
CANADA / JUDGMENT

R. v. Jasper

2020 BCSC 2119

COURT

Supreme Court of British Columbia

DECIDED

10 December 2020

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2020 BCSC 2119 R. v. Jasper

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Jasper,

2020 BCSC 2119

Date: 20201210

Docket: 27568

Registry: Vancouver

Regina

v.

Steven Martin Jasper

Before: The Honourable Mr. Justice Skolrood

Oral Reasons for Sentencing

Counsel for the Crown,

appearing via teleconference:

S.P. Lakshman

Counsel for the Accused:

R.A. (Sandy) Ross

Place and Date of Trial/Hearing:

Vancouver, B.C.

November 26, 2020

Place and Date of Judgment:

Vancouver, B.C.

December 10, 2020

[1] THE COURT: On October 7, 2020, Steven Jasper pled guilty to three counts:

Count 1

That on or about the 14th day of March, 2017 at or near the City of Vancouver, he committed theft over \$5,000, being the theft of a vehicle contrary to s. 334(a) of the Criminal Code;

Count 2

That on or about the 14th day of March, 2017 at or near the City of Vancouver, he attempted to rob Janine Althorp contrary to ss. 344 and 463(a) of the Criminal Code; and

Count 3

On or about the 14th day of March, 2017 at or near the City of Vancouver, he operated a motor vehicle in a manner that was dangerous to the public, contrary to s. 249(1)(a) of the Criminal Code.

[2] Mr. Jasper is now before the court for sentencing.

Circumstances of the Offences

[3] Counsel helpfully put together an agreed statement of facts that outlines the circumstances of the offences. I will not recite the facts in their entirety, but will provide an overview of what occurred on the evening of March 14, 2017.

[4] At approximately 8:15 that evening, Mr. Baldeep Singh was driving a Blacktop Cab near Hastings and Carrall Street in Vancouver. He picked up Mr. Jasper as a passenger. Once in the taxi, Mr. Jasper said, "[g]o hurry up, my wife is pregnant, go hurry up." Once the taxi started moving, Mr. Jasper began to go through Mr. Singh's backpack, so he stopped the taxi. Due to Mr. Jasper's behaviour, Mr. Singh became fearful and got out of the taxi. Mr. Jasper then grabbed the keys, got into the driver's seat, and drove off in the taxi.

[5] Mr. Jasper then drove the taxi at a high rate of speed through the streets of Vancouver. At one point, he was driving east on Venables Street approaching Clark Drive. He was travelling at an estimated speed of 80-100 km/hr. He attempted to turn right onto Clark to head south, but was unable to navigate the turn due to the high speed. Instead, he crashed into the front of a Mazda minivan driven by Mr. Kwok, that was stopped facing northbound at the intersection. Shortly after striking the minivan, the taxi burst into flames.

- [6] Mr. Jasper got out of the taxi and ran to a nearby BMW that was stopped at the same intersection. Ms. Althorp was the driver of the BMW. Mr. Jasper got into the back of her car and yelled at her to drive. He said, "[j]ust drive, they're going to shoot me." He then climbed into the front seat, sat on top of Ms. Althorp, and pressed the gas pedal with his foot while punching Ms. Althorp.
- [7] Another individual who witnessed what happened came to Ms. Althorp's aid. He pulled Mr. Jasper out of the BMW, punched him once, and then held him until the police arrived.
- [8] The agreed statement of facts also addresses Mr. Jasper's mental state on the evening of March 14, 2017. It is useful to set out the relevant paragraphs in their entirety:
14. Jasper had sought help for his drug usage by entering the Methadone Maintenance Program. In February 2017 his doctor suggested the use of Suboxone and discussed its use with him. He was prescribed Kadian (an opiate) to be used as a bridge to change his medication. His doctor at the time states that the plan was to start Jasper on Suboxone after he had been in withdrawal from all opiates.
15. According to Jasper, prior to March 14, 2017, he had received a takeaway dose of Suboxone from a pop-up clinic in the downtown Eastside. He did not discuss its use with his doctor at that time. On March 14, 2017, prior to the incident, he states that he used Suboxone when he still had opiates in his body from Kadian (such use is contraindicated). This led to an adverse drug reaction and caused him to misperceive events and act out in a bizarre manner during the incident. A psychiatric opinion indicates that while his thinking was affected by this adverse drug reaction, he was still able to understand the nature and quality of his actions to the point of being criminally responsible for his behavior.

