
CANADA / JUDGMENT

R. v. Dunlop

2018 BCSC 2125

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Supreme Court of British Columbia

DECIDED

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2018 BCSC 2125 R. v. Dunlop

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Dunlop,

2018 BCSC 2125

Date: 20180509

Docket: 26544-2

26545-2

Registry: Quesnel

Regina

v.

Aaron James Dunlop

Before: The Honourable Madam Justice Church

Oral Reasons for Sentence

Counsel for the Crown:

J.C. Johnston

Counsel for the Accused appearing by teleconference:

B. Herdy

Place and Date of Hearing:

Quesnel, B.C.

May 8, 2018

Place and Date of Judgment:

Quesnel, B.C.

May 9, 2018

- [1] THE COURT: On November 23, 2017, Aaron Dunlop pleaded guilty to two counts of breach of recognizance on Indictment 26545-2 and thereby admitted that he failed to comply with conditions of a recognizance not to consume illegal drugs and to obey a 10:00 p.m. curfew. On January 11, 2018, and following a trial, I convicted Mr. Dunlop of Counts 2, 4, and 5 on Indictment 26544-2 and thus found him guilty of assault with a weapon of Dwayne Becker and Matt Lucani, possession of a weapon dangerous to the public peace, and committing mischief by wilfully damaging a door. All of these offences arise from events that occurred on September 6, 2016. In the course of my oral reasons for judgment delivered on January 11, 2018, I set out in some detail the circumstances of the offences on Indictment 26544-2. Those circumstances also form the basis of the two breach offences for which Mr. Dunlop has pleaded guilty.
- [2] In terms of those circumstances, very briefly, on September 6, 2016, Mr. Dunlop arrived at the home of his friend, Greg Brink, with whom he was supposed to work and reside in accordance with a court order out of Alberta. Prior to arriving at Mr. Brink's residence, Mr. Dunlop consumed large quantities of crystal methamphetamine and he was visibly impaired by drugs when he arrived at the Brink residence. His agitated and paranoid behaviour alarmed Mr. Brink to such an extent that Mr. Brink fled his own home and drove to his neighbour's property where he called police.
- [3] Meanwhile, Mr. Dunlop left the Brink property and drove to a residence in West Quesnel owned by his friend, Dwayne Becker. Mr. Becker suffers from cognitive difficulties arising from a brain injury. He lives in a mobile home and had two roommates at the time, one of whom was Matt Lucani. When Mr. Dunlop arrived at the Becker residence, he was still impaired by drugs and very agitated. He went into the residence armed with a machete that he had brought with him from Alberta and talked with Mr. Becker, sharing a cigarette with him in Mr. Becker's bedroom. At some point, Mr. Dunlop went to speak to his wife on the phone in the kitchen. His conversation with his wife was angry and threatening and he was still holding the machete. During that call, Mr. Lucani went into the bedroom with Mr. Becker and locked the door.
- [4] When Mr. Dunlop finished his telephone call, he attempted to re-enter the bedroom, but the door was locked and Mr. Lucani told him to leave the residence. Mr. Dunlop was unable to do so because his car keys were inside the bedroom. Mr. Dunlop became angry with Mr. Lucani and, while armed with the machete, told Mr. Lucani that he would "gut him". When he was unable to convince Mr. Lucani to open the door even after he slid his machete under the door, Mr. Dunlop took a metal dumbbell bar from down the hall and smashed a hole in

the bedroom door, entered the room, retrieved his keys and his machete, and left the residence.

