeter's associates applied a taser to the complainant. In response to hearing police sirens, the hotel room invaders left the scene. Mr. Demeter was apprehended the next day, 7 January 2018, and has been in custody since.
- [7] While in custody, Mr. Demeter committed the two obstruction offences in and around the time of his preliminary hearing. Having heard the complainant testify on day one of the hearing, Mr. Demeter made telephone contact with the break-and-enter complainant and the complainant's girlfriend. Mr. Demeter issued threats to both, and in the course of the call with the girlfriend, cajoled and persuaded her to change her original statement implicating him. She was told to give evidence that it was a setup and that Mr. Demeter was not present. These telephone calls with key witnesses were clear attempts to throw some wrenches in the Crown's case.
- [8] Mr. Demeter has a criminal record that includes property offences as well as a 2006 conviction for uttering threats and a 2012 conviction for extortion and flight from police. This latter conviction was for offences that bear some similarity in their execution to the offences that Mr. Demeter has pleaded guilty to, i.e. Counts 1 and 3 on the provincial indictment. For these convictions in 2012, he was sentenced to a totality of five years as I understand the information that I have been provided.
- [9] Mr. Demeter, I have read the presentence report and the psychologist's report. I have also benefited from your counsel's submissions on your background, and I take account of the significant issues you have had with substance abuse, including with opioids and crack cocaine, and your other health issues including the diabetes and an autoimmune disorder that, as you have also pointed out in the midst of your remarks to me, puts you at increased risk if exposed to the COVID-19 virus.
- [10] I know you now appreciate that the root cause of your trouble is addiction. I was glad to read the series of reports from Mr. Kelly, and what comes through in those letters is some degree of optimism that you have some insight into your problems with addiction. What also comes through in the material that I have read is the support of your parents, which I know from your remarks is support that you appreciate. What gives me some optimism, a special optimism in this case, is your 16-year-old son's presence in the picture, and the support that your parents are providing by giving him a home. It seems that you now well appreciate the gift that you have been given by having this young man in your life. But I think you also appreciate that to this point in time you have not performed as his father and that you must do that, and I am sure that this is helping fuel your recognition that you must overcome your addiction problems. You must get back to work. You have the training and experience and skills to have stable employment, and you have it in you to be a proper father to your son.

- [11] I am well aware that it is easy to make speeches about overcoming addiction. These addictions are notoriously difficult to beat and unless you have an unwavering commitment to overcoming these addictions, you will continue to find yourself in the sort of difficulties which have landed you in jail and have put you at a distance from your son, and put you in a position where you are unable to help him.
- [12] I have heard what you have had to say about the difficulties that the COVID-19 virus is causing you and your concerns about that. I do not think you are being paranoid. I think you are being sensible in doing all you can to avoid exposure to the virus, but I can do no more for you than to adopt the sensible submission that has been made by your counsel jointly with the prosecutors in this case. I have approached this joint submission with the mandated high degree of deference. I adopt it as the appropriate disposition of these matters.
- [13] On Count 3 in the indictment, the sentence is four years -- i.e., the break and enter, and assault causing bodily harm. On Count 1 in the indictment, the kidnapping charge, the sentence is two years concurrent to the Count 3 sentence. The break and enter and the kidnapping were essentially one continuous transaction, and I agree that concurrent sentences are appropriate.
- [14] With respect to the two obstruction offences that occurred on the same day months later, the sentences ought to be concurrent to one another, and there will be a one-year sentence of imprisonment on each count, i.e., Counts 8 and 10. However, the sentences for the obstruction events involve different public interests than the events of January 2018, and I agree that these sentences ought to be consecutive to the sentences imposed on Counts 1 and 3.
- [15] The possession of cocaine and methamphetamine sentences will be as jointly proposed: 90 days on each count, these sentences consecutive to one another, but those sentences concurrent to the sentences imposed on indictment 42216-1, as amended. I appreciate that it may be seen to be appropriate to make these drug possession sentences consecutive to the other sentences, but the joint submission that these sentences be concurrent is based on an appropriate regard for the principle of totality, and I impose these drug possession sentences concurrently as requested.
- [16] There will be credit for time served. Mr. Demeter, you have served 978 days. It is common ground that you are to receive credit for 1467 days. You have spent 105 days in custody on unrelated matters, and so your credit is reduced to 1362 days. What remains is another 464 days.
- [17] I impose the probation order that forms part of the joint sentencing submission, and the order will be for a three year term. You are to report within 72 hours of your release, and thereafter as directed.
- [18] You are to abstain from owning, possessing, or carrying a weapon.