Circumstances of the Offender

- [9] In terms of Mr. Jasper's circumstances, I have the benefit of two presentence reports, one dated September 20, 2017, relating to previous offences, and one dated November 10, 2020, prepared in connection with the current offences, as well as a Gladue report dated November 11, 2020.
- [10] Dealing first with the Gladue report, I will quote from the summary provided by the author, at p. 3:

Steven Jasper is a 38-year-old of Cree and Ojibwe decent. He is currently residing at the North Fraser Pre-Trial Centre. Steven reported that from age 25 to present, has spent a total of approximately 10 years in prison, in eight different correctional facilities located throughout British Columbia.

Steven has been significantly impacted by a loss of identity. Steven grew up in a home that had numerous incidents of domestic violence. From a very young age, he witnessed his stepfather (whom he thought was his biological father until he was age 26) inflict physical harm and aggressive behaviour towards his mother. Steven himself was physically abused by his stepfather from a young age.

Steven lacked safe parental figures in his childhood and early adolescence and was passed around to different family members for his primary care. He was exposed to alcohol and drugs at a young age due to his stepfather's alcoholism and drug use.

From a very young age, Steven suffered from a loss of Cree and Ojibwe identity due him having estranged relationships with his parents. He still struggles with his indigenous identity to this day. From birth until age 26, Steven was unaware of who his biological father was. At age 26, Steven discovered that his stepfather whom he was named after, Steven Senior, was not his biological father.

Steven was physically and emotionally abused by his stepfather until age 14, at which time he ran away from home. Steven also had an estranged relationship with his mother, which impacted him throughout his life.

Steven experienced sexual abuse inflicted by two adults in his life. When he was in his early teens, Steven was sexually molested by one of his mother's husbands. This abuse took place over several years. Furthermore, when he was 13 years old, an older woman, his then girlfriend's mother, forced herself sexually on him.

Steven reported he has suffered from depression and has attempted to commit suicide.

Steven has faced homelessness in his teens and throughout his adult life due to his addictions and lack of safe parental figures.

- [11] The more recent presentence report also details aspects of Mr. Jasper's history and personal circumstances. In addition to what is set out in the Gladue report, the presentence report notes that Mr. Jasper has had training in cosmetology and barbering, and that he has a diploma in business management and marketing from Thompson Rivers University. At various times, he has been employed in the film industry.
- [12] He was in a relationship for a period of time and has a daughter with his former spouse, but he has not seen his daughter since Christmas of 2018.
- [13] He has a history of mental health issues and reports having been diagnosed with anxiety disorder, post-traumatic stress disorder, and obsessive-compulsive disorder. He has also struggled with drug and alcohol abuse.

- [14] Mr. Jasper has a significant criminal record dating back to 2002 with numerous convictions for theft and possession of stolen property. The most significant jail time was imposed in March of 2015, when he was sentenced to 39 months for a number of offences, including robbery, possession of stolen property, and dangerous operation of a motor vehicle. Mr. Jasper also has a number of convictions for breach of a probation order and/or breach of a recognizance.
- [15] While Mr. Jasper has been in custody, he has participated in numerous programs and taken various courses to address his addiction and other issues. The materials submitted at the sentence hearing include certificates of achievement in various programs, including:
- a) Socialization;
 - b) Assert Yourself;
 - c) Preparing for Release;
 - d) Criminal Addictive Thinking Workbook;
 - e) Early Recovery Skills Workbook
 - f) Improving Self Esteem;
 - g) Face Your Feelings Workbook;
 - h) Finding Your Best Self; and
 - i) Numerous Essential Skills to Success programs, including: Housing Needs, Nutrition and Your Health, Learn to Learn4 Life, Employability Skills, Communication Skills, Substance Abuse Education, Money Management, and Healthy Relationships.
- [16] Information was also provided to confirm that Mr. Jasper has been offered a bed in the provincial substance use treatment program operated by the Phoenix Society in Surrey.
- [17] One other point worth noting about Mr. Jasper is that he spoke at the sentence hearing and took full responsibility for his actions. He also expressed considerable remorse. He was articulate in what he had to say and I believe him to be sincere. I also note that he prepared letters of apology addressed to each of Mr. Kwok, Ms. Althorp, and the operations manager of Blacktop Cabs.

