

CANADA / JUDGMENT

R. v. Hecock

2022 BCSC 516

COURT

Supreme Court of British Columbia

DECIDED

22 February 2022

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2022 BCSC 516 R. v. Hecock

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Hecock,

2022 BCSC 516

Date: 20220222

Docket: 71008-2

Registry: Chilliwack

Regina

v.

Zacchary Marcus Scott Hecock

Before: The Honourable Madam Justice Walkem

Oral Reasons for Sentence

Counsel for Crown:

D. Singhal

Counsel for Defendant:

R. Wood

Place and Date of Trial/Hearing:

Abbotsford, B.C.

February 22, 2022

Place and Date of Judgment:

Abbotsford, B.C.

February 22, 2022

- [1] THE COURT: Well, this is both a simple and a straightforward case, and at the same time presents an area of difficulty for me regarding sentencing principles as I will outline later.
- [2] The parties came to an agreement about the basic facts of this case. On July 20, 2020, not 2021 as stated in the signed admissions of fact which I think was a typo, Mr. Hecock illegally imported 11 duffel bags containing just under 180 kilograms of methamphetamine across the Canada/United States border. Mr. Hecock possessed the duffel bags with the intention of trafficking within the meaning of s. 5(2) of the Controlled Drugs and Substances Act, and was wilfully blind to the contents of those bags.
- [3] Mr. Hecock was ultimately arrested after the trailer, attached to an ATV that had been used to transport the duffel bags across an unmarked section of the border, tipped in a raspberry field. Within short order, a witness called police and Mr. Hecock was arrested. The person that was with Mr. Hecock was not apprehended. It was agreed that Mr. Hecock had intended to drop the drugs on the Canadian side of the border and he fully expected that he would be paid for that service.
- [4] Mr. Hecock is an American who resides in Blaine, Washington. The total amount of methamphetamine was 179.9 kilograms. It was agreed this is a very large amount of drugs and had a significant value which ranged from between 5.4 to 17 million at retail or street level value, depending on the unit it was sold in, or on a wholesale level a value of about 1.8 to 4.5 million.
- [5] The Crown points to these factors: A sentence must reflect the gravity of the offences committed and the moral blameworthiness of the offender. Methamphetamine is a Schedule I substance and highly addictive. Its use can lead to violent behaviour and a significant risk of brain damage. There is no doubt that the proliferation and sale of methamphetamine comes at a high social cost within our society. Deterrence and denunciation are important sentencing considerations for both importation and trafficking of large quantities of Schedule I substances.
- [6] While both offences carry a maximum penalty of life in prison, the usual range of sentences for first time offenders is between six and 12 years. The Crown points out that, sentences on the high end of the range and even higher, are often attracted by those offenders who import or traffic high amounts of Schedule I substances. Both parties agreed that that was the case here.

- [7] The Crown and defence jointly submitted the following sentence for consideration of this court: Ten years in jail, less time served, for both Counts 1 and 2, to be served concurrently; a mandatory s. 109 weapons prohibitions order for a period of 10 years; a s. 487.04 DNA order due to the fact that the offence is a secondary designated offence as it pertains to the importation of over a kilogram of a Schedule I substance; and forfeiture of all drugs, bags, and packaging, and the trailer seized as part of the attached forfeiture order.
- [8] There were joint submissions on the following points: The high quantity of substances imported. It is clear that this volume of methamphetamine could have significant impact and reach on sale. The sophistication of the operation and high value of the methamphetamine suggest it was part of a larger and well-organized trade, likewise that this was a planned event, not an impulse action on Mr. Hecock's part. Motivation to make profit underlie Mr. Hecock's participation in the scheme.
- [9] Mitigating factors that both parties pointed to include the guilty plea before trial and Mr. Hecock's lack of a criminal record.
- [10] Both parties referred to a series of court cases, in which a range of eight to 12 years was found to be appropriate sentence for drug couriers caught transporting significant quantities of Schedule I substances. The parties agreed Mr. Hecock should be credited time and-a-half for time served. His remaining sentence per the joint submission of 10 years would be 2,777 days or roughly seven years and seven months.
- [11] In the course of joint submissions, my attention was drawn to a Gladue report which was prepared to provide guidance to the court on how to consider the fact that Mr. Hecock is an Indigenous man, and both parties agreed that he fell within the meaning of s. 718.2(e) of the Criminal Code. Gladue is a sentencing principle which recognizes that Aboriginal people face racism and systemic discrimination in and out of the criminal justice system. The Gladue sentencing principles attempt to deal with the crisis of overrepresentation and inequities faced by Aboriginal peoples in the criminal justice system through changing how judges sentence. Gladue instructs sentencing judges to consider all available sanctions, other than imprisonment, that are reasonable in the circumstances, with particular attention to the circumstances of Aboriginal offenders. Here, though the parties sought and obtained a Gladue report prior to sentence, the contents of that report were not reflected in any changes to the joint sentencing submissions. I specifically asked counsel if any of the authorities referred to had considered the Gladue factors of the offender who was being sentenced. The cases referred to had not.
- [12] I am very cognizant of the fact that when the Crown and defence are able to come together to create a joint statement of facts and to make joint submissions as to sentencing there are very strong principles for accepting those recommendations. In the case of *R. v. Anthony-Cook* [2016 SCC 43], our Supreme Court reiterated this principle at paragraph 32 saying that:

Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[13] In this regard, this is a difficult decision for me to make. All other factors being equal, the recommendation is fair and balanced on the circumstances. The troubling aspect for me was that it did not take into account the offender's Aboriginal heritage and the impact that this may have had on his offending.

[14] Salient features of Mr. Hecock's background revealed in his report include the following:

- a. He draws his Indigenous ancestry from his paternal side.
- b. His grandfather attended a Catholic school where he was abused. The American Indian boarding school system, the American equivalent of the residential school system in Canada, was created to remove Indigenous people from their culture, families and communities.
- c. The Gladue report highlighted how harms done at such schools often become intergenerational. Such appeared to be the case with Mr. Hecock's family. The grandfather attended a residential school. He abused his son, Mr. Hecock's father; and Mr. Hecock's father in turn suffered from drug addictions and was physically abusive with Mr. Hecock and his siblings.
- d. Mr. Hecock witnessed routine violence by his dad against his mom.
- e. The family moved often when his mom sought to escape the domestic violence.
- f. The older siblings would sometimes jump through a window with their younger siblings to protect them from the violence in the home.
- g. The family's Indigenous tribal roots are in California. However, like many families impacted by these experiences, the family's connections to those roots was tenuous. The family moved to and settled in Washington State where Mr. Hecock grew up. Though not a member of these two nations, he and his family did participate in cultural and spiritual activities of the Lummi and Nooksack peoples.
- h. Mr. Hecock has renewed his cultural connections and practice in pretrial and intends to continue to do so.
- i. Mr. Hecock was diagnosed with bipolar disorder at 13 years of age and had attempted suicide at the young age of 14 and was hospitalized.
- j. He spent time in different foster care situations.
- k. In the past, he has been able to sustain himself from repairing vehicles and motors and other welding related activities.

- l. At the time of his arrest he was experiencing significant addictions issues to methamphetamine. He participated in this scheme which led to these charges in part to make money to feed that addiction.
- [15] There is no doubt for me that these features of cultural dislocation, violence, and addictions reflect a history of colonial impact.
- [16] There is, at the same time, a strong public interest in addressing and ameliorating the overrepresentation of Aboriginal offenders in our prisons. Nonetheless, as the parties have negotiated and come to this agreement on full knowledge of what their cases were, I accept the joint recommendation. I note that - to both counsel - that, for me, this was a difficult decision. I would hope in the past if you -- in the future if you get a Gladue report, that should not be something that you ignore. You need to take that into consideration and I take to some extent you got the report, you have taken it into account, that needs to be done in every case. It is not a rubber stamp.
- [17] Mr. Hecock, please stand.
- [18] Mr. Hecock, you are sentenced as follows: Ten years in jail, less time served in custody, for both Counts 1 and 2, to be served concurrently with each other. I am also imposing a mandatory s. 109 weapons prohibitions order for a period of 10 years, and a s. 487.04 DNA order because this offence is a secondary designated offence, and ordering forfeiture of all drugs, bags and packaging, and the trailer seized as part of the attached forfeiture order.
- [19] So that is the sentence, Mr. Hecock. I wish you luck. I do hope that you are able to use your time to perhaps recover some of your cultural connections and I wish you luck with that recovery.

"A. Walkem J."

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