

CANADA / JUDGMENT

R. v. Horvath

2024 BCSC 1323

COURT

Supreme Court of British Columbia

DECIDED

7 June 2024

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2024 BCSC 1323 R. v. Horvath

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Horvath,

2024 BCSC 1323

Date: 20240607

Docket: 33934-2

Registry: Vancouver

Rex

v.

Bernard Julius Horvath

Before: The Honourable Justice Francis

Oral Reasons for Sentence

Counsel for the Crown:

J.R. Lawn

H. Parmar

Counsel for the Defence:

J.D. Tarnow

J. Wu

Place and Date of Trial/Hearing:

Vancouver, B.C.

June 7, 2024

Place and Date of Judgment:

Vancouver, B.C.

June 7, 2024

Introduction

- [1] THE COURT: Bernard Horvath was charged with two counts of importing controlled substances into Canada on November 10, 2022. The Crown has proposed to stay Count 2, and Mr. Horvath has pleaded guilty to Count 1.
- [2] The parties have made a joint submission on sentence, and consistent with the Supreme Court of Canada's decision in *R. v. Anthony-Cook*, 2016 SCC 43, a joint submission should not be rejected lightly. Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons aware of all of the relevant circumstances including the importance of promoting certainty and resolution discussions to believe that the proper functioning of the justice system has broken down. This is obviously a very high threshold.
- [3] As such, I am limited in my evaluation of the jointly proposed sentence to considering whether it will bring the administration of justice into disrepute or is otherwise contrary to the public interest.
- [4] I am content that the sentence sought jointly by Crown and defence would not bring the administration of justice into disrepute and is not contrary to the public interest. I am going to provide some brief reasons to explain my reasoning for reaching this conclusion for the sake of the record.
- [5] I am going to just briefly address the circumstances of the offence and the offender and the sentencing principles to be applied.

Circumstances of the Offence

Agreed / Proven Facts

- [6] An agreed statement of facts has been tendered, and I have considered those facts, as well as the additional facts provided by counsel in their oral submissions in determining to accept this joint submission.

Circumstances of the Offender

Personal Background, Character, and Current Circumstances

- [7] Mr. Horvath is 79 years old. He appears to have strong family supports with two adult children and five grandchildren. He was a heavy-duty mechanic and a business owner prior to the offence, and he is now retired. He has reintegrated back into Canadian society. He has no intention of returning to Mexico. He has stable housing now, although he unfortunately had to spend four months at Surrey Pretrial before his judicial interim release could be sorted out. Mr. Horvath has, through his counsel, expressed remorse for his actions.

Criminal Record

- [8] A criminal record of an offender is relevant to sentencing.
- [9] In this case I note that Mr. Horvath has a criminal record, although it is related to a dated and unrelated offence of impaired driving from 2006.

Legal Framework/Principles

Principles of Sentencing

- [10] Counsel sets out the fundamental purpose and objectives of sentencing as set out in s. 718.1 of the Criminal Code, R.S.C. 1985, c. C-46 [Code]:

718 The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by 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 or to the community.

- [11] A fundamental principle of sentencing is that the sentence must be proportionate to the gravity of the offence and to the degree of responsibility of the offender. The sentence must strike a balance between ensuring that offenders are held responsible for their actions, properly reflecting and condemning their role in the offence and the harm that they caused, while not exceeding what is just and appropriate given the moral blameworthiness of the offender.

[12] Section 718.2 of the Code sets out additional principles that the court must consider, and these include:

718.2 A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
 - (iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,
 - (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
 - (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
 - (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.
- [13] Sentencing is a balancing process. No one objective trumps the other, and ultimately, regardless of how the objectives are balanced, the resulting sentence must respect the principle of proportionality.

