
CANADA / JUDGMENT

R. v. Hunter

2021 BCSC 2426

COURT

Supreme Court of British Columbia

DECIDED

23 November 2021

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2021 BCSC 2426 R. v. Hunter

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Hunter,

2021 BCSC 2426

Date: 20211123

Docket: 42670

Registry: Campbell River

Regina

v.

Brittani Lesley Lynn Hunter

Corrected Judgment: The text of the judgment was corrected at the front page and paragraph 35 on December 15, 2021.

Before: The Honourable Mr. Justice Baird

Oral Reasons for Sentence

Counsel for the Crown:

J. Petty

Counsel for the Accused:

D. Marion, Q.C.

Place and Dates of Hearing:

Campbell River, B.C.

September 24, 2021 &

November 23, 2021

Place and Date of Judgment:

Campbell River, B.C.

November 23, 2021

INTRODUCTION

[1] The accused, Brittani Lesley Lynn Hunter, has entered guilty pleas to three criminal charges, all committed on February 17, 2020 in Campbell River, B.C. They are as follows:

- Count 1: Robbery of Laura Ramm;
- Count 2: Use of an imitation weapon in committing that robbery; and
- Count 3: Robbery of Lucy Wilkins.

[2] The maximum sentence for robbery is life imprisonment. Using an imitation firearm in the commission of a robbery carries a maximum sentence of 14 years, and a minimum mandatory sentence of one year, which sentence must be served consecutively to that imposed for underlying robbery.

CIRCUMSTANCES

- [3] On February 17, 2020 at approximately 1:30 p.m., the offender robbed the "One Stop Convenience" store on Croation Road in Campbell River. She entered the store with a red bandana covering her face and pointed an imitation firearm at the store clerk, Laura Ramm, who was alone in the store at the time. The gun looks to me to be a toy water pistol painted black. It was not terribly convincing.
- [4] The offender ordered Ms. Ramm to open the till. Ms. Ramm refused and backed away. The offender went around to the other side of the counter and stole a couple of packets of Belmont cigarettes which she placed in a large black purse. She left the store and took the bandana off exposing her face. Her image was captured by a surveillance camera by which she was later identified.
- [5] The police took a statement from Ms. Ramm. She reported that the offender told her that she was robbing her and to "open the till and give me your money". The offender was carrying a gun, but Ms. Ramm said that it did not look real. Ms. Ramm said that the offender got at most two packages of cigarettes. She followed the offender out of the store and watched as she got into a Nissan Murano and drove away.

- [6] Approximately one hour later the offender was at it again, this time at a TD Bank branch located in central Campbell River. The complainant Lucy Wilkins, age 71, was in the foyer of the branch withdrawing money from an ATM. I have been shown security camera photos in which the offender can be seen lurking about in the background. When Ms. Wilkins left the branch the offender followed.
- [7] Once outside, the offender pushed Ms. Wilkins to the ground, took her wallet, and ran off. By then Ms. Wilkins had \$970 in her wallet which she was planning to use as a rental deposit on a new apartment. A witness called Matthew Landers happened to be in the parking lot outside the branch, who saw the whole thing. He chased after the offender and caught up with her at a nearby Canadian Tire store.
- [8] When Mr. Landers attempted to apprehend and detain the offender, she told him he was "going to die", and started yelling "rape". Mr. Landers let go of her, and she disappeared into the Canadian Tire store. Mr. Landers was in pursuit but lost track of her, then the police arrived and found her in the store. In the brief interval during which she was by herself, the offender changed her clothes. By the time the police arrested her she had on different trousers and a different shirt.
- [9] The police searched the store and located the large black purse that the offender had been carrying and the clothing that she had been wearing during both robberies. Ms. Wilkins' wallet was in the purse along with a pair of black gloves, a balaclava, the packets of Belmont cigarettes stolen in the first robbery, and the imitation handgun which was pointed at Laura Ramm.
- [10] Ms. Wilkins was injured as a result of the second robbery. She sustained a non-displaced fracture to her right wrist. When she fell she injured her right knee, already compromised by osteoarthritis. She had bruises and abrasions above her right eye, on the bridge of her nose, and on both hands. She had a swollen upper lip.

