

CANADA / JUDGMENT

R. v. Diligenti

2024 BCSC 717

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Supreme Court of British Columbia

DECIDED

26 April 2024

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2024 BCSC 717 R. v. Diligenti

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Diligenti,

2024 BCSC 717

Date: 20240426

Docket: 32952

Registry: Vancouver

Rex

v.

Darin Carlos Slade Diligenti

Before: The Honourable Madam Justice Duncan

On appeal from: A decision of the Provincial Court of British Columbia, dated
May 30, 2022 (R. v. Diligenti, 2022 BCPC 192, North Vancouver Docket No. 67063).

Oral Reasons for Judgment

Counsel for the Crown:

D. Meagher

Counsel for the Appellant:

M.P. Klein, K.C.

Place and Date of Trial/Hearing:

Vancouver, B.C.

March 27, 2024

Place and Date of Judgment:

Vancouver, B.C.

April 26, 2024

Introduction

- [1] On May 5, 2021, the appellant, Darin Diligenti, was convicted of assault causing bodily harm contrary to s. 267(b) of the Criminal Code, R.S.C. 1985, c. C-46. On May 30, 2022 he was sentenced to six months imprisonment, probation for 12 months and ancillary orders including a DNA order, a victim fine surcharge and restitution in the amount of \$1,293.38.
- [2] The appellant's appeal from conviction was dismissed by Madam Justice Power on August 14, 2023: indexed at 2023 BCSC 1405. He now appeals against sentence.

The Circumstances of the Offence

- [3] The appellant and the victim, Anthony Smith, are adult stepbrothers. The appellant was 49 years old at the time of the offence. Mr. Smith was 38 years old.
- [4] On the day of the offence, the appellant was visiting his mother at her home in West Vancouver. The home is on a cul-de-sac and is situated below street level, accessible by a set of outside stairs. Mr. Smith was at the home to look into some electrical issues. Mr. Smith was accompanied by his apprentice, Andrew Maurer.
- [5] Mr. Smith and Mr. Maurer were going about their business, trying to determine the cause of the electrical issues. The appellant made a comment to Mr. Smith about his toupee. Mr. Smith ignored the comment and went up the stairs from the house to street level where his van was parked.
- [6] Mr. Smith stood at or near a power pole while Mr. Maurer went to the van to retrieve the tool he needed. Mr. Maurer did not have the key to the van so he walked around the van to where Mr. Smith was standing. He saw the appellant had come up the stairs from the house and was saying something to Mr. Smith about a bill for work in Whistler. Mr. Smith did not respond verbally but in Mr. Maurer's view did not look relaxed. Mr. Maurer said the appellant raised his voice, Mr. Smith turned around and took a step or two towards the appellant and began to say something in a calm tone when the appellant headbutted Mr. Smith.
- [7] After the headbutt, Mr. Smith fell backwards onto the ground. Mr. Maurer moved to get in between the two men.

- [8] Mr. Smith did not recall the moment of impact. He woke up on the ground and was bleeding. He got out his phone to try to record the appellant, who slapped the phone out of Mr. Smith's hand.
- [9] Mr. Smith suffered a broken nose and a chipped tooth. He had suffered major head trauma in 2015 and was worried about further damage from the assault. In his victim impact statement he described ongoing emotional difficulties stemming from the assault.
- [10] The appellant testified at trial. He maintained he did not want contact with Mr. Smith due to work previously done at his mother's house which allegedly led to water damage. Nevertheless, he asked Mr. Smith if he was responsible for the work and Mr. Smith ignored him. The appellant then made a remark about Mr. Smith's toupee, to the effect that he was a good-looking guy and should feel confident without it. Mr. Smith continued to ignore the appellant. The appellant said commenting about the toupee was standard commentary between stepbrothers.
- [11] The appellant acknowledged that he went up the stairs to the street, despite Mr. Smith having ignored him. He wanted to ask about some work Mr. Smith had done in Whistler. He maintains Mr. Smith came at him in a very quick and aggressive manner and he felt vulnerable. Mr. Smith came very close to him and the appellant dropped his chin and forehead to protect his face. There was some contact and Mr. Smith smiled at him and said "that's assault".
- [12] The appellant said Mr. Smith continued to harass him and acknowledged that he may have swiped at Mr. Smith's phone. The appellant went back down the stairs and was pursued by Mr. Smith and Mr. Maurer.
- [13] The appellant was aware that Mr. Smith had suffered a head injury several years earlier. At the sentencing hearing, Mr. Klein found the transcript reference from the Crown's cross-examination of the appellant at trial. The Crown suggested to the appellant that he knew that Mr. Smith was hospitalized in 2015 with skull fractures. The appellant replied that he did not know the details of the injuries, but he knew it was a head injury.
- [14] The trial judge did not believe the appellant's account of events. On the basis of the evidence that she did accept, she convicted the appellant of assault causing bodily harm.

