
CANADA / JUDGMENT

R. v. Duerksen

2016 BCSC 1931

COURT

Supreme Court of British Columbia

DECIDED

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Duerksen,

2016 BCSC 1931

Date: 20160624

Docket: 63977-4

Registry: Chilliwack

Regina

v.

Christopher John Duerksen and

Stuart Matthew Forrest

Before: The Honourable Mr. Justice Schultes

Oral Reasons for Sentence

Counsel for the Crown:

S.C. Domaradzki

Counsel for the Accused C.J. Duerksen:

M.J. Swartz

Counsel for the Accused S.M. Forrest:

J.B. Turner

Place and Date of Hearing:

Chilliwack, B.C.

June 24, 2016

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June 24, 2016

- [1] THE COURT: I think it would be beneficial to everyone if I were to give my reasons now, since everyone has focused their efforts on bringing the matter to a conclusion in an efficient way, rather than have the offenders and the victim of these offences and his family wait any longer.
- [2] We have been in voir dires in relation to statements given to the police by Mr. Duerksen and Mr. Forrest, and after I gave rulings in relation to those voir dires, Mr. Duerksen conceded that the admissible evidence supported convictions on the counts of kidnapping, unlawful confinement, and robbery, and Mr. Forrest entered guilty pleas to the offences of kidnapping, unlawful confinement, and assault causing bodily harm.
- [3] So we are going to deal with their sentencings today. There is a joint submission, which has been fully explained, in terms of the usual range of sentence for these kinds of offences, the circumstances of these two relatively young men, and both the aggravating and mitigating factors in relation to their actions.
- [4] The circumstances are quite unusual, bordering on the bizarre.
- [5] Mr. Duerksen previously knew Mr. Regehr, the victim, from work done by Mr. Duerksen's father and then by Mr. Duerksen himself for Mr. Regehr's family's farming operation.
- [6] Sometime before the offence date, in an effort to assist him in some conflict that Mr. Duerksen was having with the mother of his child, Mr. Regehr had agreed to provide a void cheque for a very considerable sum of money, which Mr. Duerksen used to impress the mother of his child about his financial resources.
- [7] On the day of the offence, he met up with Mr. Regehr in a shed on the family property, and it appears that after some initial amiable conversation, he requested a ransom note demanding money from Mr. Regehr's family. The note was for \$7.5 million, which is a staggering figure. It gives some flavour, I think, to the poorly conceived nature of this transaction.
- [8] Mr. Regehr, according to the agreed statement of facts, wrote the note as requested. Mr. Duerksen took his wallet and truck keys. He tried to run and that was right when Mr. Forrest came into the shed.

- [9] It is conceded that Mr. Forrest essentially picked up on the situation and saw it as necessary to stop Mr. Regehr from leaving. He struck him. Mr. Regehr fell to the floor and banged his head. He was hit several more times and kicked in the groin area. Mr. Forrest was the one who inflicted those blows. Mr. Regehr went in and out of consciousness, I infer because of having struck his head.
- [10] Eventually they put a hoodie over his head, took him to Mr. Duerksen's truck, and Mr. Duerksen drove them to a nearby park. They took him about 400 metres into a heavily-wooded area and bound him to a tree around his neck and wrists. They used - it is visible in the photographs - industrial type clamps which were tightly secured.
- [11] His family had not heard from him. They became very concerned. They went to the farm property and there was no sign of him, even though his truck was there. They found blood in large amounts in the shed, which is depicted in the photographs.
- [12] A large scale search was carried on for Mr. Regehr, and fortunately he was found several hours later in this park by a police dog. He was trying to yell for help, but he also had a sock stuck in his mouth. He had bled quite significantly, had hypothermia and appeared to be in shock, and they needed bolt cutters to remove his restraints. We have seen photographs of his condition when he was discovered and it is not hyperbolic to say he looked absolutely dreadful. It is apparent from one glance at the photographs that this would have been quite a horrifying experience.
- [13] He suffered what is described as a severe head injury, some bleeding in his brain which fortunately stopped of its own accord, multiple facial fractures, some blurred vision, severe scalp lacerations, soft tissue injuries to his wrist, a groin injury from when he was kicked, psychological trauma resulting in a psychiatric consultation, and some problems with urinating while he was in the hospital. These injuries fortunately healed to a significant degree.
- [14] In a very articulate victim impact statement, Mr. Regehr described not just the physical toll, which is bad enough, but the sense of a lack of safety that now permeates his daily living. When one lives a sort of normal, law-abiding life, and then out of the blue something like this happens to a person, there is, I can understand, a great sense of lack of trust in the world and a kind of a fearful feeling that if something like this could happen in such an unforeseen way, it could happen again at any time.
- [15] Despite the effects on him, he has dedicated himself, as has his mother and other family members who have prepared victim impact statements, towards the idea of forgiveness and moving on. I gather as well from defence counsel that he and the other members of his family have behaved with great restraint and dignity throughout this court proceeding, and for that they are to be greatly commended. Certainly forgiveness is the road to healing. I think we all say that, but when people actually put it into practice, it is quite admirable.

