

CANADA / JUDGMENT

R. v. Doran

2022 BCSC 1699

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Supreme Court of British Columbia

DECIDED

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2022 BCSC 1699 R. v. Doran

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Doran,

2022 BCSC 1699

Date: 20220609

Docket: 67721

Registry: Chilliwack

Regina

v.

Jennifer Patricia Doran

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Before: The Honourable Madam Justice Ker

Oral Reasons for Sentence

Counsel for the Crown:

L.J. Helps

The Accused, appearing in person:

J. P. Doran

Counsel appearing as Amicus Curiae:

P.R. Derksen

Place and Date of Hearing:

Chilliwack, B.C.

May 2, 2022

Place and Date of Judgment:

Abbotsford, B.C.

June 9, 2022

- [1] These Reasons for Judgment were delivered as oral reasons. They have since been edited for distribution.

Introduction

- [2] On January 20, 2022, following a ten-day trial, I found the offender, Jennifer Patricia Doran, guilty of one count of arson contrary to s. 433(a) of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. Ms. Doran is now before the Court for sentencing for this offence.
- [3] My reasons for judgment convicting Ms. Doran of this offence are indexed as 2022 BCSC 1697 (the "previous reasons").
- [4] The offence of arson with disregard for human life carries a maximum penalty of life imprisonment. Although this type of arson offence does not have a mandatory minimum sentence, s. 742.1(c) of the Code precludes a conditional sentence order ("CSO") for this offence.
- [5] The Crown seeks a sentence of two to three years imprisonment. If the Court is inclined to impose a sentence of two years or less imprisonment, the Crown also seeks a three-year probation order.
- [6] Arson under s. 433 of the Code is neither a primary nor secondary designated offence in s. 487.04 of the Code and does not engage s. 109 of the Code, the mandatory firearms prohibition order. Accordingly, the Crown is foreclosed from seeking a DNA order and a firearms prohibition order.
- [7] Ms. Doran has represented herself throughout these proceedings. Ms. Doran took no real position on the type or length of sentence to be imposed. She has cast herself as one of the victims in this offence. She blames a number of people for putting her in an impossible situation, including Jennifer Ridgeway, the Executive Director of the housing development where Ms. Doran was living at the time of the offence, as well as treating psychiatrists and a security guard at the housing development.

- [8] Amicus was appointed to assist the Court throughout these proceedings in light of Ms. Doran's status as a self-represented accused and a person experiencing mental health issues. Amicus argued that if a period of incarceration was necessary, it should not exceed two years' duration, so that appropriate community supervision in the form of a probation order can be included to assist in Ms. Doran's rehabilitation and in protecting the community.
- [9] My task is to determine the appropriate sentence for this offence. Crafting a proportionate sentence in accordance with the purpose, principles, and objectives the law requires in each unique case is one of the most challenging and difficult stages of the criminal justice process in Canada. This task is governed by ss. 718 through 718.2 of the Code and informed by relevant case authorities. Although the objectives set out in the statutory provisions guide courts and are clearly defined, the task of crafting a sentence nonetheless involves the sentencing judge exercising a broad discretion in balancing all of the relevant factors in order to meet the objectives of sentencing: *R. v. Lacasse*, 2015 SCC 64 at para. 1; *R. v. Parranto*, 2021 SCC 46 at para. 9.
- [10] Fundamental to this task is the need to ensure that the sentence imposed is proportionate to the gravity of the offence and the degree of responsibility of the offender (the "proportionality principle").

Circumstances of the Offence

- [11] The previous reasons set out the underlying facts in detail. Accordingly, those reasons inform my reasons for sentence and it is not necessary for me to review those circumstances in substantial detail here.
- [12] The offence occurred in the early morning hours of March 26, 2018. However, the genesis for the offence goes back further. Approximately five days before the offence, on "cheque day"--the day when social services and disability cheques are issued to individuals entitled to such support and benefits--Ms. Doran purchased approximately six 227-millilitre bottles of Ronsonol lighter fluid.
- [13] In the early morning hours of March 26, 2018, Ms. Doran sprayed lighter fluid on approximately three different piles of clothing and some area rugs in her suite at the Chilliwack Community Services housing complex known as "The Village." Prior to this, she had covered the suite's smoke detector and water sprinkler with plastic bags and packing tape in an effort to delay detection of the fire.
- [14] Before lighting the accelerant, Ms. Doran placed a small backpack with some personal belongings outside the door of her suite. This was caught on the surveillance video outside the door of her suite. After placing her backpack outside her suite, the surveillance footage captures Ms. Doran returning to her suite. Moments later, an orange glow is evident, Ms. Doran exits the suite, locks the door, and exits the building via a nearby staircase.

