
CANADA / JUDGMENT

R. v. Goldberg

2012 BCSC 2060

COURT

Supreme Court of British Columbia

DECIDED

11 May 2012

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2012 BCSC 2060 R. v. Goldberg

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Goldberg,

2012 BCSC 2060

Date: 20120511

Docket: 144495-3

Registry: Victoria

Regina

v.

David Ross Goldberg

Corrected Judgment: The text of the judgment was edited
at paragraph 3 on August 8, 2014.

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

Oral Reasons for Sentence

Counsel for the Crown:

N. Jensen

Counsel for the Offender:

R. Mulligan, Q.C.

Place and Date of Hearing:

Victoria, B.C.

May 8, 2012

Place and Date of Sentence:

Victoria, B.C.

May 11, 2012

- [1] THE COURT: On 21 October 2011, I convicted Mr. Goldberg of two counts of attempted murder and one count of the possession of explosive substances without a lawful excuse.
- [2] There has been a lengthy delay in completing the sentencing phase of this matter. That delay was caused by a number of factors, including Mr. Goldberg's dismissal of his trial counsel, his initial refusal and then subsequent agreement to participate in a psychiatric assessment, and his eventual retention of Mr. Mulligan as his new legal counsel.

Circumstances of the Offences

- [3] The circumstances of the offences have been set out in detail in my reasons for judgment delivered on 21 October 2011 [indexed as 2011 BCSC 1925]. For the purposes of this sentencing, I will summarize those circumstances.

Attempted Murder

- [4] Mr. Goldberg met Tasha Aroonjaratsang over the Internet in the summer of 2007. Shortly afterwards, he travelled to Thailand, Ms. Aroonjaratsang's homeland, to meet her and her family.
- [5] The two quickly developed a romantic relationship. In the fall of 2007, Mr. Goldberg and Ms. Aroonjaratsang participated in a Thai engagement ceremony in Ms. Aroonjaratsang's home town.
- [6] During the course of their brief relationship, Mr. Goldberg gave Ms. Aroonjaratsang's mother approximately \$30,000 American. He also gave Ms. Aroonjaratsang money to assist her with her studies in Thailand and her daily living expenses.
- [7] The relationship came to an end in early 2008, when Ms. Aroonjaratsang stopped regularly communicating with Mr. Goldberg. By the spring of 2008, Ms. Aroonjaratsang had sent email correspondence to Mr. Goldberg that clearly indicated her desire to end their relationship. She also acknowledged that the money he had given to her mother needed to be returned, and that she would work towards that end.
- [8] Mr. Goldberg refused to accept that his relationship with Ms. Aroonjaratsang had come to an end, and he continued to call her and send her emails professing his love for her.

- [9] In the summer of 2008, Ms. Aroonjaratsang informed Mr. Goldberg by email that she had married someone else and that she no longer wanted to have any contact with him. Mr. Goldberg felt jilted and cheated by Ms. Aroonjaratsang.
- [10] In the latter part of the summer of 2008, Mr. Goldberg purchased a Springfield Armory XD-40 .40-calibre semi-automatic handgun and a Mossberg 12-gauge shotgun. He also purchased a laser-sighting device for the handgun and joined a local firing range where he practised using his newly acquired firearms.
- [11] Through very intricate and exceptionally deceptive means, Mr. Goldberg was able to discover the name of Ms. Aroonjaratsang's new husband as well as the address of their home in Saanich, British Columbia.
- [12] In September 2008, Mr. Goldberg travelled by car and ferry from his home in California to Canada. On 21 September 2008, he arrived in Victoria aboard the Motor Vessel Coho. He brought with him, amongst many other things, his two firearms, as well as ammunition for both weapons. Mr. Goldberg informed the Canadian border officials that he would be transiting through British Columbia with his firearms en route to Alaska. That was a lie.
- [13] The evening of 24 September 2008 found Mr. Goldberg in the quiet residential neighbourhood where Ms. Aroonjaratsang and her husband, Jeremy Walsh, lived. Mr. Goldberg was carrying his handgun, fully loaded with 10 hollow-point cartridges. He also had in his pockets two additional magazines, fully loaded with an additional 10 cartridges in each. As Ms. Aroonjaratsang and Mr. Walsh were walking home from a local grocery store, Mr. Goldberg confronted them on the street in front of their residence.
- [14] During the course of the confrontation, Mr. Goldberg cocked and pointed the firearm directly at Ms. Aroonjaratsang and Mr. Walsh. He said to both of them that he was going to kill them. When Mr. Goldberg raised his free hand to steady the handgun in the firing position, Mr. Walsh moved towards Mr. Goldberg to protect himself and his wife. The firearm discharged. A struggle ensued between Mr. Goldberg and Mr. Walsh, and the firearm that was still in Mr. Goldberg's hand discharged two more times. While this struggle was underway, Ms. Aroonjaratsang and Mr. Walsh were able to subdue Mr. Goldberg by stabbing him six times in the chest and torso with a knife that Mr. Walsh had been carrying.
- [15] Mr. Walsh was eventually able to disarm Mr. Goldberg. The police arrived shortly thereafter and the scene was secured.
- [16] Mr. Goldberg was taken to the hospital with life-threatening injuries that required surgical intervention.