THE OFFENDER

- [11] The offender is a 30-year-old woman with a minor and unrelated criminal record. In February 2020 she was convicted of dangerous driving and impaired driving, for which she was fined and placed on probation for one year. In August of the same year she was convicted of breaching her bail order and possession of a controlled substance. On these latter convictions she was given a 3-day "time served" disposition. Before this she had never spent any time in jail.
- [12] In fact, until a couple of years ago, when the offender would have been around 28 years old, she had never before in her life come to the attention of the police. I am satisfied, on all of the evidence submitted on this sentencing, that the cause of her recent and uncharacteristic anti-social behaviour is a heroin addiction into which she fell sometime after her long-time domestic partner, and the father of her now six-year-old son, committed suicide.

- [13] Before this, it appears that the offender led a productive and blameless life. She was consistently employed in the automotive service business, working at places like Mr. Lube and Jiffy Lube. Before her recent difficulties, her plan was to take training to become a certified mechanic. She and her common-law spouse provided for themselves and their son, and caused no trouble to anyone. Unfortunately, the offender's spouse started drinking too much, and this led to their separation.
- [14] It was in the wake of this separation that the offender's spouse took his own life. He was in the offender's home at the time and she found his body in the garage. She claims that after this she suffered from PTSD. She was introduced to heroin thereafter by a childhood friend. She found that it lessened her pain and anxiety. She became an addict and her life came unstuck. She claims that she committed the robberies at the instigation of an ex-boyfriend who threatened to harm her son if she failed to get money for drugs.
- [15] The offender was born in Campbell River. Her parents split up when she was six years old. This was difficult for her, but she describes her childhood as a happy one. She lived mostly with her mother until age 16 when she met her deceased partner. They were together for over a decade before his death. She got as far as grade 10 at a local secondary school and recently completed her adult Dogwood Certificate in 2017.
- [16] The death of the offender's spouse was a major psychological blow. I accept that she has suffered from his loss. Along with the sharp censure and condemnation of her criminal wrongdoing must come a sense of pity for the misfortunes that she has endured. She is remorseful for what she has done, told me that she thinks every day about the harm that she has caused to the victims of her crimes, and can only imagine how traumatised they must be.
- [17] As I have said, she has a minor and unrelated criminal record. She was cooperative with police, did not resist arrest, and promptly confessed to her crimes. She entered guilty pleas at an early opportunity and never set the matter for trial. Nevertheless, the offences that she has committed are serious and merit stern punishment and rebuke.
- [18] During the first robbery, for emphasis, her face was masked and she produced an imitation firearm, however unconvincing it may have been. The victims of both robberies were alone and vulnerable. Ms. Wilkins is quite elderly and frail. The offender confronted her physically. Ms. Wilkins fell to the ground as a result causing injuries that are by no means trivial. There was an obvious element of planning and premeditation involved in both robberies, as desperate and unsophisticated as they were.
- [19] I gather that the offender was kept in police custody until February 20, 2020 when she was denied bail in Provincial Court. She entered her guilty pleas on June 8, 2020 and was released on bail by consent. In August 2020 she was arrested for breaching her bail conditions and possessing a narcotic. She pled guilty to those charges as I have previously said, and received a three-day sentence. After that she was at large on bail for quite some number of months before she stopped reporting to her bail supervisor as required and a

warrant issued for her arrest. She was arrested and taken into custody on April 26, 2021 and has remained there ever since.