Issues on Appeal

- [15] Mr. Klein, K.C., maintains that the sentence imposed was unfit and merits appellate intervention. He advances three grounds of appeal:
1. the six month period of incarceration is an unfit sentence, because it is disproportionate and unreasonably harsh;
 2. if incarceration is within the appropriate range, the trial judge erred in not imposing a conditional sentence order ("CSO");

3. for this offence and this offender, a conditional discharge is an appropriate sentence. In the alternative, a suspended sentence is appropriate.

[16] Mr. Meagher, counsel for the Crown respondent, reminds me that the sentencing judge had the unique advantage of seeing and hearing the witnesses, including the appellant, and I must apply a highly deferential standard of review.

[17] In *R. v. Lacasse*, 2015 SCC 64, Justice Wagner, as he then was, for the majority reiterated the narrowly circumscribed scope of review on an appeal against sentence:

[39] This Court has reiterated on many occasions that appellate courts may not intervene lightly, as trial judges have a broad discretion to impose the sentence they consider appropriate within the limits established by law: s. 718.3(1) of the Criminal Code; see also *R. v. Shropshire*, [1995] 4 S.C.R. 227, at para. 46; *R. v. L.M.*, 2008 SCC 31, [2008] 2 S.C.R. 163, at para. 14; *R. v. L.F.W.*, 2000 SCC 6, [2000] 1 S.C.R. 132, at para. 25; *R. v. Nasogaluak*, 2010 SCC 6, [2010] 1 S.C.R. 206, at paras. 43-46.

[40] In this regard, Iacobucci J. explained in *Shropshire* that consideration of the fitness of a sentence does not justify an appellate court taking an interventionist approach on appeal:

An appellate court should not be given free rein to modify a sentencing order simply because it feels that a different order ought to have been made. The formulation of a sentencing order is a profoundly subjective process; the trial judge has the advantage of having seen and heard all of the witnesses whereas the appellate court can only base itself upon a written record. A variation in the sentence should only be made if the court of appeal is convinced it is not fit. That is to say, that it has found the sentence to be clearly unreasonable. [para. 46]

[41] In *Proulx*, this Court, per Lamer C.J., discussed these same principles, which continue to be relevant:

In recent years, this Court has repeatedly stated that the sentence imposed by a trial court is entitled to considerable deference from appellate courts: see *Shropshire*, *supra*, at paras. 46-50; *M. (C.A.)*, *supra*, at paras. 89-94; *McDonnell*, *supra*, at paras. 15-17 (majority); *R. v. W. (G.)*, [1999] 3 S.C.R. 597, at paras. 18-19. In *M. (C.A.)*, at para. 90, I wrote:

Put simply, absent an error in principle, failure to consider a relevant factor, or an overemphasis of the appropriate factors, a court of appeal should only intervene to vary a sentence imposed at trial if the sentence is demonstrably unfit. Parliament explicitly vested sentencing judges with a discretion to determine the appropriate degree and kind of punishment under the Criminal Code. [First emphasis added; second emphasis in original.]

Although an appellate court might entertain a different opinion as to what objectives should be pursued and the best way to do so, that difference will generally not constitute an error of law justifying interference. Further, minor errors in the sequence of application of s. 742.1 may not warrant intervention by appellate courts. Again, I stress that appellate courts should not second-guess sentencing judges unless the sentence imposed is demonstrably unfit. [paras. 123 and 125]

These principles have since been reiterated in L.M. and Nasogaluak.

[18] Later in the reasons, Wagner J. said:

[44] In my view, an error in principle, the failure to consider a relevant factor or the erroneous consideration of an aggravating or mitigating factor will justify appellate intervention only where it appears from the trial judge's decision that such an error had an impact on the sentence.

[19] With that standard in mind, I turn to the reasons for sentence and the grounds of appeal raised by the appellant.