Possession of Explosive Substances

- [17] After learning that Ms. Aroonjaratsang had married someone else, Mr. Goldberg began searching the Internet and collecting a large quantity of information about bombs and bomb-making. This included extracts from The Anarchist Cookbook relating to improvised explosive devices and the ingredients or elements required to make such devices.
- [18] The police search of the hotel room Mr. Goldberg had rented in Victoria, as well as their search of his vehicle that he had parked not far from the Walsh residence on the night of 24 September 2008, disclosed that Mr. Goldberg had recently purchased wireless remote receivers, model rocket engines, magnesium fire-starting tools, road flares, and tree stump remover.
- [19] The expert forensic evidence at trial satisfied me beyond a reasonable doubt that Mr. Goldberg possessed all of the essential ingredients and information to make an explosive device. He had a power source, a switch, materials that could form the main charge, a canister or container that could hold the main charge, and a detonator. Moreover, he had a significant amount of information obtained from the Internet on how to go about making an explosive device.

Circumstances of the Offender

- [20] I heard a significant amount of evidence relating to Mr. Goldberg's personal history and background during the course of the trial. I have also had the benefit of a pre-sentence report that was prepared in March of this year.
- [21] Mr. Goldberg is a 40-year-old American citizen. His family, consisting of his father and two brothers, live in the United States of America. Mr. Goldberg's mother died when he was 29 years old.
- [22] Mr. Goldberg is a graduate of Cornell University where he obtained a Bachelor of Science degree in applied physics and a Master's degree in electrical engineering. It is clear to me that Mr. Goldberg is a very articulate and intelligent person.
- [23] The pre-sentence report indicates that Mr. Goldberg continues to have the love and support of his family and many friends, including those who have stood by him during the course of this long trial. Uniformly they indicate that the offences for which he has been convicted are completely out of character for him.
- [24] Prior to these offences, Mr. Goldberg had no criminal record.

- [25] During the course of the preparation of the pre-sentence report, Mr. Goldberg insisted that he was not criminally responsible for the offences for which he was convicted. Instead, he maintained that he was the victim in this case. In his submissions on sentencing, Mr. Mulligan informed the court that since the preparation of the report, Mr. Goldberg has developed a better understanding of the offences for which he was convicted and is now quite remorseful for his actions.
- [26] When given the opportunity to address the court on sentencing, Mr. Goldberg articulately reiterated that he did not try to kill Ms. Aroonjaratsang and Mr. Walsh, but nevertheless was sorry for what had occurred and what he had done on the evening of 24 September 2008.
- [27] The psychiatric assessment of Mr. Goldberg that was completed by Dr. Anthony Dugbartey of the Forensic Psychiatric Services Commission concluded that there was no evidence of Mr. Goldberg having any psychotic symptoms or mental disorders. Dr. Dugbartey also observed that:

Mr. Goldberg does not appear to harbour any systematized attitudes which condone the use of violence.

- [28] Of concern to the court, however, is Dr. Dugbartey's opinion that:

Mr. Goldberg presents with moderate risk for violence, and it is my view that the risk is specific to Ms. Aroonjaratsang and anyone who happens to be her current spouse, suitor, or current romantic partner. I am not convinced that Mr. Goldberg is quite prepared to move on with his life as he says he has. My chief concern is that the defendant may continue to explore ways of seeking what he perhaps perceives as recompense for his dowry expenditures on her, which may bring him in direct contact again with Ms. Aroonjaratsang sometime in the future.

- [29] The pre-sentence report also includes information from the Canadian Border Service Agency relating to Mr. Goldberg's ability to remain in Canada at the expiry of any sentence I impose. By all accounts, Mr. Goldberg will be deported to the United States of America immediately following his release from custody.
- [30] The author of the pre-sentence report noted that Mr. Goldberg expressed no desire to stay in Canada, and anticipated he would return to California after his release.

