

CANADA / JUDGMENT

R. v. Hanson

2020 BCSC 1248

COURT

Supreme Court of British Columbia

DECIDED

30 July 2020

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2020 BCSC 1248 R. v. Hanson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Hanson,

2020 BCSC 1248

Date: 20200730

Docket: 89642-2, 89943-2

Registry: Kelowna

Docket 45967-2

Registry: Penticton

Regina

v.

Matthew David Hanson

Before: The Honourable Mr. Justice S. Wilson

Oral Reasons for Sentence

Counsel for the Crown:

D. Ruse

Counsel for the Defence:

B.S. Lynskey

Place and Date of Trial/Hearing:

Kelowna, B.C.

Place and Date of Judgment:

Kelowna, B.C.

July 30, 2020

- [1] THE COURT: This is my decision on sentencing.
- [2] The accused Matthew Hanson pleaded guilty to two charges:
- a) breaking and entering a residence, contrary to s. 348(1) of the Criminal Code; and
 - b) arson endangering life, contrary to ss. 43(a)(b) of the Criminal Code.

Circumstances

- [3] On June 14, 2018, Mr. Hanson broke into a residence at 1390 Cornwall Road, Kelowna. The family had departed at approximately 8:30 in the morning and at 1 p.m. one of the homeowners returned to discover that a bedroom had been ransacked. She discovered that a cellphone, a watch, a small portable computer, some clothes in a Carhartt bag, together with some food from the refrigerator, had all been stolen. A security video recorded the event, but no arrest was made until September 10, 2018.
- [4] The more serious of the two offences for which the accused is to be sentenced occurred on September 9, 2018. The accused was living at 11520 B Okanagan Centre Road in Lake Country with his girlfriend, Ms. Cross. The victims of the arson, the Yerema family, lived nearby. At the time of the arson, David Yerema, his wife Rasa, their son Samuel, and daughter Emma, were all present, as was Mr. Yerema's cousin Cynthia Skoretz, who was visiting.
- [5] At approximately 6:49 a.m., Mr. Hanson walked along Robinson Road and down the Yermas' driveway. He tried the door handles of various vehicles before setting fire to items on the porch and attempting to set fire to something adjacent to the front of one of the vehicles. The accused walked around the side of the residence and into the back yard and entered the home through a closed but unlocked door.
- [6] The Yermas were all asleep. Once inside the home, the accused opened the refrigerator and removed some bottles from inside, waking the family dog. The accused fled the residence and hurdled a fence into a neighbouring yard. Rasa Yerema was awakened by the dog and alerted her husband David, who was asleep on the back porch. Both saw a male with a blue shirt and a red baseball cap jump the fence and go into the neighbour's yard. By this time, the fire was ablaze.

- [7] Mr. Yerema, who had just woken up and was wearing his pajamas, was able to drag burning material away from the side of his house. In the course of fighting the fire, he received second-degree burns to his leg and smoke inhalation and was taken to Kelowna General Hospital for treatment. In the meantime, Ms. Yerema set off in pursuit and was able to take some photographs of the accused, who was sauntering down the street despite the fire.
- [8] Some time later, the police received a report of a pickup truck that had crashed nearby. The police also received reports of a suspicious-looking male running around the neighbourhood. The blue shirt and red cap were found discarded. The pickup truck had been stolen shortly before.
- [9] The arresting officer noted the smell of fuel on the accused's hands. He had initially tried to light the fire at the Yerema house with gasoline from a jerry can, but it was empty. Instead, he used diesel fuel from another jerry can that was also on the property. Prior to starting the fire, he had made earlier attempts to light some papers on fire, which was subsequently discovered to be papers stolen from another vehicle, and what appeared, on the security video, to be red nylon strapping.

The victim

- [10] Mr. Yerema provided a victim impact statement on behalf of the family. He personally suffered burns to his leg and ankle. He missed three weeks of work and, although no surgery or grafting was required, he is still left with residual scarring and discomfort. More importantly, this event had a profound impact on the family's sense of security. His daughter, who was 14 years of age at the time, was afraid to be left at home alone and has been to counselling.
- [11] The family has lost the sense of security that all citizens should enjoy in their home.

