

CANADA / JUDGMENT

# R. v. Foster

2015 BCSC 1198

## COURT

Supreme Court of British Columbia

## DECIDED

11 June 2015

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2015 BCSC 1198 R. v. Foster IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Foster, 2015 BCSC 1198 Date: 20150611 Docket: X076423 Registry: New Westminster Regina v. Corey Ross Foster

- And - Docket: 94032 Registry: Kamloops Regina v. Corey Ross Foster Before: The Honourable Mr. Justice Savage Oral Reasons for Sentence Counsel for the Crown: J. Lester Counsel for the Accused: D. Redekopp Place and Date of Hearing: New Westminster, B.C. June 11, 2015 Written Submissions: June 9, 2015 Place and Date of Sentence: New Westminster, B.C. June 11, 2015 Table of Contents I. Background. 3 II. Sentencing Considerations. 3 III. Sentence. 5 A. Global Sentence. 5 B. New Westminster Court File 76423-4. 5 C. Kamloops Court File 94032. 5 D. Credit Pre-Trial Incarceration. 6 E. Other Orders. 6 [SUBMISSIONS] 7 I. Background

- [1] On December 1, 2014, Corey Ross Foster pleaded guilty to two sets of counts arising from separate incidents occurring roughly six months apart.
- [2] The first set of counts relate to events that occurred on August 8, 2010 and are referenced in Kamloops Court File No. 94032. Mr. Foster was indicted on counts of aggravated assault, breaking and entering, and committing mischief.
- [3] The second set of counts relates to events occurring on January 12-13, 2011. These counts are referenced in New Westminster Court File No. 76423-4. Mr. Foster pled guilty to one count of each of assault causing bodily harm and unlawful confinement, two counts of breaking and entering with the intent to commit an indictable offence, and one count of using an imitation firearm during the break and enter.
- [4] I have had the benefit of written submissions by counsel for Mr. Foster setting out his personal circumstances. I have also had the benefit of written submissions from counsel for Mr. Foster and the Crown which contain a joint submission with regard to the appropriate sentence. II. Sentencing Considerations

- [5] The Crown and Mr. Foster submit that the range of sentences for this type of offence where sentences have been imposed as a result of a guilty plea is four to nine years. With respect to this range, counsel directed the Court to *R. v. Fraser*, 2007 SKCA 113; *R. v. Ali*, 2012 BCSC 340; *R. v. Nepinak*, 2011 BCSC 80; *R. v. Navas-Rivas*, 2013 BCSC 2176; and *R. v. Brossault*, 2009 BCSC 464.
- [6] The fundamental purpose and principles of sentencing are set out at ss. 718, 718.1 and 718.2 of the Criminal Code, R.S.C. 1985, c. C-46. In reviewing these matters, I am mindful of the admonition of the Supreme Court of Canada in *R. v. M.(C.A.)*, [1996] 1 S.C.R. 500, that the relative weight and importance of these various matters will depend on the nature of the crime and the circumstances of the offender. I am also aware that I am not bound to accept the joint submission: *R. v. Bezdan*, 2001 BCCA 215 at para. 13.
- [7] Counsel for Mr. Foster has set out his prior circumstances which, on the one hand, include a criminal record that dates back two decades. On the other hand, he also notes a long standing learning disability, which Mr. Foster submits prevented him from exceling in school, and describes his pursuit of various potentially commercializable inventions while in remand. Counsel also noted that the Surrey charges resulted in no lasting injuries and that the victims were highly uncooperative.
- [8] With respect to the Kamloops charges, these events stemmed from Mr. Foster's concern that his children from a common-law relationship were being exposed to drug dealing activity. He acted in concert with others to deal with a situation which escalated into a serious life-threatening aggravated assault. Counsel notes Mr. Foster's sincere regret and remorse. Mr. Foster did plead guilty, albeit after hearing the Crown's evidence, but that does spare the justice system and all involved persons the expense of further proceedings.
- [9] Mr. Foster has already spent 943 days incarcerated on remand for these offences. The Crown and Mr. Foster agree that he is eligible for enhanced credit for the time spent in pre-sentence custody in accordance with the decisions of the Supreme Court in *R. v. Summers*, 2014 SCC 26; *R. v. Carvery*, 2014 SCC 27; and *R. v. Clarke*, 2014 SCC 28. I see no reason to depart from this submission. The 943 days shall be credited at 1.5:1. Mr. Foster shall therefore receive a credit of 3 years, 10 months, and 15 days.
- [10] The overarching duty of the sentencing judge is to fashion a sentence that is just and appropriate in the circumstances and reflects the gravity of the offence committed and the moral blameworthiness of the offender. I am satisfied that the sentence jointly proposed is fit and in keeping with the purpose and principles of sentencing. III. Sentence
- [11] Mr. Foster, please stand. A. Global Sentence
- [12] For the various offences described below to which you have pleaded guilty, I sentence you to a global sentence of seven years imprisonment. This sentence is broken down as follows: B. New Westminster Court File 76423-4

