
CANADA / JUDGMENT

R. v. Hayes

2017 BCSC 235

COURT

Supreme Court of British Columbia

DECIDED

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2017 BCSC 235 R. v. Hayes

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Hayes,

2017 BCSC 235

Date: 20170104

Docket: X078472-2

Registry: New Westminster

Regina

v.

Ryan Alexander Hayes

Before: The Honourable Mr. Justice Verhoeven

Oral Reasons for Sentence

Counsel for the Crown:

P. Mann

Counsel for the Accused:

J.J. Saulnier

Place and Date of Trial/Hearing:

New Westminster, B.C.

January 4, 2017

Place and Date of Judgment:

New Westminster, B.C.

January 4, 2017

- [1] THE COURT: These are reasons for sentence in this matter.
- [2] Ryan Alexander Hayes is charged with a number of offences occurring in 2012. He has pleaded guilty to Count 1 on the indictment. That is possession of a controlled substance, to wit: cocaine, for purposes of trafficking, contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 [CDSA] occurring on or about October 18, 2012, at the City of Maple Ridge, British Columbia.

Circumstances of the Offence

- [3] The Crown has set out the out the material facts in its submissions during the sentencing hearing. Those are, generally speaking, covered in the Crown's synopsis which was referred to during the course of the sentencing hearing. The defence takes no issue with the facts as set out by the Crown. I adopt, then, the facts as set out by the Crown in its submissions for purposes of this sentencing decision.
- [4] In very general terms, however, and by way of summary: Ridge Meadows RCMP conducted surveillance upon Mr. Hayes for a number of months in 2012. That occurred in May, June, and October of 2012. The police observed at least 19 incidents where it appeared that Mr. Hayes was involved in drug transactions. The Crown alleges that Mr. Hayes was involved in a dial-a-dope operation. No issue was taken with that. That is supported by the surrounding circumstances including, for example, the large number of cellphones that were seized: two on his person, and nine more in his residence, which operated as a stash house.
- [5] The arrest took place on October 18, 2012. The RCMP observed Mr. Hayes enter a vehicle which then drove away and dropped him off a few minutes later. The driver was arrested and found to have a flap of cocaine in his possession. Shortly thereafter, the police attempted to arrest Mr. Hayes as he tried to enter his pickup truck which was parked at a Save-On-Foods Store on Lougheed Highway. He fled, but was arrested at a nearby gas station where he was observed to be flushing materials down a toilet.
- [6] Upon arrest, the police located \$80 cash, a set of keys, and two cellphones. They searched the pickup truck incidental to the arrest and located 35 flaps of cocaine, with a total weight of 14 grams, another cellphone, a wallet, and keys to a Nissan Sentra. That vehicle was previously observed in the surveillance being utilized for purposes of drug transactions. The police obtained a search warrant for Mr. Hayes' residence. At the residence, police located numerous documents in Mr. Hayes' name, various items of drug paraphernalia, 17 notebooks including scoresheets, and 16 gram flaps of cocaine with a total weight of seven-and-a-half grams, also some marihuana, nine cellphones, and \$7,010 in cash. The total amount of cocaine seized has a value of around \$2,000.

- [7] So the circumstances of the offence are that Mr. Hayes operated a dial-a-dope operation. He operated it out of his home. There is no indication that other persons were employed or used in the operation. The volumes involved are on the modest end of the scale. The operation was not highly sophisticated. On the other hand Mr. Hayes was not simply a courier or a delivery person for the operation, he was its principal.

