
CANADA / JUDGMENT

R. v. Godbout

2015 BCCA 168

COURT

British Columbia Court of Appeal

DECIDED

15 April 2015

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2015 bcca 168

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Godbout,

2015 BCCA 168

Date: 20150415

Docket: CA040612

Between:

Regina

Respondent

And

Todd Edward Godbout

Appellant

Before:

The Honourable Chief Justice Bauman

The Honourable Mr. Justice Chiasson

The Honourable Mr. Justice Willcock

On appeal from: Orders of the Provincial Court of British Columbia, dated

December 20, 2012 (conviction) and January 18, 2013 (sentence)

(R. v. Godbout, Terrace Docket 27696).

Oral Reasons for Judgment

Counsel for the Appellant:

D.A. MacLeod

Counsel for the Respondent:

P.A. Eccles

Place and Date of Hearing:

Vancouver, British Columbia

April 13, 2015

Place and Date of Judgment:

Vancouver, British Columbia

April 15, 2015

Summary:

The appellant appeals his sentence of a total of four years less time in pre-sentence custody on a 1:1 basis on two counts of possession of controlled substances for the purpose of trafficking. The appellant had a criminal record that included convictions for a designated substance offence. He contends the judge erred in not considering concurrent sentences and in overemphasizing denunciation and deterrence. He does not quarrel with the judge's treatment of credit for pre-sentence time in custody. Held: appeal dismissed. The issue of concurrent versus consecutive sentences did not arise at the sentencing hearing. A period of incarceration usually is imposed in the present circumstances. Denunciation and deterrence usually predominate. It is clear that Parliament has expressed a preference for incarceration where there is an aggravating factor when an offender is convicted of an offence under the Controlled Drugs and Substances Act: *R. v. De Felice*. A previous drug conviction is an aggravating factor. Two years on each count of possession for the purpose of trafficking in the circumstances of this crime and this offender is not an unfit sentence.

Background

- [1] CHIASSON J.A.: The appellant was convicted in Provincial Court on December 20, 2012 on two counts of possession of controlled substances for the purposes of trafficking - cocaine and ecstasy - under s. 5 of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 [CDSA]. He was sentenced on January 18, 2013 to a total of four years less time in pre-sentence custody as follows: on count one (cocaine) - 730 days less 412 days; on count two (ecstasy) - 730 days consecutive.

- [2] The charges arose out of the shipment by courier to the appellant of a child's toy box that contained a quantity of cocaine. It was intercepted by the police and the cocaine was replaced with an inert substance. The box was alarmed to go off when opened. It was delivered to the appellant on June 4, 2010 by a police officer posing as a courier deliverer.
- [3] When the alarm sounded the police entered the appellant's dwelling authorized by a search warrant. He was arrested and the premises were secured. Under the authority of a further warrant, the appellant's dwelling was searched and a quantity of ecstasy pills was located inside a safe to which the appellant had provided the combination. Other indicia of drug trafficking were found in the apartment. This evidence and a statement by the appellant confirmed that he was supplying drugs at a mid-level in the illegal drug trade.
- [4] The appellant appears to have turned to drug trafficking because he was injured and unable to work for a time, although he has a history of involvement in the illegal drug trade. In a statement he said, "I've done it off and on for about 20 years". This is consistent with convictions in 1997 and 2003 of possession of a controlled substance for the purpose of trafficking.
- [5] The importation and distribution of cocaine was admitted to have taken place for at least six months and involved at least one previous couriered shipment. The appellant stated that he usually did not deal with ecstasy, but "I got a good deal on it". He had been supplied with 2,000 pills and at the time of his arrest had approximately 600 - 800 left. The appellant purchased the pills for \$.50 each and sold them for \$5.00 each.
- [6] At the time of his arrest, the appellant was 36 years old with a four-year-old son, who, with his mother, resided with the appellant. He has a criminal record that included the drug offences previously noted, breaking and entering, false pretences, theft, breach of probation and assault. The longest sentence he had been given prior to the sentences under appeal was 90 days.

Sentencing Reasons

- [7] After briefly setting out the background of the offences, the sentencing judge addressed the appellant's position. He noted his family life and the fact that the appellant had taken steps in custody and when released on judicial interim release to improve his education and to find and create work for himself. The judge also referred to letters of reference provided by the appellant.
- [8] The judge dealt with the law at paras. 5 and 7:
- [5] I have been presented with numerous cases which cover a wide range of sentencing conclusions. Though barring exceptional circumstances, the courts of this province tend to issue jail sentences for these type of offences, even on a first offence. I say that taking into account the quantity seized here.

[7] The case law places an emphasis on denunciation and deterrence, both specific and general. The Crown suggests a sentence of four and a half years' custody total. The defence suggests I consider the time in custody and grant him a community sentence.