The offender

- [12] Matthew Hanson is 33 years of age and grew up in Kelowna. His father left the family when he was three years old. He has two brothers, who are 10 and 13 years older than he. According to Mr. Hanson, and upon review of the presentence report, Mr. Hanson's mother, who raised him along with a stepfather, has struggled with alcohol. Mr. Hanson has struggled with alcohol as well and believes the genesis of his alcohol and drug issues are feelings of lack of self-worth. He struggled academically and socially, which manifested itself in cutting himself and drinking. He has had a pattern of being employed for periods of time but cycling into depression, resulting in abuse of alcohol and drugs, which then, inevitably, leads to a loss of work.
- [13] He describes having insight into his addiction issues as a result of his attendance with the VisionQuest Recovery Society's facility near Logan Lake. In the past, poor decisions have led to an addiction cycle of alcohol and drugs, including cocaine, crack cocaine, and methamphetamine. He has had descents into addiction behaviour in the past, only to return

to a prosocial life, but the circumstances that led to his deterioration prior to these offences are when a relationship started to deteriorate. He lost his job and moved into his partner's parents' home.

- [14] At the same time, his mother was breaking up with his stepfather, with whom he had a good relationship. He ended up living with his mother and there were days of heavy drinking, which returned him to a negative cycle that saw him using methamphetamines on a daily basis.
- [15] Since the events that give rise to these charges, Mr. Hanson has made significant efforts focused on his recovery. He enrolled in the VisionQuest residential treatment program. He went there in November 2018 and resided there for approximately 13 months. After a few months he received passes to visit his family.
- [16] He has letters of support from a number of people, including those involved in his care at VisionQuest. One of the people at VisionQuest testified at this hearing. By all accounts, he did extremely well there and assumed leadership roles within VisionQuest, including the highest position available to patient residents.
- [17] The accused resides with his girlfriend Ms. Cross, along with her 11-year-old son and their child together, born in late 2019. His partner is likely a stable influence and she does not have any addiction issues of her own and works as a care aide.
- [18] He obtained employment with a drywalling company and has recently obtained a raise from \$17 to \$18 per hour. This job remains available to him. He is supported by his mother, his girlfriend, his girlfriend's mother, and has recently reconnected with other members of his family, including his father and his two older brothers. He remains sober and his focus is on maintaining his sobriety. That will, in turn, enable him to continue to provide for his family.

Positions of the parties

- [19] The Crown seeks a sentence of three to five years' imprisonment for the arson endangering life, to be served consecutively with nine months for the break and enter.
- [20] The defence says this is a case of exceptional circumstances. His lawyer says he should receive a conditional discharge.

Aggravating and mitigating circumstances

- [21] The Crown points to the fact that the accused had to go to some effort to start the fire on the porch and indeed tried to start another fire adjacent to the Yeremas' vehicle, only to be unsuccessful. It was obvious that people would be sleeping in the home. It was 6:49 a.m., which increased the risk of serious injury. Having started the fire, he made no attempt to warn the occupants.

- [22] As mitigating factors, the accused says this was not a preplanned or premeditated attack on the Yerema family and that the arson itself does not appear to have been preplanned, to the extent that accelerants that were used were found on the property as opposed to acquired previously and taken to it. The steps taken by Mr. Hanson towards his rehabilitation are also mitigating in this case.
- [23] The parties disagree as to the extent to which the guilty pleas should be considered as mitigating factors. While a guilty plea spares witnesses from having to testify and avoids the need to use valuable court time, the Crown says the guilty pleas were shortly before trial and, given the clarity of the security videos in both cases, the evidence against the defendant was overwhelming and a conviction, therefore, inevitable.

Principles of sentencing

- [24] The principles of sentencing that apply in this case are both denunciation and deterrence.
- [25] This was a terrifying event for the victims and one that could have had catastrophic consequences but for the quick actions of the homeowners. It could have involved the loss of their home or much, much worse.

