

CANADA / JUDGMENT

R. v. Fitzgerald

2013 BCSC 2343

COURT

Supreme Court of British Columbia

DECIDED

28 November 2013

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2013 BCSC 2343 R. v. Fitzgerald IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Fitzgerald, 2013 BCSC 2343 Date: 20131128 Docket: X073857-2 Registry: New Westminster Regina v. James Lyle Fitzgerald Ryan Gregory Milliard David Stephen Pickup-Henriksen Before: The Honourable Mr. Justice Truscott Oral Reasons for Sentence Counsel for the Crown: M. Loda Counsel for the Accused Fitzgerald: Counsel for the Accused Milliard: Counsel for the Accused Pickup-Henriksen: S. Wright E. Doricic W. Jessop Place and Date of Hearing: New Westminster, B.C. November 28, 2013 Place and Date of Judgment: New Westminster, B.C. November 28, 2013

- [1] THE COURT: Mr. Milliard, I am prepared to accept the submission that has been made jointly for you. You have been told by your counsel, I am sure, that I have no obligation to accept a joint submission that is made. If I consider that it is not appropriate, I can reject it and I can deal with it differently as I see fit, but it has been explained to me fully. The cases indicate that your offence falls within the range of three years and I am satisfied that is an appropriate sentence to impose.
- [2] MR. DORICIC: I'm sorry, My Lord. With regard to Mr. Milliard it was two years plus a day.
- [3] THE COURT: Two years and one day was recommended and I will accept that, so I sentence you sir to imprisonment time of two years plus one day. I will make the recommendation that you serve that at the Pacific Institution.
- [4] MR. DORICIC: Thank you, My Lord.
- [5] THE COURT: And in addition, there will be ancillary orders that you will have a lifetime prohibition of firearms under s. 109 of the Criminal Code and you will be ordered to give a DNA sample under the Criminal Code.
- [6] That completes that, thank you.
- [7] MR. DORICIC: Thank you, My Lord. [SENTENCE SUBMISSIONS RE ACCUSED FITZGERALD]

- [18] THE COURT: You are quite young, Mr. Fitzgerald, and you have a long way to go. I know how interesting it looks to young people to drive fast cars and have a lot of money at an early age, but this is what it gets you when they catch up to you. There is no better way to run your life than on the straight and narrow and you will enjoy your life a lot better that way.
- [9] I am prepared to accept the joint submission that has been made for you Mr. Fitzgerald, and I sentence you to three years of imprisonment. I order you to provide another DNA sample.
- [10] That concludes that. Thank you. [SENTENCE SUBMISSIONS RE ACCUSED PICKUP-HENRIKSEN]
- [11] THE COURT: You are an interesting person. You have quite a number of supporters. I have read every one of their letters. There was a particularly wonderful statement about you made by your girlfriend. I do not know if she is still your girlfriend or not, but you look like you have fallen in and out of the drug trade.
- [12] You are lucky in one sense that you were caught with this weapon prior to the law changing later in 2008 or you would be on a three-year sentence. On the Indictment there is no allegation against you about peddling drugs at all, but this was a loaded prohibited weapon that you were carrying over to Mr. Hairan and we can all guess what that was for.
- [13] You have a chance once you get out to correct your life, and with all the support you have, you have every chance of being fully rehabilitated and to lead a wonderful life but -- and this might have been said to you on your prior conviction -- it is up to you. You have got to decide what you want to do with your entire life. You are still a very young man and this is the penalty that you pay.
- [14] I am prepared to accept the joint submission. I sentence you to federal time of two years plus one day of imprisonment. You will have a lifetime weapons' prohibition under s. 109 of the Criminal Code and you will provide another DNA sample if you have provided one already.
- [15] I will make the same recommendation for you. I appreciate security concerns as once you are in the drug trade you are at risk even in the penitentiary. So I will make the recommendation that you serve your time at the Pacific Institution.
- [16] That completes my sentence.
- [17] MR. WRIGHT: Thank you, My Lord.
- [18] MR. DORICIC: Thank you, My Lord.
- [19] MR. JESSOP: Thank you, My Lord.
- [20] MS. LODA: Thank you, My Lord. With respect to forfeiture I will serve notice on Mr. Jette on behalf of Mr. Hairan and then when I have heard from him forward a copy to Your Lordship's chambers if that's okay.

- [21] THE COURT: Yes, that would be fine.
- [22] MS. LODA: All right. If a stay of proceedings could be directed against whatever counts remain outstanding. Thank you.
- [23] THE COURT: Yeah, the other - well, there is nobody else.
- [24] MS. LODA: Mr. Pickup-Henriksen was charged on Count 1 and the Crown directs a stay of proceedings with respect to that. I think that Mr. Hairan's counts have probably been (indiscernible) and nothing else should remain.
- [25] THE COURT: Mr. Hairan is on all the other counts only and I will stay the Count 1 against Mr. Pickup-Henriksen. "The Honourable Mr. Justice Truscott"
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