[9] Time spent in pre-sentence custody was addressed in para. 9:

I have been urged to consider that Mr. Godbout has spent significant time in city cells and in segregation and he should receive a higher credit rate for those times rather than the straight one-to-one credit for time in custody. I have taken that into account in consideration in determining an appropriate sentence.

[10] The judge continued:

[10] In my view, the largest aggravating factor to consider with respect to Mr. Godbout's personal circumstances is that he has two prior convictions for related activity. The low-end sentences he has received to date have not sufficiently deterred him from engaging in the business of trafficking in illegal substances. The health risks and misery brought on individuals through the availability and use of drugs such as cocaine and ecstasy are well known. Mr. Godbout has chosen to engage in an activity he knows to be illegal for his own gain. He knew the risks getting into the business. He essentially admitted in a statement that he was familiar with the business and had been engaged in it for at least a period of months.

[11] I want to make it clear again that I have considered Mr. Godbout's time in custody while transported in city cells and in segregation. I had considered a lengthier sentence than the one I am imposing.

Positions of the Parties

[11] The appellant agrees that a period of incarceration is warranted. He does not quarrel with the judge's treatment of time in pre-sentence custody, but contends that the four year sentence is out of proportion to the longest sentence previously imposed on the appellant. He asserts that the judge erred by failing to consider whether "this was an appropriate case for the imposition of concurrent sentences".

[12] He notes that the judge did not specifically address rehabilitation when determining the sentence. That is, he overemphasized denunciation and deterrence.

[13] The Crown refers to the extensive background that was before the judge and states that the sentence is a fit sentence in the circumstances of this case.

Discussion

[14] It is not suggested that the judge erred in his treatment of time served in pre-sentence custody, but it is worth noting that in *R. v. Keyler*, 2015 BCCA 48, this Court stated:

- [18] Sentencing is, of course, a highly individualized process. The objective is to obtain the appropriate sentence for the offender in the circumstances of the crime before the Court. Where credit for pre-sentence custody had relevance to the sentencing court's determination of a fit sentence, it likely will be inappropriate to revisit the issue because the law subsequently changes. Where the more correct approach is followed and the appropriate sentence is first determined, after which credit for pre-sentence custody is taken into account, it likely will be more appropriate to revisit the credit as a result of a subsequent change in the law. In such circumstances, applying credit is almost an administrative exercise. An adjustment from a credit of 1:1 to 1:1.5 essentially is arithmetic.

Although the judge followed the less preferable approach in the present case, there is no doubt that he gave full consideration to taking into account time served.

- [15] The appellant concedes that the issue of concurrent versus consecutive sentences did not arise. The Crown sought a global sentence of four and one-half years. In making his submissions on sentence, the appellant sought a conditional sentence with no differentiation between the counts.

- [16] The judge did not mention rehabilitation specifically, but he clearly was alive to the circumstances of the appellant. He observed correctly, and the appellant concedes, that a period of incarceration usually is imposed in the present circumstances and that denunciation and deterrence usually predominate.

- [17] It is instructive to note s. 10(1) of the CDSA:

10. (1) Without restricting the generality of the Criminal Code, the fundamental purpose of any sentence for an offence under this Part is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation, and treatment in appropriate circumstances, of offenders and acknowledging the harm done to victims and to the community.

- [18] Section 10(2)(b) provides that a previous conviction of a designated substance offence is an aggravating factor. Section 10(3), requires a sentencing judge to give reasons for not imposing incarceration where there is an aggravating factor. Although this does not foreclose an alternative sentence, it is clear that Parliament has expressed a preference for incarceration where there is an aggravating factor when an offender is convicted of an offence under the CDSA (R. v. De Felice, 2010 BCCA 273 at paras. 23-25).

- [19] While it would have been preferable for the sentencing judge specifically to address rehabilitation, in the circumstances of this case, I do not consider that it was a reviewable error for him not to do so. He was fully alive to the appellant's situation and the efforts he had taken to make changes in his life and he referred to this in his reasons. The judge also was fully aware of the circumstances of the crime: it was a continuing drug trafficking enterprise involving two separate designated substances. The appellant had been involved with illegal drugs previously and off and on for many years. His record showed that previous

sentences did not affect the appellant's propensity to turn to illegal drug trafficking.

[20] In my view, no error of principle has been shown. Two years on each count of possession for the purpose of trafficking in the circumstances of this crime and this offender is not an unfit sentence.

Conclusion

[21] I would dismiss this appeal.

[22] BAUMAN C.J.B.C.: I agree.

[23] WILLCOCK J.A.: I agree.

[24] BAUMAN C.J.B.C: The appeal is dismissed.

"The Honourable Mr. Justice Chiasson"

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