Discussion

- [26] The Crown says the range of sentence for arson endangering life is three to eight years, albeit there are outlying cases. The cases that the Crown refers to as outliers generally involve Gladue factors or significant mitigating or aggravating circumstances.
- [27] In *R. v. Quigley*, [1998] 105 BCAC 164, the Court of Appeal considered a sentence of eight years of new time, which, after taking into account 11 months of dead time, equated to a sentence of nine to 10 years, to be demonstrably unfit and reduced the sentence to one of five years. The arson in that case was targeted because the accused was a tenant of the property and was under notice to vacate. It was a planned arson to the extent the accused used an accelerant.
- [28] In *R. v. Dustyhorn*, 2019 SKCA 93, the Saskatchewan Court of Queen's Bench concluded, at paragraphs 40 and 41, that the appropriate range of sentence for arson endangering life, where homes are set on fire with occupants inside, is three to five years. In *Dustyhorn*, the circumstances were aggravated to the extent the accused was a member of a gang and subjected someone to a beating that resulted in their death. However, in terms of the arson itself, the court was satisfied that Mr. Dustyhorn had ensured that no one was present before setting the home on fire. The sentence imposed of four years was upheld on appeal.
- [29] The cases with sentences in excess of five years generally had different circumstances. In *R. v. Davis*, 2011 ABPC 319, and *R. v. Richard*, 2015 BCPC 93, the accused had set fires that were targeted at a specific person, in both cases, intimate partners.

- [30] In *R. v. Bevacqua*, 2014 ONSC 6279, an Ontario case, the events arose out of a marriage breakdown and the accused lit the family home on fire. It was not preplanned but was triggered by an argument. He received a sentence of four and a half years.
- [31] The *Bevacqua* case refers to another Ontario case, *R. v. Fournel*, 2012 ONSC 375. In that case, the accused, who was a police officer, administered a non-prescription sleep aid to her daughter-in-law, with whom her son was involved in a custody battle. The court upheld the trial judge's sentence of two years for drugging the victim, consecutive with three years for the arson.
- [32] A recent decision of this court is *R. v. Ferguson*, 2017 BCSC 2056. In that case, the two accused thought the victim was responsible for another fire. At 6:30 a.m., they exacted retaliation and set the victim's house on fire. There was a joint submission, with regard to one of the accused, of 30 months, and Justice Maissonville accepted the joint submission. She sentenced the other offender to three years' imprisonment.
- [33] The accused argues that the Crown's cases can be distinguished. In many of the cases cited, the arson was planned in advance and targeted as against a specific victim, which he says is not the case here.
- [34] The accused refers to a number of authorities as well. However, it is important to note that, in the majority of those cases, the conviction or plea was to arson, as opposed to the more serious charge of arson endangering human life. This is an important and significant distinction. It is important to recognize in the various authorities that there is a difference between a conviction for arson endangering life and simple arson, as the former has a higher maximum sentence and is treated more seriously. For example, even in the *Dusthorn* case, while there had been prior assaults and the arson was premeditated and targeted at the intimate partner, Mr. Dusthorn had, nonetheless, ensured that no one was in the house before he set it on fire.
- [35] The accused refers to a series of cases, including *R. v. Cain* (B.C.C.A.) 28 B.C.A.C. 105, *R. v. Boone*, 2013 BCSC 1306, and *R. v. Preston* (B.C.C.A.) 47 BCLR (2d) 273, where the court discussed the importance of rehabilitation and why, in the right circumstances, that principle may take precedence over the usual sentencing principles of deterrence and denunciation. Those cases led to the "exceptional circumstances" test in *R. v. Voong*, 2015 BCCA 285.
- [36] The object of the criminal justice system was described by the Court of Appeal in *Preston* as being the protection of society. However, as the court identified, protection of society may involve incarceration of the offender, but, in other instances, it may have the very opposite affect. On page 5, Justice Wood, for the Court, said:

The object of the entire criminal justice system, of course, is the protection of society, and I say at once that if incarceration is the only way of protecting society from a particular offender, then transitory and expensive though it may be, that form of protection must be invoked. But where,

as in this case, the danger to society results from the potential of the addict to commit offences to support her habit, and it appears to the court that there is a reasonable chance that she may succeed in an attempt to control her addiction, then it becomes necessary to consider the ultimate benefit to society if that chance becomes a reality.

