

CANADA / JUDGMENT

R. v. Demeter

2022 BCCA 115

COURT

British Columbia Court of Appeal

DECIDED

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2022 BCCA 115 R. v. Demeter

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Demeter,

2022 BCCA 115

Date: 20220330

Docket: CA47299

Between:

Regina

Respondent

And

Mihai Demeter

Appellant

Before:

The Honourable Mr. Justice Fitch

The Honourable Madam Justice Fisher

The Honourable Mr. Justice Marchand

On appeal from: An order of the Supreme Court of British Columbia, dated September 10, 2020 (sentence) (R. v. Demeter, 2020 BCSC 1678, Courtney Docket 40189-2 and Campbell River Docket 42216-1).

The Appellant, appearing in person (via videoconference):

M. Demeter

Counsel for the Respondent:

M. Mereigh

Place and Date of Hearing:

Vancouver, British Columbia

February 28, 2022

Place and Date of Judgment:

Vancouver, British Columbia

March 30, 2022

Written Reasons by:

The Honourable Mr. Justice Marchand

Concurred in by:

The Honourable Mr. Justice Fitch

The Honourable Madam Justice Fisher

Summary:

The appellant pleaded guilty to several offences and was sentenced to five years' imprisonment. The judge imposed a jointly proposed sentence. After applying credit for time served, the remaining custodial sentence was 464 days. In accordance with the joint submission, the judge also ordered that the appellant be on probation for three years following the custodial sentence. The appellant has completed his custodial sentence. He seeks leave to appeal and challenges the probation order imposed. He argues the probation order is inappropriate because: he did not agree to it; it is contrary to s. 731(1)(b) of the Criminal Code; the availability of probation only arose due to the delay in sentencing; the judge failed to consider the harsh conditions of his pre-trial custody; his sentence is disproportionately severe compared to his co-accused; and the probation order renders the sentence unfit.

Held: Leave to appeal granted, appeal dismissed. Court-appointed counsel found no basis for an argument for ineffective assistance of counsel and there was nothing in the record to support the argument that the appellant had not agreed to the joint submission. The probation order is permissible under s. 731(1)(b). The delay in sentencing provides no basis for appellate intervention. The joint submission appears to have taken into account the collateral consequences of the appellant's pre-trial custody. The record does not support the appellant's contention that his sentence offended the parity principle. Finally, the judge appropriately afforded high deference to the parties' joint submission on sentence and imposed a sentence that was justified in the circumstances.

Reasons for Judgment of the Honourable Mr. Justice Marchand:

Introduction

- [1] On February 25, 2020, Mihai Demeter pleaded guilty to one count of kidnapping, one count of breaking, entering and committing an indictable offence (assault causing bodily harm), and two counts of obstruction of justice.
- [2] After several adjournments, on September 10, 2020, the judge imposed a jointly proposed sentence. The judge sentenced Mr. Demeter to five years' imprisonment, comprising two years for kidnapping, four years concurrent for breaking, entering and committing an indictable offence, and one year for each count of obstruction of justice. The sentences for obstruction of justice were concurrent to one another but consecutive to the other sentences. After giving Mr. Demeter credit for time he had already served, the remaining time to serve was 464 days.
- [3] The judge ordered that Mr. Demeter be on probation for three years after the conclusion of his custodial sentence with statutory, reporting, counselling and protective terms. The judge made ancillary firearms prohibition and DNA orders.
- [4] Mr. Demeter was represented by counsel when he entered his guilty pleas and at his sentencing hearing. He is now self-represented.
- [5] On March 1, 2021, Mr. Demeter applied for an extension of time and leave to appeal his sentence. On the same day, he also filed a notice of appeal. On April 20, 2021, he filed an amended notice of appeal.
- [6] Mr. Demeter has now completed his custodial sentence. He appeals only the probation order that was imposed. He asserts:
 - He did not agree to probation, but his lawyer proceeded with the joint submission anyway;
 - Given that he had already served the equivalent of more than two years in custody at the time of the sentencing hearing, the three-year period of probation was contrary to s. 731(1)(b) of the Criminal Code [Code];
 - Through no fault of his own, Mr. Demeter's sentencing hearing was adjourned a number of times. If he had been sentenced earlier, by operation of s. 731(1)(b) of the Code he could not have been sentenced to probation;
 - The judge failed to consider the particularly harsh conditions of his pre-trial custody, including the impact of restrictions associated with the COVID-19 pandemic;
 - His sentence was disproportionately severe when compared to the sentences imposed on his similarly situated co-accused; and
 - The three-year period of probation is excessive, making his sentence demonstrably unfit.

