
CANADA / JUDGMENT

R. v. Goldberg

2011 BCSC 1926

COURT

Supreme Court of British Columbia

DECIDED

25 November 2011

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2011 BCSC 1926 R. v. Goldberg

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Goldberg,

2011 BCSC 1926

Date: 20111125

Docket: 144495-3

Registry: Victoria

Regina

v.

David Ross Goldberg

Before: The Honourable Mr. Justice G.R.J. Gaul

Oral Ruling re Psychiatric Assessment

Counsel for the Crown:

N. Jensen

Counsel for the Accused:

R. Dieno

Place and Date of Hearing:

Victoria, B.C.

16 November, 2011

Place and Date of Judgment:

Victoria, B.C.

November 25, 2011

- [1] THE COURT: On 21 October 2011, I found the accused guilty of two counts of attempted murder and one count of possession of explosive substances.
- [2] Following the delivery of my reasons, the Crown requested that I order the preparation of a pre-sentence report. Additionally, the Crown requested that a psychiatric or a psychological assessment of Mr. Goldberg be completed as a component of the pre-sentence report.
- [3] The defence opposed the Crown's request, and consequently the matter was set over to 16 November 2011 for argument. Initially, the defence objected to the preparation of the pre-sentence report. However, in a somewhat unusual development, Mr. Goldberg addressed the court on the issue of the pre-sentence report after his counsel, Mr. Dieno, had done so. Contrary to the submissions of his counsel, Mr. Goldberg informed the court that he was agreeable to having a pre-sentence report prepared. However, he did not believe that a psychiatric or psychological assessment was necessary and therefore refused to consent to that component of the report.
- [4] In the result, I directed that a pre-sentence report be prepared and reserved my decision as to whether a psychiatric or psychological assessment should be prepared as a component of that report to today's date.

Summary of the Facts

- [5] Mr. Goldberg believed that he had found his life partner when, in 2007, he met Ms. Aroonjaratsang via the Internet. Mr. Goldberg travelled to Thailand to visit Ms. Aroonjaratsang and to meet her family on a number of occasions. During one of those visits, he and Ms. Aroonjaratsang participated in a Thai engagement ceremony in her home town. As part of that ceremony, Mr. Goldberg presented Ms. Aroonjaratsang's mother with approximately \$15,000 worth of gold.
- [6] Shortly after returning to the United States, Mr. Goldberg employment was unexpectedly terminated. The financial stress caused by this sudden loss of employment caused a financial crisis for Mr. Goldberg and prompted him to ask Ms. Aroonjaratsang for the return of the gold he had given to her mother. The request upset Ms. Aroonjaratsang; however the gold was converted into American dollars and the funds returned to Mr. Goldberg. This sudden turn of events, with the resulting loss of face for the Aroonjaratsang family, caused Ms. Aroonjaratsang to re-evaluate her relationship with Mr. Goldberg.

- [7] Fearing his relationship with Ms. Aroonjaratsang was foundering, Mr. Goldberg returned the \$15,000 plus an additional \$15,000 to Ms. Aroonjaratsang's family. However, the damage to the relationship was done.
- [8] Ms. Aroonjaratsang stopped communicating with Mr. Goldberg on a regular basis, and in March 2008 she told him that the relationship was over. On 18 March 2008 Ms. Aroonjaratsang sent Mr. Goldberg an e-mail explaining how she did not want a relationship with him and how she intended to repay the money that he had given to her mother.
- [9] Mr. Goldberg did not accept that his relationship with Ms. Aroonjaratsang was over, nor did he accept the fact if the relationship was coming to an end his \$30,000 was not being returned to him immediately.
- [10] Notwithstanding the clear indication from Ms. Aroonjaratsang that she did not want a relationship with Mr. Goldberg, he continued to e-mail her with professions of his love for her.
- [11] On 15 July 2008, Ms. Aroonjaratsang informed Mr. Goldberg via e-mail that she had married someone else and that she did not want to see or hear from him again. This incensed Mr. Goldberg, as the money he had given to Ms. Aroonjaratsang's mother had yet to be returned.
- [12] Mr. Goldberg felt jilted and swindled by Ms. Aroonjaratsang. He felt he was entitled to an explanation of why she had run away from him and had married someone else, and why he had not yet received all of the money that he had given to her mother.
- [13] With a determination that can only be described as obsessive, Mr. Goldberg set about tracking down Ms. Aroonjaratsang and her new husband, using elaborate ruses and deceitful means that took an enormous amount of planning and effort. Moreover, within a few weeks of receiving Ms. Aroonjaratsang's e-mail of 15 July 2008, Mr. Goldberg:
- a) purchased a handgun and a shotgun, as well as ammunition for both firearms;
 - b) began practising with at least one of the firearms at a shooting range;
 - c) began surfing the Internet for information relating to bombs, explosives, and bomb making; and
 - d) began composing his Last Will and Testament.
- [14] In my opinion, Mr. Goldberg's Last Will and Testament was much more than an ordinary testamentary document, as it included a description and record of his dealings with Ms. Aroonjaratsang and the immeasurable pain and torment he felt she had caused him.
- [15] On 21 September 2008, Mr. Goldberg entered into Canada with both firearms, as well as ammunition for both weapons, using a fraudulent story that he was en route to Alaska.