Fitness of the Six-Month Jail Sentence

[20] Counsel referred to eleven authorities at the sentencing hearing. They were roughly divided between sentences of imprisonment for a number of months and non-custodial sentences for the offence of assault causing bodily harm. In brief summary, those authorities are:

- a) R. v. Giraud, 2020 QCCQ 2657: the accused (28) was convicted of assault causing bodily harm and assault with a weapon. The victim (63) had given the accused cigarettes in the past, but on the day of the offence refused to give him a second one. The accused reacted aggressively to the refusal and blocked the victim's exit. The victim dropped his phone and, when he bent to pick him up, the accused struck him with an object. The victim sustained a deep gash over his left ear which required stitches. The accused had a record for prior convictions and had breached the terms of his release. He received a sentence of 14 months imprisonment.
- b) R. v. Leavitt, 2019 BCPC 143: the accused was convicted after a trial of assault causing bodily harm and uttering threats to his common law spouse. The two had a disagreement over money and the accused assaulted and threatened the victim over the course of about one and a half hours. The judge imposed a sentence of nine months on the assault causing bodily harm charge, which with credit for time served was reflected as one day in custody concurrent with the sentence for uttering threats.
- c) R. v. Volk, 2018 BCPC 58: the accused (49) was sentenced, after a trial, to 10 months imprisonment and 12 months probation for assault causing bodily harm to the victim, who was in his late sixties. The victim's adult son had been harassing the accused and his family over a long period of time. The accused went to the victim's house to confront the adult son. The victim and his wife were outside, told the accused their son was not there and told the accused to leave. The accused and victim yelled at each other and the accused punched the victim in the head, causing him to fall and sustain a brain injury. He was hospitalized for 10 days and had to learn to walk again. His driver's licence was restricted and he could not return to work. The accused had a dated, minor criminal record. He was gainfully employed, with two adult children and unlikely to ever commit such an offence again.

- d) R. v. Forsythe, 2016 BCPC 202: the accused was convicted after trial of assault causing bodily harm. He spat at the victim's car because he felt disrespected and believed the victim was Middle Eastern or South Asian. The victim got out of the car and put his hands out in a questioning gesture. The accused ran at the victim and punched him in the head, causing him to fall. The accused then kicked the victim with full force in the face. The victim's nose was broken and had to be re-set and he required 28 stitches on his lip. The accused was 30 years old with a prior record for serious violence, behavioural issues and he was on probation at the time. He was given a sentence of 18 months imprisonment less credit for 68 days pre-trial custody, plus probation.
- e) R. v. M.F.T., 2013 BCCA 20: the accused appealed a sentence for two counts of assault causing bodily harm. He went to his sons' school with his Grade 10 son and two other young males to seek revenge on a boy who had punched the accused's younger son, who was in Grade 9. The accused told the two young males, who were in the process of assaulting the intended victim, to let his Grade 10 son "get in there". The victim got the upper hand and the accused appeared to be about to intervene. A bystander tried to prevent him from doing so and the accused head-butted him, causing a split lip and some dental damage. The trial judge imposed six months jail on each conviction for assault causing bodily harm. The accused's sentence appeal was dismissed. Madam Justice Saunders said:
- [12] I do not see, in the reasons for sentence, any error of principle. Nor do I see any error in the application of relevant factors. That leaves only the issue of the fitness of the sentence. This was an unusual situation which involved a high degree of moral blameworthiness on the part of the appellant who was the instigator of a vengeful attack, through the instrument of three youths, one of whom was his son, on a 15 year old student. Notwithstanding the mitigating factors referred to by counsel, and by the judge, I cannot say the sentence is unfit.
- f) R. v. Ranspot, 2017 BCPC 101: the accused, a 60 year-old lawyer, entered a guilty plea to assault causing bodily harm to his intimate partner. They got into an argument and a physical altercation and the accused's actions caused lacerations and a bump to the complainant's head. The accused entered a guilty plea early and, notwithstanding a prior conviction for impaired driving, he received a conditional discharge. Alcohol was at the root of the problem and the accused had undergone counselling.
- g) R. v. Stard, 2016 BCPC 441: the accused went to hospital believing he was having a heart attack. He had consumed a significant amount of marijuana. He attacked the attending nurse without warning or provocation and punched him at least two or three times. The victim suffered a torn retina, bleeding in the eye socket and a concussion. He experienced PTSD as a result of the attack and did not return to work. The accused had no criminal record, was remorseful and accepted full responsibility. He received a conditional discharge.

