
CANADA / JUDGMENT

R. v. Greer

2020 BCSC 1131

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 1131 R. v. Greer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Greer,

2020 BCSC 1131

Date: 20200619

Docket: 40746-2

Registry: Duncan

Regina

v.

Timothy James Greer

Before: The Honourable Mr. Justice T.J. Crabtree

Oral Reasons for Sentence

Counsel for the Crown:

T.I. McFadgen

Counsel for the Accused, Greer:

C.L. Hodson

Place and Date of Hearing:

Duncan, B.C.

June 18, 2020

Place and Date of Judgment:

Duncan, B.C.

June 19, 2020

OVERVIEW

[1] THE COURT: Mr. Greer was found guilty of the following three counts on Indictment 40746-2:

1. Count 6, that on June 30, 2018, at or near Duncan, B.C., he possessed a prohibited weapon, which was described as a cut-down Mossberg Model 400G pump-action 12-gauge shotgun, without being the holder of an authorization or licence, contrary to s. 95(1) of the Criminal Code;
2. Count 7, that on the same date he possessed a prohibited weapon, described as a Rohm model firing pistol, without being the holder of a licence; and
3. Count 8, that on the same date he stored a firearm, a Savage model 30-30 Winchester calibre rifle, in a careless manner.

[2] The most serious of the three offences to which I have just referred is, of course, the offence under s. 95(1) of the Criminal Code, which carries a maximum sentence of 10 years' incarceration but for which there is no minimum penalty.

[3] I will go through some of the circumstances, in the course of the sentencing hearing. A more fulsome discussion of the circumstances is set out in the detailed reasons for conviction, I provided orally in court on April 7, 2020.

[4] In considering the appropriate sentence for Mr. Greer today, several issues were raised by counsel, including the following:

1. Should the sentence be served consecutively or concurrently? I will explain that in more detail, shortly.
2. What is the impact, if any, of COVID-19 on an appropriate sentence?
3. What pre-trial credit is Mr. Greer entitled to, for time spent in custody?

[5] Of course, the ultimate issue is the determination of a fit and proper sentence, being mindful of the circumstances of the offence, the circumstances of Mr. Greer, and his culpability in these matters.

THE FACTS

Circumstances of the offence

- [6] Briefly, by way of facts, the court found that on June 30, 2018, Mr. Greer had knowledge and control of a shotgun, a handgun and long guns, situated in a residential property owned by him and in which he occupied the master bedroom. He was engaged in a drug operation that involved the purchase, packaging and resale of drugs from the residence, as well as similar activity outside the residence. During the execution of the search warrant, the police observed elements of the drug operation in the bedroom. These included a quantity of caffeine, used as a cutting agent to mix with the drugs, and scoresheets. Also observed were the pistol, three long rifles located in the closet, live shotgun shells and ammunition, and a Kevlar vest.
- [7] In the living room, the police located the shotgun, positioned between the cushion and the back of a leather chair, such that one could reach back and retrieve it. When the weapon was discovered by the police, a live round was found in it. I will refer more to those circumstances, in a moment.

Circumstances of the offender

- [8] I will now set out Mr. Greer's personal circumstances. Mr. Greer is 45 years of age. He was born on Vancouver Island but relocated to Alberta where he was raised. He remained there until approximately 32 years of age; at which time, he moved back to Vancouver Island. His mother now maintains a home in Chemainus. His father continues to have ties to this area but works in Alberta.
- [9] I would describe Mr. Greer's time in Alberta as somewhat of a contradiction. For periods of time, he was able to secure employment in the construction industry and operated heavy equipment. He was gainfully employed. At other times, he became engaged in the criminal justice system; first as a youth and then as an adult. He was convicted of a number of offences over a period of time, which often resulted in periods of incarceration. The longest of which, as set out in the record filed, was in 1994. Mr. Greer was sentenced to a period of two years' consecutive to a six-month sentence imposed a few months earlier for a break/enter and theft, a mischief, and an attempted theft.
- [10] Mr. Greer's record continued after 1994, which included convictions for administrative-type offences including: a breach of a court order for failing to comply with a recognizance; and several driving convictions including: dangerous operation of a motor vehicle, driving while over .08, obstruct police officer, another dangerous operation of a motor vehicle, and flight from a peace officer. The total number of convictions were not added up, but the record is extensive for the period of 1994 to 2009. I am told that the convictions recorded in 2008 and 2009, which are the last recorded convictions on his criminal record in Alberta, were for offences that occurred in 2007 and 2008.