Case Authorities

[14] Crown has advanced a number of authorities in support of the joint position on sentencing, and that includes five cases: *R. v. Demirovic*, 2020 BCSC 900; *R. v. Johnston*, 2003 Canlii 14150 (ONSC); *R. v. Nguy*, 2002 BCCA 93; *R. v. Pham*, 2011 BCSC 1041; and *R. v. Kim*, 2014 BCPC 1. While some of the cases relied on by the Crown contained custodial sentences, two involved conditional sentence orders. The distinguishing factor is that none of those cases involved an offender who is a senior of advanced age. In my view, this is a significant factor as to why the proposed sentence is appropriate.

Application of the Law to the Offence

Aggravating and Mitigating Factors

[15] The Crown has submitted that there are a number of aggravating factors, including:

- a) the quantity and value of the methamphetamine;
- b) harm to the community of drug trafficking;
- c) the fact that Mr. Horvath had a profit motive for engaging in the offence;
- d) the use of the secret lining; and

e) the fact that Mr. Horvath has a criminal record.

[16] In my view, the aggravating facts that I think are most salient are:

- a) the quantity and the value of the drugs; and
- b) the harm to the community of drug trafficking.

[17] Mr. Horvath has said that he was unaware and has admitted to being wilfully blind to the presence of drugs in his suitcase. So the profit motive and the sophisticated means by which the drugs were hidden are less apt to be aggravating factors.

[18] The Crown says the mitigating factors are that:

- a) Mr. Horvath has entered a guilty plea and has taken responsibility for the offence;
- b) Mr. Horvath has expressed remorse for his actions;
- c) Mr. Horvath's criminal record is unrelated to the offence; and
- d) Mr. Horvath is elderly.

[19] I agree that all of the mitigating factors identified by the Crown are at play in crafting an appropriate sentence in this case, and again, as I said, I find that Mr. Horvath's advanced age, his apparent naivety, and the fact that he entered a guilty plea and expressed remorse, all serve as mitigating factors that greatly reduce his moral culpability for the offence.

Sentence

[20] The primary sentencing principles for drug importation cases are denunciation and deterrence. However, Mr. Horvath's circumstances, as both counsel submitted, are very unique and any sentence must be tailored to the particular offender before the court. The terms of the conditional sentence order are strict in this case and they will serve, in my view, as an effective deterrent.

[21] So, having heard the submissions of counsel, I am content that the sentence sought jointly by Crown and defence would not bring the administration of justice into disrepute and is not contrary to the public interest.

[22] Mr. Horvath, I am going to ask you to please stand.

[23] For the reasons I have expressed with respect to your guilty plea on Count 1 of the indictment, I sentence you to two years less a day conditional sentence order followed by a three-year probation order on terms that I am going to read out in a moment, and I am going to allow you to have a seat while I do that because the terms are quite long.

Ancillary Orders

[24] I am going to be reading directly from Appendix A of the Crown submission in reading out the terms, first of the conditional sentence order.

[25] You must comply with a conditional sentence order for a term of 24 months less a day, and the conditions are -- and I am going to refer, Madam Registrar, to the picklist numbers:

- Condition 6001: You must keep the peace and be of good behaviour. You must appear before the court when required to do so by the court. You must notify the court or your conditional sentence supervisor in advance of any change of name or address and promptly notify the court or supervisor of any change in employment or occupation. You must remain in British Columbia unless you have prior written permission from the court or your conditional sentence supervisor to leave the province.

- Condition 6002: Reporting. You must report in - person to a conditional sentence supervisor at Vancouver South Community Corrections, 1308 S.E. Marine Drive, 2nd floor, Vancouver, B.C., by 3:00 p.m., on Monday, June 10, 2024, and after that you must report as directed by your supervisor.

- Condition 6201: Address. You shall report to your CSO supervisor and provide them the address where you live and your phone number. You must not change your address or phone number without prior written permissions from your supervisor.

- Condition 6206: House Arrest and Curfew.