- [19] You are to take counselling for substance misuse as directed.
- [20] The statutory terms in section 732.1(2) are imposed:
- a) You are to keep the peace and be of good behaviour;
 - b) You are to appear before the court when required to do so by the court, and notify the probation officer in advance of any change of name or address, and promptly notify the probation officer of any change of employment or occupation.
- [21] You are also to abstain from communicating, directly or indirectly, with the following persons: Jennifer Hacking, Melissa Deschamps, Scott Lees, Cindy Mountain, also known as Cindy Buller, Ashley Buller, Tamara Buller, Billy Pedersen, Blaine Legge, Bobbi-Lynn Delayer, Derek Garcia, Mike Woiwood, Richard Cahon and Dawn Kirkham.
- [22] THE OFFENDER: My Lord, may I ask you, why all those people I'm not allowed to talk to?
- [23] THE COURT: Well, I was told that these people were either co-accused or witnesses or otherwise had some involvement in these circumstances. I will hear more from you or your counsel on that in a moment.
- [24] With respect to ancillary orders, there will be DNA taken by the least invasive means practical in the circumstances, a section 109 weapons prohibition for life, and a section 743.21(1) non-communication order while you are in prison with the persons that I have just listed.
- [25] Counsel, what do you have to say about the extent of the list of persons in response to the comment Mr. Demeter just made. Mr. Morgan?
- [26] MR. MORGAN: Well, Your Honour, with respect to Ms. Hacking, she was used as a prop to make the phone calls. Ms. Deschamps was one of the complainants, as was Mr. Lees. Cindy Mountain was a co-accused. Ashley Buller and Tamara Buller were contacted at various times through indirect means and calls, and potentially were assisting Mr. Demeter. Billy Pedersen was co-accused, as was Mr. Legge. Bobbi-Lynn Delayer was in the hotel room at the time. Derek Garcia was prosecuted in relationship to assaulting Mr. Lees. The Crown was not able to prove that he was associated with Mr. Demeter beyond a reasonable doubt, but that informs why that is there. Mr. Woiwood is manifest. Richard Cahon was also contacted, as was Dawn Kirkham, during telephone calls.
- [27] THE COURT: Mr. Cahon and Ms. Kirkham were contacted in relation to the matter that is before the court?
- [28] MR. MORGAN: That is correct. Mr. Cahon was employed by Mr. Demeter, as I understand it through the phone calls, to hunt down and locate Ms. Deschamps. Ms. Kirkham at one point was asked by Mr. Demeter to put drugs inter alia into the clothes and provide them to him while he was in custody.

- [29] THE COURT: Anything you want to say, Mr. Arndt?
- [30] MR. ARNDT: No, My Lord. As far as the final two, those are the only two that are sort of marginal as far as the order is concerned, and all the rest of them up to Woiwood are entirely appropriate as far as no contact. The other one is bit of a stretch.
- [31] THE COURT: The order will go on the terms that I have pronounced.
- [32] Anything for clarification?
- [33] MR. MORGAN: My Lord, there was one housekeeping matter. I neglected -- there should be, frankly, a no-go to go to any place, residence of those people.
- [34] THE COURT: In the probation order?
- [35] MR. MORGAN: That's right, yeah. Yeah. I mean, it just makes sense.
- [36] MR. ARNDT: Out of fairness, it should be any place that he knows is the residence, because he will be in custody now for -- he has been in custody for a very considerable period of time, and hasn't the first clue where these people live so --
- [37] THE COURT: What's the usual term for the probation order? Let me just take a look. The usual provision is this: "you must not go to any place where the named person lives, works, attends school, worships or happens to be. If you see them, you must leave their presence immediately, without any words or gestures."
- [38] MR. MORGAN: I'm content with that, My Lord. I mean, if Mr. Demeter were to walk into a Tim Hortons and see Cindy Mountain there and turned around, he would not be in breach of that condition. If he were to, in the abstract, remain there and stare her down, he would be, but I take Mr. Arndt's point, I think that language covers it all.
- [39] THE COURT: Okay. So that's picklist number 2005-1.
- [40] THE CLERK: Thank you.
- [41] MS. RUTHERFORD: And the jail sentence, the credit, which count does that apply to?
- [42] THE COURT: Well, I suppose it would apply to Count 3, that is the longest sentence.
- [43] MR. MORGAN: Yes.
- [44] THE COURT: The break and enter?
- [45] MR. MORGAN: That's what I would think is logical, My Lord.
- [46] MS. RUTHERFORD: Okay. And those are the probation and ancillary orders, which --
- [47] THE COURT: I think the probation and ancillary orders ought to attach to all counts, except the federal counts.

- [48] MS. RUTHERFORD: Yes, My Lord. That's why I rose. The federal Crown is not seeking the probation terms so any future allegations of breach of contact wouldn't involve the federal file.
- [49] THE COURT: Yes. So the probation order will attach only to Counts 1, 3, 8 and 10 on 42216-1.
- [50] MS. RUTHERFORD: Thank you, My Lord.
- [51] MR. MORGAN: My Lord, with respect to the outstanding counts and any other outstanding informations, I direct a stay of proceedings on those please.
- [52] MS. RUTHERFORD: As does the federal Crown on the federal indictment. The remaining counts are stayed.
- [53] THE COURT: Yes. Thank you, counsel for your assistance in this matter.
- [54] THE OFFENDER: Am I -- am I able to [indiscernible]. So how much more time do I have then? I am rather confused on the math.
- [55] THE COURT: The sentence remaining is a matter of arithmetic. It amounts to another 464 days.
- [56] MR. ARNDT: You can call me, please.
- [57] THE OFFENDER: Okay. I just don't understand. If I pled guilty to 21 months from February, that's -- I would do 14 months, right? So from February, 14 months would be March or April. That's why I was saying that. How does it come out that I have to do over a year from now?
- [58] THE COURT: It's a matter of arithmetic. If, after speaking about the issue with your counsel, the matter needs to be recalled because there is a difficulty with the arithmetic, then we will deal with that at the time. Otherwise the sentence will stand.
- [59] THE OFFENDER: Okay.
- "Thompson J."

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