- [11] Mr. Greer attributes his criminal involvement to an addiction issue, which first came to light with his abusing alcohol in his teenage years. It turned fairly quickly into the use and abuse of illicit substances including cocaine, heroin and fentanyl. Despite Mr. Greer's addiction issue and involvement in the criminal justice system for periods of time, he also had the capacity to obtain and maintain work during other periods of time, while in Alberta. Mr. Greer demonstrated this capacity when he relocated to Vancouver Island, following his last conviction in Alberta. For a significant period of time after that, he was able to engage in the community, in terms of successfully completing an apprentice program, working as a journeyman mechanic, and then qualifying as a master mechanic. He obtained employment with several dealerships in the Vancouver Island area, for which he was well compensated.
- [12] It is clear Mr. Greer has the capacity, when not engaged in the criminal justice system, to contribute to the community; and has good relationships with the children of his former relationships. While back on Vancouver Island, he has been active in spending time with them. Despite the fact that he was working, had purchased a home and had hobbies (including boating and fishing), his addiction seemed to take hold again; and, in part, contributed to his re-engaging in the criminal justice system.
- [13] Having kept himself out of the criminal justice system since the completion of his last sentence in Alberta in 2009, Mr. Greer re-engaged in it toward the end of 2017. At that time, he took monies from his bank totalling in excess of \$20,000, and for which he was sentenced to a period of incarceration.
- [14] Mr. Greer then became involved in the matters currently before the court. Through the course of his engagement in these activities, he has essentially lost all that he put together since coming to Vancouver Island, except for the support of his family and his relationship with his children. He has lost his employment, his home and the other benefits he accumulated.
- [15] In the course of Mr. Greer being detained and in custody for what his counsel noted has been a significant period of time and despite the COVID-19 restrictions placed upon the institution, he has demonstrated an effort to come to grips, again, with one of the root causes for his involvement in the criminal justice system, his addiction to drugs.
- [16] I am told and I accept that Mr. Greer has completed programs offered in the Regional Correctional Centre. Certificates were not filed but it is a matter of record through his counsel, as to the courses that he has taken and completed. I also accept that he engaged in, and is continuing to take, one-on-one counselling made available; and he is addressing or taking steps towards addressing his issue with addiction. Fortunately, the counselling has continued during this COVID-19 time period, through videoconferencing.
- [17] In addition, the court was provided with a letter written by Mr. Greer's parents. I will not read it out but I think it appropriate that we ensure a copy is filed on the sentencing hearing, to record what was said. To paraphrase, his parents believe in Mr. Greer. They believe that he is a good person, supportive of his children, a hard-worker, clean and sober for a period

of 10 years. What comes through this letter is the fact that, whatever happens today, Mr. Greer needs to keep in mind that he has two persons who completely support him and who are prepared to assist him when he is released from the institution. I make that point because Mr. Greer knows full well, having come through another cycle of addiction and the issues that it has caused, he will need this support when he returns to the community. It is through supports that his ongoing abstinence is going to be aided, as he returns to work and contributing to the community.

- [18] To briefly return to the circumstances, the events that are the focus of the proceeding today occurred between March and June 2018. During that time, Mr. Greer was actively engaged in drug activity, which was operated out of his residence. On two occasions, he sold controlled substances to an undercover officer, once in March and once in April. In June, he and the undercover officer were having further discussions with respect to another street-level transaction, which he ultimately did not take part in. However, as a result of that, a search warrant was issued and, the day following, the police attended at his residence and discovered the weapons to which I previously referred.
- [19] With respect to the drug offences, Mr. Greer appeared before Justice Baird in February 2020, prior to the commencement of this trial and was sentenced to a period of two years' incarceration. I make reference to that because it has some bearing on the outcome of how this matter is to be addressed.

LEGAL FRAMEWORK

- [20] I will now say a word about the sentencing framework to Mr. Greer, which I have to consider in determining what the appropriate disposition is. The purpose, objective, and principles of sentence are set out in the Criminal Code, starting at s. 718, that:

The fundamental purpose of sentencing is to protect society and 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

- [21] Section 718 of the Criminal Code sets out a number of objectives a sentencing judge should bear in mind when imposing a sentence; and they include: denouncing unlawful conduct; deterring the offender and other persons from committing similar offences; where necessary, separating the offender from society; assisting in the offender's rehabilitation; providing reparations for harm done to victims or to the community; and promoting a sense of responsibility in the offender, acknowledging the harm done to victims and to the community.
- [22] In the case of *R. v. Nur*, 2015 SCC 15 [Nur], after referring to the sentencing objectives, Chief Justice McLachlin, as she then was, said this at para. 41:

- [41] The sentencing judge must have regard to the following: any aggravating and mitigating factors, including those listed in s. 718.2(a)(i) to (iv); the principle that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances the principle that where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh and the principle that courts should exercise restraint in imposing imprisonment
- [23] In recognizing these different goals, the fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. At para. 43 of *Nur*, McLachlin C.J. went on to state:
- [43] It is no surprise, in view of the constraints on sentencing, that imposing a proportionate sentence is a highly individualized exercise, tailored to the gravity of the offence, the blameworthiness of the offender, and the harm caused by the crime "Only if this is so can the public be satisfied that the offender 'deserved' the punishment he received and feel a confidence in the fairness and rationality of the system"
- [24] Chief Justice McLachlin then discussed proportionality as being the essence of a just sanction.

Mitigating and Aggravating Factors

- [25] I will now discuss the mitigating and aggravating factors. It is understood that a sentence may be increased or reduced, to account for any relevant aggravating and mitigating circumstance relating to the offence or to the offender.
- [26] The mitigating factors include the following:
1. while Mr. Greer has a record, it is unrelated to the offences before the court for which he is to be sentenced today;
 2. there was a significant gap in his record between 2007-2008 and 2017; and
 3. there is the potential in Mr. Greer for rehabilitation; particularly if one of the underlying causes, Mr. Greer's addiction, is successfully addressed. I come to that determination because he has, for a period of time, been able to function well in the community. He has the necessary supports in the community to succeed again; and has started on that road of recovery, through the programs that he has been engaged in.
- [27] The aggravating factors include the following:
1. the number and types of weapons involved, including the associated ammunition that was located at the residence;
 2. the weapons were connected with the trafficking of a controlled substance, in that they were located in the home where that activity took place and that home was located in a residential community. When seized, the shotgun and the pistol were loaded; and

3. the circumstances surrounding the attendance at the residence at the end of June indicated drug activity. Street-level transactions were taking place by Mr. Greer and the house was used as a base for a dial-a-dope operation. There was some evidence that Mr. Greer was involved in organizing and overseeing that drug activity.

Concurrent v. Consecutive Sentence

- [28] I will now turn to the issues that I identified at the outset which were raised by counsel. First, should the sentence be concurrent or consecutive to the sentence imposed by Baird J?
- [29] In *R. v. Lee*, 2018 BCCA 428 [Lee], the Court stated (at para. 18) that the test for imposing a consecutive or concurrent sentence is:
- [18] whether the acts constituting the offence were part of a linked series of acts within a single endeavour.
- [30] First, I will say that it is not contested the weapons offences are clearly part of a single endeavour. They were all located within the residence. The nature and the quality of the offending conduct was similar; and the evidence of the offences was related and overlapping. It is certainly appropriate in the circumstances to impose a concurrent sentence, in regard to these offences.
- [31] The second part for consideration are the circumstances that occurred in the spring of 2018. Mr. Greer, as I noted earlier, entered a plea and was sentenced to two counts of trafficking on the same indictment, prior to the commencement of this trial. At the time he was sentenced to two counts of trafficking in a controlled substance, he was sentenced to a period of two years' incarceration. These two incidents, which the court heard details of during the trial, formed part of the circumstantial case of the weapons offences.
- [32] During submissions before me, counsel confirmed that while the sentencing judge was aware of the outstanding weapons offences, he was also aware the matters were proceeding to trial. Accordingly, they did not form part of the factual matrix considered when he imposed sentence on the trafficking matters. Counsel also indicated that as a result of Mr. Greer receiving credit for time served, as he had been detained on these matters, the balance of his sentence was 153 days. In other words, he received a pre-sentence credit of 577 days. As a result of the balance of the time that Mr. Greer had to serve on the drug offences, I am told that his statutory release date was June 6, 2020. The Crown submits that the sentence on the weapons offence should be consecutive, as it is a distinct and separate matter that occurred within the period when Mr. Greer was engaged in the sale of drugs. That said, he concedes a sentence could be concurrent; but if it were to be dealt with in that fashion, the fact that the weapons offences are distinct and separate offences, they must be considered as an aggravating factor on the trafficking matters. Defence submits that it is appropriate to address the weapons offences by way of a consecutive sentence.