- h) R. v. Smith, 2018 BCPC 266: the accused's former girlfriend began socializing with the victim at a gathering of young people. Some of them teased the accused and he lost his temper. He sucker punched the victim, who suffered extensive injuries to his face and mouth and was rendered unconscious. Dental repairs cost \$12,031. The accused was 20 with no prior record and entered a guilty plea. He received a conditional discharge.
 - i) R. v. Manahan, 2018 BCPC 332: the accused had been drinking at a pub for several hours. He got into an altercation and the victim tried to calm the situation. The accused and victim got into a pushing match and a female staff member separated them, but not before the accused sucker punched the victim. The victim fell to the floor and suffered significant facial injuries, requiring surgery and loss of time at work. The accused was extremely remorseful. He had no prior criminal record. The judge imposed a conditional discharge.
 - j) R. v. Kibangula, 2021 BCSC 1431: the accused was 25 with no previous convictions. He sucker punched the victim who had made a racial slur to him, apparently in jest. The victim fell through a window and required plastic surgery to repair injuries to his face. The judge at first instance imposed a suspended sentence. The justice on appeal admitted fresh evidence, allowed the appeal and imposed a conditional discharge.
 - k) R. v. Hambleton, 2021 BCPC 130: the accused was convicted, after a trial, of assault causing bodily harm. The accused believed the victim had insulted his wife and took steps to remedy the situation. He shook or punched the victim, causing an injury. He was in his late forties, with no criminal record. He received a conditional discharge.
- [21] Additional authorities were provided to me at the hearing of this appeal, but the foregoing summary of cases that were before the sentencing judge serve to illustrate the wide range of sentences imposed on individuals for assault causing bodily harm in a number of different scenarios. There was no "one size fits all" sentence, nor did the sentencing cases referred to bind the judge's hands in terms of range or type of penalty. The judge had to weigh and balance aggravating and mitigating factors in order to arrive at a fit sentence. That is a highly individualized process and, as can be seen from the passages from Lacasse, is shielded from appellate review by the principle of deference.
- [22] The trial judge was there to see and hear the witnesses and was in the best position to assess a fit sentence. A sentence of imprisonment was within the range of available sentences; however, in my respectful view she erred in arriving at both the length of sentence and how it was to be served.
- [23] The judge clearly took a dim view of the appellant's conduct. This is readily apparent from several passages in her reasons. In assessing the gravity of the offence, the judge said:
- [28] This is a critical question in arriving at the appropriate sentence here: That is, where does this particular offence land on the spectrum of gravity? Assessing the gravity in an offence involves considering the reasonably foreseeable potential harm flowing from the violent act. As stated in R. v. Friesen, 2020 SCC 9, at paragraph 84, in part:

Even if an offender commits a crime that fortunately results in no actual harm, courts must consider the potential for reasonably foreseeable harm when imposing sentence (A. Manson, *The Law of Sentencing* (2001), at p. 90).

- [29] Here, the reasonably foreseeable potential harm flowing from the single violent blow to Mr. Smith's head includes facial and head fracture, mouth trauma, loss of consciousness, and brain injury, both temporary and permanent. *Volk*, one of the cases relied on by the Crown, is a tragic illustration of the risk posed by Mr. Diligenti's intentional act: In that case, a single blow to the head resulted in a serious brain injury and long-lasting and profound consequences; (see: paragraphs 2 and 13 - 16).
- [30] In *Giraud*, the judge observed that where an assault involves a blow to the head, that chosen site of impact has a significant impact on sentencing (see: paragraph 80). In *M.T.F.*, the B.C. Court of Appeal quoted from the sentencing decision where the judge characterized a head butt as a manner of assault, "designed to cause injury and pain;" (see: *M.T.F.*, at paragraph 10). That is what Mr. Diligenti intended and that is what occurred.
- [31] The assault did not occur in the context of a consensual fight or anything of the kind: It was unprovoked and unexpected. It was, to use the language of some of the cases, "a sucker punch", a manner of assault described in *Giraud* as repugnant; (see: paragraph 75). Because the assault was unprovoked and unexpected, Mr. Smith had no opportunity to defend himself from the blow.
- [32] Increasing the gravity of the offence, because of the increased risk, is Mr. Diligenti's knowledge before he head butted Mr. Smith, that Mr. Smith had suffered a significant head injury a few years earlier. While a single blow is distinct from repeated blows, the assault was designed to cause injury and pain, and that is just what it did. The single blow was sufficiently forceful that it felled Mr. Smith, who immediately went to the ground upon being struck. Unsurprisingly, Mr. Smith was injured by the assault and has suffered some long-lasting sequela. The offence is on the high-end of the gravity spectrum.
- [24] The judge found the appellant's moral blameworthiness to be particularly high.
- [25] As to mitigating factors, the judge said:
- [55] Lack of criminal record is the most significant mitigating factor here. As well, Mr. Diligenti has not re-offended and he has not failed to comply with the terms of his undertaking. As mentioned, I accept that he is involved in his community, is a loving father and partner.
- [26] As for aggravating factors, the judge said:

- [62] The assault was unprovoked, unwarranted, and was a sucker punch to the head. All of those are aggravating factors. The pre-existing vulnerability known to Mr. Diligenti is an aggravating factor. The impact of the assault on Mr. Smith, given the provisions of the Criminal Code deeming significant impact an aggravating factor, is an aggravating factor here. (I am clear that the harm, that is to say the displaced fracture and the broken teeth, are part and parcel of the offence of assault causing bodily harm).
- [27] I pause to note that the fracture was not in fact a displaced one. I accept that the judge likely misspoke by calling it one and in any event, nothing turns on it.
- [28] The judge went on to consider the significant sentencing objectives in this case, which she identified as denunciation and deterrence, given that the offence involved unexplained violence. The judge did not reject rehabilitation as a significant objective of sentencing in this case, but found that the appellant lacked insight into his behaviour.
- [29] The judge observed that many of the cases cited by defence counsel involved youthful first offenders and guilty pleas, neither of which applied to the circumstances before her. She placed significant reliance on Volk, where a ten-month jail sentence was imposed on an adult offender for punching the victim and causing brain damage. The judge remarked on the injuries that the appellant could have caused: at para. 27. The judge went on to find as an aggravating factor that the appellant knew Mr. Smith had suffered a significant head injury several years earlier: at para. 32. The judge referred to the appellant's knowledge of the pre-existing injury again at para. 62. As I noted earlier in these reasons, however, while the appellant was aware of a head injury the evidence fell short of what the Crown asserted, which was knowledge of hospitalization for skull fractures in 2015.
- [30] The sentencing judge's task was not an easy one. The appellant was clearly the sole provocateur. He tried to engage verbally with the victim by taunting him over his toupee, then escalated things by following him up the stairs to his work van and complaining about some past work by the victim. The victim showed considerable fortitude in ignoring the taunts, but when he tried to defuse the situation, the appellant misread the victim's body language and lashed out with a head butt. The victim was knocked out and suffered some dental damage, as well as the worry that the blow would reactive symptoms from a head trauma several years earlier and some emotional difficulties.
- [31] There were clearly more aggravating factors than mitigating ones, but the sentencing judge added to the weight of the aggravating factors by emphasizing the injuries the appellant could have caused and aligning the circumstances more closely to those in Volk, and by attributing to the appellant a more detailed knowledge of the victim's previous head injury, which served to increase his moral blameworthiness. Those factors influenced the choice of a six-month jail sentence over either a shorter or less restrictive one and in my view constituted errors which led to the imposition of an unfit sentence.