- [5] While still armed with the machete and dumbbell bar, Mr. Dunlop was confronted by RCMP officers who had responded to a 911 call from the residence. They confronted him and attempted to deploy a conducted energy weapon, but those attempts were unsuccessful and officers then pointed firearms at Mr. Dunlop and demanded that he drop his weapons. After approximately one minute, Mr. Dunlop complied with instructions, set down the weapons, and got onto his knees and he was arrested and handcuffed by police.
- [6] Mr. Dunlop was arrested at the Becker residence shortly before midnight on September 6, 2016. At the time, Mr. Dunlop was subject to a recognizance dated March 24, 2016, from the Provincial Court of Alberta in Edmonton. It was a condition of that recognizance that Mr. Dunlop abstain from the consumption of alcohol, intoxicating substances, and non-prescribed drugs, and that he obey a curfew between the hours of 10:00 and 6:00 a.m. each day. Mr. Dunlop remained in custody from the date of his arrest until he was released on bail on February 28, 2017, a period of 175 days.
- [7] In terms of his personal circumstances, Mr. Dunlop was born in Quesnel on June 2, 1976, and he is almost 42 years of age. His background and personal circumstances are outlined in a pre-sentence report dated March 23, 2018. He reports a longstanding history of using alcohol and he began using various drugs including cocaine as a teenager particularly after the death of his father. He has had periods of time where he has been clean from drugs, but his struggles with addiction worsened several years ago when he began using crystal methamphetamine after the overdose death of a close friend. He has attended three different short-term treatment programs for his addiction, but has relapsed after each attendance. His last attendance was at Miracle Valley Centre approximately nine years ago. He acknowledged to the pre-sentence report writer that he continues to use crystal methamphetamine regularly, although he disputes the suggestion by the report writer that he continues to use the drug daily.
- [8] Mr. Dunlop has had periods of employment for several years leading up to 2016, most recently in Drayton Valley, Alberta. However, he does not appear to have held any employment since his arrest for these offences and he reported to the presentence report writer that he had been on social assistance for six months as at the date of the interview.
- [9] Mr. Dunlop has a criminal record dating back to 2001. He has prior convictions for break and enter, uttering threats, mischief, and breaching court orders. There is a significant gap in his criminal record between 2008 and 2016. He was convicted of breach offences in Alberta in February and May of 2016 shortly before these offences.
- [10] The Crown submits that an appropriate sentence on Counts 2 and 4 of the lead indictment is a jail sentence of two years plus a day and, on Count 5, three months' jail with all of those sentences to be served concurrently. Crown counsel also seeks a DNA order, as Count 2 is a primary designated offence, and a s. 109 firearms prohibition order for 10 years. The Crown

submits that there is only one mitigating factor, namely, that Mr. Dunlop stopped short of physically harming anyone in the course of these events. In terms of aggravating factors, the Crown submits that these offences took place in the home of Mr. Becker, a vulnerable individual with cognitive difficulties, and Mr. Dunlop subjected him to fear and intimidation in a place where he should have felt safe. The Crown suggests that a probation order would be of limited use in protecting the public in this case as Mr. Dunlop has shown a marked disregard for court orders in the past, but she suggested that a two-year probation order with limited conditions prohibiting him from possessing weapons or knives or having contact with Mr. Lucani and Jamie Harkley and from attending the residence, school, or workplace of Mr. Lucani, Mr. Harkley, Mr. Brink, or Mr. Becker would still be appropriate in this case.