- [15] Ms. Doran used a zippo lighter to ignite the lighter fluid. When the ignition source of the lighter was applied to the accelerant, the fire ignited very quickly. As just noted, Ms. Doran left the building immediately. She alerted no one to the fire.
- [16] The Village is a 22-unit community housing complex in the City of Chilliwack that provides supported assistance to the most vulnerable members of the community. Many of the residents suffer from mental health or related issues. Accordingly, The Village provides accommodation to the more marginalized and vulnerable members of the community, many who are at risk of being homeless. Ms. Doran is one such individual.
- [17] Ms. Doran had been living in a suite in The Village for approximately three years prior to the offence. The evidence at trial established that Ms. Doran loved living in this unit at The Village. However, for reasons that are not entirely clear, Ms. Doran had been served with an eviction notice in early March 2018.
- [18] Prior to the eviction notice being served, Ms. Doran had been experiencing a number of significant stressors in her personal life. She had made complaints about one of the security guards "molesting" or sexually assaulting her. In her evidence at trial, Ms. Doran also referred to being abused by a number of people at The Village, including its Executive Director, Ms. Ridgeway.
- [19] Ms. Doran's stated reasons for setting fire to her clothing appeared to be twofold: to ensure Ms. Ridgeway was unable to take any of Ms. Doran's clothes, and also so that she would be sent to jail as she viewed this to be her only means of escaping her abusers.
- [20] At the time of the fire, The Village was occupied by a number of residents, many of whom were sleeping. At least two residents were people with physical disabilities--one resident was deaf and another resident used a wheelchair to assist with mobility.
- [21] Fortunately, the building had a very robust fire detection system. Thus, notwithstanding Ms. Doran's efforts to delay detection of the fire, the smoke detectors and sprinklers almost immediately activated after the fire was ignited.
- [22] The fire caused a fair amount of smoke and water damage to Ms. Doran's suite. It also triggered the sprinkler system in her suite, causing significant water damage to the surrounding suites and hallway areas adjacent to her suite. In all, the fire caused approximately \$95,000 in damage to the suite and building, which had to be repaired.

Impact on the Victims

- [23] No victim impact statement pursuant to s. 722 of the Code or community impact statement pursuant to s. 722.2 of the Code was filed in this case. While no such formal statements were provided, I have no doubt that the other residents and on-duty staff were frightened and possibly even traumatized by this offence. By committing this offence, Ms. Doran betrayed her neighbours' trust in her. I have no doubt that Ms. Doran's actions undermined the other residents' sense of peace and security in their surroundings--a residential setting of

community living for some of the most vulnerable members of that community. I have no doubt that Ms. Doran's actions in committing this offence also undermined the sense of security that those staff members, either on duty or who were called in to deal with the situation, experienced in their work environment. Fire in a residential setting is a very dangerous, volatile, and unpredictable event.

Circumstances of the Offender

- [24] In considering Ms. Doran's circumstances, I have had the benefit of a Community Supervisor Progress Report prepared by Ms. Doran's bail supervisor, a copy of Ms. Doran's résumé, as well as transcripts from Agassiz Secondary School for the 1996-1997 academic year (Grade 12 year as well as her Grade 11 marks) and Sprott Shaw College. In addition, I have had the benefit of Ms. Doran's evidence at trial and her submissions at the sentencing hearing.
- [25] Ms. Doran is currently 42 years old. She was 38 years old at the time of the offence.
- [26] Ms. Doran has no criminal record. She has one prior entry for an unrelated offence that resulted in a conditional discharge in 2009.
- [27] Ms. Doran was born in the Lower Mainland and appears to have lived most of her life in B.C. She graduated from Agassiz Secondary School in 1997. Her transcript confirms what was obvious throughout this trial: Ms. Doran is very smart. Of the five provincially examinable Grade 12 courses Ms. Doran was enrolled in, she received three A's, with marks between 88 and 94 percent, and two B's in Math 12 and Chemistry 12, with marks of 75 and 78 percent, respectively. Ms. Doran's Grade 11 non-provincially examinable courses confirm her academic abilities, with ten A's, one B, and one C+.
- [28] Ms. Doran attended Sprott Shaw College in Kelowna, B.C. and obtained a Professional Business Management Honours Diploma in 2001. She provided an interim transcript, filed as Exhibit 3 on this sentencing, which again confirms her intellectual and academic capabilities. She completed a two-year course in approximately eight months, sustaining a 92 percent course average and a 4.0 grade point average.
- [29] On several occasions during the trial, Ms. Doran insisted she was not a stupid person. I pause to note that no one had suggested anything of the sort. Her skills and abilities in representing herself and researching points of law confirmed her intellectual and academic abilities, as do her high school and college transcripts.
- [30] After graduating from Sprott Shaw's business program, Ms. Doran was employed between 2001 and 2006 as a Retail/Corporate Account Manager for Nature's Formula Health Products Ltd. in Kelowna.
- [31] Sometime in 2002, Ms. Doran was injured in a motor vehicle accident which significantly impacted her physical and psychological health, as well as her employment capabilities.

- [32] In 2007, she was employed as a Customer Service Representative for Money Mart in Kelowna and, for a time, as a cashier and night clerk at a Chevron station in Kelowna. In 2011, she was employed by the Ramada Hotel as a laundry and room service attendant in Harrison Hot Springs, B.C. From June 2016 to December 2016, she was employed in a variety of positions at the Yale Road McDonald's restaurant in Chilliwack, B.C.
- [33] Ms. Doran presents as a bit of an enigma. She obviously is very smart and an extremely hard worker with a lot of initiative and drive. However, she also appears to experience a number of mental health issues that have brought her into the provincial mental health system from time to time, the last time being a two-week stay on the psychiatric ward of Chilliwack General Hospital on March 26, 2018, following her initial detention for this offence. When she was discharged, she was arrested for this offence and then released on bail.
- [34] It is evident that Ms. Doran does not trust male psychiatrists or male mental health workers. Indeed, she trusts few males, including police officers, security guards, and the like. She refused to participate in the preparation of a pre-sentence report or a court-ordered risk assessment, if these could not be prepared by a female forensic psychiatrist or forensic psychologist. Apparently, despite the Court's recommendation that a female forensic psychiatrist or forensic psychologist assist in this respect, no such individual was available.
- [35] Ms. Doran's bail supervisor, Ms. Lauren Kozol, has assisted in gathering information about Ms. Doran's current circumstances and mental health concerns through a community supervisor progress report. This report has been of considerable assistance to the Court in determining a fit sentence for Ms. Doran.
- [36] I will pause to say that Ms. Doran is, in some respects, her own worst enemy. I accept that she has a number of mental health issues that create significant barriers for her. And, I accept that she is distrustful of mental health professionals, perhaps due to medication disagreements, diagnoses disagreements, and other unknown reasons.
- [37] I acknowledge that I am not a mental health professional and so I say, guardedly and respectfully, that Ms. Doran is a woman with a number of unresolved mental health issues. I do not think that Ms. Doran is unkind, stupid, pathologically cruel, or manipulative, but I have no doubt that she has complicated and unresolved mental health issues that include a significant distrust of others, particularly health professionals.
- [38] Fortunately, Ms. Kozol has been able to establish a trusting and respectful professional relationship with Ms. Doran and so, through the community supervisor progress report, the Court has been able to gain a little bit of insight into Ms. Doran's difficulties through a neutral and unbiased observer.
- [39] On p. 2 of this report, Ms. Kozol advises:

LIVING ARRANGEMENTS

Community Coordinator at Mission Community Services, Tanya, has confirmed that Ms. Doran resides in their second stage housing facility and has been able to secure and maintain housing since February 1, 2022, and is able to remain at the facility for the foreseeable future.

BEHAVIOUR, EMOTIONAL STATUS:

Constable Sayeh Hejazi of the Mission RCMP confirmed that since 2018, Ms. Doran has not been the subject of complaint on any police files and has kept the peace and been of good behaviour.

Ms. Doran signed a release of information between Hope Mental Health and Hope Community Corrections on September 5, 2019. Hope Mental Health worker, Christina, confirmed that Ms. Doran always showed up to all her appointments on time with the psychiatrist. Christina confirmed Ms. Doran has been diagnosed with Post Traumatic Stress Disorder, Bipolar Disorder, Panic Disorder, and Agoraphobia.

To support the diagnosis of Post-Traumatic Stress Disorder, Ms. Doran has disclosed past sexual, physical, and emotional trauma to Probation Officer Lauren Kozol on multiple occasions.

In November 2021, Ms. Doran moved to Abbotsford and Probation Officer Lauren Kozol referred her to Surrey Forensic Psychiatric Services as per her condition on her order. Ms. Doran complied with the referral and attended all scheduled appointments. The file was closed as Ms. Doran requested to be seen by a female psychiatrist and Surrey Forensic Psychiatric Services could not accommodate this request.

[40] I accept that Ms. Doran has experienced a number of mental health issues for some time, causing her to seek access to the medical assistance in dying ("MAID") program, as I outlined in my previous reasons. I also accept that those mental health issues had some role in the commission of this offence. However, what is unclear to me, due in large part to Ms. Doran's reluctance to be interviewed by a mental health professional, is the parameter and scope of that role in the commission of this offence. That is the enigma component that the Court has to wrestle with in terms of determining Ms. Doran's moral blameworthiness in the commission of this offence and in assessing an appropriate sentence in this case.

Positions of The Parties

[41] As I mentioned at the outset of these reasons, the Crown seeks a sentence of two to three years' imprisonment for this offence. The Crown provided a range of authorities to demonstrate the variability of sentence imposed for arson offences under both ss. 433 and 434 of the Code. The range captured in these cases is between 18 months' imprisonment to ten years' imprisonment. The authorities are as follows:

- R. v. Laforge, 2020 BCSC 1269;
- R. v. Greeley, [1980] B.C.J. No. 2211 (County Ct.); 4 W.C.B. 445;

- R. v. Li, 2020 BCSC 113;
- R. v. Dennis, 2018 BCPC 270;
- R. v. Fewer, [2004] N.J. No. 433, 65 W.C.B. (2d) 297 (N.L.P.C.);
- R. v. Leer, 2017 BCPC 235;
- R. v. Clifford, 2015 BCSC 875;
- R. v. Quigley, [1998] 105 B.C.A.C. 164 (C.A.), 1998 CanLII 4552 (B.C.C.A.);
- R. v. Saba, 2000 BCCA 580.

[42] The above authorities are ordered from the least onerous sentence of 18 months' imprisonment, through to the most onerous sentence of ten years' imprisonment.

[43] Ms. Doran did not provide any authorities on what she thought might be an appropriate sentence in this case. She spent a considerable amount of time outlining why she perceived herself to be a victim in this case and renewed her attack on Ms. Ridgeway as being the cause of this offence. On other occasions, Ms. Doran simply suggested that a jail sentence be imposed.

[44] Amicus did not disagree with the helpful summary of authorities that the Crown provided in her written submissions and acknowledged that the range of sentence in this sort of case is quite wide.

[45] Regarding the appropriate sentence for this case, amicus argued that if a sentence of imprisonment was necessary, it should not exceed two years and should include a term of probation to assist Ms. Doran in her rehabilitation and reintegration into the community.

[46] Amicus provided the Court with the decision of R. v. Gaudet, 2020 PESC 35, varied 2021 PECA 15 but not on this point, for Chief Justice Clements's review of the authorities at paras. 39-63. Gaudet was a sentencing in respect of arson pursuant to s. 434 of the Code--the less-serious form of arson being damage to property. In Gaudet, the range of sentence contained within the authorities reviewed by Clements C.J. was far lower than that for the more serious offence of arson endangering human life contained in s. 433 of the Code.

[47] Amicus also provided our Court of Appeal's decision in R. v. Day, 2013 BCCA 172, for the comments at paras. 15 and 17. In Day, the appellant set fire to a campervan belonging to his father, located on the family farm. The appellant lived intermittently in the camper, which was described as filthy. The motivation to set the camper on fire appears to have been in response to critical comments made by the appellant's father as to the deteriorated and filthy condition of the camper.

