

CANADA / JUDGMENT

R. v. Dorsey

2022 BCSC 1397

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Supreme Court of British Columbia

DECIDED

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2022 BCSC 1397 R. v. Dorsey

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Dorsey,

2022 BCSC 1397

Date: 20220520

Docket: 35760

Registry: Williams Lake

Regina

v.

Bryan Mathew Dorsey

Before: The Honourable Justice Jenkins

Oral Reasons for Sentence

Counsel for the Crown:

A. McInnes

J.A. Billingsley

Counsel for the Accused:

W.J. Herdy

Place and Date of Trial/Hearing:

Williams Lake, B.C.

May 19, 2022

Place and Date of Judgment:

Williams Lake, B.C.

May 20, 2022

- [1] THE COURT: These are my reasons for sentencing of Mr. Dorsey. I reserve the right to edit these reasons should they be transcribed and make corrections for clarification purposes. However, the result will not change at a later date if these changes are put into writing.
- [2] On October 18, 2022, Mr. Dorsey entered a plea of guilty to possessing a controlled substance, to wit, cocaine, for the purpose of trafficking contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19.

CIRCUMSTANCES OF THE OFFENCE

- [3] Counsel have entered as Exhibit 1 on sentencing, an agreed statement of fact, which is very helpful and provides a detailed description of items seized, undercover purchases of cocaine from persons known to have attended at Mr. Dorsey's residence shortly before his arrest, and they had access to a phone on occasions when Mr. Dorsey was observed at the residence. In an expert report of Constable Gillis of the RCMP, regarding the value of the seized drugs, he concluded at page 7:

It is my opinion that the person running the dial-a-dope ring resided at the address on 12th Avenue North in Williams Lake as this was the location of the digital scales, large sums of cash, packaging material, a large quantity of cocaine. The cellphone used in the ring was dropped off and picked up by multiple people, who then sold to undercover police officers. Based upon the above information, I am of the opinion that the cocaine located inside the residence on 12th Avenue [I am just not referring to the actual address] was possessed for the purpose of trafficking.

- [4] The indictment followed an investigation starting on February 9, 2018, by the Williams Lake RCMP, into what was believed to be a dial-a-dope operation and resulted in a search warrant executed April 7, at the residence in Williams Lake, believed to be the residence of Mr. Dorsey. The RCMP found and seized a total of 282 grams of powdered cocaine in the living room, some in bulk, some in prepackaged dime bags, some in a large Ziploc bag; a scale; and a safe in a bedroom, with Mr. Dorsey's clothing and passport. The safe contained two bundles of cash totalling \$10,000, together with a scale, which tested positive for cocaine. According to the expert report of Constable Gillis, the value of the cocaine seized at the residence ranged between \$22,296 and \$37,159, the higher value if sold in quantities of .6 grams and the lower for sales at 1.0 grams.

- [5] The results of surveillance on the residence, together with the items found in the home, lead to the conclusion that Mr. Dorsey was operating, or at least heavily involved in, possibly coordinating a dial-a-dope operation at the mid-level, considering the quantities of cocaine, the amount of cash found in the safe, and the funds secured from Mr. Squires shortly after leaving Mr. Dorsey's residence. However, I acknowledge Mr. Herdy's comments that those funds were not directly linked to Mr. Dorsey.