Victim Impact

- [31] Although no formal victim impact statements were provided to me, Ms. Aroonjaratsang and Mr. Walsh testified during the course of the trial and explained the significant emotional turmoil the offences have caused them. Both had to endure the harrowing experience of having to stare down the barrel of a handgun being pointed directly at them while being told they are going to die. I have no difficulty in concluding that such an experience would be traumatic and life altering.

- [32] The pre-sentence report indicates that Ms. Aroonjaratsang has been under the care of a mental health professional to assist her in dealing with her emotional trauma. The report also indicates that both Ms. Aroonjaratsang and Mr. Walsh continue to fear that Mr. Goldberg will retaliate against them when he is released from custody.

The Law

- [33] An offender convicted of attempted murder where a firearm is used faces a maximum sentence of life imprisonment and a mandatory minimum sentence of four years in prison.
- [34] For the offence of possessing explosive substance without a lawful excuse, an offender faces a sentence of up to five years in prison. There is no mandatory minimum sentence.

Purpose of Sentencing

- [35] The purpose of sentencing is set out in s. 718 of the Criminal Code of Canada (the "Code"). That section reads:

The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

Principles of Sentencing

- [36] Section 718.1 of the Code establishes the following fundamental principle of sentencing:

A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

- [37] This principle is the starting point in the sentencing process. However, it must be considered and applied in conjunction with the other principles that are articulated in s. 718.2 of the Code. That section reads:

A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender . . .

- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
- d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
- e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

Aggravating Circumstances

[38] I find the following to be aggravating factors on sentencing:

- the lengths to which Mr. Goldberg went to prepare himself for his confrontation with Ms. Aroonjaratsang and Mr. Walsh, including: his obsessive behaviour in tracking down Ms. Aroonjaratsang at her new address; the purchase of the handgun, shotgun, and ammunition; the deceitful means Mr. Goldberg used to get into Canada with the firearms; and the fact that he attended a residential neighbourhood in possession of a fully-loaded handgun, as well as additional ammunition;
- the fact that the handgun was discharged three times;
- the fact that the victims of Mr. Goldberg's crimes were his former fiancée and her new spouse; and
- the fact that Mr. Goldberg continues to exhibit resentment towards Ms. Aroonjaratsang for having ended the relationship in the manner that she did.

Mitigating Circumstances

[39] I find the following to be mitigating factors on sentencing:

- Prior to these offences, Mr. Goldberg had no criminal record and by all accounts he had been an upstanding and law-abiding citizen in the United States of America;
- Mr. Goldberg suffered life-threatening injuries when he was disarmed by Mr. Walsh and Ms. Aroonjaratsang;
- Mr. Goldberg continues to have the support of his family and friends, and
- there appears to be a reasonable chance that Mr. Goldberg will be able to recommence his professional career as an electrical engineer once he is released from custody.

- [40] I have also taken note of the fact that Mr. Goldberg will be deported from Canada upon the expiry of any sentence he must serve on account of these offences. With respect to this fact, I find myself in agreement with the following observations of Hill J. in *R. v. Critton*, [2002] O.J. No. 2594 (S.C.J.):
- [86] I prefer the view that the accused's deportation is a factor which can, in some circumstances, serve to mitigate the severity of the sanction imposed by the court. Leaving aside instances of accused who are illegally in the country, in cases such as that of Patrick Critton, deportation is relevant to the sentencing function in at least three respects:
- (1) the risk of incomplete rehabilitation on release from custody is not a risk imposed upon the Canadian people
 - (2) frequently, the offender subject to deportation serves "harder time" in Canada because he or she is incarcerated a significant distance from family who are resident in a foreign country
 - (3) Canadians are spared the expense of continued incarceration of the accused where the offender is deported (annualized cost of maintaining a federal prisoner - \$51,202.00 in 1998 (Prison Population and Costs, 1997/98, Statistics Canada (online at <http://www.statcan.ca/english/indepth/85-002/feature/jurl1999004006sda.htm>); \$67,160.00 in 1999-2000 (Prisoners' Justice Updates - Current News, Facts & Stats (online at <http://www.vcn.bc.ca/august10/news.html>)).
- [41] In *R. v. Hamilton*, [2004] O.J. 3252 (C.A.), the Ontario Court of Appeal cited Critton with approval when it concluded:
- [156] . . . the certainty of deportation may justify some reduction in the term of imprisonment for purely pragmatic reasons....