- [32] Mr. Klein urges the imposition of a conditional discharge or a suspended sentence in place of the six-month sentence imposed, based on errors in the judge's analysis of those sentencing options. While it is possible to ferret out errors in the judge's conclusions that neither a conditional discharge nor a suspended sentence was a fit sentence, I remind myself that she was in the privileged position of seeing and hearing the witnesses, including the appellant, testify. Her conclusion that a period of incarceration was required in the circumstances was based on an "on the ground" assessment of the appellant and is due some deference.
- [33] This leads me to Mr. Klein's argument that the judge erred in rejecting a conditional sentence.
- [34] The judge addressed the availability of a conditional sentence, although counsel had not addressed a CSO in their submissions, as the Crown sought jail and defence sought a conditional discharge. She said:
- [72] The Court may order that an offender serve the sentence in the community if, (i), the safety of the community would not be endangered by the offender serving the sentence in the community, and (ii), a conditional sentence would be consistent with the fundamental purpose and principles of sentencing mentioned above. Because the actual cause of Mr. Diligenti's violence is unknown, despite his having no prior criminal record, it is difficult to assess whether his serving the sentence in the community would endanger the community or not, since the community includes other members of the Smith family. That is a consideration.
- [73] A significant further consideration is my conclusion that a conditional sentence order would not be consistent with the fundamental principle of sentencing. As noted in Forsythe and in Volk, given the significant weight to be placed on denunciation here, factors of retribution and punishment come into play. In *R. v. Hurley*, 2008 BCCA 461, the Court observed that incarceration generally has a greater deterrent effect as compared to a conditional sentence, which is broadly accepted as a more lenient sentence; (see: paragraph 16).
- [74] Here, Mr. Diligenti was the sole provocateur. There are not sufficient mitigating factors here that satisfy me that the objectives of deterrence, denunciation, and protection of the public would be met by a conditional sentence order.
- [35] Mr. Klein does not dispute that the appellant was the provocateur but he maintains that the judge placed an onus on the appellant to show that a conditional sentence was merited by mitigating factors and would not endanger the community, including the victim and his family.
- [36] The Crown's written submissions simply reiterate that a custodial sentence was not demonstrably unfit.

- [37] In *R. v. Proulx*, [2000] 1 S.C.R. 61, Chief Justice Lamer observed at para. 127 that no party is under a burden of proof to establish a conditional sentence is either appropriate or not appropriate. The judge should consider all relevant evidence, but it would be in the offender's best interests to establish elements militating in favour of a conditional sentence.
- [38] I agree with Mr. Klein that the judge's reasons appear to put on an onus on the appellant to explain his violent behaviour and somehow prove that he was not a danger to the community. The appellant's behaviour was undoubtedly violent, and he was the provocateur, but from his perspective he was defending himself. While this was not objectively reasonable, it was some explanation for why he behaved as he did. In addition, there was some unpleasantness in the family dynamic. The appellant and the accused were stepbrothers and apparently did not like each other. There was an explanation for the conduct, albeit not a particularly satisfactory or mature one.
- [39] Finally, I am mindful of the passage of time. The assault occurred in 2019, the conviction on May 5, 2021 and the sentence on May 30, 2022. The conviction appeal was dismissed on August 14, 2023. In all that time the appellant has not breached either his pre-trial or appeal bail terms. Time has proven he did not pose a danger to society, let alone to the victim and his family. And while a sentence served in jail is more onerous than one served in the community, a conditional sentence with strict terms for a now 51 year-old man with no criminal record and a family to support can provide the necessary deterrent and denunciatory effect.
- [40] Accordingly, pursuant to s. 742.1 of the Criminal Code, I impose the following conditional sentence order on the appellant for a period of three months, less six days representing the four days he has served in custody at the usual 1.5 to one credit, for a total of 84 days:
- a) keep the peace and be of good behaviour;
 - b) appear before the Court when required to do so by the Court;
 - c) report to a supervisor:
 - (i) within two working days, after the making of the conditional sentence order, and
 - (ii) thereafter, when required by the supervisor and in the manner directed by the supervisor;
 - d) remain within the province of British Columbia unless written permission to travel outside the jurisdiction is obtained from the court or the supervisor;
 - e) notify the court or the supervisor in advance of any change of name or address, and promptly notify the Court or the supervisor of any change of employment or occupation;
 - f) you must abstain absolutely from the consumption of drugs except in accordance with a medical prescription, of alcohol or of any other intoxicating substance;

- g) you must provide, for the purpose of analysis, a sample of a bodily substance prescribed by regulation on the demand of a peace officer, the supervisor or someone designated under subsection (7) to make a demand, at the place and time and on the day specified by the person making the demand, if that person has reasonable grounds to suspect that you have breached the condition of the order that requires you to abstain from the consumption of drugs, alcohol or any other intoxicating substance;
- h) you must abstain from communicating, directly or indirectly, with Anthony Smith or any member of his immediate family;
- i) you must perform 25 hours of community service in the first 60 days of the conditional sentence order; and
- j) you must abide by a curfew and remain in your residence between the hours of 10:00 p.m. and 6:00 a.m.

[41] You will receive a copy of this order. You may apply under s. 742.4 of the Criminal Code for a change to the optional conditions. If you breach any of the conditions, you will be brought back before me and will be liable to imprisonment for the balance of the order.

[42] The probation order imposed by the sentencing judge will remain in place as will all the ancillary orders.

"Duncan J."

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