
CANADA / JUDGMENT

R. v. Gullett

2009 BCSC 1918

COURT

Supreme Court of British Columbia

DECIDED

18 November 2009

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Gullett

2009 BCSC 1918

Date: 20091118

Docket: 24675

Registry: Vancouver

Regina

v.

Forrest Alexander Gullett

Before: The Honourable Madam Justice Dickson

Oral Reasons for Sentence

Counsel for Crown

R. Beram

Counsel for Defence

B. Coleman, Q.C.

Place and Date of Hearing:

Vancouver, B.C.

November 18, 2009

Place and Date of Judgment:

Vancouver, B.C.

November 18, 2009

- [1] THE COURT: On August 25, 2009, I found Forrest Alexander Gullett guilty of theft over \$5,000, criminal negligence causing bodily harm, and leaving the scene of an accident. The facts are set out in my Reasons for Judgment of August 25, 2009. In summary, on June 7, 2007 Mr. Gullett was in the process of stealing a piece of heavy equipment from the yard of Puddifant Brothers Contracting when the business owner, Kelly Puddifant, came upon him and attempted to intercede. Mr. Gullett had attached the stolen item to the back of his truck and was dragging it away from the yard when Mr. Puddifant attempted to block his passage and jumped onto his truck. Instead of stopping, Mr. Gullett fled and, in so doing, drove in a criminally negligent manner. As he made his get-away, he broke Mr. Puddifant's leg and damaged several cars parked nearby. Mr. Gullett was apparently not under the influence of drugs when he committed these offences, although he was generally using methamphetamines in 2007.
- [2] Mr. Puddifant suffered a compound fracture of his lower leg, along with tissue, muscle, and tendon damage, as a result of Mr. Gullett's criminally negligent driving. He underwent surgery and is permanently disfigured and unable to run. He requires medication to manage his ongoing pain.
- [3] Mr. Gullett is 45 years old and lives with his 16-year-old son when he is not in custody. He works as a tradesman doing equipment maintenance and has the support of his family and employer, who are prepared to assist him upon his release.
- [4] Mr. Gullett has 31 prior criminal convictions. Four were recorded in the 1980s and the remainder began in 2003, shortly after he commenced the use of methamphetamines. The majority of Mr. Gullett's prior convictions are property offences, although some are driving offences. He has been incarcerated on a regular basis over the past few years and has participated in a drug-recovery program. He has been in custody in connection with these charges since April 5, 2009.
- [5] Mr. Gullett has limited insight into the need for ongoing treatment of his drug addiction. He is, however, prepared to participate in treatment and monitoring as required. I accept that, as his counsel submits, following his early convictions in the 1980s Mr. Gullett lived a productive, law-abiding life until he became dependent upon drugs in approximately 2001. I also accept that Mr. Gullett is more prone to engaging in crime when his drug addiction is in an active phase.
- [6] The Crown submits that a global sentence of five years' incarceration is appropriate, taking into account the nature of the offences and Mr. Gullett's criminal history. He also seeks a mandatory firearms prohibition, a DNA order, and a driving prohibition of 10 years. Crown

counsel cites as aggravating factors Mr. Gullett's long and related criminal record, as well as his apparently uncontrolled drug addiction. In support of his position he relies on the decisions of *R. v. Carey* 2008 BCCA 37; *R. v. Brown* 2009 BCPC, *R. v. Gilliland* 2008 BCCA 118; and *R. v. Hudson* (1995), 57 BCAC 40 (C.A.).