Position of the Crown

- [42] The Crown submits that the appropriate range of sentence for the two attempted murder convictions is between 10 and 17 years imprisonment. The Crown further argues that in light of the aggravating features of this case, the sentence should fall at the higher end of that range.
- [43] With regard to the conviction for possession of explosive substances, the Crown submits that a sentence in the range of two years imprisonment would be appropriate. In doing so, the Crown maintains that if the court considers the possession of the explosive substances was "part and parcel" of the attempted murders, then the sentences could properly be served concurrently. On the other hand, if the court concludes that the possession of these explosive substances was for some other purpose, such as facilitating Mr. Goldberg's escape, then the sentence should be consecutive to the sentence imposed for the attempted murders.

- [44] The Crown acknowledges that Mr. Goldberg is entitled to credit for the time he has spent in pre-sentence custody, and calculates that amount of time, using the judicially-accepted rate of two to one, as seven years and three months.
- [45] The Crown also seeks an order prohibiting Mr. Goldberg from possessing firearms and restricted weapons for life, pursuant to s. 109 of the Code, and an order that Mr. Goldberg provide a sample of his DNA for forensic analysis.

Position of the Defence

- [46] The defence submits that the appropriate range of sentence for attempted murder convictions such as the one at bar is seven to 12 years imprisonment, and that the sentence imposed for the possession of explosive substances should be time served.
- [47] The defence asserts the unique circumstances of this case require a unique sentencing response. Mr. Mulligan highlights the fact that Mr. Goldberg will be deported from Canada at the expiry of his sentence and is unlikely to return. Moreover, he maintains that, at the time of the offences Mr. Goldberg was a "broken man with a terribly troubled mind" who was contemplating suicide. Counsel further submits that Mr. Goldberg's situation has changed dramatically since the night of 24 September 2008, and that to a great extent Mr. Goldberg has already been punished for his criminal actions of that night. Mr. Goldberg suffered life-threatening wounds that have taken a significant amount of time to heal and have left him scarred for life. He has also spent a significant amount of time on remand in a detention centre that has offered little in the way of activities or programs for Mr. Goldberg.
- [48] According to Mr. Mulligan, the appropriate sentence in the circumstances of this case, keeping in mind the time Mr. Goldberg has spent in pre-sentence custody, would be 30 days, followed by a probation order of three years, with the only term being that there be no contact, directly or indirectly, with Ms. Aroonjaratsang or Mr. Walsh. For the possession of explosive substances, the defence argues the sentence should simply be time served.
- [49] In Mr. Mulligan's submission, the 30 days would provide the Canadian authorities with the necessary time to get Mr. Goldberg's deportation documents and measures in place, so that his escorted return to the U.S.A. can take place swiftly and smoothly.

Discussion

Attempted Murder

- [50] The Crown has described Mr. Goldberg's actions on the night of 24 September 2008 as "first degree attempted murders". This expression is derived from some of the case authorities the Crown relies upon in seeking a sentence at the upper end of the proposed range of sentence.
- [51] In *R. v. Denkers*, [1994] O.J. No. 660 (C.A.), the victim of the attempted murder was Mr. Denkers' former girlfriend. In the spring of 1988 she had tried to end her relationship with Mr. Denkers; however, he would have nothing of it. He broke into the victim's home and left

threatening messages on her voice mail. He was arrested for having assaulted and threatened her, and was released on bail with a term that he have no contact with her. Following his release, and notwithstanding the order prohibiting him from having contact with the complainant, he continued to harass her with threatening telephone calls. Mr. Denkers spoke of hiring a "hit man" and "getting rid" of the complainant. Eventually he broke into the complainant's residence late one night while she was sleeping. He stabbed her multiple times in the chest, slit her throat and sexually assaulted her.