[16] On 24 September 2008, Mr. Goldberg confronted Ms. Aroonjaratsang and her husband outside of their residence. Mr. Goldberg was carrying a loaded handgun. He pointed the firearm at Ms. Aroonjaratsang and her husband and cocked it. There was some conversation between the three of them relating to the return of Mr. Goldberg's money and his insistence on knowing why Ms. Aroonjaratsang had left him. Mr. Goldberg also said on more than one occasion that he was going to kill them. At the critical moment, Mr. Goldberg raised his free hand to steady the handgun into a firing position and said he had just come to say goodbye. The weapon discharged at or around the same time that Ms. Aroonjaratsang's husband moved towards Mr. Goldberg. The two men fell to the ground and Ms. Aroonjaratsang was dragged with them. During the course of the struggle on the ground, Mr. Goldberg discharged the firearm two more times. In order to subdue Mr. Goldberg, Ms. Aroonjaratsang and her husband stabbed Mr. Goldberg a number of times with a knife. The police arrived shortly thereafter and the situation was taken under control.

[17] The sole issue that I am addressing in these reasons is whether the pre-sentence report that I have already ordered should include a psychological or psychiatric assessment of Mr. Goldberg.

[18] The ordering of a pre-sentence report is governed by s. 721 of the Criminal Code (the "Code"). In particular, s. 721 provides, in part, that where an accused is found guilty of an offence:

... a probation officer shall, if required to do so by a court, prepare and file with the court a report in writing relating to the accused for the purpose of assisting the court in imposing a sentence ...

[19] Subsection (3) reads:

Unless otherwise specified by the court, the report must, wherever possible, contain information on the following matters:

(a) the offender's age, maturity, character, behaviour, attitude and willingness to make amends;

...

[20] Subsection (4) reads:

The report must also contain information on any other matter required by the court, after hearing argument from the prosecutor and the offender, to be included in the report, subject to any contrary regulation made under subsection (2).

[21] Section 723(3) of the Code is also apposite to the issues before me. That provision reads:

The court may, on its own motion, after hearing argument from the prosecutor and the offender, require the production of evidence that would assist it in determining the appropriate sentence.

- [22] The Crown argues that the provisions of the Code I have just cited permit the court to order the sought-after assessment of Mr. Goldberg. In support of its request, the Crown points to the offender's obsessive behaviour towards Ms. Aroonjaratsang and the remarkable lengths to which he went to locate her new address.
- [23] The Crown also points to what transpired on the evening of 24 September 2008, and asserts that a psychological or psychiatric assessment of the offender is necessary in order for the court to have a full and complete picture of Mr. Goldberg and his personal circumstances.
- [24] Mr. Goldberg objects to the psychiatric or psychological assessment. In maintaining this position, he argues that I have sufficient information regarding his character, behaviour, and attitude from the evidence that was led at trial. In particular, he points to the significant number of emails that were introduced at trial and submits that they provide the full context of how and why he travelled to British Columbia.
- [25] Mr. Goldberg contends that his actions in trying to retrieve the money he had given to Ms. Aroonjaratsang and her family and in trying to obtain an explanation for her having jilted him were not irrational. Consequently, he submits there is no compelling nexus between the information a psychiatric assessment would provide and the issues the court must address on sentencing.
- [26] Mr. Goldberg also complains that a psychiatric or psychological assessment will unnecessarily prolong what has already been a lengthy and protracted prosecution.
- [27] Finally, he submits that such an assessment would be unnecessarily invasive and prejudicial to him.
- [28] The jurisprudence is conflicted on whether the court has the authority to order a non-consensual psychological or psychiatric assessment of an offender. (See: *R. v. Saba*, unreported decision, BCSC, New Westminster X047316, 19 December 1997, *R. v. Gettliffe-Grant*, 2006 BCSC 1943 and *R. v. Blackwell*, 2007 BCSC 1486).
- [29] In *Blackwell*, D. Smith J, as she then was, engaged in a detailed review and analysis of the conflicting decisions relating to the ordering of non-consensual psychiatric assessments for the purposes of sentencing. In concluding that a trial judge has the jurisdiction to order such an assessment, Madam Justice Smith observed at paragraph 37:

Unlike a fitness or NCRMD remand, a psychiatric assessment for the purpose of sentencing does not typically require an offender to attend a psychiatric institution and remain there for a fixed period of time while the assessment is completed. Instead, an offender is invited to participate in the assessment process, as he would be at the behest of a probation officer. If he declines to participate, the qualified professional conducting the assessment may still examine collateral material in order to produce a report for the court. The purpose of the assessment is not to conscript evidence from Mr. Blackwell but to assist the Court in determining an appropriate sentence. Mr. Blackwell's participation in such an assessment could assist the Court in better understanding his conduct in these offences. In the absence of an assessment, the Court may

only have the aggravating circumstances of the offen[der] to consider.