Circumstances of the Offender

- [8] I have the benefit of a helpful pre-sentence report. The pre-sentence report sets out useful information concerning the background of Mr. Hayes, his family situation, the circumstances relating to the offence in question, and Mr. Hayes' circumstances since the offence in question.
- [9] At the time, Mr. Hayes was 29 years of age. He is now 34. He grew up locally. He had a supportive upbringing, with a mother with whom he continues to be close, and stepfather. His mother and stepfather, Ms. Stein and Mr. Crowder, have provided a positive letter of support on this sentencing hearing, which I have read. That letter of support has been marked as the third exhibit on this sentencing hearing. There, they note that they provided information to the author of the pre-sentence report. They point out that their son and stepson, Ryan, has made what they describe as a "complete change in his life focus and work ethic." They point out that he has now qualified as a barber, and is owner and operator of a barbershop located in Maple Ridge, with a staff of four.
- [10] The indication in the pre-sentence report and generally is that Mr. Hayes is no longer involved with the criminal associates that he was involved in at the time of the offence. That is what he states, and there is no indication, for example, from the police, to the contrary effect. So I accept that he has, in fact, changed his lifestyle, that he is no longer involved in the criminal conduct that resulted in the charge in question, and has not been for several years.
- [11] He has been married on a common law basis for quite a long time, 11 years or more. I also have a letter of support from his common law spouse, Ms. Dizon, who is the mother of their two children, a boy aged 11, and an infant less than one year old. Ms. Dizon is present in court today. The letter of support from Ms. Dizon is also positive in terms of her relationship with Mr. Hayes and his ability to parent their two children. She supports the indication I previously referred to about a change in attitude and lifestyle and of rehabilitation on the part of Mr. Hayes. Ms. Stein and Mr. Crowder also state that Mr. Hayes is a good father to his two children.
- [12] Mr. Hayes completed high school in 2002 and also completed some post-secondary education. He obtained a small business marketing certificate. As I have stated, subsequent to the offence in question, he also qualified as a barber and is now self-employed with a barbershop business that employs other persons. So it appears to me that Mr. Hayes has made significant progress towards rehabilitation. He has expressed remorse in open court,

and indicates that he regrets the decisions that led to the charge in question, and states that he has tried to change his life. The circumstantial and other information indicates that this is indeed so. As is stated in the pre-sentence report, he stated that he has also contributed to the community by doing volunteer work with charities and homeless shelters. So it appears to me that Mr. Hayes has done a lot since the offence in question to rehabilitate himself, and to attempt to give back to the community, to support himself and his family, and to become a positive and contributing member of society.

- [13] Mr. Hayes is not a first-time offender. There is a prior drug offence of possession of marihuana and ecstasy. The offence date was July 7, 2006, so it was about six years prior to the offence in question here. Sentence was imposed February 12, 2008. The sentence imposed was a conditional sentence order of one year. There is no indication that there were any problems complying with that conditional sentence. So while the nature of the offence is related, in that it was a drug offence, it was not a trafficking offence. It was a possession offence; therefore it was significantly less serious than the present offence. However, it is a related prior offence.

Discussion and Conclusions

- [14] The offence is serious. The Crown and defence agree that an appropriate disposition in terms of sanction is for a sentence of nine months' imprisonment. The authority I am referred to in that respect is *R. v. Cisneros*, a decision of the Court of Appeal, 2014 BCCA 154. In that case, the Court of Appeal reversed a decision of the Provincial Court where, after a guilty plea, the Provincial Court judge imposed a sentence for the operator of a dial-a-dope operation of a \$2,000 fine and one-year probation. On the Crown's appeal, the Court of Appeal substituted a sentence of six months' imprisonment, noting that the range of sentence in the case for first-time offenders would be in the range of six to nine months' imprisonment. So, on that authority, as I have indicated, counsel have agreed on a joint submission of nine months.
- [15] The distinguishing feature is that Mr. Hayes is not a first-time offender.
- [16] I have no difficulty accepting the joint submission in terms of the appropriate length of sentence and the sanction. So a nine-month sentence of imprisonment will be imposed.
- [17] I am mindful of the decision of the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43, which says that the sentencing judge should not depart from on a joint submission it unless the proposed sentence would bring the administration of justice into disrepute or would be otherwise contrary to the public interest. Neither of those circumstances apply in the case at bar. Therefore, as I said, I have no difficulty accepting the joint submission.
- [18] The Crown appropriately referred to mitigating and aggravating circumstances. There is really no dispute about any of these things. The mitigating circumstance is the guilty plea. The guilty plea occurred prior to court time in the Supreme Court being taken up. There was a one-day preliminary inquiry in the Provincial Court. There was some plan previously to

challenge matters under the Charter. However, the guilty plea took place prior to any Charter voir dres taking place, and prior to any time being taken for those or for a trial. The Crown notes the positive pre-sentence report. I agree with that characterization of the facts set out in the pre-sentence report, which are generally in line with what I have indicated here in these reasons.