- [52] The trial judge sentenced Mr. Denkers to 15 years in prison. On appeal, the Ontario Court of Appeal upheld the sentence, finding the offence committed by Mr. Denkers was "as grave a case of attempted murder as one can imagine".
- [53] In my opinion, while the situation that transpired in front of the Walsh residence on the night of 24 September 2008 must have been terribly traumatic for Ms. Aroonjaratsang and Mr. Walsh, it is not as aggravated as what occurred to the victim in the Denkers case.
- [54] In *R. v. Quance*, [2000] O.J. No. 2243 (C.A.), the Ontario Court of Appeal upheld a sentence of 17 years for the offender's attempted murder of his former wife and her new partner. In reaching its conclusion, the court observed at paras. 39 to 41:
- [39] The trial judge reviewed the evidence of the many threats by the appellant and the appellant's actions on the day of the offences. He concluded that the crimes were "planned and deliberate". The appellant does not suggest that this finding was not open to the trial judge and, in my view, it is virtually the only reasonable inference from all the evidence. For weeks, the appellant had been threatening to kill his wife and to do so by fire. On the day of the offence, he purchased large quantities of gasoline. He knew his wife was at the Henderson home and he knew within seconds of his arrival that Mr. Henderson was also home. He poured gasoline on them. He has left his wife and her companion with permanent disabilities and lifelong pain and suffering. The trial judge described the offences as horrific.
- [40] On the findings made by the trial judge, this was in effect an attempted first degree murder. The gravity of the crime could only have been greater if the victims had died. The appellant's degree of responsibility was also very high. The psychiatric report, aside from indicating an "adjustment disorder with mixed disturbance of emotions and conduct", offered no psychiatric explanation for this conduct. The appellant's faculties were not impaired.
- [41] This is pre-eminently a case where this court should show deference to the trial judge. He had presided over the trial where the victims and the appellant testified. He then heard extensive evidence and submissions on sentencing. While the sentence imposed was high and perhaps even at the upper end of the range, given the appellant's previous good character and the pre-trial custody, I cannot say that it is so excessive as to justify intervention by this court . . . In that respect, I note that the sentence of the accused in *Campbell* was reduced from twenty-five years to fifteen years by this court. That case involved only one victim, less serious injuries and, remarkably, the accused and the

deceased appeared to have reconciled to some extent prior to the trial.

- [55] There are clear signs in the present case that Mr. Goldberg was prepared to kill Ms. Aroonjaratsang and Mr. Walsh; however in my opinion he was ambivalent about actually committing the acts when he first arrived in Victoria. In my view he did not make up his mind to kill them until he realized his efforts to speak with Ms. Aroonjaratsang and possibly reconcile were futile. In other words, his specific intent to kill her and her husband did not crystallize until 24 September 2008 when he confronted them out in front of their residence with a loaded handgun.
- [56] In my view, Mr. Goldberg's planning and deliberation and the consequences that flowed from his actions differ from those that were before the court in Quance. By this I mean the steps taken by the offender in Quance and the horrific results were more aggravated than those in the present case. Although emotionally traumatized, Ms. Aroonjaratsang and Mr. Walsh were not physically harmed. Mr. Quance's victims, on the other hand, suffered serious burns as a result of his pouring gasoline on them, and they have been scarred for life. Without diminishing the seriousness of Mr. Goldberg's actions, I find they do not fall into the same category as those of the offender in Quance.
- [57] In *R. v. Dennis*, 2005 BCCA 475, the offender shot his former girlfriend four times at close range. The shooting took place at a service station where the offender and the victim regularly met to exchange custody of their son. The Court of Appeal upheld a sentence of nine years, concluding at para. 30:
- [30] But this is a case that involves an admitted intention to kill and one cannot excuse the unlawful carrying of a loaded firearm, available to carry out that intention in the presence of a child. After being shot four times at close range, it is a wonder indeed that the victim survived. The physical and emotional aftermath to this victim is overwhelming.
- [58] In *R. v. Kipp*, 2010 BCSC 584, the offender was convicted of multiple offences, including attempted murder. Mr. Kipp fired 13 shots at a person with whom he had a drug-related dispute. That person was hit by four bullets, while a third party was hit by one. Mr. Justice Joyce held that the appropriate sentence for the attempted murder was 10 years in prison and in reaching this conclusion, he commented at para. 81:
- [81] I believe that a significant sentence is required to denounce Mr. Kipp's conduct, to make Mr. Kipp and others aware that resorting to the use of firearms, particularly in public places, to settle disputes that arise in the drug trade will be dealt with severely. The proliferation in the carrying and use of deadly firearms in this community is truly troubling. As I have already remarked, Mr. Kipp not only seriously injured two men, he placed innocent people at risk. Blasting away with a semiautomatic rifle in the middle of a residential neighbourhood can only bring fear to its citizens. It is only by good luck that Mr. Kipp was not facing a charge of murder.