- [48] This camper was located within 30 feet of a home occupied by the appellant's brother and his family. It was also adjacent to a motor home owned and used by farm workers. The appellant did not want to hurt anyone by setting the camper ablaze and took steps to warn his brother immediately after setting it on fire.
- [49] In *Day*, the appellant entered a guilty plea to two counts of arson pursuant to s. 434 of the Code. The sentencing judge imposed a global sentence of two years less a day imprisonment (which was ultimately reduced to 17 months imprisonment for pretrial custody) and followed by two years probation. The appellant had a significant criminal record, although no arson convictions. He also had significant substance abuse issues and schizoaffective disorder. However, the psychiatric evidence adduced in *Day* established that the offender's mental illness did not cause him to commit the arson, and so his moral culpability was not reduced as a consequence of his mental illness. The Court of Appeal upheld this sentence and dismissed the appeal.
- [50] At para. 15 of *Day*, the Court of Appeal explains:
- [51] . . . while any arson is serious, there are ranges of seriousness within the offence, relying on *R. v. K.H.* (1994), 146 N.B.R. (2d) 372 (C.A.):
- By any yardstick, arson is a serious offence. An adult is liable to imprisonment for fourteen years. Fire, no matter how well planned, is often erratic and unpredictable and gives rise to unforeseen consequences. For sentencing purposes, arsonists are sometimes divided into four types: pyromaniacs or persons who are mentally disturbed, those who burn for no special reason or a grudge, vandals and those who burn for financial gain. *K.H.* and his two companions fall into the latter category, which is generally considered to be the most blameworthy type of arson, thus attracting the most severe punishment, although there are ranges within each category. [para. 6]
- [51] Significantly, however, in *Laforge* at para. 48, Justice Marchand, as he then was, noted a slightly different order of types of arsonists, with the grudge arsonist being in the most serious group, alongside those who burn for financial gain. I agree with the hierarchy as outlined by Marchand J.
- [52] Ms. Doran appears to fall within the category of arsonists referred to in *Day* and *Laforge* as those that burn for a grudge.
- [53] I also acknowledge that it may well be that Ms. Doran actually falls at the lowest end of the hierarchy--i.e. arsonists suffering from mental illness. The moral blameworthiness of such arsonists is often considered to be of the lowest level. Unfortunately, in light of Ms. Doran's refusal to cooperate with an assessment by a psychiatrist, the Court does not have the requisite detailed and specific evidence to establish a causal link between an underlying mental health disorder and the offending behaviour in this case.

Principles of Sentencing

- [54] The determination of a just and appropriate sentence is a highly individualized exercise that goes beyond any mathematical calculation. Many courts have recognized that imposing a just and proportionate sentence in serious cases like this is one of the most challenging responsibilities that judges must exercise. It involves the careful balancing of a variety of factors in the context of a particular set of circumstances in respect of a particular offender. The balancing process occurs within a legislative framework that is informed by common law principles. The legislative framework is set out in ss. 718 through 718.2 of the Code, which enumerates the purpose and the principles of sentencing.

General Principles

- [55] Under s. 718 of the Code, the fundamental purpose of sentencing is to protect society and to promote respect for the law and the maintenance of a just, peaceful, and safe society by imposing just sanctions. The objectives of such sanctions include denouncing unlawful conduct, deterring offenders and others from committing crimes, separating offenders from society where necessary, rehabilitating offenders, providing reparations for harm done to victims or to the community, and promoting a sense of responsibility in offenders.
- [56] Section 718.1 of the Code sets out the proportionality principle, which directs that a sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the offender. The proportionality principle is fundamental to Canadian law. Thus, whatever weight a judge may wish to accord to the objectives listed in s. 718, the resulting sentence must respect the fundamental principle of proportionality: *R. v. Nasogaluak*, 2010 SCC 6 at para. 40; *R. v. Parranto*, 2021 SCC 46.
- [57] Section 718.2 of the Code enumerates, in a non-exhaustive list, a number of other sentencing principles. Pursuant to s. 718.2(a), sentences are to be increased or reduced to account for any aggravating or mitigating circumstances. Subsection 718.2(b) sets out the parity principle, which requires that sentences should be similar for similar offences committed by similar offenders in similar circumstances. Subsections 718.2(c) through (e) promote restraint in sentencing. Subsection 718.2(c) sets out the totality principle, which requires that where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh. Subsections 718.2(d) and (e) emphasize the need for restraint in the use of imprisonment. These provisions require that an offender not be deprived of liberty if less restrictive sanctions are appropriate in the circumstances. Accordingly, courts should consider all available sanctions other than imprisonment that are reasonable in the circumstances and consistent with the harm done to victims or to the community, with particular attention to the circumstances of Indigenous offenders.

