
CANADA / JUDGMENT

R. v. Dwyer

2016 BCSC 1607

COURT

Supreme Court of British Columbia

DECIDED

9 August 2016

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2016 BCSC 1607 R. v. Dwyer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Dwyer,

2016 BCSC 1607

Date: 20160809

Docket: 41830-4

Registry: Prince George

Regina

v.

Damian Andrew Frank Dwyer (also known as Damian Andrew Dwyer)

Restriction on Publication:

Pursuant to ss. 516(2) and 517(1) Criminal Code of Canada

Before: The Honourable Mr. Justice Tindale

Oral Reasons for Sentence

Counsel for the Crown:

T. Bauman

Counsel for the Defence:

D.S. Donnelly

Place and Date of Hearing:

Prince George, B.C.

August 9, 2016

Place and Date of Judgment:

Prince George, B.C.

August 9, 2016

- [1] THE COURT: Damian Andrew Frank Dwyer has entered guilty pleas on Indictment number 41830-4 to counts 1, 2, 3 and 4. Those deal with incidents that occurred on May 7, 2015. Mr. Dwyer was in possession of a restricted firearm, a 40 calibre semiautomatic handgun, as well as possessing other firearms, in particular shotguns, when he was not the holder of a licence. He was also found to be in possession of methamphetamine and cocaine, and, at the time that he was in possession of the firearms, he was prohibited from doing so pursuant to a probation order.
- [2] Exhibit 1 on this sentencing hearing is an agreed statement of facts. It is quite thorough. The circumstances are not particularly complicated. The police received information regarding Mr. Dwyer with regard to firearms and narcotics. They attended at his residence at 2460 Pulp Mill Road with a search warrant. Mr. Dwyer was arrested outside of the residence.
- [3] The police searched the residence. There were other people in the residence. In Mr. Dwyer's bedroom, the RCMP found a black pellet gun on the bedside table, a black Jericho gun holster on the bed and a black Jericho semiautomatic 40-calibre pistol bearing serial number 42308562, with a fully loaded magazine in it. There was also a fully loaded magazine compatible with that particular pistol in the closet. There was also one bag of methamphetamine with 20 grams of narcotics and two bags of crack cocaine which weighed 12.79 grams. There were also two Mossberg shotguns and a Remington shotgun found in the residence, all of the firearms were stolen.
- [4] Mr. Dwyer was arrested on May 17, 2015. He has been in custody since that date. He has entered guilty pleas. They were entered on July 18, 2016. The guilty pleas avoided a lengthy trial which was set in the fall of this year.
- [5] Mr. Dwyer has a previous conviction for uttering threats. That was disposed of on February 6, 2015. He received probation for one year on a conditional discharge. One of the conditions of that probation order was that he was not to possess any firearms or any weapons, rather, as defined in s. 2 of Criminal Code.
- [6] This is a joint submission by counsel for a global sentence of three years. The suggestion is that, on Count 1, there would be three years; Count 2 would be one year concurrent; Count 3 would be six months concurrent and Count 4 would be six months concurrent, as well as an order pursuant to s. 109 of the Criminal Code and a forfeiture order.