- [59] In my respectful view, much of what Joyce J. had to say about Mr. Kipp is equally applicable to Mr. Goldberg. Mr. Goldberg brazenly attended a quiet residential neighbourhood in Saanich, armed with an arsenal of significant force. He brandished a handgun with a laser-sighting device attached to it and pointed it directly at the two victims. He told them he was going to kill them. The firearm discharged more than once. It is only by sheer luck that no one was hit by the bullets discharged from Mr. Goldberg's firearm.
- [60] Counsel for Mr. Goldberg asserts that the range of sentence proposed by the Crown is unjustifiably high and maintains it is more properly between seven and 12 years in prison. In support of this position, Mr. Mulligan relies upon the decision of our Court of Appeal in *R. v. Cuthbert*, 2007 BCCA 585. In *Cuthbert*, the offender was convicted of multiple offences, including the attempted murder of his ex-spouse. Mr. Cuthbert had forced his way into his former spouse's residence brandishing a shotgun he had recently purchased. He threatened his former spouse, and when her new partner, Mr. Campbell, appeared in the room, Mr. Cuthbert discharged the firearm. The pellets from the cartridge struck Mr. Campbell, causing severe injuries that resulted in his permanent disability. Mr. Justice Wilson of this court imposed a sentence of 10 years in prison for the attempted murder of Mr. Campbell. In doing so, he concluded at para. 22 of his reasons:
- [22] I conclude that these activities were motivated by hatred. There is an element of abuse of a former spouse. This is a situation of domestic violence in my judgment. It was conduct which was premeditated. It was planned, thought out and carried out accordingly.
- [61] The Court of Appeal upheld the sentence imposed in *Cuthbert*, noting that a sentence of seven to 12 years would not have been unfit.
- [62] In *R. v. McFarlen*, 2009 BCSC 1201, Mr. Justice Joyce sentenced the offender to nine years in prison for the attempted murder of his former spouse. Notwithstanding a restraining order prohibiting Mr. McFarlen from attending at the matrimonial residence, he did so. After a verbal altercation with his ex-spouse, Mr. McFarlen used a splitting maul to break into the residence. Mr. McFarlen said he was going to kill his ex-spouse, and struck her twice in the head with the handle of the maul. He then started to choke her. Mr. McFarlen stopped choking his ex-spouse after she lost consciousness, and just as the police arrived. Although she did not sustain any long-term permanent physical injuries as a result of the attack, Mr. McFarlen's ex-spouse did suffer significant emotional and psychological trauma.
- [63] In sentencing Mr. McFarlen to nine years in prison, Mr. Justice Joyce noted at paras. 40 and 78 of his reasons:
- [40] In this case, the only mitigating factor is the lack of any previous criminal record. I am of the opinion that Mr. McFarlen lacks true remorse and has not yet taken responsibility for his actions. It appears to me that Mr. McFarlen still sees himself as the aggrieved party who was denied access to his children and was thereby driven to confront Ms. Charlebois to assert his position, where things got out of hand and went badly for him.

...

- [78] A number of the cases to which I have referred emphasize the need to deal forcefully with domestic violence when sentencing offenders. The need to deter the offender from repeating such conduct towards this victim or any other potential victims, the need to deter others by making it known that domestic violence will be treated very seriously, the need to denounce abusive conduct by a spouse towards his partner or former partner as totally unacceptable in our society must take priority over the rehabilitation of the offender. That is not to say that rehabilitation should be ignored, but rehabilitation can take place in the penitentiary setting where Mr. McFarlen will have the opportunity to participate in programs that can help him to deal with his anger and overcome his problems.
- [64] In my opinion, the observations of Joyce J. are apposite to the case at bar.
- [65] In my view, the sentencing principles that take precedence in this case are deterrence, both general and specific, denunciation, and the protection of the community. Secondly, the court should consider the rehabilitation of the offender, for which I find there is a reasonable likelihood.
- [66] In my opinion, the appropriate range of sentence for the case at bar is that suggested by the defence. The case authorities relied upon by the Crown for a higher range of sentence entail much more egregious and horrific conduct and consequences. That is, I repeat, not to minimize what happened to Ms. Aroonjaratsang or Mr. Walsh. It is just a recognition that the range of sentence suggested by the Crown is appropriate for more aggravated cases where the victims have suffered significant physical trauma.
- [67] I accept that there is an element of intimate partner violence in the case at bar. While Mr. Goldberg and Ms. Aroonjaratsang were not spouses, they were in an intimate relationship at one time, one that Ms. Aroonjaratsang attempted to end. Mr. Goldberg clearly did not want the relationship to end, and it was only when he finally realized and accepted that the relationship was over that he put into action his plan to kill Ms. Aroonjaratsang and Mr. Walsh.
- [68] In my opinion, there is much to be said for Mr. Mulligan's suggested approach to sentencing Mr. Goldberg. This is a serious case; however it is not the type of "first degree attempted murder" like the cases referred to by the Crown. While Mr. Goldberg did go to great lengths to prepare for the possibility of killing Ms. Aroonjaratsang and Mr. Walsh, his intentions were not clear or firm until 24 September 2008. That fact alone distinguishes this case from some of those relied upon by the Crown.
- [69] Moreover, while the consequences of the offence have been traumatic for Ms. Aroonjaratsang and Mr. Walsh, they are not, in my respectful view, comparable to the horrific results of many of the attempted murder cases the Crown has cited, where the victims have been left with long-term physical harm.