- [33] The question of whether to order sentences to be served consecutively or concurrently is a matter within the discretion of the sentencing judge, having regard to the sentencing principles including totality, proportionality, and taking into account the circumstances of the offence and the culpability of the offender. There, I rely on *R. v. Borecky*, 2013 BCCA 163 [Borecky]. The acts are linked, in that the weapons were connected to the drug operation that was being run from the residence and relied upon, as noted by the expert, for protection and/or enforcement.
- [34] A review of the authorities provided by counsel demonstrates that both consecutive and concurrent sentences have been imposed for an offender facing sentence on both drug and weapons offences. For example, in *Borecky*, the sentencing judge imposed a concurrent sentence, treating the firearms and prohibited devices in connection with the drugs as an aggravating factor. In *Lee*, the sentence imposed for offences relating to drugs and weapons offences was consecutive. The Court (at para. 11) identified that a necessary consideration is whether the offences amounted to a separate attack on society's different interests. In determining that the sentences imposed should be consecutive, the trial judge in *Lee* stated at para. 73:
- [73] The fact that the firearm was in the vehicle at the time of trafficking, is connected to the activity, but the overall and more compelling factor is that the offence offended society's overall right to be safe from drug dealers using guns in their trade which could imperil the safety of innocent members of the community. If Mr. Lee is [to be] sentenced to a concurrent sentence, that message would be lost and the principles of deterrence and denunciation for this type of offence would not be recognized.
- [35] In determining that the sentence in this case on the firearm counts ought to be consecutive, I rely on the following factors. Mr. Greer is being sentenced on the firearm offences following conviction at trial. While the trafficking offences are a relevant consideration, Mr. Greer was previously sentenced to those matters earlier this year. The firearm offences, while linked to the drug offences, are a different offence and address a different societal interest; namely, ensuring public safety in dealing with restricted and prohibited weapons.

POSITIONS OF CROWN AND DEFENCE

- [36] The positions of the Crown and defence are as follows. The Crown submits that the court should impose the following sentence: Count 6, 42 months' incarceration; Count 7, 12 months' incarceration, concurrent with the 42-month sentence; and Count 8, six months' incarceration, again concurrent. In other words, the Crown submits the appropriate sentence in these circumstances is a total of 42 months. The defence submits that the court ought to consider the imposition of a sentence of - or starting at 36 months on the s. 95(1) offence, but that the court should reduce the sentence to reflect, in particular, the circumstances surrounding the COVID-19 pandemic and time spent in custody by Mr. Greer, since his statutory release date.

DISCUSSION

Relevant Case Authorities

- [37] During the sentencing submissions, the Crown provided a number of very helpful authorities for the court to consider. As commented by Macintosh J. in *R. v. Motevalli*, 2019 BCSC 162 [Motevalli], since "at least 2012 our Court of Appeal has spoken of the need for substantial sentences for the unlawful possession of loaded prohibited firearms", (para. 7). That message was first stated in *R. v. Guha*, 2012 BCCA 423 [Guha] and has been repeated in cases since then including: *R. v. Ball*, 2014 BCCA 120; *R. v. Holt*, 2015 BCCA 302 [Holt]; and *R. v. Kachuol*, 2017 BCCA 292 [Kachuol].
- [38] In *Nur*, the Supreme Court of Canada noted that "Section 95(1) casts its net over a wide range of potential conduct", from licencing offences that include little or no moral fault or no danger to the public, to criminal activity including a high degree of blameworthiness capable of putting the public at great risk. The actions of Mr. Greer fall squarely within the criminal range of activity. The range for sentencing for the criminal range absent special or exceptional circumstances is between 30 months and seven-and-a-half years.
- [39] The following is a brief reference to a number of the cases referred to by counsel, considered in the course of these proceedings. In *Motevalli*, Mr. Motevalli was 25 years of age, with no criminal record. He was found in possession of a loaded gun with 10 rounds of ammunition, in a fast food restaurant in Richmond, B.C. It is not clear what he was doing in the restaurant with a loaded gun. Mr. Motevalli argued that his circumstances were exceptional and that the court should impose a two-year conditional sentence order. A sentence of 30 months' incarceration was imposed in that instance.
- [40] *Guha*, was a Crown appeal of a three-year global sentence imposed upon Mr. Guha, following a conviction for possession of a loaded weapon, a handgun, possession of a prohibited device, and carrying a concealed weapon. At that time, there was a mandatory three-year term of imprisonment to an offence under s. 95(1) of the Criminal Code. Mr. Guha was stopped in a vehicle. He was subsequently searched and it was discovered that he had a "9 millimetre Ruger semi-automatic handgun tucked into the waistband of [his] pants". He was 27 years of age and had previously, four or five years earlier, been convicted of trafficking in marihuana and possession for the purpose of trafficking. At the time of sentence, he was working in the graphic design field and was also employed on a volunteer basis working with high-risk youth. He had received positive reports for the contributions he made working with that group of youths. The Court of Appeal discussed the impact of mandatory minimums on the sentencing of firearms. As I noted earlier, there is now no longer a minimum sentence that the court is required to impose. This was Mr. Guha's first offence and, upon consideration of the aggravating and mitigating circumstances, the Court of Appeal increased his sentence to four years from the three-year sentence imposed by the trial judge.