- [11] In support of her submissions with respect to sentence, the Crown relies on the decisions of *R. v. Blackhall*, [1988] B.C.J. No. 2593; *R. v. Charlette*, [2015] M.J. No. 94; and *R. v. J.R.S.*, [2013] B.C.J. No. 2881. Counsel acknowledged some difficulty in finding sentencing cases that were directly on point. On Indictment 26545-2, the Crown is seeking jail sentences of six months on each count to be served concurrently with each other but consecutive to the lead indictment. The Crown submits that the breach offences are separate offences and should be served consecutively unless the court determines that the totality of the combined sentence is unduly long or harsh.
- [12] Defence counsel did not make any specific submissions with regard to the sentencing range or what a fit sentence might be, but suggested that warehousing Mr. Dunlop in a correctional centre will do little or nothing to address the underlying causes of his offending which is his addiction to illegal substances. Defence counsel called Mr. Dunlop's uncle, Fred Patey, to give evidence at the sentencing hearing. It was clear from Mr. Patey's evidence that he is a caring and supportive family member who continues to have hope that Mr. Dunlop will be able to address his addiction perhaps through residential treatment. He said that Mr. Dunlop has a loving and supportive spouse who does not use drugs. Mr. Patey acknowledged that Mr. Dunlop has talked about getting treatment for his addiction, but has not done so since his last attendance approximately nine years ago. He suggested that Mr. Dunlop might benefit from the one-year residential treatment program at the Baldy Hughes Centre near Prince George.
- [13] Defence counsel, too, acknowledged difficulties in finding cases on point, but noted that the cases relied on by the Crown included much more serious circumstances and offences than those in this case. He submitted that while he cannot necessarily suggest a community-based sentence for these offences, he continues to maintain that warehousing Mr. Dunlop as proposed by the Crown will do little to contribute to the long-term protection of the public. Defence counsel takes no issue with the DNA order or the firearms prohibition order sought by the Crown and submitted that Mr. Dunlop will require some time to pay the victim fine surcharge as he has not been working.

[14] Section 718 of the Criminal Code provides that the purpose of sentencing is to contribute to respect for the law and the maintenance of just, peaceful, and safe society by imposing just sanctions that have one or more of the following objectives:

1. denunciation of unlawful conduct;
2. deterring the offender and other persons from committing offences;
3. separating offenders from society where necessary;
4. assisting in rehabilitation of offenders;
5. providing reparation for harm done to victims or the community; and
6. promoting a sense of responsibility in offenders and acknowledging the harm done to victims and the community.

[15] In my view, denunciation, deterrence, assisting in the rehabilitation of the offender, and promoting a sense of responsibility in the offender are the sentencing objectives in the circumstances of this case.

[16] Section 718.2(b) requires that:

a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances

[17] That is a difficult task because the facts are generally unique to each case. I have reviewed the cases provided by the Crown and I did not find them to be of particular assistance in determining an appropriate sentencing range. I agree with the defence submission that all three cases involved much more serious circumstances than in this case and sentencing in the context of much more serious offences. For example, in *R. v. Blackhall*, the offender was sentenced to two years' imprisonment for possession of a weapon dangerous to the public peace and impaired driving where he was found to have been taken into custody after a brief police pursuit and then produced a loaded revolver and pointed it at police officers. In *R. v. Charlette*, the offender attempted to stab a taxi driver during a robbery attempt. After fleeing the scene, he was located by police and refused to drop his knife telling officers that they would have to kill him. The offender in that case received a global sentence of 62-and-a-half months which included 23-and-a-half months for assaulting a peace officer and one year for possession of a weapon. In *R. v. J.R.S.*, the court imposed a global sentence of six years for offences including unlawful confinement, kidnapping, sexual assault causing bodily harm, and possession of a weapon.

[18] In addition to the cases provided by the Crown, I have also considered the following decisions: *R. v. Burgess*, [2009] Y.J. No. 10, and *R. v. Takazo*, [2017] N.W.T.J. No. 84. Those cases involved serious offences and each involved evidence of an offender's intention to commit "suicide by cop". In the *Burgess* decision, the offender pled guilty to assault with a weapon and unlawful confinement after entering a local residence, kicking and punching

the occupant while she was sleeping, preventing her from leaving the residence by holding a knife to her throat, and telling another occupant to call police and advise them that she wanted to commit suicide by cop. At the time of the offences, the offender was suffering from depression and was suicidal. She was an Aboriginal woman with no criminal record and had taken significant steps after the offence to maintain her sobriety and participate in counselling. The court took those significant mitigating factors into account and sentenced her to a 12-month conditional sentence order with two years of probation.