- [70] There is also the practical reality that I cannot and should not ignore. No matter how long Mr. Goldberg spends in prison in Canada, once he has completed his sentence, he will be deported to his home in the United States. I accept that on account of this fact, I can impose a shorter sentence on Mr. Goldberg than I would otherwise impose.
- [71] In view of all the circumstances of this case, I find a sentence of nine and one-half years for each of the attempted murders is a fit sentence.

Possession of Explosive Substances

- [72] Mr. Goldberg researched and obtained information from the Internet describing how to go about making homemade explosive devices. This was not simply idle interest on his part. I found, based upon the evidence led at trial that Mr. Goldberg actively collected this information with the aim of building an explosive device. He then went about collecting all the necessary elements required to make such a device. He brought some of those ingredients with him to Victoria and purchased the rest here.
- [73] In my opinion, the only rational inference that can be drawn from the information and materials that Mr. Goldberg collected and possessed was that he intended to make an explosive device.
- [74] Counsel have provided me with no case authorities relating to this type of offence and the sentencing for it. While I find Mr. Goldberg's conduct gravely concerning, his crime does not call for the maximum sentence.
- [75] In my view, keeping in mind all of the principles of sentencing, the appropriate sentence is a custodial sentence of 18 months.

Concurrent or Consecutive Sentences

- [76] In my respectful view, all of the offences committed by Mr. Goldberg formed part of one large event and therefore the sentences for those offences will be served concurrently (see: *R. v. Li*, 2009 BCCA 85).

Credit for Pre-Sentence Custody

- [77] Although the law has changed with respect to what credit an offender can receive for the time he spends in pre-sentence custody, Mr. Goldberg's detention in custody predates those changes, and therefore he is entitled to the benefit of the pre-existing state of the law.
- [78] Mr. Goldberg has been in custody since his arrest on 24 September 2008. Some of that time was spent in the hospital recovering from his life-threatening stab wounds. When he was discharged from the hospital, he was immediately transferred to the Vancouver Island Regional Correctional Centre. In total, Mr. Goldberg has spent approximately three years and eight months in pre-sentence custody.

- [79] The generally accepted rule of thumb of "two-days credit for one-day in custody" recognizes that time spent in pre-sentence custody in a remand facility as opposed to a federal prison or provincial detention centre is "dead time" in that it is not credited towards parole. Moreover, the rule recognizes that spending time in a remand facility can be more severe than serving time it at a correctional facility, in that there are fewer resources and opportunities for rehabilitation available for inmates.
- [80] Employing this rule of thumb, I will credit Mr. Goldberg with seven and one-half years for his pre-sentence custody.

Ancillary Orders

- [81] The Crown seeks a lifetime firearms and weapons prohibition pursuant to s. 109 of the Code.
- [82] The defence does not vigorously opposed the Crown's application; however counsel for Mr. Goldberg points out that there are actually two prohibitions that need to be considered under s. 109 of the Code. The first prohibition, under s. 109(2)(a) of the Code, relates to firearms other than restricted or prohibited firearms, cross-bows, restricted weapons, ammunitions, and explosive substances and should only be for a period of 10 years. The second prohibition, under s. 109(2)(b) of the Code relates, amongst other things, to prohibited firearms and restricted firearms and should be for a life.
- [83] As I have previously mentioned, Mr. Goldberg came into Canada with an arsenal of firearms and ammunition. He possessed one of those firearms on the night in question and the weapon was used in the attempted murder of his former fiancée and her husband. The firearm was discharged more than once, and only by the grace of good fortune was no one struck by any of the bullets. In my opinion, in the unlikely event that Mr. Goldberg ever does return to Canada, he should be prohibited from possessing any firearm, period.
- [84] Consequently, pursuant to s. 109(2)(a) of the Code, I am imposing a lifetime prohibition on Mr. Goldberg from possessing any firearm, crossbow, restricted weapon, ammunition, and explosive substance. Pursuant to s. 109(2)(b) of the Code, I am further imposing a lifetime prohibition on Mr. Goldberg from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition.