Impact Statements

- [18] Ms. Althorp prepared a victim impact statement in which she states that this incident has caused her to become hyper aware of what is going on around her and she is far less trusting of other people. While she does not have any lasting physical symptoms, she noted that Mr. Jasper kicked and punched her and tried to drag her out of her car.

- [19] Mr. Singh, the taxi driver, provided a statement indicating that he has no lasting impacts from the incident. The driver of the minivan, Mr. Kwok, did not provide an impact statement.
- [20] While the people directly affected by Mr. Jasper's actions do not report being impacted in any significant or long-lasting way, there is no doubt that it was largely good fortune that no one was more seriously injured, given the dangerous manner that Mr. Jasper drove that evening. It is worth noting that part of his route passed adjacent to a residential area.

Aggravating and Mitigating Circumstances

- [21] There are a number of aggravating circumstances, including Mr. Jasper's lengthy criminal record, which includes prior convictions for theft and dangerous driving, the particular nature of the driving, including the fact that he drove in a very dangerous manner over an extended distance and period of time, the fact that he consumed prescription drugs in a manner that was contraindicated, and the fact that his actions involved three innocent people.
- [22] Mitigating circumstances include the fact that Mr. Jasper pled guilty, albeit relatively late in the piece, he has taken active steps towards rehabilitation and to address some of the issues that have plagued him, he has reconnected with his indigenous heritage, and he has expressed genuine remorse for his actions.

Principles of Sentencing

- [23] Section 718 of the Criminal Code, R.S.C. 1985, c. C-46, provides that the fundamental purpose of sentencing is to contribute to respect for the law and the maintenance of a just, peaceful, and safe society. It also lists a number of specific objectives that a sentencing judge must consider, which are:
- (a) to denounce 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.
- [24] Section 718.1 states the most basic principle of sentencing, namely that the sentence imposed should be proportionate to the gravity of the offence and the degree of responsibility of the offender.
- [25] Section 718.2 sets out a number of additional principles, including that:

- a) a sentence should be increased or reduced to take account of any aggravating or mitigating circumstances;
 - b) a sentence should be similar to sentences imposed on similar offenders for similar offences in similar circumstances;
 - c) when consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
 - d) an offender should not be deprived of liberty if a less-restriction sanction is appropriate; and
 - e) all reasonable sanctions, other than imprisonment, should be considered, with particular attention to the circumstances of Aboriginal offenders.
- [26] No single sentencing objective takes precedent and it falls to the sentencing judge to determine which objective or objectives merit the greatest weight, given the particulars of the case: see *R. v. Nasogaluak*, 2010 SCC 6 at para. 43.
- [27] In *R. v. Bosco*, 2016 BCCA 55, the Court of Appeal discussed the approach to sentencing in dangerous driving cases. Some key principles identified by Madam Justice Dickson for the Court include:
- a) Dangerous driving causing bodily harm is widely recognized as an offence of considerable gravity (at para. 37);
 - b) General deterrence and denunciation are the primary sentencing goals in dangerous driving cases (at para. 38);
 - c) Driving is a privilege that can wreak great havoc when it is exercised recklessly. Accordingly, sentences for dangerous driving must unambiguously express society's condemnation of the conduct and serve to warn likeminded others that it will not be tolerated (at para. 38); and
 - d) The factual circumstances of dangerous driving cases tend to vary widely. That being so, the range of appropriate sentences is quite broad. Factors such as the offender's age, the circumstances of the accident, the duration of the dangerous driving, the existence or absence of a criminal record, the degree of deviation from driving norms, the particulars of the highway and its use, and driving conditions are all relevant factors for consideration. Although other cases provide helpful guidance, determining a fit sentence in a dangerous driving case is a particularly fact-sensitive exercise (at para. 40).
- [28] When the dangerous driving offences relate to a theft or what is conventionally known as a car-jacking, other factors the court will consider include the degree of violence involved, whether a weapon was used, the vulnerability of the victim, and whether the incident was premeditated or spontaneous: see for example, *R. v. Chad*, 2009 ABCA 48 and *R. v. Stacey*, 2019 NLSC 45.