- [41] Holt is also a Crown appeal. Mr. Holt was sentenced to a period of 18-months' incarceration for one count of possession of a loaded restricted firearm. He was stopped for a motor vehicle infraction and subsequently arrested for possession of drugs. During the search, a loaded .22 calibre revolver was found in his backpack, together with a box containing 43 cartridges. He was 66 years of age, unemployed, and noted to be a heavy drug user. The Court, again, stated that the possession of a loaded gun poses a serious threat and a growing one in communities across Canada. The Court, in considering the appropriateness of the sentence, found that Mr. Holt's actions fell at the bottom end of the criminal range; and, on that basis, a sentence of close to three years was called for. As a result, the Court allowed the Crown appeal and increased Mr. Holt's sentence to 30-months' imprisonment.
- [42] Kachuol, again, was a Crown appeal of a conditional sentence imposed for possession of a loaded prohibited weapon. Mr. Kachuol was found in possession of an unauthorized and unregistered loaded .357 Magnum handgun, contrary to s. 95(1) of the Criminal Code. The handgun was found in the console, between the driver and passenger seats, of his motor vehicle when stopped, in Downtown Vancouver. Of note, Mr. Kachuol was 23 years of age and lived with his parents. He was caring for his elderly mother at the time of the offence. He had a prior conviction for possession for the purpose of trafficking in marihuana. Dickson J.A., writing for the Court, emphasized the sentencing principles of deterrence and denunciation when the court is called upon to sentence individuals on weapons offences, stating that the bottom end of the range is close to three years. At para. 25, she noted:
- [25] In recent years, Canadian courts have become increasingly concerned by the proliferation of handguns, gun violence and the dire consequences for our society. Guns are inherently, often lethally, dangerous, all the more so when they are possessed for an illicit purpose. As a result, their possession and use is highly regulated and, if unlawful, criminalized to ensure public safety, express society's condemnation and punish offenders. To the extent possible, courts strive to achieve these goals when imposing sentences for firearms-related offences by prioritizing deterrence and denunciation, following customary sentencing ranges in all but exceptional cases and fully accounting for aggravating factors where they exist.
- [43] The Court noted that "Mr. Kachuol's possession of the loaded prohibited handgun in a moving [vehicle], strategically placed for ready access posed a real and immediate danger to those in his orbit. The risk was increased by his consumption of alcohol and the urban environment in which he possessed the 'crime gun'", (para. 29). The Court found that a fit sentence was three years.
- [44] Three more cases I will refer to involved the imposition of a sentence where weapons offences combined with a drug-related matter. In Borecky, Mr. Borecky was sentenced to three counts of possession of a controlled substance for the purpose of trafficking in heroin, cocaine and methamphetamine; and convicted of 13 counts related to the possession of firearms, ammunition and a restricted device. At trial, the sentencing judge imposed a total of five years' imprisonment. That sentence was appealed. I would note that the weapons were discovered as a result of a police investigation at the defendant's residence. That is

where the police officers located ammunition and weapons inside a duffle bag; as well as a bag containing various drugs estimated to be of a value in the range of \$100,000. Mr. Borecky was 44 years of age and had a criminal record, which consisted of 37 prior convictions. The Court held that the sentence imposed was outside the range for an individual with Mr. Borecky's record and for the circumstances of the offence, which involved a commercial enterprise. The defendant's criminal record included seven prior drug offences, progressing from possession to trafficking, production and cultivation. The Court increased Mr. Borecky's sentence to seven years' imprisonment, from the five years imposed by the sentencing judge.