CIRCUMSTANCES OF THE OFFENDER

- [6] Mr. Dorsey is Indigenous, a member of the Ulkatcho First Nation on his father's side. His mother is not Indigenous. Mr. Dorsey is 37 years old. In his early childhood, he lived with his mother and two siblings in the Ulkatcho First Nation, previously known as Anahim Lake. He was not fully accepted into the community with the Ulkatcho First Nation, and was often referred to as "Whitey" on the Reserve. Mr. Dorsey and his siblings were often victimized and bullied. Although he spent his early years with the Ulkatcho First Nation, he reports not having a sense of belonging in that community. He was also exposed to violence and abuse in the family home on the part of his father and, to a lesser degree, his mother, who was primarily responsible for his care and relocated the family to Williams Lake when he was approximately 13 years old. Also, the acrimony between his parents reflected negatively on Mr. Dorsey, who experienced a troubled youth while living with the Ulkatcho First Nation. He advised that after the move to Williams Lake, he no longer suffered the bullying and racism experienced in his early years.
- [7] Mr. Dorsey is one course short of graduation from high school and has taken post-secondary training as a heavy-duty mechanic. He is planning on completing his high school graduation and has registered with courses to that effect. Since his release after his arrest, Mr. Dorsey has been gainfully employed, more recently at the Mount Polley Mine with a contractor, where he has been promoted. In his life, he is financially stable. He lives with his sister in Williams Lake and has a steady and stable relationship with his girlfriend. He is healthy and hopes to attend business school in the Lower Mainland, possibly at BCIT, I noted from one of the reports, or at a private college in Downtown Vancouver. Also, Mr. Dorsey acknowledges the trauma experienced in his childhood and, according to the author of his Gladue report, has expressed an interest in obtaining counselling to assist him in understanding and dealing with the trauma of his childhood.
- [8] Finally, Ms. Patterson, the author of the Gladue report for Mr. Dorsey, reports that Mr. Dorsey has expressed regret and shame for his involvement in the offence and stated he "was swept up with the wrong crowd." It was also reported that Mr. Dorsey no longer has a relationship with those who he referred to as the "wrong crowd." Mr. Dorsey testified during his sentencing and repeated his remorse and regret before the court.

- [9] The lone previous conviction Mr. Dorsey has recorded on his JUSTIN conviction list was in 2008, for prohibited driving while over .08 blood alcohol while he was in his early 20s, which I do not consider to be significant in the circumstances and not an aggravating factor on sentencing, which I will refer to later in these reasons. Although I am advised there were two other convictions for driving offences, I understand the Crown is not alleging any of the convictions amount to aggravating factors.

IMPACT ON THE COMMUNITY

- [10] In *R. v. Gill*, 2013 BCCA 320, the Court of Appeal commented at para. 22:

It is well known that dial-a-dope operations enable a pervasive and rapid dissemination of illicit narcotics that wreak destruction to both the individuals who use them and to our community. The proliferation of these operations has significantly increased accessibility to these drugs, and their harmful effects. As a result, the courts have routinely recognized that the primary objectives in imposing sentences for trafficking in this manner must be deterrence and denunciation.

- [11] The effect of illicit narcotics appears to have worsened since the Court of Appeal decision in 2013, and shows no signs of abating in British Columbia, in spite of the efforts of law enforcement and sentences which have been handed down in our courts.

MITIGATING CIRCUMSTANCES

- [12] Circumstances which would serve to mitigate a pending sentence would include an early guilty plea, that Mr. Dorsey was dealing with addiction issues at the time, he has expressed considerable remorse and responsibility, has distanced himself from those persons he frequented in the drug world, is gainfully and successfully employed, and has had no incidents relating to his bail. I accept the sincerity of Mr. Dorsey's remorse and his acceptance of responsibility.
- [13] As I stated earlier, during the sentencing hearing, Mr. Dorsey took the stand and answered several questions regarding his future plans, his prior use of illegal drugs and alcohol, and having friends and a lifestyle which led to this crime. Also, respecting mitigating circumstances, I have reviewed the detail in the presentence report and the Gladue report which provided me with a detailed description of his upbringing and the effect of the violence inflicted on Mr. Dorsey, as well as the abuse by schoolmates in elementary school, which left Mr. Dorsey, as Mr. Dorsey's counsel stated, ostracized and marginalized during his years at school in the Ulkatcho Nation. In effect, he was marginalized by those who were also marginalized at the time. I expect Mr. Dorsey's upbringing left a young boy and man with little optimism about his chances in life, and little guidance as to how to move forward. His father attended a Residential School, as had his grandfather and the effects of the conditions endured by Mr. Dorsey's father, who is now deceased, likely led to his abuse of Mr. Dorsey and Mr. Dorsey's mother. The Gladue report refers to the effects of Residential Schools on an intergenerational basis, as well.