VICTIM IMPACT

[20] The Crown was not able to contact Laura Ramm to request a victim impact statement, but I have one from Ms. Lucy Wilkins written on September 13, 2020. I read it into the record on the first day of the sentencing hearing, and will do so again now to emphasise to this offender that her violence caused real trauma and lasting harm. Ms. Wilkins wrote:

In February of 2020, I was attacked and robbed of my wallet containing my rent money by [the offender] as I exited the TD Bank in Campbell River. As a result of the attack, I sustained extensive bruising and an injury to my right hand which needed a cast for multiple weeks. Unfortunately, I have been unable to begin the prescribed physiotherapy due to the pandemic and therefore have not fully recovered from this injury. I continue to experience a lack of strength in my hand and cannot completely rely on it. The bruising and pain took a few months to recover from as well. I was unable to take care of myself or my dog during this time and had to rely on multiple friends to get through each day.

I have lived in Campbell River since 1980 and have raised five children in this community, and I cannot recall a time when we didn't feel safe. Prior to this attack I considered myself to be a strong confident and self-assured individual who took pride in her independence. Since this attack, I no longer feel safe. As I began to recover from my physical injuries and attempted to resume the daily activities that are a normal part of my life I noticed how difficult everything had become. I was and am fearful when I am out in the community alone and I find I have to leave any area where there are strangers present. This for me is not normal. I no longer feel safe going to my bank and only attend with careful planning and accommodations put in place by the staff and manager in the branch.

This event has altered my life. I can only hope that over time some of the impacts will lessen and I can feel "normal" again.

It is my sincerest hope that through this process [the offender] will receive the appropriate help so that she is able to re-enter life and contribute to it in a meaningful and functional way.

[21] I also spoke to Ms. Wilkins directly on the first day of this hearing. She told me that her husband and the father of her children became involved in drug abuse not long after they arrived in Campbell River in the early 1980s. Her marriage foundered and her husband passed away. She told me that she could have collapsed in grief as the offender seems to have done, but instead she worked for 27 years in a fish processing plant and got on about the business of raising her children. She feels strongly that drug addiction is no excuse for the offender's behaviour.

[22] During submissions, the offender raised the possibility that she suffers from post-traumatic stress disorder, but said that she had never received a proper diagnosis of this condition. I adjourned the hearing at her request for the preparation of a psychological opinion on this subject. It revealed that the offender has "indicators of PTSD symptoms", but nothing more. The offender also suffers from moderate depression and anxiety. Her risk to re-offend violently was said to be mild to moderate. The risk will be heightened if she does not stop abusing narcotics.

SENTENCING PRINCIPLES

[23] The fundamental purpose of sentencing is to contribute to the respect of the law and the maintenance of a just, peaceful and safe society by imposing proportionate sanctions that have one or more of the following objectives:

- To denounce unlawful conduct;
- To deter the offender and other persons from committing offences;
- To separate offenders from society where necessary;
- To assist in rehabilitating offenders;
- To provide reparation for harm done to victims or to the community; and
- To promote a sense of responsibility in offenders and acknowledgement of the harm done to victims and to the community.

[24] The sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. It should be increased or reduced to account for any relevant aggravating or mitigating factors relating to the offence or the offender. It should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

POSITIONS OF THE PARTIES

[25] Crown counsel submits that a fit global sentence for the offences at bar would be three years. He suggests either two years concurrent for each of the robbery counts plus one year consecutive for the imitation firearm count, or consecutive sentences of one year on the robbery counts plus one year consecutive for the firearm count. Defence counsel argues that a two year sentence would be fit in all of the circumstances. He suggests a one year concurrent sentence on each robbery count plus one year consecutive for the imitation firearm count.

- [26] Counsel have agreed that the offender is to be credited with the equivalent of 17 months of pretrial custody. In the result, I have been asked to consider imposing a sentence of additional jail time ranging, from today, between seven months and 19 months. Counsel have jointly submitted, as well, that after serving her custodial sentence the offender should be bound by the terms of a probation order to assist in her rehabilitation and ensure her good conduct in the community.