[45] Lee was a defence appeal. Here, Mr. Lee was sentenced to seven years as a global sentence, following a guilty plea to one count of possession for the purpose of trafficking and one count of possession of a prohibited firearm with readily accessible ammunition. Mr. Lee was found in possession of the .45 calibre handgun, together with 42 rounds suitable for use in that handgun, in his vehicle with quantities of cocaine, heroin/fentanyl mix, crystal methamphetamine, and a quantity of GHB, for a collective value of somewhere between \$37,000 and \$66,000. Mr. Lee was only 27 years of age. He had a limited education and was addicted to drugs. He had been dealing in drugs since 21 years of age and had a criminal record, which included 10 convictions for different offences including: two convictions for possession of a controlled substance; and seven convictions for possession for the purpose of trafficking, on three different occasions. He had a mandatory lifetime ban - or a firearm prohibition, which he was bound by when he committed the offence. In addition, he was on probation at the time of the offence. Here, the Court held that a seven-year global sentence was fit, taking into account the circumstances of the offences, Mr. Lee's circumstances, and his related record and prohibitions.

[46] Finally, the decision of *R. v. Mann*, 2018 BCCA 265 was a defence appeal; Mr. Mann appealing a sentence imposed for drug and firearm offences following a guilty plea. Mr. Mann was involved in a dial-a-dope trafficking operation in fentanyl with his brother, in the early part of 2017. It was noted that elements of their activity comprised a mid-level trafficking operation. In addition, he pled guilty to trafficking in carfentanil, as well as to possession of a loaded .38 calibre handgun, a restricted firearm, found at the residence where the drugs were being mixed and packaged for street-level sale. Mr. Mann received a global sentence of seven years' imprisonment. I note that Mr. Mann did not have a previous criminal record and that he was 23 years of age at the time of sentencing. The Court of Appeal found Mr. Mann's sentence to be fit.

[47] I will now turn to two other issues raised by counsel on behalf of Mr. Greer.

What is the impact, if any, of COVID-19 on an appropriate sentence?

- [48] It was submitted that the COVID-19 pandemic has raised an additional element that the court ought to take into account when determining a fit and proper sentence. In support of the position, the defence relies on *R. v. Hearn*, 2020 ONSC 2365 [Hearn], a decision of Madam Justice Pomerance of the Ontario Superior Court of Justice, reported earlier this year. I will preface my comments of the Hearn decision by noting that it was a joint submission. Pomerance J. noted in para. 15 that:
- [15] Clearly, the pandemic does not do away with the well-established statutory and common law principles. However, the pandemic may impact on the application of those principles. It may soften the requirement of parity with precedent. The current circumstances are without precedent. Until recently, courts were not concerned with the potential spread of a deadly pathogen in custodial institutions.
- [49] Pomerance J. states in para. 16 that:
- [16] COVID-19 also affects our conception of the fitness of sentence. Fitness is similar to proportionality, but not co-extensive with it. Proportionality dictates that the sentence should be no more than is necessary to reflect the gravity of the crime and the moral blameworthiness of the offender. Fitness looks at a broader host of factors.
- [50] Pomerance J. notes in para. 20 that the point to be taken in all of this is that a sentence, in her view, may be reduced or, as I said earlier, softened as a result of this impact. She goes on to note two caveats to the analysis (at paras. 21-23). First, she was not addressing the circumstance of the statutory credit for pre-sentence credit. In other words, s. 719(3) of the Criminal Code sets out the entitlement to that enhanced credit, and I would note that counsel here is not suggesting that the pre-sentence custody time be subject to such an enhancement. Second, Pomerance J. states that the pandemic has "not generated a 'get out of jail free card'", in other words, that it cannot turn an inappropriate sentence or reduced sentence into an appropriate one, as a result of the current circumstance that we find ourselves in.
- [51] In my consideration of this matter, I have reflected upon the comments set out in Hearn. Here, I note that there was no evidence introduced to show the current impact of COVID-19 upon the federal or provincial institutions; and, more importantly, with respect to Mr. Greer himself, in terms of whether or not he suffers a suppressed or compromised immune system. Mr. Greer, in his comments to the court, did provide some insight into his personal situation and the restrictions in movement, programming, and visitation that he has experienced while at the Pretrial Centre; and I accept the fact that there are certainly some restrictions imposed, as a result of the current circumstances.
- [52] Any sentence imposed must be guided by the statutory and common law principles of sentencing. That said, it was suggested that COVID-19 may reduce the requirement of parity with previously established ranges, or may justify a departure from the usual range of sentence in certain circumstances; and here, I refer to *R. v. Lacasse*, 2015 SCC 64. The defendant requests the court grant a reduction in what would otherwise be an appropriate

sentence, based on the potential prospect of difficulties posed by the current pandemic that the defendant may be subject to.