[30] I find the reasoning of Madam Justice Smith in Blackwell to be persuasive. I also note that it has been followed in other Canadian jurisdictions (See: R. v. Challes, 77 WCB (2d) 204, R. v. Gibbons, 2009 NUCJ 30, and R. v. J.L., 2009 QCCQ 14013).

[31] My authority to make the order sought is, however, not unlimited. The law is quite clear that before making an order I must be satisfied there is a logical nexus or relevance between the information being sought and the matters under consideration in sentencing. With regard to this point, Madam Justice Smith explained at paragraph 32 in Blackwell:

However, a review of the circumstances in Hunter suggests that evidence required to meet the "logical nexus or relevance" test is not necessarily limited to "bizarre" or extreme conduct by an offender during his or her trial. The comments in Hunter were made in response to the trial judge's request for certain, very peripheral information to be included in the PSR [pre-sentence report]. The appellate court allowed most of the trial judge's requests but excluded those requests that were found to be unnecessary or extraneous. Accepting the basis on which the court in Hunter ordered a psychiatric assessment for sentencing purposes, the evidence required to support a "logical nexus or relevance" for such an assessment need not, in my view, rise to the level of Saba-like behaviour at trial. Concerns about the random, unprovoked, inherently dangerous and violent nature of an offender's actions could, in my view, also meet the criterion for logical nexus or relevance.

[32] When sentencing a first-time offender, especially when a significant custodial sentence is a real possibility, the court should generally have a comprehensive pre-sentence report before it or at the very least a clear statement of the offender's background and circumstances.

[33] In the case at bar, I have a genuine concern about Mr. Goldberg's obsessive behaviour. Notwithstanding the clear statements from Ms. Aroonjaratsang that she did not want to see Mr. Goldberg, he continued to pursue her with a fixation that is troubling. The fact that he purchased firearms, practised using one of them, and then came to British Columbia with those firearms under false pretences, aggravates the situation.

[34] On the night in question, he was carrying the loaded handgun and additional fully loaded magazines. He had prepared what I consider is a Last Will and Testament, that clearly indicated he was anticipating and prepared for his own demise.

[35] I accept the Crown's submission that the required nexus between the information that will be disclosed in a psychiatric or psychological assessment and the issues that I have to address on sentencing, can be found in both Mr. Goldberg's obsession with Ms. Aroonjaratsang and her husband, as well as his irrational justifications for his actions.

- [36] I have given serious consideration to what Mr. Dieno and Mr. Goldberg have said about the preparation of a psychiatric assessment. Having done so, I find myself in disagreement with the submission that the evidence led at trial sufficiently addresses and explains Mr. Goldberg's personal circumstances and background, including his maturity, character, and willingness to make amends.
- [37] In my opinion, a psychiatric assessment will assist and provide a more comprehensive picture of Mr. Goldberg, thereby helping me to fashion an appropriate sentence in this case.
- [38] Nor for the reasons that I have already articulated do I accept the argument that there is no nexus between the information an assessment would provide and the issues that I must address on sentencing. I must impose a sentence that is proportionate to the gravity of the offence committed and Mr. Goldberg's degree of moral culpability. In doing so, I must consider all of the aggravating and mitigating circumstances relating to the offences. In my mind, a psychiatric assessment will assist me in this task.
- [39] Finally, having considered the amount of time and effort that both sides have devoted to this case, I do not think that an adjournment of the sentencing, in order to prepare what I consider is an important piece of information for sentencing purposes, will unnecessarily prolong this proceeding or be prejudicial to Mr. Goldberg. It will be up to Mr. Goldberg to decide whether he participates in the assessment. It is quite possible that the results of the assessment will be of assistance to him.
- [40] However, if he chooses, he can decline to participate in the assessment. In such an event, the person conducting the assessment will have to rely on other sources to complete their work.
- [41] In summary, I am of the opinion the circumstances of this case necessitate the preparation of a psychiatric assessment of the offender. The information provided in such report will be of assistance to me when it comes time to crafting an appropriate sentence for the offences Mr. Goldberg has committed.
- [42] I therefore direct that a psychological or psychiatric assessment of the offender be prepared as part of the pre-sentence report that I have already ordered.

"G.R.J. Gaul J."

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