DISCUSSION

- [27] When it comes to robbery offences, especially involving imitation firearms and bodily harm, the preeminent principles of sentencing are denunciation and deterrence. Rehabilitation is an important but secondary factor. The offences at bar constitute a marked departure from the normative standards of behaviour that we have every right to expect will be kept by all of our co-citizens, and the offender must be brought to account and punished for this.
- [28] Here it is vital to repeat, however, that the accused led a perfectly peaceful and productive life until the age of approximately 28, when a serious personal misfortune befell her, after which her life took a most unfortunate and uncharacteristic turn. She fell into heroin addiction and anti-social peer associations. For a time her young son was taken into care by the Ministry of Children and Families. She lost control of herself and her life.
- [29] The offender's child is now being cared for by the offender's mother under an agreement with the Ministry. Before her recent detention, as I understand it, by the terms of that agreement the offender had regular supervised access to the child. The offender wishes to resume a sober, productive lifestyle upon her release so that she can be a proper mother to her son. She has been in custody since mid-April of this year and has been clean from drug use during that time. She will serve an additional jail term during which her abstinence will be maintained and her recovery strengthened. While incarcerated she has successfully completed narcotics abuse recovery counselling, and courses in community living, life skills, and healing from trauma.
- [30] In support of its sentencing position the Crown has referred me to several cases: *R. v. Brogan*, 1999 BCCA 278, *R. v. Bell*, 2005 BCCA 403, *R. v. Gill*, 2006 BCCA 127, *R. v. Reedel*, 2006 BCCA 435, *R. v. McPherson*, 2003 BCCA 183. Defence counsel has referred me to: *R. v. Rousseau*, 2019 BCPC 178, *R. v. De Silva*, 2018 BCSC 1496, *R. v. Marks*, 2016 BCCA 480, *R. v. Lea-Mills*, 2013 BCSC 2417.
- [31] In these cases it is often repeated that, generally speaking, the range of sentence for robbery is between two and nine years. The cases referred to by the Crown, most of which are getting a little dated, all involve sentences within that range. Particular emphasis was place on *Bell*, which Crown counsel suggested was factually similar to the present case. It had to do with a drug-addicted female in her mid-30s robbing a gas station brandishing a pellet gun which the robbery victim did not think was real. A two-year sentence was upheld.

- [32] An obvious distinguishing feature of Bell, however, is that the offender in that case had 41 previous convictions for theft, fraud, uttering threats and assault, while the present offender's record is recent, unrelated, and quite minor. Meanwhile, the cases referred to by defence counsel are of more recent vintage, and establish that sentences of less than two years for robbery are sometimes imposed and upheld.
- [33] Rousseau involved a 37-year-old Metis offender with 32 prior convictions who robbed three businesses in one day resulting in concurrent sentences of two years less one day. In De Silva the accused committed seven bank robberies in a 21-day span which netted him a global sentence of two years, or less than 3.5 months per count. In Marks, the Court of Appeal upheld a 12-month sentence for a youthful first-time offender who robbed a gas station with an imitation firearm.
- [34] I have decided that the most helpful case handed up to me, however, is Lea-Mills. The accused in that case pleaded guilty to two robberies. In the first one, he entered a small retail establishment brandishing a fairly large kitchen knife. In the second, he covered his face with a hoodie, had a box cutter in his hand, physically attacked two individuals, and attempted to flee by running over rooftops. He was a 28-year-old crack cocaine addict who committed the offences to fund his habit. As in this case, the Crown sought a three-year sentence less 14 months of pretrial time served.
- [35] In his sentencing reasons, my colleague Mackenzie J. referred to R. v. Preston, [1990] B.C.J. No. 2886, and various appeal decisions endorsing it, to the effect that the overall purpose of sentencing is to protect the public, and while certainly incarceration can achieve that objective, due weight must be given to the reasonable prospect of durable rehabilitation in an addict who will likely do no more harm if recovery and sobriety are maintained.
- [36] In Lea-Mills, Mackenzie J. concluded that the accused's crimes were sufficiently serious that, in the name of denunciation and deterrence, additional jail time over and above the 14 months already served was required, but that the additional 22 months sought by the Crown was excessive. He emphasised the accused's relative youthfulness, his solid work history, and his reasonable prospects of rehabilitation, and imposed a sentence of four months for the first robbery, and two years consecutive on the second robbery, for a total of 28 months. Reduced by the 14 months in pretrial custody, this resulted in a remaining sentence of 14 months. As a comparator to the present case, I would rate the first robbery in both as roughly equivalent, while the second one in Lea-Mills involved a weapon and was more violent, sustained and blameworthy.
- [37] I agree with counsel that an additional period of incarceration is required for this offender, but I have decided to make it for a shorter time than recommended by the Crown. In my view, the circumstances of the case and the long-term security of the community require a more charitable balance between punishment and rehabilitation. The offences at bar are serious, no doubt about that, but Ms. Hunter at 30 years old is as good as a first time offender, she has a sympathetic background of productive work and self-sufficiency, she is

