

CANADA / JUDGMENT

R. v. Hayer

2023 BCSC 1440

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Supreme Court of British Columbia

DECIDED

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2023 BCSC 1440 R. v. Hayer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Hayer,

2023 BCSC 1440

Date: 20230817

Docket: X083239

Registry: New Westminster

Rex

v.

Munroop Singh Hayer

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Before: The Honourable Madam Justice Devlin

Reasons for Judgment re: Crown Application for Pre-sentence Report

Counsel for the Crown:

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R.C.C. Peck, K.C.

R. Wood

Place and Date of Hearing:

New Westminster, B.C.

August 15, 2023

Place and Date of Ruling given to Parties with Reasons to Follow:

New Westminster, B.C.

August 15, 2023

Place and Date of Judgment:

New Westminster, B.C.

August 17, 2023

Introduction

- [1] On April 26, 2023, Munroop Singh Hayer pleaded guilty to the manslaughter of Andrew Baldwin. Mr. Baldwin was killed in the home of his friend, A.B., on November 11, 2019, in Surrey, BC. Mr. Hayer's sentencing hearing is scheduled to commence on October 10, 2023.
- [2] By way of a Notice of Application filed August 4, 2023, the Crown seeks an order that a pre-sentence report ("PSR") with a psychological component be authored to assist in sentencing Mr. Hayer. The Crown acknowledges that the timing of their application is somewhat unfortunate, but that fact alone is not determinative of the issue.
- [3] The Crown says a PSR will provide insight into Mr. Hayer's performance on bail, his general attitude towards authority, and his entrenchment in the criminal lifestyle. They say these matters go to his prospects for rehabilitation, risk of reoffending, and his moral blameworthiness in committing the offence. They note that Mr. Hayer has been involved with probation authorities since 2013.
- [4] In support of an accompanying psychological evaluation, the Crown argues that Mr. Hayer has raised his mental health in these proceedings (particularly in the context of bail). In the Crown's submission, this makes it "more important for the Court to be equipped with the necessary information from which to evaluate [Mr. Hayer's] claims". The Crown recognizes that Mr. Hayer has commissioned a private pre-sentence report by Dr. Carla Dassinger, but emphasizes that Mr. Hayer, and his family and friends, are not credible or trustworthy declarants because of their clear interest in this matter (citing *R. v. Pahl*, 2016 BCCA 234 at para. 60). They say ordering a PSR with a psychological component now will also avoid the prospect of delay occasioned by the Crown needing to renew this application after receiving and reviewing Dr. Dassinger's report, and would "mitigate any possible concerns over the

independence" of Dr. Dassinger.

- [5] The Crown advises that a PSR will take 10 weeks to be completed. They say a psychological component would extend this timeline to 12 weeks. The Crown said they will attempt to have the completion of the report expedited as much as possible, should it be ordered.
- [6] Mr. Hayer opposes the ordering of a PSR, with or without a psychological component. He says Dr. Dassinger is a qualified and highly-experienced psychological expert, with a specific background in risk assessments. He argues that Dr. Dassinger's forthcoming report will touch on the same matters and draw from the same materials that the Crown's proposed PSR would discuss. Mr. Hayer also argues that issues relating to his credibility would be equally engaged by a state-authored PSR, for which he (and his friends and family) would likewise self-report information. Finally, Mr. Hayer submits that the Crown's proposed PSR risks delaying these proceedings, including by "the prospect of dueling opinions". In sum, he submits the proposed PSR would have no utility and would not assist the court.
- [7] Following the hearing of submissions on August 15, 2023, I advised the parties that I was granting the Crown's application, with reasons to follow. These are those reasons.

Governing Legal Principles

General Discretion to Order Pre-sentence Reports

- [8] The authority of a sentencing judge to order a pre-sentence report is found in s. 721 of the Criminal Code, R.S.C. 1985, c. C-46 [Code]:

Report by probation officer

721 (1) Subject to regulations made under subsection (2), where an accused, other than an organization, pleads guilty to or is found guilty of an offence, a probation officer shall, if required to do so by a court, prepare and file with the court a report in writing relating to the accused for the purpose of assisting the court in imposing a sentence or in determining whether the accused should be discharged under section 730.

- [9] Section 721(3) of the Code lists matters a PSR must address (e.g., per subsection (a), "the offender's age, maturity, character, behaviour, attitude and willingness to make amends"). Section 721(4) provides that a PSR "must also contain information on any other matter required by the court, after hearing argument from the prosecutor and the offender".
- [10] Section 721 of the Code is supplemented by s. 723(3), which further entitles the court, on its own motion, to "require the production of evidence that would assist it in determining the appropriate sentence".
- [11] The purpose of a PSR is to assist the court in exercising its discretion to impose a fit and appropriate sentence. That exercise requires sentencing judges to "receive all the potentially relevant information regarding the offences and the offender": *R. v. Blackwell*, 2007 BCSC 1486 at paras. 7-8, 38 [Blackwell]. In particular, PSRs provide the court information about the

accused's background and circumstances, or a "picture of the accused as a person in society": R. v. Nelson, 2015 BCCA 371 at para. 9; R. v. McCormick, 2022 NSSC 61 at para. 10. This, in turn, assists sentencing judges in having proper regard to the principles and objectives of sentencing: R. v. McPherson, 2013 ONSC 1635 at para. 12.