- [13] On New Westminster Count 1, the first breaking and entering, I sentence you to four years imprisonment.
- [14] On New Westminster Count 14, the use of an imitation firearm, I sentence you to one year to be served consecutively to the sentence imposed in respect of New Westminster Count 1.
- [15] On New Westminster Count 4, the assault causing bodily harm, New Westminster Count 5, the unlawful confinement, and New Westminster Count 12, the second breaking and entering, I sentence you to eighteen months, one year and three years respectively, to be served concurrently to the sentences imposed in respect of New Westminster Counts 1 and 14. C. Kamloops Court File 94032
- [16] On Kamloops Count 1, aggravated assault, I sentence you to two years imprisonment to be served consecutively to the sentence imposed in respect of New Westminster Counts 1 and 14.
- [17] On Kamloops Count 2, the third breaking and entering, I sentence you to two years, to be served concurrently to the sentence imposed in respect of Kamloops Count 1. D. Credit Pre-Trial Incarceration
- [18] As agreed by counsel, you are credited 943 days of pre-trial incarceration for which you will receive credit on a 1.5:1 basis. The total credit, then, is 3 years, 10 months and 15 days. E. Other Orders
- [19] Pursuant to s. 109 of the Criminal Code, I order that you are prohibited for 10 years from the date of your release from incarceration from possessing the weapons described in s. 109(2) (a) of the Criminal Code and are prohibited for life from possessing the weapons described in s. 109(2)(b).
- [20] As you have been convicted of a primary designated offence, under section 487.04 (namely aggravated assault), I make an order authorizing the taking of samples of bodily substances, reasonably required for the purpose of forensic DNA analysis, at a time and place to be determined by the custodial authorities.
- [21] Pursuant to s. 737 of the Criminal Code, I waive the victim surcharge.
- [22] Mr. Foster you were engaged in a criminal career these past years which has netted you an unenviable criminal record. If you value your liberty, I urge you to continue to make productive use of the remaining time you spend in custody to prepare for a different life. The path you were on promises only misery, continued incarceration, or worse.
- [23] Counsel advises me that you have been using your time productively. I understand that you have applied for or have obtained numerous provisional software patents while in custody. You are to be commended for that. In my opinion that is a matter that should be a primary consideration when the authorities review your eligibility for early parole.
- [24] Please be seated.

- [25] Counsel, is there anything further? [SUBMISSIONS]
- [26] There will be an order for forfeiture of the items seized at the time of your arrest on the Kamloops and New Westminster matters.
- [27] MR. LESTER: And I will direct a stay of proceedings of the other counts outside of 1, 4, 5, 12 and 14. Madam Registrar, you have the list there, don't you on the counts on which he was sentenced?
- [28] THE CLERK: I have them My Lord.
- [29] MR. LESTER: There will be a stay of proceedings on the other counts.
- [30] THE COURT: So the balance of those counts are then stayed in accordance with the Crown's direction. We are adjourned. "The Honourable Mr. Justice Savage"

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