[37] In Preston, the accused was 41 years of age and had been a heroin addict for over 20 years. She had made numerous unsuccessful prior attempts to overcome her addiction. She had a lengthy criminal record, including drug-related convictions, including trafficking.

[38] The Court of Appeal pointed out that heroin addiction is very difficult to overcome. The accused in Preston had enrolled in a methadone treatment program and had been able to maintain sobriety for some time. The Court went on to touch upon the cycle and pointed out what is often the futility in terms of incarceration:

However, the protection which society derives from a sentence of imprisonment, imposed upon a heroin addict for the purpose just described, is transitory at best. There is no credible basis for expecting that a term of imprisonment will rehabilitate the addict. Drugs of all sorts are readily available in our prisons and penitentiaries. Only the price varies, in kind and amount, from that which is exacted on the street. When the sentence is served, the addict who re-emerges from custody poses the same threat to society as before, and the whole cycle is ready to be repeated.

[39] The Court then went on to discuss both the need for deterrence but also the possibility of rehabilitation and that, in some cases, the former should yield to the latter:

What then is the proper approach for the court to take when sentencing in a case such as this? When the benefit to be derived to society as a whole, as a result of the successful rehabilitation of a heroin addict, is balanced against the ultimate futility of the short-term protection which the community enjoys from a sentence of incarceration, I believe it is right to conclude that the principle of deterrence should yield to any reasonable chance of rehabilitation which may show itself to the court imposing sentence. To give the offender a chance to successfully overcome his or her addiction, in such circumstances, is to risk little more than the possibility of failure, with the result that the cycle of addiction leading to crime leading to incarceration will resume, something that is inevitable, in any event, if [that] chance is not taken. On the other hand, as has already been pointed out, if the effort succeeds the result is fundamentally worthwhile to society as a whole.

[40] Justice Bracken described the difficulty facing the courts in matters such as these in *R. v. Boone*, in which he recognized the conflicting principles of denunciation and deterrence on the one hand and rehabilitation on the other. At paragraphs 25 to 28, he said the following:

- [25] Sentencing is often a difficult function for the courts. Clearly this offence is serious and caused the victim considerable and long-lasting harm. The nature of the offence, combined with the defendant's history of offending, result in a focus on the principles of denunciation and deterrence. However, his background, strong family and community support, the fact of his employment and the steps he has taken to rehabilitate himself result in a conflict between the principles of denunciation and deterrence and the principle of rehabilitation.
- [26] The elimination of the availability of conditional sentence orders for offences of this nature perhaps reinforces the principles of denunciation and deterrence. Indeed, but for the evidence of now almost three years of sobriety and good conduct, the need for denunciation and specific deterrence would undoubtedly be the paramount factors in this sentencing.
- [27] The defendant seems remorseful and demonstrated his remorse and regret in his comments to the court. He seems committed to the continuation of his current path.
- [28] The obvious difficult aspect [of] this case is which of the conflicting principles of sentencing should govern; those of denunciation and deterrence, or that of rehabilitation.
- [41] The Court of Appeal confirmed in Voong that Preston remains good law. In Voong, the Court said the following at paragraph 45:

The exceptional circumstances must engage principles of sentencing to a degree sufficient to overcome the application of the main principles of deterrence and denunciation by way of a prison sentence.

- [42] The Court went on to say, at paragraph 47, that its analysis was not restricted to drug trafficking offences.
- [43] The accused in this case points to the following factors that, when reviewed in aggregation, give rise to exceptional circumstances:
- a) his guilty plea;
 - b) his relatively limited criminal record;
 - c) the significant efforts he has made in recovering from his addictions, as confirmed by his friends and family, together with the people from VisionQuest;
 - d) he is employed and doing well; and
 - e) he is remorseful and has turned around his life following the arrest.
- [44] Mr. Hanson's counsel argues the principles of deterrence and denunciation can be met with strict terms of release.
- [45] I agree that the guilty plea is a mitigating factor, even though the security video was clear, because the victims were spared the need to testify and court resources were saved.