Specific Considerations for Arson

- [58] The primary objectives of sentencing in arson cases are denunciation and deterrence of the conduct that forms the basis of the offence. Of course, the objective of rehabilitation also informs the analysis and cannot be discounted or ignored where there is evidence that it exists. Rehabilitation relates to the idea that the offender has been able to make changes to their personal circumstances towards ensuring the offender does not re-offend in the future. Nevertheless, in some serious cases where deterrence and denunciation are the primary objectives, rehabilitation may be ascribed a reduced weight in the calculus of fashioning an appropriate sentence.
- [59] Section 433 arson is a very serious offence. The maximum punishment of life imprisonment reflects both its significant gravity and the fact that fire is erratic, unpredictable, and may give rise to significant unforeseen consequences, including extensive property damage, serious personal injury, and/or death: Laforge at para. 47, and cases cited therein.
- [60] In Fewer, the Honourable Judge Gorman adroitly observed:
- [36] The primary principles of sentencing that must be applied in all cases of arson are those of general deterrence and denunciation. Arson obviously causes property damage, however, the seriousness of this offence extends well beyond any property damage that might occur. Fire is inherently dangerous and difficult to control. Setting fire to a building can have unintended and fatal consequences. There are various individuals in our society that have the unenviable task of being required to respond to fires. They risk their lives every time they do so. Arsonists recklessly place the lives and safety of such individuals at risk. Therefore, the sentences imposed for this offence must reflect this factor.
- [61] To similar effect are the comments of the Honourable Judge Sidhu in her recent decision in *R. v. Panek*, 2022 BCPC 115 at para. 52.
- [62] In light of the broad spectrum of circumstances in respect of how arson is committed and the diverse groups of offenders who commit such offences, it is logical that arson offences in the Code carry broad sentencing ranges as reflected in the authorities provided at this sentence hearing. Crown counsel noted in her written submissions that, generally speaking, sentences tend to be in the range of two to four years' imprisonment, as evidenced by the decisions in *Li*, *Dennis*, and *Leer*. I found Crown counsel's written summary of the authorities, filed as Exhibit A, to be balanced and very helpful. The cases cited at paras. 16(a) through (i) demonstrate the broad range of sentence which courts in this province and elsewhere have imposed in arson cases pursuant to ss. 433 and 434 of the Code:
- a. *R. v. Laforge*, 2020 BCSC 1269 - Sentence: 18-months followed by 3 years probation. Indigenous offender pleaded guilty to setting a car on fire outside of a 7-11store. He waited for the occupants to leave the store and he chose the location because it was close to a firehall. He suffered from mental health and addictions issues and Gladue factors weighed heavily in the sentencing process owing to his childhood trauma and the disproportionate

impact his status as an indigenous person had when it came to his sentencing. He was cooperative with authorities and willing to take treatment. His motive for the arson was to bring attention to his perceived plight. Nobody was injured. [s. 434 of the Code]

- b. R. v. Greeley [1980] B.C.J. No. 2211 (BC Co. C) - Sentence: 2 years less one day jail followed by 2 years probation. 34 year old offender convicted after trial of setting fire to his landlord's home after a dispute that arose while he was in the process of moving out. Offender was otherwise of good character and had no criminal history. Offender had positive PSR, psychiatric report and character reference letters. He had an alcohol use issue. Nobody was present inside the home at the time of the fire; however, the damage did result in displacement of the occupants. The fire was characterized as being spur of the moment. [s. 434 of the Code]
- c. R. v. Li, 2020 BCSC 113 - Sentence: 2 years jail. 50 year old offender convicted of arson contrary to s. 434.1. The Offender was a landlord who rented out a duplex complex he owned. Prior to the fire, the offender was in an argument with his tenant and had previously served an eviction notice upon him. On the day of the fire, the tenant yelled racial epithets at the offender who was on site. The offender then entered the garage and intentionally set fire to the tenant's belongings inside to intimidate the tenant or to force him off the property. The fire destroyed the tenant's property and damaged the garage and the duplex. The arson was premeditated and the offender used gasoline. Following the fire, the offender fled the scene to the airport where he arrived 30 minutes after the fire started. He was apprehended after getting medical assistance for burns he suffered. The offender had no record, was of good character and had a history of useful and gainful employment. [s. 434 of the Code]
- d. R. v. Dennis, 2018 BCPC 270 - Sentence: 2 years jail followed by 3 years probation. 31 year old Indigenous offender set fire to a Sandman Inn in Kamloops where he and other family members were staying while they were evacuated by the forest fires raging on in the province. He had completed parole for a sexual offence just 71 days prior. He had a lengthy criminal history. At the time of the offence he had been consuming alcohol and drugs and was having difficulty adjusting to being released from custody. He trashed his hotel room at first and when police arrived he told them to arrest him. He had also set fire to his grandmother's suitcase that caused the sprinkler system to activate in the hotel. The sprinklers caused flooding and some property damage. He was found to have acted impulsively and without premeditation. His moral culpability was described as "complex" largely due to his indigeneity. [s. 433(a) of the Code]
- e. R. v. Fewer, 2004 CarswellNfld 389 (Prov. Ct.) - Sentence 27 months. 34 year old offender with unrelated criminal record burned down a house to ease his brother's pain. The brother had been sexually abused in that house as a child by a relative. The accused ensured the house was unoccupied by the time of the fire and the current occupants had no connection to the sexual abuse. [s. 434 of the Code]