1. You must obey house arrest for the first 18 months of your order by being inside your residence as reported to your conditional sentence supervisor or on its lot 24 hours a day, seven days a week. The exceptions are as follows:

- (a) You may be away from your residence during the house arrest or curfew period with the prior written permission of your conditional sentence supervisor. Such permission will be given only for employment, education, counselling, medical appointments, volunteering or other compelling reasons.

- (b) Every day between 9:00 a.m. and 12:00 p.m. for the purposes of attending to personal errands or exercise.

- (c) You may be away from your residence in the company of your daughter, Kim Connell, or your son, Dean Horvath, with the prior written permission of your conditional supervisor.

2. For the remainder of your conditional sentence order, you will obey a curfew by being on the property of your residence during the hours of 10:00 p.m. and 6:00 a.m. every day except with prior written permission of your conditional sentence supervisor. Such permission will be given for employment purposes, education, counselling, medical appointments, volunteering, completion of your community work service hours, when in the company of your daughter, Kim Connell, or your son, Dean Horvath, or in such circumstances your

supervisor sees fit.

3. You may be away from your residence during the house arrest or curfew period of this order while going directly to or returning directly from a healthcare facility because of a medical emergency. If asked, you must provide your conditional sentence supervisor with proof of your attendance at the facility.
4. You must present yourself immediately at the door to your residence or answer the phone when any peace officer or conditional sentence supervisor attends or calls to check on you during the house arrest or curfew period of this order.
5. If you are given permission by your conditional sentence supervisor to be away from your residence during house arrest or the curfew period of this order, you must carry it with you in paper or electronic format at all times when you are away from your residence.
6. If a peace officer finds you outside your residence during the house arrest or curfew period of this order and requests to see the permission, you must show it to the officer.

· Condition 6601: Counselling. You must attend, participate in, and complete any intake, assessment, and counselling or education program directed by your conditional sentence supervisor.

· Condition 6701: Community Work Hours. You must complete 60 hours of community work under the direction of your conditional sentence supervisor. Your community work service hours must be completed within the first 18 months of your conditional sentence order.

· Condition 6904: Firearms and Weapon Prohibition. You must not possess, directly or indirectly, any weapon as defined by the Criminal Code, including:

- (a) firearms and ammunition;
- (b) crossbows, prohibited or restricted weapons or devices, or explosive substances;
- (c) anything used, designed to be used, or intended for use in causing death or injury to any person, or to threaten or intimidate a person;
- (d) any imitation firearm or weapons including any compressed air guns, BB or pellet guns; and
- (e) any related authorizations, licences and registration certificates, and you must not apply for any of these.

· Condition 6501: No Alcohol or Drugs. You must not possess or consume alcohol, or controlled substances as defined in the Controlled Drugs and Substances Act, S.C. 1996, c. 19, or any other intoxicating substance, except with a medical prescription.

· And we are not including the surrender travel documents condition, Part 1, but Part 2, is having already surrendered all travel documents in your possession including any passport, permanent residence card, Nexus card, travel visa or enhanced driver's licence, not to obtain or possess any travel documents or seek any replacements thereafter.

· Condition 5304: Not Leave B.C. You must not leave British Columbia unless you have the prior written permission of your probation officer. You must carry the written permission, which can be in electronic format, with you at all times if you are outside the province.

[26] So that concludes the terms of your conditional sentence order.

Probation Order

[27] Now I am going to read in the terms of your probation order.

[28] Length of Probation Order: You must comply with a probation for a term of 36 months, which will commence on the termination date of your conditional sentence order. The conditions are:

· 5001: You must keep the peace and be of good behaviour. You must appear before the court when required to do so by the court. You must notify your probation supervisor in advance of any change of name or address, and promptly notify the court or supervisor of any change in employment or occupation.

· 5002: You must report in person to a probation officer at Vancouver South Community Corrections at 1308 S.E. Marine Drive, 2nd floor, as directed by your conditional sentence supervisor.

· 5302: Address. You must live at an address approved in advance by your probation officer and provide them with your phone number. You must not change your address or phone number without the prior written permission from your probation officer.