- [19] In the Takazo decision, the offender became intoxicated and obtained a gun. He waved it around and pointed it at police in an effort to get them to shoot him. He had a history of mental illness and addiction to alcohol and was subject to a lifetime firearm prohibition after being convicted of forcible confinement, break and enter, use of a firearm in the commission of an offence, all of which arose out of a prior 30-hour standoff with police. The offender was convicted of violating a firearms prohibition and pointing a firearm at a police officer. The court sentenced him to 18 months' jail with credit for 10 months of presentence custody and three years of probation.
- [20] It is apparent from the cases that there is a fairly wide range of sentencing options for these particular types of offences even including those circumstances where there is evidence that an offender attempted "suicide by cop". I agree with the Crown that it is a mitigating factor in this case that Mr. Dunlop did not physically harm anyone. As I found at trial, Mr. Dunlop threatened to "gut" Mr. Lucani while wielding a machete outside the door and demanding that Mr. Lucani open the door and, in so doing, he committed an assault because he threatened to apply force to Mr. Lucani with a weapon and, at the time that he made the threat, he had the ability to carry out that threat.
- [21] Mr. Dunlop expressed remorse for his actions at the conclusion of the sentencing hearing. I note that his expression of remorse is in contrast to the comments in the presentence report that were attributed to him in which he suggested that police made a spectacle of the charges, that the charges appeared more severe than what actually happened and, "the goof made up charges." Those comments do not indicate remorse and demonstrate, in my view, a lack of insight into Mr. Dunlop's own behaviour and its impact on other people. Mr. Dunlop spoke of his wish to obtain treatment for his addiction and change his life and indicated that he had made some calls about possible options but that it was difficult to get into a program. He seemed less than enthusiastic about attending the Baldy Hughes treatment program suggested by his uncle, Mr. Patey, because it would mean being separated from his spouse for a year.
- [22] As I have already noted, Mr. Dunlop has a relevant criminal record including prior convictions for uttering threats and mischief.
- [23] I agree with the submission of defence counsel that warehousing a person suffering from addictions does little to address the underlying causes of the offending. I do not agree, however, that a community disposition would meet the objectives of sentence in this case,

which are denunciation, deterring Mr. Dunlop and others from committing such offences, and promoting in Mr. Dunlop a sense of responsibility and acknowledging harm done to the victims in this case and the community at large. Although Mr. Dunlop may not have intended to physically harm Mr. Becker or Mr. Lucani, it appears that he does not acknowledge or accept the impact that his behaviour may have had on them, particularly Mr. Becker given his known vulnerabilities. The comments attributed to Mr. Dunlop in the presentence report suggests that he lacks insight into his own behaviour and its impact on others and focuses instead on describing how his actions were the result of how other people had treated him.

- [24] Despite being out of custody since February 28, 2017, and not being engaged in any employment, there is no indication that Mr. Dunlop has voluntarily undertaken any treatment for his addictions, either short-term or residential or even attended counselling, and he admits that he continues to use crystal methamphetamine regularly. Although he has expressed the desire to attend treatment, Mr. Dunlop had made no plan for how to address his addiction and did not seem motivated to attend the treatment program suggested by his uncle. His untreated addiction and his lack of insight into his offending substantially increase the risk that he poses to the community.
- [25] I have concluded that a jail sentence is required in order to achieve the objectives of denunciation and deterrence and to promoting a sense of responsibility in Mr. Dunlop, and that a period of probation to follow that jail sentence may assist Mr. Dunlop in terms of his rehabilitation. Mr. Dunlop has a significant gap of eight years in his criminal record and that gives me some hope that he may be a candidate for rehabilitation. He has a supportive spouse and his uncle has been present and supported him throughout this court proceeding and that adds to my optimism that, with their support, Mr. Dunlop can take steps to move his life in a more positive direction. Generally speaking, treatment will only succeed in those who chose to overcome their addiction as opposed to those who are ordered to do so by the court. If Mr. Dunlop is serious about his commitment to treatment, he can give his consent today to include, as a term of his probation order, attendance at treatment including residential treatment as directed by his probation officer. I am not prepared to order such a term, however, without Mr. Dunlop's consent.
- [26] In my view, the circumstances of these offences and the circumstances of this offender are much closer to those in the Takazo case, although the use of a firearm and the prior conviction for similar offences were more aggravating in that case. After consideration of all of the circumstances of the offences, the circumstances of Mr. Dunlop, the submissions of counsel, and the relevant objectives of sentencing, I have concluded that a global sentence of 14 months in jail is appropriate in this case less credit for time served at 1.5 to one.
- [27] Mr. Dunlop, could you please stand up.