- f. R. v. Leer, 2017 BCPC 235 - Sentence: 3 years before credit for time served. 2 years followed by 3 years probation. 18-year old mentally ill female accused set fire to the townhouse complex she was living in with her mother. Just prior to the fire she was released from hospital and while driving home with her mother tried to steer their vehicle into oncoming traffic. Her mother called 911 to report her erratic behaviour and her concern that the offender was release from hospital prematurely. While the mother was talking to 911, the offender deliberately set the fire with a candle. It spread and caused damage in excess of \$1 million. Nobody was hurt but it would have been foreseeable that other people would have been present. The accused presented a high risk to re-offend. [s. 433 of the Code]
 - g. R. v. Clifford, 2015 BCSC 875 - Sentence: 3 years jail. 49 year old offender with no record snuck onto an isolated remote property, destroyed trees that were contained in the orchard and burned down their garage. There was no fire service available due to the remoteness of the location and the victim tried to put out the fire without avail. Vehicles were destroyed as were other mementoes and other possessions in the garage. The offence was planned and characterized as vengeful, malicious, insidious, frightening, and menacing. The fire was in retaliation for a longstanding dispute and the offender had acted in as a vigilante. [s. 430 and s. 434 of the Code]
 - h. R. v. Quigley, 1998 CarswellBC 494 (BCCA) - Sentence: 5 years. 58 year old offender burned down a property he was renting after being evicted from the building. He had used gasoline to set the fire. There was substantial damage to the property, but nobody was injured. The accused suffered from a paranoid personality disorder. The offence involved planning and deliberation. [s. 433 of the Code]
 - i. R. v. Saba, 2000 BCCA 580 - Sentence: 10 years jail. 21-year-old offender with no prior record set fire to apartment block where he lived with his mother. Offender poured gasoline on the roof and in the stairwell prior to setting it on fire. The sentencing judge described the arson as deliberate and planned. 80 tenants occupied the apartment on the night of the fire, the majority were elderly. All managed to escape. The accused offered no insight into this offending and was not remorseful. He was convicted after trial. [s. 433 of the Code]
- [63] The authorities provided by the Crown made clear that every case is qualitatively and quantitatively different. Distinguishing features in the facts, the circumstances of the offender, or the impact on victims are fundamentally apparent. This is not surprising in light of the varied circumstances and purposes for which arson is committed. These decisions are proof of the seemingly trite but very important principle that sentencing is a highly-individualized exercise.

- [64] What the Crown's authorities do establish is this: the more the offence is planned, premeditated, or undertaken for fraudulent or vengeful purposes, or the greater the risk to human life it presents, the greater the sentence. The recent decision in *Panek* confirms that significant sentences of imprisonment can be imposed, even on first-time offenders. In *Panek*, the Court imposed a global sentence of four years for two offences: one under s. 433 (a residential building), and one under s. 434 (a church).

Mental Health Issues

- [65] I have alluded to the fact that Ms. Doran appears to have a number of different mental health diagnoses attributed to her. She has not denied that she has mental health issues. What role her mental health challenges played in this offence, however, remains a mystery at this point.
- [66] The jurisprudence recognizes that medically-diagnosed mental health conditions that are shown to have caused or contributed to the commission of an offence may be regarded as a mitigating factor warranting a reduction in sentence on the grounds that the offender's moral culpability or blameworthiness is attenuated.
- [67] For mental health to be considered a mitigating factor in sentencing, the offender must show a causal link between their illness and their criminal conduct. That is, the illness must be an underlying reason for the conduct. And, there must be evidence that a lengthy sentence would have a serious negative effect on the offender such that it should be reduced on compassionate grounds: *R. v. Fabbro*, 2021 ONCA 494 at paras. 25-26.
- [68] That an offender experiences mental health issues is not automatically a mitigating factor on sentence. It is only a mitigating factor if it is causally connected to the offending. The authorities make clear that it is an error in principle to assume an offender's moral blameworthiness for an offence is reduced automatically because they have a mental illness or other cognitive limitations.
- [69] The authorities have repeatedly affirmed that there needs to be detailed and specific evidence to establish and understand the relationship between an underlying mental health disorder and criminal behaviour. Where the causal link is not established as between the offender's mental illness and the commission of the offence, moral culpability cannot be reduced: *R. v. Merkel*, 2021 BCCA 445; *R. v. Milne*, 2021 BCCA 166; *R. v. Penttila*, 2020 BCCA 63; *R. v. Badhesa*, 2019 BCCA 70 at paras. 42-44.
- [70] The decision in *Fabbro* is illustrative of the type of evidence that will establish the causal link necessary for mental health issues to be considered a mitigating factor. In *Fabbro*, the offender pleaded guilty to a number of offences, including carrying a weapon (a sawed-off shotgun) for a purpose dangerous to the public peace. The offence unfolded through a routine traffic stop whereupon the offender placed the shotgun in his mouth and an hours-long standoff ensued, but ended peacefully. The offender had the shotgun to commit suicide and was certified under Ontario's Mental Health Act when he was arrested. The offender had

significant mental health issues and a longstanding substance abuse issue, which began when he was prescribed opioids to deal with pain from a motor vehicle accident. When doctors stopped his prescription, he turned to street drugs. Following the offence, he undertook a significant amount of treatment and counselling while on bail. Defence counsel sought a CSO but the sentencing judge denied it, imposing instead a sentence of two years less a day imprisonment to emphasize the primacy of the objective of deterrence and denunciation. The Ontario Court of Appeal concluded that the sentencing judge erred in failing to consider the role of the offender's mental health challenges in the commission of the offence, and so erred in failing to impose a CSO.

[71] The Ontario Court of Appeal in *Fabbro* noted there was ample evidence of the causal link between the offender's mental health issues and the commission of the offence at para. 26:

[26] While the sentencing judge acknowledged the appellant's addiction and mental health challenges, he did not consider whether there was a causal link between them and the offences. He was required to determine the extent to which those matters contributed to the appellant's conduct and the impact of that finding on the appropriate sentence: *R. v. Ellis*, 2013 ONCA 739, 303 C.C.C. (3d) 228, at para. 116, leave to appeal refused, [2014] S.C.C.A. No. 53. There was ample evidence of that causal link in the: two pre-sentence reports; medical records which included the appellant's attempts to get treatment at the Sault Area Hospital in the months leading up to the incident; and, reports from Dr. Pistor (psychiatrist), John Mertes (therapist), and Frank Perri (social worker). The conclusion that there was such a causal link is virtually inescapable on the evidence: the appellant wanted to commit suicide (using the shotgun) because of his addictions, his unresolved mental health issues, and the ensuing breakdown of his life. That the appellant's mental health problems and addiction played a central role in the offences is borne out by the appellant's conduct once on bail and being treated. He abided by strict bail conditions for over two years without a breach and fully complied with the rules and regulations of the John Howard Society Bail and Supervision Program.