- [14] Mr. Dorsey has also submitted two letters of support from his employers, who speak highly of his dedication to his work with them, his reliability and responsibility. He will have no difficulty, if in the community, to be able to continue his employment and is likely to succeed in advancing. Mr. Dorsey has also referred to the possibility of training in online marketing and proposes to enter a school in Vancouver, which would provide him with that adequate training to be able to succeed in that profession, hopefully. Although I find Mr. Dorsey's plans in that respect to be admirable, at this point it may be wishful thinking and his future in that respect is very much speculative.
- [15] Section 718.2(e) gives rise to the Gladue report which was recently received and provides a comprehensive report of Mr. Dorsey's relationship with the Ulkatcho First Nation, some of which I have referred to previously when discussing Mr. Dorsey's circumstances. Ms. Patterson, who is the author of the report, at page 10 refers to previous and proposed interventions and, at page 11, to the healing plan and restorative justice considerations. She references the First Nations Health Authority, Indian Residential School Resolution Health Program, his employment, and further discusses aftercare to assist Mr. Dorsey with access to culturally relevant services, dedicated to assist his healing; and counsellors through the Indian Residential School's Resolution Health Program, as funded by the First Nation Health Authority. At page 11 of her report, she refers to the possibility of 60 sessions of mental health and emotional support, for which Mr. Dorsey is eligible.
- [16] These circumstances of your upbringing bring home the reasoning behind s. 718.2(e) of the Criminal Code, which require me to consider all available sanctions other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims with particular attention to the circumstances of the Aboriginal offenders and amount to a mitigating factor.

AGGRAVATING CIRCUMSTANCES

- [17] Turning to the aggravating circumstances, the most aggravating factor in the case of Mr. Dorsey is his entry into the illegal drug trade; that he was operating as a mid-level drug dealer which involved organization, including purchasing large amounts of cocaine, organizing a group of persons who would make sales at the street or personal level for use; for all intents and purposes, was in the business for profit, presumably to support a lifestyle, although he admitted to using cocaine prior to the offence. His actions led to planned criminal activity in a hierarchy where he was perhaps not at the top of the hierarchy, but certainly at a serious mid-level role.
- [18] I have previously, in these reasons, referred to the impact of dial-a-dope operations in the community at large and the devastating effect of illegal drugs in all sections of our society in the community of Williams Lake. The effect of illegal drugs sales in smaller communities, such as Williams Lake, can be even more devastating than in the large cities.

[19] The Crown has pointed out the duration of the enterprise as an aggravating factor and referenced the decision of *R. v. Deol*, 2019 BCSC 1879, a decision of Justice Riley, in which he stated at para. 39:

First, there is the fact that the operation was ongoing in nature. Mr. Deol was not involved in an isolated act of trafficking, based on a single bad decision or a momentary lapse in judgment. Rather, he was part of a committed, ongoing, drug trafficking business over a period of weeks or months.

[20] Cocaine is one of the most common and dangerous illegal drugs with potentially serious health consequences for users. Knives, bear spray, and baseball bats, all of which can amount to weapons and resulting violence, are not uncommon in the world of illegal drugs and those were found in Mr. Dorsey's residence, as well.

PRINCIPLES OF SENTENCING

[21] Section 718 of the Criminal Code sets out the purposes and principles of sentencing as follows:

The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and [finally]
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

[22] Section 718.1 is also very important, and important in this case, and states as a fundamental principle of sentencing that:

A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[23] Section 718.2 sets out other sentencing principles to be considered by a judge including aggravating and mitigating circumstances and, importantly in this case, as I have referred to earlier, s. 718.2(e) which states that:

- (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

POSITION OF THE CROWN

- [24] The position of the Crown is quite straightforward. The Crown submits that an appropriate sentence, in these circumstances, would be 36 months of incarceration.
- [25] There is no doubt, based upon the principles of sentencing in the Criminal Code, and based upon the many authorities, that denunciation and deterrence are the most important principles for consideration in cases of dial-a-dope offenders; that denunciation and deterrence has over and over again, been considered to be the most important principle of sentencing for these offences. I refer to *R. v. Shusterman*, 2012 BCSC 362, a decision of Justice Romilly, in which he stated that the range of sentences for the type of street-level trafficking in cocaine involved in the case at bar, would appear to be six months to three years, and I note that refers to street-level trafficking. The discussion in *Shusterman* of offending at higher levels of trafficking referred to sentence ranges between one and three years.
- [26] Other cases referred to me include *R. v. Davidson*, 2014 BCSC 269; *R. v. Harris*, 2017 BCSC 1552, with a 36-month sentence; and *R. v. Allen*, 2014 BCSC 1024, with a 30-month sentence; and other cases which I will not refer to here.

THE POSITION OF THE OFFENDER

- [27] Mr. Dorsey seeks a conditional sentence under s. 742.1, and has referred me to the cases of *R. v. Chen*, 2021 BCSC 697 [Chen], a decision of Justice Schultes; *R. v. Sharma* (2020), 152 O.R. (3d) 209, and 2020 ONCA 478 [Sharma]; and *R. v. Aeichele*, 2022 BCSC 195, to support his position.
- [28] The issue of whether or not a conditional sentencing order is appropriate in the circumstances of this case, is at the heart of this sentencing hearing. Imposing conditional sentences is covered in s. 742.1 of the Criminal Code, which permits a court, if imposing a sentence of imprisonment of less than two years, the court may order the sentence to be served in the community, subject to the conditions in s. 742.3 if, on all other factors, the sentence is not prosecuted by indictment for which a maximum term of imprisonment is 14 years or life and other conditions.
- [29] The decisions referred to me by Mr. Herdy, for Mr. Dorsey, have found that conditional sentences can be ordered, irrespective of the conditions referred in 742.1(c). The leading case relating to conditional sentences is *R. v. Proulx*, [2000] 1 S.C.R. 61 [Proulx], in which the Court listed in its summary, after extensive discussion, the most significant item here being item 8 in para. 127:

8. A conditional sentence can provide significant denunciation and deterrence. As a general matter, the more serious the offence, the longer and more onerous the conditional sentence should be. There may be some circumstances, however, where the need for denunciation or deterrence is so pressing that incarceration will be the only suitable way in which to express society's condemnation of the offender's conduct or to deter similar conduct in the future.

[30] I also refer to s. 718.1, which establishes proportionality as a primary sentencing principle and refer to the words of Justice G.P. Weatherill in *Aeichele* at para. 45 where, after referencing the words of s. 718.1, he added:

Parity and individualization inform it. [That is, proportionality] The gravity of the offence may be constant, but the individual offender varies.

[31] I turn to the decision of Justice Schultes in *Chen* and refer to paras. 165 and 166:

[165] Counsel elaborated that the provisions have also unintentionally interfered with the fundamental sentencing principle of proportionality, as well as those of rehabilitation and restraint. Limitations on conditional sentences have removed a key restorative sentencing tool, one that is fundamentally different from suspended sentences and which can achieve both punitive and rehabilitative purposes. The result has been the "missing middle" that Sharma referred to in the context of arbitrariness - a choice between actual incarceration and a suspended sentence which, the authorities make clear, is fundamentally different from a conditional sentence and should not be tortured into replacing it. Once again, a significant burden falls on marginalized offenders, who previously might have remained in the community under conditional sentences that were structured to achieve both punitive and rehabilitative aspects. That absence has been repeatedly lamented by sentencing judges, who express their frustration at their inability to craft appropriate sentences without it. And, as Sharma makes clear, quite aside from s. 15 concerns these restrictions make it more difficult to impose sentences that achieve the rehabilitation and reintegration of indigenous offenders that is required under the Gladue framework, and thereby to address systemic discrimination.