- [16] What I draw from his victim impact statement and the others is that the offences had a significant effect on Mr. Regehr and will continue to do so.
- [17] Mr. Duerksen is 33 years old. He has a very limited and dated criminal record in relation to a drug offence. Mr. Forrest is 25 years old, has a more extensive record, including related convictions for assault in 2011 and uttering a threat. The rest of his record has been largely breach and property-related matters.
- [18] I do not want anyone to think that the Gladue report in relation to Mr. Forrest has gone to waste just because there is a joint submission. I have read it and will just say that it paints an appalling and nevertheless, unfortunately, quite common portrait of Mr. Forrest's family background, particularly the abuse and dysfunction to which his grandparents and mother were subjected, the substance abuse problems that his mother suffered from, and his own birth into very troubled circumstances. Clearly he had very significant behaviour problems as a child, resulting in him being in foster care and his counsel says he may well have some form of fetal alcohol effect or syndrome, as well.
- [19] I will take into account his aboriginal background as an aspect of his moral blameworthiness in this case, and will reflect that when I am considering the fitness of the joint submission.
- [20] Both offenders have expressed remorse and a sense of personal responsibility for their actions.
- [21] Mr. Duerksen's statements to the police very shortly after his arrest show what appears to me to be a sincere level of recognition of how horribly out of control the situation had gotten, and he seemed to show genuine concern for Mr. Regehr, who was then still hospitalized, and hope for his recovery. At one point, he said he would like to change places with him. Similarly, he has attempted to correspond with Mr. Regehr's family since then to express his regret.
- [22] Mr. Forrest provided a letter which his counsel read out. I am quite alive to the clichéd responses or shallow statements that can be made by offenders in this kind of situation. I did not find Mr. Forrest's letter to be that way at all. It struck me as being from the heart, and recognizing that whatever problems Mr. Forrest has in his life, he cannot be visiting them on other people like Mr. Regehr, whom he did not even know and had nothing against, simply because he finds himself in a particular situation and behaves impulsively. I thought it was a sincere attempt to convey his regret and his resolve to do better in his life.
- [23] The aggravating and mitigating features have been described very well by counsel.
- [24] Aside from the inherent seriousness of this type of offence, the degree of violence to which Mr. Regehr was subjected and the circumstances of his confinement are aggravating factors. The manner of his confinement, even in the context of kidnapping-type offences, must have been absolutely terrifying. The way in which he was fastened to the tree with the cable and the clamps was bizarre, and something that one does not see and hopes not to see very

frequently. He was left in essentially a forest, a wooded area, unable to move and unable to call for help. What the accused were thinking in doing this really escapes me, but there is a degree of callousness there.