[72] I conclude this review of the general principles of sentencing by returning to the fundamental principle of proportionality. In *R. v. Pham*, 2013 SCC 15, the Supreme Court of Canada discussed proportionality and its interplay with the sentencing objectives and other principles at paras. 7-8:

[7] LeBel J. explained proportionality as follows in *R. v. Ipeelee*, 2012 SCC 13, [2012] 1 S.C.R. 433, at para. 37:

Proportionality is the sine qua non of a just sanction. First, the principle ensures that a sentence reflects the gravity of the offence. This is closely tied to the objective of denunciation. It promotes justice for victims and ensures public confidence in the justice system. . . . Second, the principle of proportionality ensures that a sentence does not exceed what is appropriate, given the moral blameworthiness of the offender. In this sense, the principle serves a limiting or restraining function and ensures justice for the offender. In the Canadian criminal justice system, a just

sanction is one that reflects both perspectives on proportionality and does not elevate one at the expense of the other.

- [8] In addition to proportionality, the principle of parity and the correctional imperative of sentence individualization also inform the sentencing process. This Court has repeatedly emphasized the value of individualization in sentencing: *Ipeelee*, at para. 39; *R. v. Wust*, 2000 SCC 18, [2000] 1 S.C.R. 455, at para. 21; *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, at para. 92. Consequently, in determining what a fit sentence is, the sentencing judge should take into account any relevant aggravating or mitigating circumstances (s. 718.2(a) of the Criminal Code), as well as objective and subjective factors related to the offender's personal circumstances.
- [73] The Court emphasized this again in *Lacasse* at para. 53, instructing sentencing judges that proportionality is to be determined both on an individual basis (that is in relation to the offender themselves and to the offence committed by that person), and by comparison with sentences imposed for similar offences committed in similar circumstances. The concepts of individualization and parity of sentence must be reconciled for a sentence to be proportionate.
- [74] More recently, in *Parranto*, the Supreme Court returned to the principles of proportionality, parity, and the purpose of ranges in sentencing. The majority of the Court reiterated that the concepts of sentencing ranges and starting points are simply tools providing non-binding guidance for sentencing judges and appellate courts. Accordingly, they are "navigational buoys" or, put another way, they are "tools and not straitjackets": *Parranto* at paras. 3-4, 16-28, 36-37, 41, 205.
- [75] Regarding the purpose of sentencing ranges, the majority in *Parranto* held that ranges and starting points are tools that convey an appreciation of the gravity of the offence and offer judges "a place to begin their thinking." They are restricted to offence-based considerations and are to speak only to the gravity of the offence: *Parranto* at paras. 44, 46-47, 205.
- [76] The majority in *Parranto*, at paras. 9-12 and 205, also reminds that proportionality is the primary animating principle, while parity and individualization are secondary principles which inform the proportionality assessment. Because sentencing remains an individualized process, parity is secondary to proportionality: *Parranto* at paras. 9, 38, and 205. The gravity of the offence may be constant, but the individual offender varies. Thus, the question in sentencing remains: does the sentence reflect the gravity of the offence, the degree of responsibility of the offender, and the unique circumstances of each case?

Analysis

- [77] With these principles firmly in mind, I turn to the determination of an appropriate sentence for the offence committed by Ms. Doran.

[78] As noted earlier, Ms. Doran is before the Court for sentencing having been found guilty of the most serious form of arson: arson with disregard for human life. Ms. Doran's personal circumstances and the circumstances of this offence pose challenges to determining a fit sentence. I will begin by outlining the aggravating and mitigating circumstances that I find to be engaged in this case.

Aggravating Circumstances

[79] As noted earlier, a sentence should be increased to account for any relevant aggravating circumstances relating to the offence or the offender. The aggravating factors in respect of this offence are manifest in my previous reasons, which outline the circumstances of the offence and include the following:

i. Nighttime Offending

[80] The fire was lit at night, under the cover of darkness, at a time when the residents of the building--some of whom have physical disabilities--would likely be sleeping. Thus, the offences occurred in circumstances where the potential victims were very vulnerable neighbours. Accordingly, there was great risk to those inside the building.

ii. Magnitude of the Risk Caused

[81] The fire exposed many people to risk of harm, even significant harm and possibly death, including the residents of The Village, on-duty staff, neighbouring businesses and residences, and attending emergency services personnel.

iii. Loss of Security

[82] Ms. Doran offended against her neighbours and those who were trying to help her. She set ablaze a residence where vulnerable members of the community reside and are entitled to feel safe and secure. The Village is a key community institution that provides safe harbour, shelter, and a core existence for vulnerable individuals.

iv. Deliberate Nature of the Offence

[83] This arson was not the product of any kind of accidental or negligent behaviour. It was deliberate. Ms. Doran purchased lighter fluid days prior to the offence on cheque day for the purpose of lighting the fire.

v. Lack of Assistance

[84] When Ms. Doran observed the fire spiralling out of control, she failed to alert anyone or provide any assistance. In fact, she locked the door of her suite, left by an adjacent staircase, and walked away. She did nothing to limit the damage she inflicted or to ensure that rescuers would have a few extra minutes to get those most vulnerable out of the fire.