- [7] Mr. Dwyer, as I said, has been in custody since May 7, 2015 which would give him credit for 461 days in custody. Given enhanced credit of one-and-a-half to one day served, he would receive credit for 691 days. So three years at 365 days per year would be 1,095 days, less the 691 days, would be a sentence of 404 new days in custody.
- [8] Obviously there are aggravating circumstances in this matter. There was a loaded handgun in the residence. Mr. Dwyer was prohibited from possessing weapons, and he did not have any licence for them. However, he has entered a guilty plea. Also I am told that Mr. Dwyer cooperated with the police in this investigation and also in allowing the police or leading the police to a cache of dangerous firearms that have been taken off the street.
- [9] I am told that Mr. Dwyer is 35 years of age. During his childhood, his parents split up when he was very young. He and his brother were for the most part raising themselves as his mother would work in the afternoon/evening hours. Mr. Dwyer finished grade 10. He has had a number of occupations and has been gainfully employed up until recently in the construction industry. He is a journeyman carpenter as well as, an apprentice crane operator.
- [10] About 2014, he became involved in a relationship with a Tamara Hayden. She had two children from previous relationships. She had a number of problems in her own life which created stress for Mr. Dwyer. Mr. Dwyer's mother also passed away in 2011. The culmination of these events led to some depression for Mr. Dwyer. Mr. Dwyer became wrapped up in the drug world. He was using narcotics, which led him to this point here today.
- [11] Mr. Dwyer has spoken on his own behalf as well and he has indicated that he is sorry for his actions, and he wishes to get this matter behind him and to not be back in the court system.
- [12] I have been provided two cases: R. v. Holt, which is a decision of the B.C. Court of Appeal, 2015 BCCA 302, in which a sentence of 30 months was upheld for a similar type of weapons offences. Though, in that case, as well as in R. v. Nur, which is a Supreme Court of Canada decision, [2015] 1 S.C.R. 773, the firearms were being possessed in public. In Nur, there was a 40 month decision which was upheld in terms of sentencing.
- [13] Both counsel have as I said, made a joint submission. There have been thoughtful and well-thought-out submissions on this matter. Certainly the sentence as has been proposed, is in my view, within the range of a fit sentence, taking into account the aggravating factors and the mitigating factors that have been touched on here today. It is at the low end but, nonetheless, it is in the range. Crown did explain there was a number of issues, as there often are in trials, but there was a number of issues in this matter which may have affected the outcome in terms of the trial for the Crown, and perhaps even for Mr. Dwyer.

- [14] In any event, I am satisfied that the joint submission is reasonable and it is a fit sentence for the offences. So, with regard to Count 1, the appropriate sentence would be three years in custody, that would be 1,095 days in custody. I will give Mr. Dwyer credit for the 461 days he has spent in custody and enhanced credit at a ratio of 1.5, so that he receives 691 days credit, that leaves 404 days new time to be served on Count 1.
- [15] On Count 2, there will be one year concurrent.
- [16] On Count 3, there will be six months in jail concurrent and on Count 4, there will be six months jail concurrent.
- [17] So, the total sentence left for Mr. Dwyer, his total sentence is three years less his credit of 691 days, so the remaining time is 404 days in custody.
- [18] Also, on Count 1, there will be a weapons prohibition pursuant to s. 109 of the Criminal Code. So, sir, you will be prohibited from possessing any firearm other than a prohibited firearm or restricted firearm, and any crossbow, restricted weapon, ammunition, explosive substance for a period of 10 years, and you will be prohibited from possessing any firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.
- [19] Crown, with regard to the forfeiture order, what --
- [20] MR. BAUMAN: Would I -- sorry --
- [21] THE COURT: -- what section is that under that you are seeking?
- [22] MR. BAUMAN: -- there's two sections; it will be s. 491 of the Criminal Code and s. 16 of the Controlled Drugs and Substances Act. Oh, pardon me, I think it's -- just double check that. Yes, s. 16. So what I would suggest Your Lordship order is that all controlled substances are forfeited and all other offence-related property, except for that offence-related property that can be claimed by the rightful owner, is also forfeited. And then what I will do is confirm what the lead investigator what items they have been able to confirm ownership of and I will append the major exhibit flow chart to the order, give it to my friend for his signature, and put it before Your Lordship for Your Lordship's signature.
- [23] THE COURT: All right. So what I will do then I will make an order under s. 16 of the Controlled Drugs and Substances Act that all of the narcotics, controlled substances, that were seized during this investigation be forfeited to the Crown for destruction and then pursuant to s. 491 of the Criminal Code, that all other offence-related items, including the firearms, will be forfeited to the Crown subject to any lawful claim by the rightful owner of the firearms, and I will just have them -- as Crown has said, if Crown and defence could then sign the order and I will sign it.
- [24] MR. BAUMAN: Thank you, My Lord.

[25] THE COURT: All right, so sir, 404 days in jail, as well as the weapons prohibition. Those documents will be prepared and brought up, and you will have to sign that. All right, sir? Thank you, counsel, for the thorough and thoughtful submissions.

[26] MR. BAUMAN: Thank you for hearing it this morning, My Lord.

"R.S. Tindale, J."

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