[7] For the reasons that follow, I am unable to agree with any of Mr. Demeter's submissions.

Circumstances

[8] The offences arose out of events that occurred on January 6, 2018, in Campbell River. The judge succinctly summarized the circumstances as follows:

[5] 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 attempt to throw some wrenches in the Crown's case.

Procedural Background

[9] Mr. Demeter entered his guilty pleas on the second day of a 20-day trial on a ten-count indictment.

[10] Prior to taking Mr. Demeter's guilty pleas, the judge conducted a plea inquiry under s. 606 of the Code. Mr. Demeter confirmed that: his guilty pleas were voluntary; he was admitting the essential elements of the offences; he was giving up his right to a trial; and he understood that sentencing would be up to the judge regardless of "whatever arrangements lay behind the change of pleas by way of plea negotiations."

[11] At the request of counsel for Mr. Demeter, the judge ordered a pre-sentence report with a psychiatric component. Anticipating six to eight weeks for the preparation of the reports, the judge adjourned proceedings to April 20, 2020, to fix a date for sentencing. Eventually, the parties scheduled the sentencing hearing for July 3, 2020.

- [12] On July 3, 2020, Crown counsel informed the judge of a possible abuse of process application and that there were ongoing settlement discussions. Counsel for Mr. Demeter requested an adjournment and informed the court that Mr. Demeter was "in agreement that the matter should be adjourned to allow [counsel] to have those discussions." Proceedings were adjourned to August 10, 2020, to fix a new date for sentencing.
- [13] The sentencing hearing proceeded on September 10, 2020. In addition to the four counts at issue on appeal, Mr. Demeter was also sentenced for two counts of possession of small amounts of controlled substances, namely cocaine and methamphetamine. The controlled substances had been located by police during a search of his residence the day after the events at issue.
- [14] Due to the COVID-19 pandemic, Mr. Demeter attended his sentencing hearing by video. The judge explained to Mr. Demeter that he had the right to be in the courtroom in person. Mr. Demeter confirmed that he wished to appear by video.
- [15] The Crown says the parties provided the judge with an aide memoire setting out the terms of their joint submission on sentence, including the length and terms of the probation order imposed by the judge. During the sentencing hearing, the parties referenced and relied on the aide memoire, but no one read out its terms and it was not marked as an exhibit.
- [16] The provincial Crown and Mr. Demeter's counsel made reasonably detailed submissions in support of the jointly proposed sentence. The federal Crown added relatively brief submissions in support of 90-day sentences on the drug possession charges. The parties made clear that these 90-day sentences formed part of the joint submission.
- [17] During his submissions, Mr. Demeter's counsel highlighted a number of hardships Mr. Demeter had endured in pre-trial custody, including some related to the pandemic. Mr. Demeter's counsel also highlighted the sincerity of his desire to turn his life around, including by being released to a recovery centre "wherever he is directed" where he would receive counselling.
- [18] During the sentencing hearing, Mr. Demeter addressed the court. Among other things, he:
- took responsibility and expressed remorse and sorrow for his actions;
 - apologized to the complainants, the court, the Crown, his family and "anybody else to whom I've misbehaved";
 - expressed his motivation to be a good role model to his teenage son;
 - explained the progress he had made to address his substance abuse issues while in custody;
 - indicated that he was "determined to take any counselling to keep off drugs";
 - reassured the judge that he had "no thoughts of contacting the co-accused or victims";

- informed the court of some of the hardships he had endured while in pre-trial custody related to COVID-19 restrictions and an assault he suffered;
- referred the judge to a number of authorities in which offenders received, in Mr. Demeter's words, "enhanced credit" due to COVID-19; and
- implored the judge to take a "creative" approach to sentencing to reduce his remaining time in custody to allow him to go to a treatment centre on the understanding that if he "screw[ed] up" the sentence could be longer.