- [53] While I have considered this, I am not inclined to do so in these circumstances for the following reasons. I do not know for how long such restrictive conditions may continue and in what form. Not enough is known at this point, as to whether conditions may improve, worsen, or remain the same. As a result, it appears to me to be speculative to assess the impact. Again, as I noted previously, there is no specific evidence concerning the particular health issues or risks, if any, that are faced by Mr. Greer; and finally, I would draw upon the comments in the Ontario Court of Appeal case of *R. v. Morgan*, 2020 ONCA 279, discussing the impact of COVID-19 at para. 12, where the Court states:
- [12] That result does not mean that there is no potential remedy for the appellant respecting the impacts arising from the COVID-19 pandemic. We expect that the Ontario Parole Board will take into account those impacts in deciding whether the appellant should be granted parole. If the Parole Board fails to do so, the appellant has other remedies available to him to redress that failure.
- [54] Based on the circumstances and information that I have before me at this juncture, it strikes me that any impact that COVID-19 may have upon Mr. Greer and the sentence received is best left in the hands of the parole authority in this province.

Pre-Sentence Custody

- [55] Section 719(3) of the Criminal Code sets out that an accused may receive credit for each day spent in custody while waiting to be sentenced on these matters and that the maximum is 1.5 days for every day of pre-trial custody spent. I have discussed Mr. Greer's entitlement to pre-sentence custody with respect to the sentence imposed by Justice Baird, in February of 2020. As a result, there was and is no time that Mr. Greer is entitled to credit from up to the point when he became entitled to his statutory release on the sentence that was imposed by Justice Baird. There is agreement amongst counsel given Mr. Greer's statutory release date that he has since that date spent 13 days on what I will term as pre-sentence time waiting to address this matter; and for which he is, in my view, entitled to credit in accordance with the same enhanced credit as provided in s. 719(3). By my calculation, this amounts to a total of 20 days.

SENTENCE

- [56] In considering the appropriate sentence for Mr. Greer, I take into account the following. The primary sentencing objectives are denunciation, deterrence, and the protection of the community. That said, one can never lose sight of rehabilitation, as it is the effective mechanism through which any individual involved in the criminal justice system can put in place those measures such that they do not return to the system, having completed their sentence.

Appropriate Sentence for Each Count and Credit for Pre-Sentence Custody

- [57] In imposing what I will describe as effectively a consecutive sentence for the criminal activity that took place in the spring of 2018, including trafficking in controlled substances on the two occasions to which he was sentenced by Baird, J. and the matters that Mr. Greer is before the court on, I consider the following.
- [58] In determining the appropriate sentence, I bear in mind the range of sentence for weapons or firearm offences; the circumstances of Mr. Greer and his culpability; the aggravating and mitigating factors; the principle of parity; and the totality principle. In my view, the appropriate sentence in these circumstances is a period of 40 months, less the 20 days that he spent in custody on this matter, on Count 6; on Count 7, a 12-month period of incarceration to be served concurrent; and on Count 8, six months' incarceration to be served concurrent. In other words, a total sentence of 40 months, less the time served.

Ancillary Orders

- [59] There will be an order pursuant to, I believe it is, s. 109 of the Criminal Code, that being the weapons prohibition.
- [60] There will be a secondary DNA order for the taking of a DNA sample, pursuant to s. 487.051 of the Criminal Code. I recognize that order can be made if the court is satisfied that such an order is in the best interests of the administration of justice. In considering the offences for which Mr. Greer has been convicted, the circumstances surrounding their commission, and what I would describe as a relatively minimal impact that such an order would have on Mr. Greer's privacy and security of the person, I am satisfied that such an order be made in these circumstances.
- [61] That there be a forfeiture order pursuant to s. 491(1)(vi), I believe it is.
- [62] MR. McFADGEN: (b), My Lord.
- [63] THE COURT: (b), I am sorry. That items numbered five, 10, 12, 14, 15, and 42 on the exhibit flowchart marked as Exhibit 1 in these proceedings shall be forfeited to the Crown, and that pursuant to s. 490.1(1)(b), the balance of those items circled on Exhibit 1, which I understand have been reviewed by both counsel, shall be forfeited to the Crown.
- [64] Have you had a chance to review that, Mr. Hodson?
- [65] MR. HODSON: I did, My Lord.
- [66] THE COURT: Thank you.
- [67] Madam Clerk, you have Exhibit 1 that is now part of the record, correct?
- [68] THE CLERK: I do, My Lord.