· 5304: Not Leave B.C. You must not leave British Columbia unless you have the prior written permission of your probation officer. You must carry the written permission, which can be in electronic format, with you at all times if you are outside the province.

· 5401: Curfew:

1. You must obey a curfew by being inside your residence located at Unit 246, 3484 Kingsway, Vancouver, B.C., or on its lot, between 10:00 p.m. and 6:00 a.m. every day.
2. You must present yourself immediately at the door of your residence or answer the phone when any peace officer or probation officer attends or calls to check on you during the curfew.

3. You may be away from your residence during the curfew with the prior written permission of your probation officer. Such permission is to be given only for employment or other compelling reasons. You must carry the permission with you when you are outside your residence.
- 5402: Curfew. You may also be away from your residence during the curfew hours, while at, or going directly to, or returning directly from a healthcare facility because of a medical emergency. If asked, you must provide your probation officer with proof of your attendance at the facility. You also may be away from your residence during the curfew hours in the company of your daughter, Kim Connell or your son, Dean Horvath, with the prior written permission of your condition -- or your probation officer
- 5601: No Drugs or Alcohol. You must not possess or consume alcohol, or controlled substances as defined in the Controlled Drugs and Substances Act or any other intoxicating substance, except with a medical prescription.
- And then, finally, Travel Documents. Having already surrendered all travel documents in your possession, including any passport, permanent residence card, Nexus card, travel visa or enhanced driver's licence, not to obtain or possess any travel documents or seek any replacements.
- [29] So that concludes the probation orders. Next, we have the ancillary orders. Ms. Parmar?
- [Discussion of probation order 5002 and 5402]
- [30] THE COURT: Okay. So we will turn to the ancillary orders.
- [31] CNSL H. PARMAR: Okay.
- [32] THE COURT: I have already signed the forfeiture order.
- [DISCUSSION RE FIREARMS PROHIBITION FROM 10:12:20 A.M. TO 10:17:05 A.M.]
- [33] THE COURT: All right. So I am going to read that ancillary order into the record.
- [34] Pursuant to s. 109(2) of the Criminal Code, you are prohibited from possessing (a) any firearm other than a prohibited firearm or restricted firearm and any crossbow, restricted weapon, ammunition and explosive substance for a period of 10 years from today; and (b) any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for life.
- [35] All right. So that is the -- so the next one is the DNA order.
- [36] Count 1 of the indictment is a secondary designated offence. After considering the factors in s. 487.051(3) of the Criminal Code, I am satisfied that it is in the best interests of the administration of justice to make an order in Form 5.04 authorizing the taking of samples of bodily substances from you for the purposes of registration in the DNA National Databank.

[Discussion of place of attendance to take DNA samples]

[37] THE COURT: Okay. So we will just add the term that, Mr. Horvath, you must attend at a station of the Vancouver Police Department by next Friday?

[38] CNSL J. TARNOW: Two weeks, please.

[39] THE COURT: Two weeks?

[40] CNSL J. TARNOW: Yes, within the next --

[41] THE COURT: Okay. Within 14 days of today.

[42] CNSL J. TARNOW: Thank you.

[43] THE COURT: And submit to the taking of the samples. This order is valid until executed.

[44] And then finally, the victim surcharge. You must pay a victim surcharge in the amount of \$200, and it must be paid within 60 days, and if you require further time to pay the surcharge you need to apply in writing to ask for an extension.

[45] Anything further?

[46] CNSL H. PARMAR: Madam Justice, just that Crown directs a stay of proceedings on Count 2 of the indictment.

[47] THE COURT: Yes. Yes. So Count 2 is stayed. All right. Anything else?

[48] CNSL J. TARNOW: Nothing. Thank you very much, Justice.

[49] THE COURT: Okay, thank you very much.

[50] Mr. Horvath, best of luck moving on.

"Francis J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/24/13/2024BCSC1323.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-horvath-2024>

Prepared on 26 October 2026 · Esheria