Reasons for Sentence

- [19] The judge gave oral reasons for sentence on the day he heard submissions.
- [20] At the outset, the judge acknowledged that Mr. Demeter "had taken the time and trouble to prepare detailed remarks" which the judge found "to be thoughtful and insightful in their entirety."
- [21] After reciting the circumstances, the judge noted that Mr. Demeter has a criminal record including convictions for property offences, uttering threats, extortion and flight from police. The judge noted that Mr. Demeter received a total of five years' imprisonment in 2012 for the extortion and flight from police convictions. The judge also noted that these convictions bore "some similarity in their execution" to the kidnapping and break, enter and commit offences that were before him.
- [22] The judge indicated that he had read the pre-sentence and psychological assessment reports that had been filed. He acknowledged Mr. Demeter's significant issues with substance abuse and other health issues. He accepted that Mr. Demeter understood that the root cause of his "trouble" was addiction. He was "glad" to discern a level of optimism in letters prepared by Mr. Demeter's counselor that indicated Mr. Demeter had insight into his problems with addiction.
- [23] The judge recognized that Mr. Demeter had the support of his parents and expressed a "special optimism" arising out of the presence of Mr. Demeter's son in his life. The judge encouraged Mr. Demeter to put his training, skills and experience to good use and to be a proper father to his son. The judge cautioned Mr. Demeter that he would continue to be in conflict with the law unless he made an "unwavering commitment" to overcoming his addictions.
- [24] The judge expressed that he had heard Mr. Demeter's concerns regarding COVID-19. Given Mr. Demeter's health issues, the judge considered Mr. Demeter to be taking a sensible approach to avoiding any exposure to the virus. The judge then said:

- [12] [B]ut 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 in these matters.
- [25] The judge then imposed the custodial sentences I have outlined. With respect to probation, the judge indicated that he was imposing the probation order "that forms part of the joint sentencing submission." The judge imposed three years of probation, including statutory, reporting, counselling, weapons, and no-contact terms.
- [26] Mr. Demeter interrupted the sentencing judge to ask about the long list of people he was "not allowed to talk to." The judge invited counsel to address the extent of the list. The provincial Crown indicated that each person was either a co-accused, complainant or witness.
- [27] When the judge expressed his understanding that the probation order would attach to all counts except the federal counts, the federal Crown confirmed that was the case. The provincial and federal Crown directed stays of proceedings with respect to all outstanding counts.
- [28] Mr. Demeter then intervened to express some confusion with respect to how much more time he had to serve. The judge explained that it was a matter of "arithmetic" and if, after Mr. Demeter had spoken with his counsel, there was a problem with the arithmetic, the matter could be recalled.
- [29] Mr. Demeter did not express any concerns about the fact that a probation order had been imposed. His matter was not recalled.

Case Management of Appeal

- [30] As indicated above, Mr. Demeter filed an application for an extension of time and leave to appeal his sentence as well as his notice of appeal on March 1, 2021. He did so from the Fraser Regional Correctional Centre without the assistance of counsel. He identified his grounds of appeal as follows: "In consideration of the excessive period of probation the learned sentencing judge erred by imposing a sentence that is demonstrably unfit. Such further grounds as the transcripts may reveal, counsel may advise, as honourable courts permit."
- [31] On April 20, 2021, Mr. Demeter filed an amended notice of appeal and an application for the appointment of counsel under s. 684 of the Code. Mr. Demeter's amended notice of appeal identified the following additional grounds of appeal:

Ineffective counsel along with the [unprecedented] pandemic closing down the supreme courts for months, forcing the appellant through no fault of his own to spend extra time in pre-trial custody under very restrictive covid protocols, reducing the time left to serve in his sentence to under 2 yrs. Which if the courts hadn't been closed for months his sentence would have been a

federal sentence of over 2 years where probation would not have been legal or applied. It is obvious from the transcripts that the appellant did not know what the joint submission was set out before the court. Then after sentencing the appellant was transferred to Fraser Regional Correctional Centre where he was exposed to and caught Covid-19 and was very sick for weeks and still suffers some symptoms. Finally, 2 of his co-accused received a sentence of 6 months where the appellant received a 4 year sentence in custody. The appellant is only appealing the probation part of the sentence.