- [69] THE COURT: All right. So, finally, two things - three things. First, I will leave here, Madam Clerk, the two-page letter that was prepared by Mr. and Mrs. Greer that needs to be filed.
- [70] Second, I wish to extend my appreciation to counsel for their efforts, not only during the trial but also yesterday, during the sentencing proceeding. Their assistance was of great value to the court throughout the proceeding and I thank you both.
- [71] Finally, I say to Mr. Greer, sir, that while I appreciate that there is a period of time yet to serve, you should not lose sight of the efforts that you have undertaken to date, and the supports that you have. You have the capacity to use the time to ensure that you can put in place those supports, such that when you are released and in the community, you can draw upon those supports to return to the productive lifestyle that you had for that period of time between 2009 and 2017. Good luck, sir.
- [72] Thank you, counsel.
- [73] MR. McFADGEN: Thank you, My Lord.
- [74] THE COURT: Anything else arising?
- [75] MR. McFADGEN: Just to clarify on the forfeiture order -
- [76] THE COURT: Yes.
- [77] MR. McFADGEN: - I discussed it yesterday, but Item 42 -
- [78] THE COURT: Yes.
- [79] MR. McFADGEN: - which is the shotgun shells, if Your Lordship could just ensure for the record that is all 45 shells as opposed to the 36 that are on that -
- [80] THE COURT: Yes, as -
- [81] MR. McFADGEN: - the flowchart. I know we discussed it, but just so that there is no confusion with the Registry.
- [82] THE COURT: Yes, and that is Item 42?
- [83] MR. McFADGEN: It should be Item 42 on the flowchart.
- [84] THE COURT: So Item 42 comprises, at least as a result of the evidence heard at trial, 45 shotgun shells.
- [85] MR. McFADGEN: Thank you, My Lord.
- [86] THE COURT: Thank you.
- [87] THE CLERK: And, My Lord, the forfeiture order and DNA and firearms prohibition, is that counts or just for Count -
- [88] MR. McFADGEN: It is fine if it is all on Count 6.

[89] THE COURT: Yes -

[90] THE CLERK: Thank you.

[91] THE COURT: - and it was s. 109, correct?

[92] MR. McFADGEN: Yes.

[93] THE COURT: All right.

[94] MR. McFADGEN: It should be a lifetime firearms prohibition.

[95] THE COURT: Yes, it is a lifetime prohibition. Oh, just on that point - that is because you say there was a previous prohibition?

[DISCUSSION RE DURATION OF S. 109 PROHIBITION]

[96] THE COURT: So the sentence is imposed but for that particular point as to whether it is a lifetime ban or not, pursuant to the provisions of s. 109, all right, and then I will arrange through the scheduling co-ordinator that we could organize submissions on that -

[97] MR. HODSON: Yes.

[98] THE COURT: - and you can canvass whether you wish Mr. Greer to be present. He is entitled to be present and I could make that arrangement by video. It just strikes me that - well, in any event, we will cross that bridge when we get to it. I would not want it to interfere with the classification process. That is my only concern.

[99] MR. HODSON: Right. Yes, okay.

[100] THE COURT: All right. So we can address it quickly if need be, but it should not - in my view, it should not hold up the Corrections classification that needs to be done.

[101] MR. HODSON: Understood. I will take instructions from Mr. Greer and -

[102] THE COURT: All right, thank you.

[103] MR. McFADGEN: Thank you, My Lord.

[104] THE CLERK: My Lord, for today's purposes, though, for the firearms order, it is going to look for an amount of time. So would you like me to put "lifetime", and then schedule for an application and then that sentencing document could be varied? Perhaps, it can be varied?

[105] MR. HODSON: My Lord, I am fine if it proceeds that way. That way if I get instructions from Mr. Greer to abandon -

[106] THE COURT: All right.

[107] MR. HODSON: - and nothing needs to be done further.

[108] THE COURT: All right. So, on that basis that you have the right to address that matter before me, I think I will say for the record that I do not consider myself functus of that particular issue, in the event that it needs to be addressed.

[109] MR. HODSON: Thank you, My Lord.

[110] THE COURT: Are you content with that?

[111] MR. McFADGEN: Yes.

[112] THE COURT: All right. Thank you.

"T.J. Crabtree J."

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