- [7] In *Carey*, supra, the offender stole a car and, while fleeing police at high speeds, struck another vehicle and badly injured its occupant. He was under the influence of drugs and disqualified from driving at the time. The offender had a long record for property and driving offences, including a conviction for criminal negligence causing death. He entered pleas of guilty to a variety of offences, including criminal negligence causing bodily harm, driving while disqualified, and possession of stolen property. The trial judge sentenced him to a global sentence of five years' incarceration, which, given his time in pre-trial custody, amounted to an effective sentence of seven years. In upholding this sentence Lowry J.A. noted that the offender had persisted in criminal conduct representing a serious danger to public safety, which was a matter of grave concern.
- [8] In *Brown*, supra, the offender, a drug addict, was involved a high speed police chase that caused serious property damage and bodily injury. He had 34 prior convictions for property and driving offences, prior failed attempts at drug and alcohol rehabilitation, and a limited work history. He was remorseful and pleaded guilty to failing to stop at the scene of an accident, dangerous driving causing bodily harm, failing to stop for a peace officer and breach of probation. The trial judge imposed a sentence of 15 months' incarceration, followed by 15 months on probation and a five-year driving prohibition, which sentence incorporated 21 months' credit for time served. In so doing, he noted the offender's efforts to address his addictions and stated, at ¶ 47:
- "Mr. Brown deserves recognition for the progress that he has made, but in my view the community cannot yet be confident that he has those demons controlled."
- [9] In *Gilliland*, supra, the Court of Appeal upheld an effective global sentence of seven years' incarceration for a variety of offences, including criminal negligence causing bodily harm. As in *Carey*, supra and *Brown*, supra, *Gilliland*, supra involved a high speed police chase that resulted in serious bodily injuries. The offender had a very extensive criminal history, which included a demonstrated disregard for court orders and driving prohibitions. The offender did not plead guilty.
- [10] In *Hudson*, supra, the offender appealed a four-year global sentence imposed for, amongst other offences, dangerous driving committed in the context of a police chase that ended in an accident. The offender, a heroin addict, had numerous prior convictions for property and driving offences. Although no one was seriously hurt in the accident, this was described by the court as "miraculous". The Court of Appeal upheld the four-year sentence imposed.
- [11] Counsel for Mr. Gullett submits that a conditional sentence of two years less one day is appropriate. He emphasizes that Mr. Gullett fled the scene of his crime as a result of fear for his personal safety and was unaware of the fact that he had injured Mr. Puddifant. He

submits that the authorities relied upon by the Crown are distinguishable on their facts and, in particular, on the basis that they relate to flight from police and resulting high speed police chases. He argues that Mr. Gullett should be given the opportunity to take advantage of his family's final offer of support, accept drug treatment, and build a stable life for himself, all of which will ultimately protect the community.

- [12] The fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a just, peaceful, and safe society. To achieve this purpose the court must impose just sanctions directed toward one or more of the objectives enumerated in s. 718 of the Criminal Code, R.S.C. 1985, c. C-46. These objectives are:
- (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.
- [13] A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender: s. 718.1, Criminal Code. Aggravating and mitigating circumstances are to be taken into account: 718.2, Criminal Code.
- [14] In this case, taking into account all of the aggravating and mitigating factors cited by counsel and described above, I conclude that a global sentence of three years' incarceration is appropriate.
- [15] In my view, a conditional sentence would not be proportionate to the gravity of Mr. Gullett's offences or the degree of his responsibility. I agree with Mr. Gullett's counsel, however, that this case is not identical to those involving high-speed police chases and thus somewhat different considerations are engaged. In particular, although Mr. Gullett's fear that he might be harmed by Mr. Puddifant does not excuse his behaviour, it distinguishes it from that of offenders who flee the police and thereby knowingly commence dangerous high speed chases that predictably endanger the public in serious ways. I also agree with Crown counsel that Mr. Gullett's conduct demonstrated a wanton disregard for Mr. Puddifant's safety and, as a result, caused him serious bodily harm.
- [16] Taking into account the time that Mr. Gullett has already served, I impose a further sentence of 20 months' incarceration on Count 2, the criminal negligence count. On the other counts, I impose concurrent sentences of six months. I also make the DNA and lifetime firearms prohibition orders sought by the Crown on Count 2. Taking into account his driving record and the circumstances of the offences, as well as the potential impact of a driving

prohibition on Mr. Gullett's ability to earn income following his release from prison, I prohibit Mr. Gullett from driving for a period of five years.

"DICKSON J."

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