- [46] I also agree that his record is limited. His more recent criminal record includes possession of stolen property. In the past he has had a drunk driving conviction and a mischief conviction that resulted in a conditional discharge plus probation. Of course, those factors, the pleas and his record, in and of themselves are not exceptional.
- [47] In *R. v. Smith*, 2013 BCCA 173, the accused pleaded guilty to impaired driving causing death following a collision that resulted from her driving an automobile when impaired by drugs and alcohol and striking and killing a motorcyclist. In that case, the accused entered into a residential treatment program immediately and had pleaded guilty. The judge sentenced her to one day of prison, followed by three years' probation, citing Preston and other authorities.
- [48] The Court of Appeal determined, on an appeal by the Crown, that this sentence was not fit and instead ordered a term of imprisonment of two years less one day, representing credit for time served. The Court of Appeal analyzed the sentencing judge's assessment of moral blameworthiness and rejected the analysis that the accused was no more morally blameworthy than if she had driven a vehicle but no consequences flowed. The Court held that it was a well-established sentencing principle that more serious consequences can often result in more significant penalties.
- [49] I consider Mr. Hanson's efforts to be mitigating factors when determining the appropriate sentence, but, as the Court of Appeal concluded in *Smith*, which case was cited in *Voong* at paragraph 47, there are offences that are significantly serious that substantial efforts to deal with the underlying issue may only serve to mitigate the sentence as opposed to rising to the level of being exceptional circumstances.
- [50] At paragraph 54 of *Smith*, Justice Bennett, who also wrote the majority decision in *Voong*, held the following:
- [54] The sentencing judge was of the opinion that the best way to protect the public was to rehabilitate Ms. Smith so she does not commit this offence again. While that is a superficially attractive conclusion, it fails to take into account other important principles of sentencing, which must be weighed by a judge when imposing a fit sentence. In *M. (C.A.)*, the Court said the following about the process of determining a fit sentence:
- [81] Retribution, as well, should be conceptually distinguished from its legitimate sibling, denunciation. Retribution requires that a judicial sentence properly reflect the moral blameworthiness of that particular offender. The objective of denunciation mandates that a sentence should also communicate society's condemnation of that particular offender's conduct. In short, a sentence with a denunciatory element represents a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantive criminal law. As Lord Justice Lawton stated in . . . *Sargeant* . . . : "society, through the courts, must show its abhorrence of particular types of crime, and the only way in which the courts can show this is by the sentences they pass". The relevance of both retribution and denunciation as goals of sentencing underscores that our criminal justice system is not simply a vast system of

negative penalties designed to prevent objectively harmful conduct by increasing the cost the offender must bear in committing an enumerated offence. Our criminal law is also a system of values. A sentence which expresses denunciation is simply the means by which these values are communicated. In short, in addition to attaching negative consequences to undesirable behaviour, judicial sentences should also be imposed in a manner which positively instills the basic set of communal values shared by all Canadians as expressed by the Criminal Code.