- [19] There are several aggravating factors. This was a dial-a-dope operation. Numerous authorities of this court and the Court of Appeal have commented upon the pernicious nature of such enterprises, and the fact that they cause substantial harm to persons who use drugs, who are victimized by their use of drugs, that they take advantage of those persons, and conveniently facilitate those persons in continuing harmful behaviour. This offence took place over a number of months and was therefore sustained and prolonged. The criminal activity was certainly planned, deliberate, and intentional in all respects. Mr. Hayes was not a drug addict. He pursued the activity solely for economic gain, or in other words for profit. The money seized indicates that profit was made for a considerable period of time, no doubt. So Mr. Hayes knowingly chose to pursue the lure of easy money earned illegally instead of attempting to earn money through hard work in a legitimate occupation or enterprise. His conduct must be denounced, and others must be deterred from making similar choices.
- [20] I indicated earlier, however, that Mr. Hayes was a low-level dealer. That also is a factor that cuts both ways. He was not at the top level, but he was not at the bottom level either.
- [21] The Crown correctly notes that the primary sentencing objectives in this case are denunciation and general deterrence. The relevant sections are s. 718 and others of the Criminal Code as well as s. 10(1) of the CDSA. The maximum sentence possible for this offence is life imprisonment. A conditional sentence order is no longer applicable. However, it is clear from my comments already that Mr. Hayes has by all accounts substantially rehabilitated himself. There does not appear to be a risk of future offences. A sentence of incarceration is required in order to meet the objectives of denunciation and deterrence. The joint submission appropriately addresses that. So, as I have said earlier, the sentence of nine months' imprisonment is appropriate, and I have no difficulty accepting the joint submission for it.
- [22] The Crown seeks certain ancillary orders. There is no issue about any of them, with one minor exception.
- [23] So the ancillary orders are to be as follows: a firearms prohibition under s. 109 of the Criminal Code which is mandatory and is of 10 years' duration; secondly, a DNA order under s. 487.051 of the Criminal Code; that is discretionary, but the defence takes no issue with it, and I accept that it is appropriate in the circumstances.
- [24] The victim fine surcharge that applies is \$200. Defence counsel asked for 30 days to pay, and that is appropriate. So that will also be imposed and with 30 days to pay.

- [25] The Crown seeks a forfeiture order under s. 16(1) of the CDSA. None of the matters are in issue, except with respect to two cellphones. The forfeiture order, then, applies to the drugs that were seized, the various drug paraphernalia that were seized, the cash which was \$7,010 as well as \$80 on Mr. Hayes' person.
- [26] The defence seeks to preserve from forfeiture two cellphones, one that was in Mr. Hayes' pocket upon arrest, which it is submitted was an iPhone that was used only for personal purposes, and the other is a non-operational iPhone, an even older model, I gather, that was in the console or glovebox of the truck that was nearby. There is no possible suggestion that either of these phones has any market value at this stage. The offence took place in 2012 and it is now 2017. So given the nature of such technology, the phones themselves, if even operable at this point, would be worthless. The defence contends that Mr. Hayes only desires the two cell phones because they contain photographs of Mr. Hayes' older child, which were otherwise unpreserved on any other media or by any means.
- [27] I accept that contention, and I accept that, given the number of phones in total, there would likely have been at least one phone in Mr. Hayes' possession that was not used for drug purposes. So I will allow the two phones referred to be preserved from forfeiture. The Crown and defence can work out the precise description of those two phones for purposes of the formal order.
- [28] Mr. Hayes, would you please stand up. Mr. Hayes, you have heard what I have said. For the reasons I have said, I am imposing a sentence of nine months' imprisonment. It is unfortunate that, with a young family, you must spend considerable time in custody, but it is necessary, I am satisfied, for the reasons I have said. I do, obviously, support your continued rehabilitation, and I hope that you are able to continue to stay out of trouble once you have served your sentence. I also impose the other conditions that I have stated in these reasons for sentence.

"Verhoeven J."

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