- [32] Having identified ineffective assistance of counsel as a ground of appeal, under the Ineffective Assistance of Trial Counsel practice directive issued on November 12, 2013 (the "Practice Directive"), Mr. Demeter's appeal entered the case management process. At the first case management conference on May 18, 2021, the case management judge made a limited appointment order under s. 684 of the Code to enable counsel to review the merits of Mr. Demeter's ineffective assistance of counsel argument.
- [33] It took some time for appointed counsel to obtain Mr. Demeter's trial counsel's file. After she did, she reported at a case management conference on December 1, 2021, that she was "not able to find a basis for an argument for ineffective assistance of counsel." Mr. Demeter was present and indicated that he planned to represent himself or retain private counsel. The case management judge then confirmed that the next step was to have a hearing to decide Mr. Demeter's application for an extension of time to appeal, application for leave to appeal and, if an extension and leave were granted, the merits of his appeal. She also confirmed that appointed counsel's role was over.
- [34] A final case management conference was held on January 13, 2021. The case management judge reminded Mr. Demeter of the outstanding matters, namely his applications for an extension of time and leave to appeal, as well as a hearing of his appeal on the merits. She also reminded Mr. Demeter of his obligation to show why his sentence was unfit.
- [35] With the Crown's consent, the division granted Mr. Demeter an extension of time to file his appeal.

Standard of Review

- [36] An appeal court can intervene to vary a sentence only if the sentence is demonstrably unfit or if the sentencing judge made an error in principle that had an impact on the sentence: *R. v. Friesen*, 2020 SCC 9 at para. 26; *R. v. Sellars*, 2018 BCCA 195 at para. 22; *R. v. Lacasse*, 2015 SCC 64 at para. 41.

Analysis

Ineffective Assistance of Counsel

- [37] Mr. Demeter's ineffective assistance of counsel argument turns on his assertion that he did not agree to probation but his lawyer proceeded with the joint submission anyway. There are several problems with Mr. Demeter's argument.
- [38] First, although no one put the terms of the probation order on the record during submissions, it is clear from the record and the reasons for judgment that all counsel and the judge shared a common understanding that the joint submission included three years of probation with specific terms.
- [39] For example, during submissions, the provincial Crown highlighted that Mr. Demeter was to have "no communication with various folks" but did not provide any names. In his reasons for sentence, the judge not only indicated he was going to impose the jointly proposed probation order, but he identified the "various folks" by name. Further, although there were a number of discussions between the judge and counsel during the judge's delivery of his reasons for sentence, counsel for Mr. Demeter did not object to the imposition of the probation order or any of its terms.
- [40] Second, Mr. Demeter acknowledges in the written statements he filed in support of his appeal that his lawyer informed him of the probation terms in the days leading up to the sentencing hearing. While he says he did not agree, when he addressed the court during the sentencing hearing, he expressed his desire to continue with treatment, indicating "I will follow every condition to the letter." He also underscored his commitment to having no contact with the co-accused and victims. In addition, during the sentencing judge's delivery of his reasons for sentence, Mr. Demeter asked for an explanation of the list of people he was to have no contact with and about the judge's determination of his remaining time to serve. He did not indicate that he had not agreed to probation. Before this Court, Mr. Demeter acknowledged that he went along with the probation order and had no excuse for not saying anything about it to the sentencing judge.
- [41] Finally, even if I were to accept that Mr. Demeter was confused about what was happening and uncomfortable objecting to the probation order, his argument about ineffective assistance of counsel is not supported by the record.
- [42] When self-represented appellants like Mr. Demeter make allegations of ineffective assistance of counsel, the Practice Directive requires that the appeal be immediately referred to case management. The Practice Directive sets out a series of steps that take place to ensure there is a foundation for the allegations and a fair process to examine the merits of the allegations. The process may involve the appointment of counsel. The process contemplates notice to the appellant's trial counsel and the appellant's waiving solicitor-client privilege to enable trial counsel an opportunity to address the appellant's allegations about their conduct.

- [43] In this case, Mr. Demeter's appeal was referred to case management. The case management judge appointed counsel to examine the merits of Mr. Demeter's allegations of ineffective assistance of counsel. Appointed counsel obtained Mr. Demeter's trial counsel's file. Based on her review of all of the circumstances, Mr. Demeter's assertion that he had been ineffectively represented lacked merit.
- [44] The upshot is that appointed counsel's role ended and no evidence was put before this Court to establish that Mr. Demeter's trial counsel had provided him ineffective assistance.
- [45] In the absence of evidence to establish that Mr. Demeter received ineffective assistance from his trial counsel, I would dismiss this ground of appeal.