- [82] As a closing note to this discussion, it is important to stress that neither retribution nor denunciation alone provides an exhaustive justification for the imposition of criminal sanctions. Rather, in our system of justice, normative and utilitarian considerations operate in conjunction with one another to provide a coherent justification for criminal punishment. As Gonthier J. emphasized in *Goltz* . . . the goals of the penal sanction are both "broad and varied". Accordingly, the meaning of retribution must be considered in conjunction with the other legitimate objectives of sentencing, which include (but are not limited to) deterrence, denunciation, rehabilitation and the protection of society. Indeed, it is difficult to perfectly separate these interrelated principles. And as La Forest J. emphasized in *Lyons*, the relative weight and importance of these multiple factors will frequently vary depending on the nature of the crime and the circumstances of the offender. In the final analysis, the overarching duty of a sentencing judge is to draw upon all the legitimate principles of sentencing to determine a "just and appropriate" sentence which reflects the gravity of the offence committed and the moral blameworthiness of the offender.
- [51] In *Smith*, the Court of Appeal in granting the appeal imposed a two-year sentence and concluded that the mitigating factors, which included her rehabilitation efforts, placed her at the low end of the sentencing range. In concluding that a custodial sentence was nonetheless warranted, the Court of Appeal pointed out that Ms. Smith's history of alcohol abuse was longstanding and that she had not taken steps until the tragic events that gave rise to her conviction had already taken place. Many of those considerations apply to this case.
- [52] This is a very serious offence that could have had significant and potentially catastrophic consequences for the victims. This is not a case with hypothetical or theoretical victims. There are real victims who suffered real harm. In addition to the damage to the family home, Mr. Yerema suffered burns and Emma Yerema continues to require counselling to this day.
- [53] I agree with the Crown that this is not akin to those cases where someone is selling drugs to fuel a drug habit. Nor is it a situation whereby the victims or potential victims of the offence were, themselves, also engaged in risky or illegal behaviour. This is a case where the victims were a regular family, asleep in their home, not engaged in any sort of hazardous activity.

- [54] Successful completion of a residential treatment program is laudable, but in and of itself, is insufficient to be considered exceptional. Moreover, Mr. Hanson has apparently managed to get himself off drugs and alcohol in the past, only to relapse. While he may not have had the professional help in the past that he did this time, it is, nonetheless, not possible to have complete confidence in his success.
- [55] Mr. Hanson's efforts to address his underlying drug issues are significant and commendable. However, the principles of denunciation and deterrence are also of importance in what is a very serious offence. His personal success to date is obviously a factor that works in his favour, but it does not override other considerations.
- [56] The accused argues that the damage suffered in this case was not as significant as in some of the other cases. This was not a case, for example, where there was over a million dollars of damage or a home was a total loss. While the severity of the consequences can often play a role in determining the fit sentence, it is difficult to accept this should be a significant factor in assessing moral blameworthiness, because the only reason the consequences were not more catastrophic was the quick actions of Mr. Yerema to save his home, even though he suffered some injury as a result.
- [57] The accused says that unlike in many of the Crown's authorities, this is not a case that involves an arson that was targeted to a particular victim. He describes it as more reckless than premeditated.
- [58] I agree this was not a premeditated attack, to the extent the accused did not bring an accelerant to set the fire or that he had any intention of specifically targeting the Yerema family. However, it would be inaccurate to describe his actions as reckless because the video taken on the Yerema family's security camera makes it clear the accused set the fire deliberately and was indeed trying to set another fire in the vicinity of one of the vehicles. It, therefore, cannot be argued that the fire that caused the damage to the Yermas' home was an unintended, if predictable, consequence of some less culpable action.
- [59] There is no doubt the accused meant to start a fire and the fact that he could have added more flammable fuel to that fire but did not can hardly be seen as mitigating when he walked away from the home without taking any steps to try to warn the occupants that their home was on fire. The mere fact that the accused had no particular motive to cause damage to this victim does not equate with a lack of intent to cause damage.
- [60] The arson cases referred by the accused involve primarily arson, as opposed to arson endangering human life. As I said before, there is a substantial difference between the offences, as many of the authorities that do not include the endangerment of human life component involve either commercial properties or fact patterns where the accused was aware that no one was in the building.