- [25] On the mitigating side, they either entered guilty pleas or invited convictions as soon as the legal issue concerning the admissibility of their statements that they felt they had to argue had been resolved against them. Obviously the earlier in the process one accepts responsibility and shows remorse through a guilty plea the greater weight it can be given, but the steps that these offenders have now taken are still entitled to meaningful weight as a mitigating factor.
- [26] Crown counsel has taken me through the cases and I am satisfied she has accurately set out the general range of sentence for similar offences and offenders. The sentences being sought are situated within that range in a way that appropriately reflects the aggravating and mitigating factors here. They are not soft sentences by any means but they are also fair in the sense that higher sentences could certainly be justified.
- [27] Joint submissions can enhance the administration of justice when they are arrived at in a principled way. I am satisfied the Crown and defence have done that here, and so I intend to impose the sentences that have been sought.
- [28] There has been slightly more than two years of pre-trial custody. These offenders are entitled to one and a half days for every one that they have served. That comes to just slightly more than three years. In the case of Mr. Forrest, I am going to round it to three years, so that at his request he can have a resulting sentence that will give him access to a better selection of programs in the federal system.
- [29] I will deal with the ancillary orders first.
- [30] These are all primary designated offences, so pursuant to s. 487.051 of the Criminal Code, I will direct that the number of samples of bodily substances that are reasonably required for the purposes of forensic DNA analysis be taken from both offenders.
- [31] I will also, pursuant to s. 109(2), provide that they be prohibited from possessing any of the items set out in s-s (2)(a) for 10 years following their release from imprisonment, and any of the items set out in s-s (b) for life.
- [32] This is a case in which there are mandatory victim fine surcharges of a total of \$600 per offender. I think in all the circumstances, it is an appropriate situation to impose those fine surcharges, make them payable forthwith, and impose one day in jail in each offender's case, which will be concurrent with the sentences that I am now going to impose.
- [33] I will deal with the quantum of sentence for each offender, and then I am going to place them both on probation for three years with identical terms.

- [34] With respect to Mr. Duerksen, had there been no previous custody, the Crown would have been seeking a four-year sentence for the kidnapping and sentences of one year concurrent to each other and concurrent to the kidnapping on the offences of confinement and robbery, and I am told that the effect of the application of the one and a half days is to bring the sentence there to three days below the one year that the Crown would otherwise have sought.
- [35] So what I am going to do there is on Count 1 for Mr. Duerksen, the sentence will be 11 months and 28 days' imprisonment. On Count 3, unlawful confinement, the sentence will be imprisonment for one day concurrent with the other sentences, and on the robbery, Count 5, the sentence will be one day concurrent with all the other sentences.
- [36] For Mr. Forrest, the Crown would have sought and it was the joint submission, a five-year sentence on the kidnapping, a one-year sentence on the unlawful confinement, and a three-year sentence on the assault causing bodily harm. So for him, the sentence will be imposed as follows: on Count 1, two years' imprisonment; on Count 2, assault causing bodily harm, one year concurrent to all other sentences, and on Count 3, unlawful confinement, one day imprisonment concurrent to the other sentences.
- [37] Both offenders will be placed on probation for a period of three years, and there are mandatory conditions that I am obliged to impose, over and above the minimal ones that have been sought by the Crown, and I will be imposing two other terms that I think are essential to make the probation work.
- [38] I do accept that the principal concern in seeking probation here is protection -- a sense of security. Mr. Forrest has avowed that he would never approach any member of the Regehr family without their express invitation. I expect Mr. Duerksen would say the same thing if he were asked. But nonetheless, they are entitled to that sense of security that goes with a no-contact order, but I think there are some other conditions that are necessary to ensure that the probation is meaningful and that it has a rehabilitative effect, as well.
- [39] In any event, the mandatory conditions are as follows and they will apply to both orders. They are to keep the peace and be of good behaviour, appear before the court when required to do so by the court, and notify the court or the probation officer in advance of any change of name or address, and promptly notify the court or the probation officer of any change of employment or occupation.
- [40] There are also some optional conditions under s-s (3) of 732.1, which I will impose. The first of these is that they report to a probation officer within two working days of their release from custody, and thereafter when required by the probation officer and in the manner directed by the probation officer.