Mitigating Circumstances

[85] There are three mitigating circumstances in this case:

- i. Ms. Doran has no criminal record for the purposes of this sentencing;
- ii. Ms. Doran has been a model of good behaviour while bound by bail conditions over the past four years; and,
- iii. Ms. Doran expressed a measure of remorse both in her April 13, 2018 statement to Constable Micklefield and in her evidence, albeit a significantly qualified remorse. Accordingly, this third factor is only a partial mitigating factor.

[86] In her evidence at trial, Ms. Doran was genuinely horrified as to what could have happened to the other residents of The Village. To that extent, Ms. Doran appears to be remorseful. However, at the sentencing hearing, Ms. Doran appeared to partially dilute this indicium of remorse by casting herself as a victim in this offence and blaming Ms. Ridgeway and other amorously slated "abusers" for seemingly pushing her to act so rashly, such that she had to set fire to her clothing and suite to escape the abuse.

[87] There is no specific and direct evidence that establishes a causal connection or relationship between any underlying mental health disorder and the commission of this offence, as Ms. Doran refused to participate in the preparation of the court-ordered pre-sentence report and psychiatric report. To that end, I cannot conclusively find the existence of this mitigating factor as required by the Badhesa, Milne, Merkel, and Fabbro line of authority.

[88] However, having had the benefit of Ms. Doran's testimony before the Court at the trial and her submissions at the sentencing hearing, what I can say is this: Ms. Doran's mental health issues may have played some role in the commission of this offence.

[89] Ms. Doran sees herself as a victim and has donned the mantle of victimhood to explain why she committed this offence. And, in some respects, Ms. Doran may well be a victim of her own complex emotional and psychological difficulties. She presented at times as self-absorbed, lacking in insight, and perhaps suffering from a persecution complex. It is probably safe to say that there can be little doubt that Ms. Doran's mental health difficulties had some role in this offence, but it is impossible to discern what role or how much of a role it played, as that detailed and specific medical evidence is lacking.

[90] Certainly Ms. Doran was living in a supportive housing complex for individuals with mental health challenges when she committed this offence. Moreover, she was hospitalized pursuant to the provisions of the Mental Health Act, R.S.B.C. 1996, c. 228, following her detention on March 26, 2018 and remained committed to the psychiatric ward of the Chilliwack General Hospital until her discharge and arrest on or about April 13, 2018. In addition, Exhibit 1 of the community supervisor progress report outlines various psychiatric diagnoses that suggest Ms. Doran struggles with mental health issues.

- [91] Accordingly, I suspect and infer that Ms. Doran's mental health issues had a role to play in this offence, which attenuates her moral culpability to a degree, albeit not as significant a degree as in cases like Fabbro or Laforge. This means that Ms. Doran's moral blameworthiness cannot be significantly diluted such that it results in a significant sentencing reduction in this case.
- [92] Regarding the offence-based side of the equation of the proportionality analysis, this offence is extremely serious. Ms. Doran's degree of responsibility is also fairly high given the planned nature of the offence and the steps taken to implement it.

Determination

- [93] In summary, this was a very serious offence that could have had catastrophic consequences, but for the building's extremely efficient fire detection system and the quick actions of the night staff and emergency responders. Ms. Doran's degree of responsibility for committing this offence is high, especially given the planning and deliberation that went into it. Her degree of responsibility is attenuated only minimally by her evident and underlying mental health issues.
- [94] The authorities are clear that denunciation and deterrence are the key objectives of sentencing in a case like this. Measured against this is a 42-year-old woman with a significant work history, no criminal record, and seemingly complex mental health issues.
- [95] Balancing as best I can the competing principles and objectives of sentencing, the aggravating and mitigating circumstances that I have found in this case, and Ms. Doran's personal circumstances, as well as exercising the maximum restraint that I conclude is permissible in the circumstances, I find a fit sentence to be two years less a day imprisonment followed by a probation order of three years.
- [96] THE COURT: Ms. Doran, once you are released from serving your term of imprisonment, you must comply with the terms of a probation order for 36 months. The conditions are as follows.
1. You must keep the peace and be of good behaviour.
 2. You must appear before the Court when required to do so by the Court.
 3. You must notify the Court or the probation officer in advance of any change of name or address, and promptly notify the Court or the officer of any change of employment or occupation.
 4. You must report in person to a probation officer at the Abbotsford Community Corrections office, 1400 - 32375 Veterans Way, Abbotsford, B.C., within two business days after your release from custody, unless you have obtained, before your release from custody, written permission from the probation officer to report elsewhere or within a different timeframe. After that, you must report as directed by your probation officer.

5. You must have no contact or communication, directly or indirectly, with Jennifer Ridgeway.
 6. You must live at an address approved in advance by your probation officer and provide them with your phone number. You must not change your address or phone number without prior written permission from your probation officer.
 7. You must attend, participate in and complete any intake, assessment, counselling, or education program as directed by your probation officer. This may include but is not limited to counselling or programming for:
 - a) anger management;
 - b) violence prevention;
 - c) alcohol or drug addiction;
 - d) mental health; and/or
 - e) other issues.
 8. You must not possess any incendiary device, flammable product, or explosive substance, including but not limited to lighters, matches, jerry cans, fire accelerants, or fireworks, outside of your residence, except with the prior written permission of your probation officer. You must carry the permission, which may be in electronic format, when you possess any of these items outside your residence.
- [97] THE COURT: All right. Before we conclude, I just want to say thank you very much to Ms. Helps and Mr. Derksen for your professionalism, patience, and the sensitivity with which you have conducted this case. The Court is indebted to you for your assistance, thank you.
- [98] Ms. Doran, good luck to you. Thank you. We are adjourned.
- "Ker J."

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