

CANADA / JUDGMENT

R. v. Dhanda

2023 BCCA 390

COURT

British Columbia Court of Appeal

DECIDED

13 October 2023

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2023 BCCA 390 R. v. Dhanda

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Dhanda,

2023 BCCA 390

Date: 20231013

Docket: CA47750

Between:

Rex

Respondent

And

Amarjit Dhanda

Appellant

Before:

The Honourable Justice Griffin

The Honourable Madam Justice DeWitt-Van Oosten

The Honourable Mr. Justice Voith

On appeal from: An order of the Provincial Court of British Columbia, dated
September 14, 2021 (sentence) (R. v. Dhanda, Port Coquitlam Docket 100401).

Oral Reasons for Judgment

Counsel for the Appellant:

E. Purtzki

Counsel for the Respondent:

M.A. Mereigh

J. Kim, Articled Student

Place and Date of Hearing:

Vancouver, British Columbia

October 13, 2023

Place and Date of Judgment:

Vancouver, British Columbia

October 13, 2023

Summary:

Ms. Dhanda appeals her nine-month custodial sentence imposed on her conviction of attempted obstruction of justice. She submits that the judge erred because in giving her a sentence equal to that of her husband, the co-offender Mr. Narwal, the judge did not take into account that the collateral consequences of the sentence would be worse for her, as primary caregiver of the parties' younger child. Held: Appeal dismissed. The judge considered the individual collateral consequences of the sentence imposed on Ms. Dhanda, as it would affect the family, taking into account her role as primary caregiver. The judge understood that the incarceration of both parents would have separate, collateral consequences, took this into account in determining a fit sentence, and sought to accommodate the family consequences by staggering the imposition of the sentences on the two offenders. The judge made no error in principle and did not fail to consider a relevant factor.

GRIFFIN J.A.:

Introduction

- [1] The appellant Ms. Amarjit Dhanda, and her spouse, Mr. Sikander Narwal, were each convicted of attempting to obstruct justice contrary to s. 139(3)(a) of the Criminal Code, with reasons indexed at 2019 BCPC 328 ("Reasons for Conviction"). An appeal from conviction was dismissed: 2023 BCCA 328 ("Reasons on Conviction Appeal").
- [2] Ms. Dhanda now seeks to appeal from her sentence of nine months' custody and two years' probation. Reasons for sentence were delivered on October 23, 2020 ("RFS #1") and September 14, 2021 ("RFS #2"). The sentence was imposed on the latter date.

- [3] Mr. Narwal was sentenced on October 23, 2020: ("Narwal RFS"). He received a sentence of nine months' custody plus two years' probation. The judge adjourned the imposition of Ms. Dhanda's sentence until it was thought Mr. Narwal's sentence had been served, at their request, to minimize the collateral consequences on their children: RFS #1 at para. 156.
- [4] Ms. Dhanda seeks an extension of time and an order granting leave to appeal from sentence, and I would grant these orders.
- [5] Ms. Dhanda's ground of appeal is that the judge did not sufficiently individualize each sentence. In particular, she says by imposing the same sentence on her and her husband, the judge erred in principle in failing to distinguish that the collateral consequences of the sentence would be worse for Ms. Dhanda and her youngest son, as she is the primary caregiver. The son was eight years old at the time of her sentencing. She says that this error had an impact on sentence. She submits that when her circumstances as "primary parent" are considered, the custodial part of the sentence ought to have been six months not nine months.
- [6] The Crown says that the judge made no error and carefully considered all relevant facts and individual circumstances.
- [7] Respectfully, I am not persuaded by Ms. Dhanda's submissions that the judge made an error in principle that impacted the sentence, and I would dismiss the appeal, for the following reasons.

Circumstances of the Offence

- [8] I turn briefly to the circumstances of the offence which are outlined in the various judgments on conviction and sentencing.
- [9] Ms. Dhanda was once friends with one of the complainants, Ms. Gill. According to Ms. Gill, she refused Ms. Dhanda's request to provide false information to ICBC in relation to Ms. Dhanda's claim for personal injuries. This led to an end to the friendship and the start of Ms. Dhanda's hostilities towards the Gill family.
- [10] The hostile behaviour included: a threatening phone call; vandalizing the Gill's home with feces and eggs; turning off the gas line and cutting telephone wires; and Ms. Dhanda's adult children driving by the Gill family home several times.
- [11] On May 29, 2017, Ms. Dhanda's brother, Sarabjit Dhanda, approached the Gill home carrying a knife. Ms. Gill's husband, Mr. Dutt, pursued Mr. Dhanda as he left the property; the vehicles stopped and Mr. Dhanda got out of the car and threatened Mr. Dutt with a knife and a hammer. Mr. Dhanda's vehicle returned to the Gill family home, while Ms. Gill was on the telephone with police. He left again but the police pulled over the vehicle soon after. Two hammers were found in the vehicle.