- [12] Ultimately, it falls within the sentencing judge's discretion to order a PSR. Factors to be considered in exercising this discretion include the need for further information, delay that may be occasioned by requiring the report, and expenses associated with the report, both for the accused and the court. None are determinative. Courts have suggested PSRs should only be ordered when required for some "specific purpose". See R. v. Kandola and Johal, 2012 BCSC 1012 at para. 16 and R. v. D.L.W., 2014 BCSC 43 at para. 6, quoting R. v. Shapley (1998), 174 Sask. R. 92, 1998 CanLII 13895 (K.B.); R. v. Duyck, 2019 BCPC 330 at para. 11.

Pre-sentence Reports with Psychological Components

- [13] In British Columbia, the leading authority on the jurisdiction to order a psychological assessment of a non-consenting offender is Blackwell. There, D. Smith J. (as she then was) underscored that sentencing imparts judges with a broad discretion. This, as mentioned above, requires the court to "receive all potentially relevant information regarding the offences and the offender". After comprehensively reviewing caselaw on the issue, D. Smith J. concluded that the Code does permit sentencing judges to require a psychological assessment of the offender, including as part of a PSR. Blackwell at paras. 38-39.
- [14] However, the court may only do so where there is some "logical nexus or relevance" between the information sought and the matters under consideration in sentencing. This standard does not necessarily require "bizarre" or "extreme" conduct on the part of the offender during their trial. Among other things, concerns about an offender's "random, unprovoked, inherently dangerous and violent" offending can "also meet the criterion for logical nexus or relevance". As well, the absence of a known psychological or psychiatric condition afflicting the offender is not a barrier to finding an assessment is warranted. Blackwell at paras. 31-32, 38; R. v. Sandhu, 2019 BCSC 2291 at para. 14; R. v. Goldberg, 2011 BCSC 1926 at para. 31 [Goldberg].

Analysis

- [15] The central issue on this application is whether I should exercise my discretion to order a PSR with a psychological component. To reiterate, in exercising this discretion I must determine if there is some logical nexus or relevance between the information sought and the matters under consideration in sentencing.
- [16] Mr. Hayer's sentencing hearing is scheduled for October 10 and 11, 2023. A comprehensive Agreed Statement of Facts has been prepared. As I understand it, there is no dispute with respect to the underlying facts.

- [17] That said, manslaughter is a very serious offence. The death of Mr. Baldwin was related to a drug debt that Mr. Baldwin owed to Mr. Hayer. At the sentencing hearing, Mr. Hayer's background, his criminal history, his involvement in the criminal milieu prior to and following the death of Mr. Baldwin, and his more recent mental health issues (to which he has referred in the course of these proceedings) will all be relevant considerations.
- [18] As noted earlier, Mr. Hayer has retained Dr. Dassinger, a registered clinical psychologist, to prepare a background and risk assessment report. I am advised that Dr. Dassinger has been provided a substantial amount of material to review in order to prepare her report. In addition, I understand it is Dr. Dassinger's intention to obtain information from Mr. Hayer's current and prior bail supervisors regarding his conduct while on bail. Contrary to the Crown's submission, although I have yet to receive her report, I find no basis to be concerned about Dr. Dassinger's independence or her ability to assist the court.
- [19] However, I emphasize that crafting an appropriate sentence for Mr. Hayer requires me to receive the broadest possible perspective on issues central to that task, including information that will inform his prospects for rehabilitation and risk of reoffending. Mr. Hayer has been subject to supervision by various probation officers who have had extensive personal dealings with him over several years. As the letters provided in the Crown's materials reveal, there appears to have been a change in Mr. Hayer's attitude towards their supervision. While Dr. Dassinger may be in a position to incorporate some of their perspectives into her report, I do not consider the preparation of a separate PSR--and especially one based on the first-hand dealings of officers with Mr. Hayer--to be redundant. Indeed, the self-reporting of probation officers' interactions with and views on Mr. Hayer may well differ, complement, or amplify Dr. Dassinger's reporting of those officer's experiences. The prospect of additional insights from this self-reporting, in my view, calls for an exercise of my discretion to order a PSR, in the circumstances.
- [20] In terms of the proposed psychological component, I note once more that Mr. Hayer has raised his mental health in the course of these proceedings. I also note that he has hired a psychological expert to author a report for the purposes of sentencing, suggesting that he understands his mental health to be a salient consideration in this matter. Finally, Mr. Hayer admits that in the lead-up to the offence, he persistently threatened the victim, the victim's mother, and the victim's former intimate partner. In my view, the court would benefit from additional insight into this behaviour. I find these factors, taken together, establish that a nexus exists between Mr. Hayer's psychological health and the matters to be considered in sentencing him.

- [21] Finally, there remains the possibility that components of Dr. Dassinger's report may need to be directly challenged by the Crown at the sentencing hearing. This may result in the Crown seeking a state-authored PSR. Although not a determinative factor, in the interests of administrative efficiency, I find that the preparation of a PSR now will serve to reduce the likelihood of a delay in the sentencing hearing occasioned by the Crown needing to obtain a report in response to the contents of Dr. Dassinger's report.
- [22] Thus, I am satisfied that the circumstances of this case justify an exercise of my discretion to order a PSR with a psychological component.
- [23] In closing, I wish to be clear that although a PSR with a psychological component has been ordered in this case, it remains open to Mr. Hayer not to participate in the preparation of the report: Blackwell at paras. 6, 37; Goldberg at para. 40. Nothing will be inferred from that decision in sentencing him.

Disposition

- [24] Pursuant to ss. 721(1) and 723(3) of the Code, I order that a PSR with a psychological component be prepared prior to Mr. Hayer's sentencing hearing, set to commence on October 10, 2023.
- [25] I encourage the Crown to take all necessary steps to expedite the preparation of this report.
- "Devlin J."

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