the mother of a young boy who needs her support, and her offending was fuelled by a serious drug addiction into which she fell after a serious psychological setback in her personal life.

- [38] The offender has been free of drugs since mid-April. The additional jail time that I am about to impose will strengthen her rehabilitation by putting even more distance between her and street drugs. She has taken steps while in custody to improve herself, and I am going to make an order of probation by which her ongoing recovery will be monitored and assisted after she is released from prison. If she remains drug-free, my considered opinion is that her risk for future offending will be low.
- [39] My goal is to punish this offender adequately, and to drive home a sense of responsibility in her for the significant harm that she has caused to her victims and the community, but to accord as much restraint as I can along the way to assist her in recovering from drug addiction and returning to a productive and prosocial lifestyle.
- [40] I look at the two robbery offences as distinct and separate, not as part of a single transaction or event. It is an appropriate case for consecutive sentences. In all of the circumstances, and due regard had to the principle of totality, I hereby sentence this offender to consecutive jail terms of: four months on Count 1, 12 months on Count 2, and 12 months on Count 3, for a total of 28 months reduced by the equivalent of 17 months already spent in custody. The net sentence, to be served from today, is therefore one of 11 months.
- [41] Upon her release, the offender will be bound by the terms and conditions of a probation order for a period of 18 months. The terms and conditions of your probation order, Ms. Hunter, are as follows:
1. You will keep the peace and be of good behaviour.
 2. You will report to this court as and when you are required to do so by this court.
 3. Within 48 hours of your release, you are to report in person to your probation officer in Campbell River, where you have already been reporting for some time, and thereafter as directed.
 4. You must provide the probation officer with your residential address and not change your place of residence without the prior written approval of your probation officer.
 5. You are to have no contact directly or indirectly with Laura Ramm or Lucy Wilkins.
 6. You are not to attend at or be found inside One Stop Shop located at 1680 Croation Road in Campbell River.
 7. You are not to be found within the TD Bank branch located at 1400 Island Highway, Campbell River.

8. You are not to possess any weapons within the meaning of that term in s. 2 of the Criminal Code, except for knives within your own residence for the purpose of the immediate preparation and consumption of food.
 9. You are not to possess or consume any substances banned by the Controlled Drugs and Substances Act, except substances as are prescribed for you as medicine by a licenced medical doctor practicing in British Columbia.
 10. You must attend, participate in, and complete any intake, assessment, counselling, or education program as directed by your probation officer. This may include counselling or programming for alcohol or drug addiction, anger management, or violence prevention.
 11. Having consented in court, you must attend for psychiatric intake, assessment, or treatment programming through Adult Forensic Psychiatric Services, as directed by your probation officer.
 12. Finally, I order you to pay restitution to the clerk of this court for the benefit of Lucy Wilkins of the sum of \$970, to be paid in full by no later than the expiry of 14 months of this probation order.
- [42] As the offence of robbery is a primary designated offence, on authority of s. 487.051 of the Criminal Code I hereby order you to provide a sample of your DNA forthwith by the least intrusive means available for inclusion in the national registry.
- [43] I also order under s. 109 that for a period of 10 years you are prohibited from possessing any firearm, cross-bow, restricted weapon, ammunition, and explosive substance, and you are prohibited from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.
- [44] That is all.
- "Baird J."

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