- [28] On Counts 2 and 4 of the indictment, I sentence you to 420 days in jail. Your actual presentence custody is 175 days. Your credited presentence custody is 263 days. The jail sentence that I impose on you today, therefore, is 157 days which is a little over five months of new time. On Count 5 of the indictment, mischief, I sentence you to 90 days' jail. All of the sentences on that indictment are to be served concurrently. Following your jail sentence, you will be subject to a period of probation for two years on the following terms.
- [29] THE CLERK: On all three counts?
- [30] THE COURT: Yes.
- [31] THE CLERK: Thank you.
- [32] THE COURT: 2001, you must keep the peace and be of good behaviour. You must appear before the court when required to do so by the court. 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 probation officer of any change of employment or occupation.
- [33] As I indicated in my reasons, Mr. Dunlop, I am not prepared to order that you attend residential treatment unless you consent to do so. Do you consent, sir?
- [34] THE ACCUSED: No.
- [35] THE COURT: All right. In terms of the reporting requirement, then, Madam Clerk, there will simply be one reporting required after release. So, 2104, you must report in person to a probation officer at a probation office closest to the place of your release from custody within two business days after your release from custody, unless you have obtained, prior to your release, written permission from the probation officer to report elsewhere or within a different timeframe.
- [36] You can delete the rest of that section. I am not going to require ongoing reporting, and the rest of these, Madam Clerk, are the conditions that are outlined in the recognizance.
- [37] You shall not possess any weapon as defined in s. 2 of the Criminal Code.
- [38] You must forthwith surrender for safekeeping to the RCMP detachment in Mission, B.C., any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, or explosive substance in your possession together with any authorization or registration certificates for any such item. Except for the purposes of making delivery to the RCMP in accordance with this condition, you shall not possess any of the items listed in this condition and you must not reside in a home where any other person keeps or stores such items.
- [39] You shall not possess any knife outside of your residence except for the immediate preparation or eating of food or for purposes directly and immediately related to your employment.

- [40] You shall have no contact or communication directly or indirectly with Matthew Lucani or Jamie Harkley.
- [41] You shall not attend at or be within 100 metres of any place which you know to be the residence, school, or workplace of Dwayne Becker, Matthew Lucani, Jamie Harkley, and Greg Brink.
- [42] Count 2 of this indictment is a primary designated offence and I will make the DNA order on that count.
- [43] On that count, I will also make an order under s. 109 of the Criminal Code prohibiting you from possessing firearms for a period of 10 years.
- [44] On Indictment 26545-2, Counts 1 and 2, Mr. Dunlop has pleaded guilty, to those counts, which in my view is a mitigating factor. Sentences are automatically concurrent unless the court or legislation directs otherwise and, generally speaking, distinct and separate offences generally attract consecutive sentences whilst offences that are sufficiently interrelated and occur during the same general incident should normally attract concurrent sentences. In this case, while they are separate offences, they are sufficiently interrelated with the main incident to attract concurrent sentences. So, on Count 1 and 2 of that indictment, I sentence you to 90 days' jail on each count concurrent with each other and concurrent with the sentences to be served on 26544-2.
- [45] With respect to the victim fine surcharge, you will have three years to pay those amounts.

"The Honourable Madam Justice Church"

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