- [61] An exception is *R. v. Sharun*, 2017 BCPC 367. However, the accused who had underlying mental health issues, set the fire, intent on self-harm. The endangerment to human life flowed from the fact that he was living in an apartment building that had other inhabitants. From the review of that case, the fact that the accused's primary motivation was self-harm and that he had taken substantial steps to deal with his underlying mental health issues, were found to be sufficient to allow for a suspended sentence.
- [62] Sentencing is an individualized process that requires the court consider a number of factors and circumstances. The court must be mindful of the range of sentences imposed for similar offences by offenders in similar circumstances. I consider this offence to be sufficiently serious such that society's need for denunciation and deterrence necessitates a custodial sentence.
- [63] In terms of a fit sentence, I conclude that a reasonable starting point is this Court's recent decision in *Ferguson*. In that case, Mr. Ferguson and his co-accused set the fire at a residence at 5:20 a.m., believing that the victim himself had been responsible for a different fire. Both Mr. Ferguson and his co-accused pleaded guilty. The home contained three people at the time the fire was lit, one adult and two children, all of whom, fortunately, were able to escape. The home was largely destroyed. Mr. Ferguson was relatively young and had a history of drug use. He also had an unrelated criminal record, but not a lengthy record. The Crown suggested a range of three to five years, based upon the remorse shown by the accused. Justice Maisonville concluded that a three-year sentence was appropriate.
- [64] I note that the amount of property damage here was substantially less than was the case in *Ferguson*, even though that was, in large part, because of the quick actions of Mr. Yerema and not because of anything the accused did or did not do. The Court of Appeal in *Smith* nonetheless confirmed that the severity of the consequences nonetheless play a role in sentencing.
- [65] The fact that the fire was set when one might reasonably expect that people would be sleeping and that the home contained innocent people is common to these facts and those in *Ferguson*. In *Ferguson*, Justice Maisonville confirmed at paragraph 15 that an offence that is committed as an act of vengeance will result in a more severe sentence. The premeditation in *Ferguson*, which included the purchase of gasoline as an accelerant and the fact that it was targeted and motivated by some perceived need for revenge, are factors that were present in *Ferguson* but not here, which would tend to suggest a lesser sentence for Mr. Hanson.
- [66] Most importantly, I consider Mr. Hanson's substantial efforts at rehabilitation, while not rising to the level of exceptional circumstances, given the offence here, are substantial and significant as a mitigating factor. I accept that he is remorseful and that he appears to be on the right road to establishing a prosocial and productive life.
- [67] Mr. Hanson, please stand.

[68] Having considered the authorities and Mr. Hanson's significant efforts at rehabilitation, which I consider to be mitigating, I conclude a sentence of 18 months' incarceration to be fit and proper in the circumstances for the arson endangering human life, plus six months of probation.

[69] As for the break and enter charge, I sentence you to five months, to be served concurrently with the other sentence. I accept, as the Crown conceded, that this is the type of offence that can, unfortunately, accompany addiction issues.

[70] I will now go through the terms of the probation:

2102: You must report immediately, in person, following release, to a probation officer at 1355 Water Street, and, after that, you must report as directed by the probation officer.

2203: You must reside at a address approved in advance by the probation officer. You must provide your probation officer with your phone number and you must not change your residence or your phone number without written permission from your probation officer.

2401: You must not possess or consume alcohol, drugs, or any other intoxicating substance, except in accordance with a medical prescription.

2403: You must not enter any liquor store, beer or wine store, bar, pub, lounge, nightclub, beer garden, or any other business from which minors are prohibited at any time by the terms of a liquor licence.

2002: You must have no contact or communication, directly or indirectly, with David Yerema, Rasa Yerema, Emma Yerema, Samuel Yerema or Cynthia Skoretz.

2610: You must not possess, either personally or through another person, any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition or explosive substance, or anything that resembles a weapon or firearm, any weapon as defined by s. 2 of the Criminal Code, or any other related authorizations, licences or registration certificates.

2301: You must not go to 1390 Cornwall Road, Kelowna, or to any residence, school or workplace of David, Rasa, Emma or Samuel Yerema, or go within 100 metres of such places, except while on a highway in a moving motor vehicle on your way to or from some other place for the purpose of travelling to and from employment, medical appointments or a mental health appointment.