- [12] Four witnesses gave statements to police about Mr. Dhanda's behaviour: Ms. Gill, Mr. Dutt, and their nephew and niece who were present. Mr. Dhanda was charged with assault with a weapon.
- [13] This then led to a series of events where the four witnesses were pressured to recant. Ms. Dhanda and Mr. Narwal took steps in applying this pressure, including Mr. Narwal speaking to Mr. Dutt several times and having cars drive by the Gill family home. On one occasion, Ms. Dhanda stood outside the Gill home yelling and swearing at Ms. Gill; another time she flipped her middle finger at her; and another time while Ms. Gill was waiting in her vehicle at her son's school, Ms. Dhanda approached her and spat in her face. On one occasion, Ms. Dhanda was in her vehicle when one of the complainants was crossing the pedestrian crosswalk, and Ms. Dhanda revved the engine, frightening them. On two or three occasions, Ms. Dhanda made her presence known to Ms. Gill at Ms. Gill's children's or cousin's soccer practices, standing near her car watching, despite the fact that Ms. Dhanda's children were not involved in the practice. This caused Ms. Gill to fear for their safety: Reasons for Conviction at paras. 110, 114.
- [14] The sentencing judge described Ms. Dhanda and Mr. Narwal as engaging in a "campaign of harassment and threatening behaviours that targeted Ms. Gill and her family over a period of approximately three months": RFS #2 at para. 9.
- [15] All of this led to the four witnesses recanting their statements to police regarding Sarabjit Dhanda. However, one of the witnesses did tell the police officer "off the record" that she had been threatened.
- [16] Ultimately, Ms. Dhanda and Mr. Narwal were arrested on the charges that led to their convictions. Some of the evidence at trial included intercepted telephone calls between Ms. Dhanda and her brother when he was in custody on the assault charge.
- [17] At the sentencing of both parties, the Crown sought a sentence of 6 to 12 months' custody followed by two years' probation. Counsel for each offender submitted that a fit sentence would be a six-month conditional sentence order ("CSO") and probation.

Alleged Error in Sentencing

- [18] I turn now to the alleged error in sentencing.
- [19] Obstruction of justice is a very serious offence for which the maximum sentence is 10 years' imprisonment.
- [20] The key ground of appeal is that the judge did not apply the principle of individualization when concluding that Ms. Dhanda should receive the same sentence as her husband received. She submits that her personal circumstances justify a lesser sentence, in particular, her role as primary caregiver to her youngest child.

- [21] It is well-established that sentencing judges must consider all relevant circumstances in reaching a fit sentence, tailored to the offender's individual circumstances and moral culpability: *R. v. Parranto*, 2021 SCC 46 at paras. 44, 46. It is equally clear that an appellate court cannot interfere with a sentence simply because it would have weighed relevant factors differently: *R. v. Lacasse*, 2015 SCC 64 at para. 49.
- [22] The judge recognized that sentencing "is an individualized process" and made clear that he was considering Ms. Dhanda's circumstances and personal responsibility separately from that of Mr. Narwal: RFS #2 at para. 13.
- [23] The judge carefully reviewed Ms. Dhanda's personal circumstances, touching on her age, family members, work history, home life, responsibilities, and health.
- [24] Ms. Dhanda was 50 years old at time of sentencing.
- [25] Ms. Dhanda and Mr. Narwal had five children together, who were ages ranging from 23 to the youngest age eight at the time of Ms. Dhanda's sentencing. All of the children, including the two adult daughters, lived at home. The three youngest children attended elementary school: RFS #2 at para. 15.
- [26] Ms. Dhanda's youngest child, a son, had an apparent heart condition but there was no medical report providing the specifics: RFS #2 at para. 15. Submissions by her counsel at sentencing suggested that the disorder might require surgery at some point, and limited the child from playing sports and doing anything very physical. There was evidence that he also had been diagnosed with attention deficit disorder and encountered learning and behavioural issues at school.
- [27] Contrary to Ms. Dhanda's submissions, the judge expressly considered the fact Ms. Dhanda was the primary parent dealing with the youngest child's medical appointments, schooling, and implementing treatment recommendations for his behavioural issues: RFS #2 at para. 17.
- [28] The judge also noted that Ms. Dhanda had no prior criminal record; had a grade 12 education; grew up in a traditional caring Indian home environment; and took on some of her mother's responsibilities when her mother died when Ms. Dhanda was 23 years old. Ms. Dhanda married Mr. Narwal at age 25, and she described their relationship as "tumultuous" and that he was controlling. The judge recognized that Mr. Narwal had been charged with assaulting Ms. Dhanda in 2000, and was bound by conditions between 2000 and 2003. The parties divorced, but later reconciled and remarried in 2005.
- [29] The parties separated in 2013, but lived in the same house, with Mr. Narwal living in the basement suite.

