

CANADA / JUDGMENT

R. v. Forsberg

2018 BCCA 156

COURT

British Columbia Court of Appeal

DECIDED

16 April 2018

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2018 BCCA 156 R. v. Forsberg COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Forsberg, 2018 BCCA 156 Date: 20180416 Docket: CA44939 Between: Regina Respondent And Alan Leonard Forsberg Appellant Before: The Honourable Madam Justice Saunders The Honourable Madam Justice Garson The Honourable Madam Justice Fisher On appeal from: an order of the Provincial Court of British Columbia, dated September 27, 2017 (R. v. Forsberg, Victoria Dockets 167641-2) Oral Reasons for Judgment Counsel for the Appellant: T. J. Russell Counsel for the Respondent: R. D. Leong Place and Date of Hearing: Victoria, British Columbia April 16, 2018 Place and Date of Judgment: Victoria, British Columbia April 16, 2018 Summary: The sentence imposed on a guilty plea to possession of cocaine for the purpose of trafficking was 27.5 months and one year of probation, after credit of 22.5 months for pre-trial custody. Section 731 of the Criminal Code does not allow for a probation order in a sentence exceeding two years. The sentence is therefore illegal to the extent of the probation order. Held: Appeal allowed to the extent the probation order is set aside.

- [1] SAUNDERS J.A.: On June 2, 2017, Alan Leonard Forsberg pleaded guilty before a judge of the Provincial Court sitting in Victoria to a number of offences. On Indictment No. 167641-2 he pleaded guilty to possession of cocaine contrary to s. 4(1) of the Controlled Drugs and Substances Act (the "CDSA"); on Information No. 167638-C-4, he pleaded guilty to possession of fentanyl for the purposes of trafficking contrary to s. 5(2) of the CDSA, possession of cocaine contrary to s. 4(1) of that Act, and carrying a concealed weapon contrary to s. 90(1) of the Criminal Code. For these offences, Mr. Forsberg was sentenced on September 27, 2017, to concurrent sentences, the longest being on Indictment No. 167641-2, a jail term of four years and two months before the application of credit for pre-sentence custody, and one year probation. He was given credit of 22.5 months for the 15 months he spent in custody awaiting sentencing, resulting in a net jail sentence of 27.5 months.
- [2] Mr. Forsberg has filed an application for leave to appeal sentence and, if leave be granted, appeals sentence on the ground that the probation order imposed in respect of the possession of cocaine count on Indictment No. 167641-2 is an unlawful disposition. Mr. Forsberg is late in filing that application for leave to appeal and so he requires an order of the Court extending the time for that application. My colleagues agreeing, the extension for time to apply for leave to appeal sentence is allowed and the time is extended to December

5, 2018.

- [3] The Crown does not oppose the sentence appeal as the probation order makes it an unlawful disposition, and in that I would observe s. 731 of the Criminal Code is governing. For the purpose of determining whether probation is permissible under s. 731(1)(b) of the Criminal Code, the actual term of imprisonment imposed by the sentencing court after taking into account any time spent in pre-sentence custody is operative: *R. v. Mathieu* (2008), 231 C.C.C. (3d) 1 (S.C.C.), at para. 19; *R. v. Goeujon*, 2006 BCCA 261, at para. 29, 53. Thus, the sentence of 27.5 months new time, and one year probation, is an illegal sentence: *R. v. Knott*, 2010 BCCA 386, at para. 72; *R. v. Danielisz*, 2009 BCCA 401, at para. 2.
- [4] I would give leave to appeal sentence and allow the appeal from sentence with respect to Indictment No. 167641-2 only to the extent of setting aside the probation order.
- [5] GARSON J.A.: I agree.
- [6] FISHER J.A.: I agree.
- [7] SAUNDERS J.A.: The appeal is allowed on those terms. "The Honourable Madam Justice Saunders"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/ca/18/01/2018BCCA0156.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-forsberg-2018>

Prepared on 29 October 2026 · Esheria