- [41] They are to have no contact, directly or indirectly, with Kevin Regehr or with any person known by them to be a member of his immediate family. They are not to attend at or within a one-kilometre radius of the addresses at [content redacted] or any other place known by them to be occupied by those persons.
- [42] They are to attend for and successfully complete, to the satisfaction of the probation officer, any counselling or other program to which they are referred to by the probation officer.
- [43] Have I forgotten anything?
- [44] MS. DOMARADZKI: Yes, thank you.
- [45] THE COURT: Is that all right? Okay, and what happens to the other counts? Are they going to be stayed or --
- [46] MS. DOMARADZKI: There is going to be a stay of proceedings with respect to the remaining counts. I just wanted to make sure that the record, in terms of CPIC and so forth reads clearly.
- [47] THE COURT: Yes.
- [48] MS. DOMARADZKI: So the effective sentence with respect to Mr. Duerksen is, with respect to Count Number 1, four years.
- [49] THE COURT: Yes.
- [50] MS. DOMARADZKI: With respect to Number 3, which is the confinement, one year concurrent.
- [51] THE COURT: Yes.
- [52] MS. DOMARADZKI: With respect to Count Number 5, which is the robbery, one year concurrent. But the actual sentence, after taking into consideration the three years and three-day credit, the actual sentence is 11 months, 28 days for Count Number 1; Number 3, one day concurrent; and Number 5, one day concurrent.
- [53] THE COURT: Correct.
- [54] MS. DOMARADZKI: Okay, and with respect to Mr. Forrest, the actual or the effective sentence with respect to Count Number 1, the kidnapping, is five years; with respect to Number 2, which is the assault causing bodily harm, it is three years concurrent; and with respect to Count Number 3, which is the confinement, it is one year concurrent. The actual sentence after taking into consideration a three-year credit is, Number 1, two years; Number 3 -- Count Number 2, one day -- or sorry, one year concurrent.
- [55] THE COURT: Yes.
- [56] MS. DOMARADZKI: And Count Number 3, one day concurrent, do I have that right?

[57] THE COURT: Exactly correct.

[58] MS. DOMARADZKI: Thank you, My Lord.

[59] THE COURT: All right, and I could not leave this process without thanking all counsel for the diligence and skill with which they have presented the case, thank you.

[60] MS. DOMARADZKI: My Lord, I apologize, I forgot one further thing.

[61] THE COURT: Yes.

[62] MS. DOMARADZKI: While incarcerated, the no contact for both Mr. Duerksen and Mr. Forrest.

[63] THE COURT: I know we can do that for bail. Do I have that --

[64] MS. DOMARADZKI: Yes, if --

[65] THE COURT: You can look it up.

[66] MS. DOMARADZKI: If Your Lordship can pass me the Criminal Code, I can find it very quickly and --

[67] THE COURT: I think any institution will enforce it, in any event, but I will gladly impose something that I have the -- you do not have to do that with me looming over you, I will just step out for a minute and then you can --

[68] THE CLERK: Order in court, all rise.

[69] MS. DOMARADZKI: Thank you.

[PROCEEDINGS ADJOURNED AND RECONVENED]

[70] MS. DOMARADZKI: I apologize for that, My Lord. The non-communication order is with respect to -- pursuant to s. 743.21 of the Criminal Code.

[71] THE COURT: Yes, all right. Pursuant to s. 743.21, I also prohibit either offender from contacting Mr. Regehr or any person known by them to be a member of his immediate family.

[72] I forgot a couple of things. Did we make the Gladue report an exhibit, Mr. Turner?

[73] MR. TURNER: I don't think we did.

[74] THE COURT: Okay, that should be an exhibit.

[75] MR. TURNER: Yes.

[76] THE COURT: I will make a recommendation that Mr. Forrest should have access to all programs within the correctional system that may be suitable to aboriginal offenders, and the Gladue report, I know they come and get a copy of the file, but the Gladue report, for greater certainty, should become part of his file. It is very helpful and people who are going to give him programs should see it.

[77] All right, thank you all very much.

The Honourable Mr. Justice T.A. Schultes

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