2209: During the six-month probation, you must obey a curfew by being inside your residence or on the lot of your residence between the hours of 9 p.m. and 6 a.m. each day. You must present yourself immediately at the door of your residence or answer the phone when any police officer or probation officer attends at your residence or calls to check your compliance with the curfew condition of this order. You may be away from your residence during the curfew hours with the written permission of your probation officer. Such permission is to be given only for compelling reasons. You must carry the written permission with you when you are outside your residence during the curfew hours. You may also be away from your residence during the curfew hours:

- (a) while in the course of your employment or when travelling directly to or returning directly from your place of employment. If requested, you must provide your probation officer with the details of your employment, including locations and hours of work; and
 - (b) in the event of a medical emergency, and then only while at a healthcare facility or while travelling directly to or from that facility. If requested, you must provide your probation officer with written confirmation that you went to the facility, signed by a representative of the healthcare facility to which you went.
- [71] The ancillary orders, as requested by the Crown. There will be a 10-year firearms ban; a lifetime ban on prohibited and restricted firearms; a DNA order under s. 487.051 of the Criminal Code; and, finally, I confirm that Mr. Hanson is entitled to 36 days' credit for pretrial detention.
- [72] That concludes my decision. Is there anything arising?
- [73] MR. RUSE: With respect to the probation order, I may have missed it, but with respect to the no-go, I believe you said it was 1390 Cornwall Road or any residence or place of employment of the Yerema family?
- [74] THE COURT: Yes.
- [75] MR. RUSE: 1390 Cornwall Road was the location of the break and enter, which was Mr. Bischoff's residence.
- [76] THE COURT: Oh, I see, yes.
- [77] MR. RUSE: So you're probably going to have to put two no-gos there, one no-go to 1390 Cornwall Road with respect to the victim of the B and E --
- [78] THE COURT: Yes.
- [79] MR. RUSE: -- but also a no-go to --
- [80] THE COURT: Robinson -- was it Robinson Road?
- [81] MR. RUSE: Correct.
- [82] THE COURT: Yes.
- [83] MR. RUSE: 2592 Robinson Road --
- [84] THE COURT: All right. That --
- [85] MR. RUSE: -- which is the residence of the Yerema family.
- [86] THE COURT: Yes, that should be added.
- [87] MR. RUSE: And I just didn't quite catch the -- with respect to the reporting condition, was that within two days following his release?

- [88] THE COURT: Yes.
- [89] MR. RUSE: Thank you.
- [90] THE COURT: Anything, Mr. Lynskey?
- [91] MR. LYNSKEY: No, Your Honour -- or no, My Lord.
- [92] THE COURT: Then we are concluded.
- [93] THE CLERK: My Lord, sorry, I need an actual calculation on the jail time -- actual new jail time.
- [94] MR. RUSE: There was 36 days available, so it would be another 18 days, which is 54. So he was given credit for 54 days, with another 18 months to serve, is the way I understood your decision.
- [95] THE COURT: My intention was that it was 18 months, less what the -- my understanding was he had 36 days of credit. So the 18 months, which would be what, 547 days, would have been reduced by 36 days. But I am not -- I was relying on your calculation --
- [96] MR. RUSE: You're correct. It would be 18 months, I guess, then minus 36.
- [97] THE COURT: Yes. So it would be -- 547 days would be 18 months, less 36 days, leaving 511 days. That would be my calculations, unless I am wrong. Is that sufficient, Madam Clerk?
- [98] THE CLERK: Yes, My Lord.
- [99] THE COURT: All right. All right.
- [100] MR. RUSE: Thank you.
- [101] THE COURT: Thank you.
- [102] MR. RUSE: Oh --
- [103] THE COURT: Yes.
- [104] MR. RUSE: -- before we leave. With respect to the Penticton matter that's been following this matter --
- [105] THE COURT: Yes.
- [106] MR. RUSE: -- I'll direct a stay of proceedings.
- [107] THE COURT: Thank you.
- [108] MR. RUSE: And with respect to the other count on the arson indictment, I'll direct a stay on that one as well.
- [109] THE COURT: Thank you. All right. Thank you.
- [110] THE CLERK: Order in court.

"Wilson J."

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Prepared on 30 October 2026 · Esheria