DNA Order

- [85] Attempted murder is a primary designated offence for the purpose of making a DNA data bank order. Consequently, pursuant to s. 487.051 of the Code, I make an order authorizing the taking from Mr. Goldberg for the purpose of forensic DNA analysis any number of samples of one or more of his bodily substances that are required for that purpose by the means of the investigative procedures described in s. 487.06(1) of the Code.

Summary

- [86] Mr. Goldberg, you will now stand.

- [87] Mr. Goldberg, you have heard my reasons for sentencing. In summary, I am sentencing you for the attempted murder of Tasha Aroonjaratsang to nine and one-half years in prison. I am also sentencing you for the attempted murder of Jeremy Walsh to nine and one-half years in prison. Your sentence for having possessed explosive substances without a lawful excuse is 18 months in prison. All of the sentences will be served concurrently.
- [88] You have spent approximately three years and eight months in pre-sentence custody, and I am granting you credit for seven and one-half years using the judicially recognized rule of thumb of two-for-one credit. Deducting this credit from the global sentence imposed, I order that you spend an additional two years less one day in prison.
- [89] You will also be subject to a probation order for a period of three years. The only term of that order, Mr. Goldberg, aside from the statutory provisions required by the Code, is that you are to have no contact, either directly or indirectly, with Tasha Aroonjaratsang, Jeremy Walsh, or Mr. William John Walsh, Mr. Walsh's father.
- [90] I recognize, Mr. Goldberg, that the terms of this probation order do not extend beyond the Canadian borders. However, I find the order will provide one more layer of protection to the victims from any harassment that you might consider.
- [91] You may have a seat.
- [92] If Mr. Goldberg does try to re-enter Canada, the border authorities will have, amongst all the other information relating to him, a copy of this probation order. If he does enter Canada and does contact the victims, then he will be subject to arrest and the prosecution for breach of the probation order.
- [93] Those are my reasons. Mr. Jensen, anything arising?
- [94] MR. JENSEN: If I might just have a moment, My Lord?
- [95] THE COURT: I will be asking you the same question, Mr. Mulligan.
- [96] MR. JENSEN: No, My Lord, I -- given that the probation order essentially will give the rights to arrest at the border, before -- well, if he can't come in, in that three year period of time, once it's finished there's a question of him just entering, whether or not that will be arrestable in and of itself, if he's just coming in. So you may want to consider, during that period of time, he not enter Canada. I suspect in the -- in all of the circumstances, he will not be allowed to enter Canada, given his record and given the convictions that he has here, that have been registered here today. But that would be the only thing that you may want to consider, thank you.
- [97] THE COURT: Mr. Mulligan, the suggestion of the probation order was yours. What do you have to say, amongst other things, about your friend's suggestion that an additional term of the probation order include a prohibition from entering Canada?

- [98] MR. MULLIGAN: I understand the gist of what's been said. There's force to that suggestion. I say, however, the following: It is not usual to ban people from certain places by probation orders, except in particular circumstances which are very narrowly defined. And secondly, it's not likely to be necessary. If you made the order, I'm sure it will not be problematic. Any such order will be enforced, like the term that you have already announced, but I say, with respect, it's not necessary.
- [99] THE COURT: Is there anything else arising from the reasons?
- [100] MR. MULLIGAN: No, thank you. Perhaps -- this is so minor, it hardly bears speaking, but there is consideration of whether or not there would be any waiver of any victim surcharge in the circumstances. Please do that.
- [101] THE COURT: Thank you for raising that. Mr. Jensen, do you have any submissions on the victim surcharge?
- [102] MR. JENSEN: None.
- [103] THE COURT: All right. In light of the circumstances of this case, the amount of time Mr. Goldberg has spent in custody, and the period of time he is going to spend in custody, further time he is going to spend in custody, I will waive the victim surcharge.
- [104] Moreover, having heard submissions on the issue, I will add one additional term to the probation order of Mr. Goldberg that will be in place for a period of three years. That additional term is that he is not to be found within -- how would I phrase it? He is not to be found within the borders of Canada. Mr. Jensen?
- [105] MR. JENSEN: Yes, I think that would cover it, thank you.
- [106] THE COURT: Mr. Mulligan, any issues with that?
- [107] MR. MULLIGAN: No.
- [108] THE COURT: All right. Mr. Registrar, do you have that?
- [109] THE CLERK: Yes, My Lord.
- [110] THE COURT: So the probation order, aside from the statutory required terms, will have two additional terms: one is the no contact with the three named individuals, and the second is he is not to be found within the borders of Canada.
- [111] I thank counsel for their submissions.
- "G. R. J. Gaul J."

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Prepared on 29 October 2026 · Esheria