[166] A further serious consequence of overbreadth, in counsel's submission, is an undermining of transparency in the justice system, as prosecutors and defence counsel struggle to achieve just sentencing outcomes despite the unavailability of conditional sentences in many appropriate situations, by such practices as pleas to lesser included offences, or consent to the relaying of charges for which the sentences are available. An empirical canvass of this phenomenon is not available, but counsel refers to several example of such plea resolution practices in action in decided cases. To the extent that prosecutors and defence counsel, and ultimately even judges, are required to treat the facts of the offences in a creative manner in order to make the proper range of sentence available despite the legislation, the restrictions put a level of stress on the administration of justice that raises serious concerns.

[32] So, irrespective of the limitation to conditional sentences set out in s. 741.1, following Proulx, Chen, and Sharma, I am able to consider proportionality in this case looking at the seriousness of the offence and the aggravating factors referred to above and balance the same as against the circumstances of Mr. Dorsey.

CONCLUSION

[33] Considering the mitigating factors referred to above, including the findings of the Gladue and pre-sentence reports, I ask, even considering the seriousness of the offence, because of the Gladue and other mitigating factors present, is the situation in which Mr. Dorsey finds himself so pressing, such that only a sentence of incarceration can satisfy the principles of proportionality, as well as rehabilitation and restraint? My answer is: I think not.

[34] The extent of the abuse and discrimination you encountered, Mr. Dorsey, in your youth, the intergenerational trauma, being the negative psychological effects passed from your father's generation by a lack of parenting skills, substance abuse, poverty, and poor wellbeing, have all had an effect on your person and your ability to take action for your wellbeing. Those circumstances were the type of factors which are considerations for sentencing under s. 718.2(e), which specifically refers to Indigenous offenders. I also take into account your actions since your arrest in April 2018, including your abstinence from alcohol and drugs, your work record, and the support you are receiving from your mother, girlfriend, employers, and others.

[35] Can the principles of denunciation and deterrence be satisfied with a conditional sentence?

[36] Would you stand, please.

[37] That question has been answered in Proulx, Chen, and Sharma. I find that if I were to impose a custodial sentence in all of the - circumstances, that sentence would likely be less than two years, mainly because of what I have read in the Gladue report and the mitigating factors I referred to previously.

[38] Accordingly, sir, I am imposing a conditional sentence of two years less a day, commencing today, concluding on May 19, 2024, to be served in the community and you must comply with this conditional sentence which includes:

1. You must keep the peace and be of good behavior.
2. You must report in person to the conditional sentence officer who is located -

[Discussions of CSO location]

[39] THE COURT: He is to report to a conditional sentence officer, that is by 4:00 p.m. today, at 640 Borland Street, Suite 100.

3. You must not consume or possess alcohol or controlled substances, as defined in the Controlled Drugs and Substances Act, or any other intoxicating substance, except with a medical prescription.
 4. When you first report to your conditional sentence supervisor, you must provide them with an address where you live and your phone number, and you must not change your address or phone number without prior written permission from your conditional sentence supervisor.
 5. You must attend, participate in, and complete any intake, assessment, counselling, or education program directed by your conditional sentence supervisor and this may include, but is not limited to, counselling or programming for alcohol or drug addiction at the discretion of your conditional sentence supervisor. In addition, you will attend, participate in, and complete any First Nations Health Authority - Indian Residential Resolution Health Program. In addition, you will participate in any other counselling recommended by your Gladue report writer, in cooperation with your conditional sentence supervisor.
 6. Next, you may possess one cellphone only, which has only one phone number and is registered in your name.
- [40] Any breach of these orders, Mr. Dorsey, may result in the cessation of this conditional sentencing order and could lead to your imprisonment depending on the circumstances.

ANCILLARY ORDERS

- [41] I have already granted a forfeiture order under s. 16 of the Controlled Drugs and Substances Act.
- [42] I impose 10-year mandatory firearms ban under s. 109(1) of the Criminal Code; and an order in Form 5.03 under s. 487.051(1) of the Criminal Code authorizing the taking of samples of bodily substances from you, for the purpose of registering in the national DNA databank.
- [43] There will also be a probation order for a period of 12 months following the conditional sentence on the same conditions as set out for the conditional sentence.
- [44] Those are my reasons.

"Jenkins J."

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