Legality of Probation Order

- [46] Mr. Demeter's written and oral submissions demonstrate that he has a fairly good understanding of the sentencing regime established by the Code. For example, he understands that under s. 731(1)(b), probation may be added to a custodial sentence only if the offender is sentenced to a term of imprisonment that does not exceed two years. He submits that Parliament must have intended that an offender "not be made subject to a probation order if required to serve a sentence of more than 2 years." Contrary to that intention, he submits he was sentenced to the equivalent of five years' imprisonment plus probation.
- [47] As the division explained to Mr. Demeter during the hearing of his appeal, his submission on the legality of the probation order is contrary to binding authority from the Supreme Court of Canada. In *R. v. Mathieu*, 2008 SCC 21 at para. 17, the Court held that the term of imprisonment referred to in s. 731(1)(b) is the actual term of imprisonment imposed by the sentencing judge at the time of sentencing, not the effective term of imprisonment. Pre-sentence custody is, therefore, not part of the "term of imprisonment" referred to in s. 731(1)(b): at para. 19. It is only a factor to consider in determining a fit sentence.
- [48] In this case, although the effective term of imprisonment imposed on Mr. Demeter was five years, the actual term of imprisonment was 464 days. Applying *Mathieu*, as the actual term of imprisonment was less than two years, the probation order was legal.
- [49] I would dismiss this ground of appeal.

Delay

- [50] Mr. Demeter contends that if proceedings had not been delayed, he could not have been sentenced to probation.

- [51] Mr. Demeter is right that if he had been sentenced to the equivalent of five years' imprisonment on the very day he pleaded guilty, the judge could not have imposed a probation order. As of February 25, 2020, with appropriate credit for the time he had already served, he would have had just over two years left to serve, slightly over the limit for imposing probation in s. 731(1)(b) of the Code. But it was never the plan for Mr. Demeter to be sentenced immediately following his guilty pleas.
- [52] As is common when guilty pleas are entered during the course of trial, proceedings were adjourned to obtain pre-sentence and psychological assessment reports. Proceedings were adjourned to April 20, 2020, to schedule a future date for sentencing. Even if sentencing had proceeded on that date (as Mr. Demeter suggests should have occurred), the judge could have imposed a probation order. That is because as of April 20, 2020, with appropriate credit for the time he had already served, Mr. Demeter would have had just under two years left to serve, slightly under the limit in s. 731(1)(b) of the Code.
- [53] In the circumstances of this case, the delay in proceedings provides no basis for this Court to intervene. I would dismiss this ground of appeal.

Collateral Consequences

- [54] Mr. Demeter submits the judge failed to consider the particularly harsh conditions of his pre-trial custody, including the impact of restrictions associated with the COVID-19 pandemic. In the language used by the courts, Mr. Demeter submits the judge erred in failing to consider the collateral consequences of his pre-trial custody.
- [55] In *R. v. St. Constantine*, 2022 BCCA 6, this Court summarized the leading case on collateral consequences, *R. v. Pham*, 2013 SCC 15, as follows:
- [43] Collateral consequences are not aggravating or mitigating factors as they do not relate to the gravity of an offence or the moral blameworthiness of an offender. Rather, they are to be taken into account as personal circumstances of an offender. "Their relevance flows from the application of the principles of individualization and parity": *Pham* at para. 11. Their weight varies from case to case and "should be determined having regard to the type and seriousness of the offence": *Pham* at para. 12. While a sentencing judge has discretion to take collateral consequences into account, the sentence must ultimately remain proportionate to the gravity of the offence and the degree of responsibility of the offender: *Pham* at para. 14.
- [56] During the sentencing hearing, Mr. Demeter and his counsel very clearly articulated that he had been subjected to many restrictions due to the COVID-19 pandemic, including lack of access to programming, and that he had been seriously assaulted while in custody.