- [30] Ms. Dhanda looked after the farm where she lived and cared for the children. She worked as a youth correction officer for 15 years, between 2000 and 2015. The judge noted that she gave up this position due to chronic back issues. She has ongoing pain in her spine: RFS #2 at paras. 23-24. The judge noted her limited financial circumstances: RFS #2 at para. 28.
- [31] The judge considered as a mitigating factor that Ms. Dhanda did not have a criminal record and was gainfully employed throughout much of her adulthood, and continued to look after the children and the farm once her employment ended: RFS #2 at para. 30
- [32] The judge took into account that Ms. Dhanda's prior employment might result in her having an especially difficult time in jail: RFS #2 at para. 56.
- [33] As aggravating factors, the judge considered the following factors:
- a) There was an element of planning involved in the commission of the corrupt acts;
 - b) The actions were prolonged and persistent, over a period of approximately three months;
 - c) The intimidation and threatening behaviours occurred at the victims' home, also exposing their children to these behaviours;
 - d) The behaviours had caused the victims to feel unsafe, which had a significant and longstanding impact on them, including causing them to move residences.
- RFS #2 at paras. 32-35.
- [34] The judge also referred to Ms. Dhanda's acts of intimidation occurring not only in the home but elsewhere in the community; her lack of insight or understanding of the offence; and the fact she had some limited contact with Ms. Gill after the offence despite being bound by a no-contact order: RFS #2 at para. 36.
- [35] While the judge carefully outlined their individual actions that led to the convictions, the judge found that Ms. Dhanda's moral blameworthiness for the offence is high and on equal footing to that of Mr. Narwal: RFS #2 at para. 37.
- [36] Ms. Dhanda has not suggested there is any error in principle in respect of the judge's findings regarding her moral blameworthiness.
- [37] There is no debate that it may be appropriate for a sentencing judge to examine collateral consequences that may result in a sentence having a more significant impact on the offender: *R. v. Suter*, 2018 SCC 34 at para. 48.
- [38] In sentencing Ms. Dhanda and her husband, the judge dealt with the collateral consequence of how the parties' children might be affected by a sentence of incarceration.
- [39] The judge gave express consideration to the potential that the children would experience both financial and emotional hardship if a custodial sentence is imposed on each parent: RFS #2 at paras. 42, 53-55.

- [40] That succinctly reflected Mr. Narwal's submissions that he was the prime breadwinner; and Ms. Dhanda's submissions that she was the primary caregiver. I accept that Ms. Dhanda performs more than emotional support for her children, but the judge's language was simply a way of summarizing the distinction between their roles. It was clear from the whole of the judge's reasons that the judge understood the role of Ms. Dhanda in the home and family.
- [41] At the time of sentencing Mr. Narwal, counsel for the the parties submitted that the parties' minor children might have to be placed in foster care if the parents received a custodial sentence. The judge noted there was no evidence of that and no evidence that the adult children could not assume a greater role if their parents were required to serve a custodial sentence. The two offenders also had extended family members who live locally: RFS #1 at paras. 145-146.
- [42] I note that while Ms. Dhanda suggests the family hardship will be a greater collateral consequence with her sentence because she is the primary parent, it could equally be argued that the financial hardship will be a greater collateral consequence of Mr. Narwal's sentence. These consequences cannot be measured precisely.
- [43] Ms. Dhanda's submissions on appeal seem to imply that her youngest child is fragile and is especially vulnerable if she is absent.
- [44] The record only supported the conclusion that Ms. Dhanda was the primary caregiver, not that her child needed specialized care and would not be able to receive it if Ms. Dhanda was absent for some months of incarceration.
- [45] The sentencing judge also took steps to minimize any collateral consequences by imposing the sentences in a staggered way, one after the other, so that there would always be a parent available to the children. As mentioned, Mr. Narwal was sentenced first, on October 23, 2020. Ms. Dhanda was later sentenced on September 14, 2021. However, due to subsequent steps taken to appeal from conviction and the granting of bail, the staggering of sentences did not occur precisely as envisioned by the sentencing judge. Nevertheless, we are informed Mr. Narwal has now served his custodial sentence, while Ms. Dhanda is incarcerated with a probable discharge date in mid-February 2024.
- [46] Given the son's age and the fact he would be able to remain in the home with another parent present for at least part of the time, and adult siblings, I do not see that it is an error in principle for the judge to fail to conclude that a period of months of incarceration of his mother would have a greater collateral consequence than a period of months of incarceration of his father, such that it justified a reduced sentence for Ms. Dhanda.

[47] Ms. Dhanda has not established that the judge made an error in principle or failed to consider a relevant factor. The judge considered the individual circumstances of the offence and Ms. Dhanda's individual circumstances. There is no merit to the suggestion that the sentencing judge did not consider the collateral consequences of Ms. Dhanda's sentence, namely, the impact it might have on her youngest child.

[48] It is not argued that Ms. Dhanda's sentence is otherwise disproportionate.

Disposition

[49] For these reasons, I would dismiss the appeal.

[50] DEWITT-VAN OOSTEN J.A.: I agree.

[51] VOITH J.A.: I agree.

[52] GRIFFIN J.A.: The application for an extension of time and leave to appeal is granted. The appeal is dismissed.

"The Honourable Justice Griffin"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/ca/23/03/2023BCCA0390.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-dhanda-2023>

Prepared on 25 October 2026 · Esheria