- [57] The judge was not obliged to refer to every argument advanced by Mr. Demeter (*R. v. Dinardo*, 2008 SCC 24 at para. 30; *R. v. Burns*, [1994] 1 S.C.R. 656 at 664-665, 1994 CanLII 127) but did specifically indicate that he had heard what Mr. Demeter had to say about the difficulties he was experiencing due to COVID-19. There is no reason to think the judge ignored what Mr. Demeter had said about being assaulted while in pre-trial custody or that it would have made any difference to the sentence the judge imposed.
- [58] As will be seen, the judge paid appropriately high deference to the parties' joint submission on sentence. The judge had every reason to accept that the joint submission took into account all of the collateral consequences of Mr. Demeter's pre-trial custody.
- [59] I would dismiss this ground of appeal.

Parity

- [60] Mr. Demeter submits that two of his co-accused received six-month custodial sentences, whereas he received an effective custodial sentence of five years plus three years of probation.
- [61] Section 718.2(b) of the Code codifies what is known as the "parity principle." The subsection provides that "a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances."
- [62] It appears to be common ground that two of Mr. Demeter's co-accused received far less time than he did. Unfortunately, according to the Crown, the reasons for sentence in those cases were not transcribed. As a result, this Court is unable to make a true comparison between the sentences imposed on Mr. Demeter and his co-accused. On the basis of the information before the Court, Mr. Demeter has not established that he and his co-accused were similarly situated. In these circumstances, this Court is unable to conclude that the sentence imposed on Mr. Demeter offended the parity principle.
- [63] I would dismiss this ground of appeal.

Fitness of Sentence

- [64] At the heart of Mr. Demeter's appeal is his assertion that the three-year period of probation imposed by the judge is excessive, making his sentence demonstrably unfit.
- [65] The overarching goal of sentencing is to impose a sentence that is proportionate to the gravity of the offence and the degree of responsibility of the offender: Code, s. 718.1; *Friesen* at para. 30. In the special case of joint submissions, the role of a sentencing court in determining a fit sentence is constrained.

- [66] In *R. v. Anthony-Cook*, 2016 SCC 43, the Supreme Court of Canada recognized the critical role joint submissions on sentence play in the proper functioning of the criminal justice system. The Court held that sentencing judges should generally defer to joint submissions and should not depart from them unless the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest: at para. 32.
- [67] In this case, the judge paid appropriate deference to the jointly proposed sentence. I say this for two main reasons.
- [68] The first is that Mr. Demeter has accumulated a serious record. He has previously received a five-year sentence for a similar offence. The sentence imposed was at the low end of the range for the combination of kidnapping, home invasion, obstruction and drug possession charges that were before the court, particularly given Mr. Demeter's record and the injuries suffered by the complainant. The jointly proposed sentence appears to have placed meaningful weight on Mr. Demeter's guilty pleas, his progress while in custody, the support of his family and the collateral consequences of his pre-trial custody. Otherwise, his sentence could have been longer, perhaps even much longer.
- [69] The second is the importance of supporting Mr. Demeter's recovery. In *Mathieu*, the Court emphasized that the purpose of probation is not to punish the offender but to facilitate their rehabilitation in the interests of public safety: at paras. 20-21. The Court highlighted that probation can be particularly important in cases like Mr. Demeter's where the offender has not had access to programming while serving pre-sentence custody: at para. 20.
- [70] The Court also noted that, if probation could not be imposed in cases where the time spent in pre-sentence custody plus the sentence of imprisonment imposed by the judge is more than two years, the judge might decide to impose a longer period of incarceration: at para. 22. The Court called this a "harmful consequence" which "would have the unfortunate effect of unjustifiably increasing the length of time to be served in prison" and undermine "the probation order's effect of facilitating an offender's reintegration into society": at para. 22.
- [71] In my view, the jointly proposed sentence imposed by the judge would not bring the administration of justice into disrepute or otherwise be contrary to the public interest. In all of the circumstances, the sentence was appropriate.
- [72] I would dismiss this ground of appeal.

Disposition

- [73] I think I speak on behalf of all members of the division in saying how impressed I am with Mr. Demeter's progress to date and his commitment to living a substance- and crime-free life. I hope that, in time, Mr. Demeter will come to see his probation order as supportive of his efforts to lead a better life, rather than as an unfounded and unfair punishment.

[74] I would grant Mr. Demeter leave to appeal but, for the reasons I have given, I would dismiss Mr. Demeter's appeal.

"The Honourable Mr. Justice Marchand"

I AGREE:

"The Honourable Mr. Justice Fitch"

I AGREE:

"The Honourable Madam Justice Fisher"

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