Positions of the Crown and Offender

- [29] Both parties acknowledge that the time spent in custody up until the date of the sentence hearing with credit amounts to 20 months.
- [30] The Crown submits that a global sentence of 40 months is fit and reasonable in this case, meaning that Mr. Jasper would spend an additional 20 months in custody, followed by two years' probation, along with a three-year driving prohibition.
- [31] As reflected in the authorities, including *Bosco* that I referred to, the Crown notes that sentencing in dangerous driving cases is very fact-dependent and case-specific.
- [32] Keeping that in mind, the Crown nonetheless cited:
- *R. v. Sadler*, 2009 BCCA 386, where the Court of Appeal upheld concurrent sentences of 30 months for two convictions of dangerous driving causing bodily harm;
 - *R. v. Bailey*, 2017 BCCA 389, where the Court of Appeal upheld a global sentence of four years on 16 counts that included one count of dangerous driving causing bodily harm. That particular conviction warranted a three-year term; and
 - *R. v. Zinter*, 2018 BCSC 1837, where the court imposed a six-year sentence for dangerous driving causing death, leaving the scene of an accident, and refusing to provide a breath sample.
- [33] The Crown notes the 39-month sentence given to Mr. Jasper in March 2015 and submits that it would unreasonable to impose a lesser sentence in respect of the current offences.
- [34] Mr. Jasper submits that the 20 months that he has been in custody on these matters is a reasonable and fit sentence in all of the circumstances. He notes that the cases relied on by the Crown involve charges of dangerous driving causing death or bodily harm, which are more serious than what he has been convicted of. Mr. Jasper submits that the adverse drug reaction he experienced on the night of March 14, 2017, affected his mental state and supports a finding of some degree of diminished responsibility.
- [35] Alternatively, Mr. Jasper submits that the effective 20 months in custody to date could be allocated to Counts 1 and 2, the robbery and attempted robbery charges, and that a further four months for Count 3 could be in the form of a conditional sentence to be served at Phoenix House.

Discussion

- [36] As the decisions like *Bosco* make clear, cases such as this that involve dangerous driving offences along with other offences, such as theft, are very fact-specific and, as a result, the range of appropriate sentences is broad.

- [37] I have reviewed the circumstances of Mr. Jasper's offences as set out in the agreed statement of facts. They are egregious, both in terms of the dangerous driving engaged in by Mr. Jasper and the attendant risk to bystanders created by that driving, and the direct impact his behaviour had on Mr. Singh, Mr. Kwok, and Ms. Althorp. As I have touched upon, it is a matter of considerable luck that no one was injured more seriously.
- [38] That said, the theft of the taxi and the attempted theft of Ms. Althorp's vehicle were not premeditated, no weapon was involved, and the degree of violence employed by Mr. Jasper was relatively minimal.
- [39] Mr. Jasper's criminal record is also a significant factor here. The Crown points to a previous sentencing decision involving Mr. Jasper given by Mr. Justice Myers on July 19, 2012, following a guilty plea by Mr. Jasper to a charge of break and enter. Justice Myers noted that Mr. Jasper had expressed remorse and a willingness to address his substance abuse issues. He also highlighted the Crown's submission that Mr. Jasper was at a crossroads in his life, where he could commit to rehabilitation or continue on the path of being a career criminal. Sadly, Mr. Jasper has had seven subsequent convictions since that appearance before Justice Myers, which is indicative of the path he took.
- [40] Given these circumstances, and as directed by the authorities in similar cases, the principles of denunciation and deterrence are primary sentencing principles that must be considered here.
- [41] At the same time, Mr. Jasper's personal circumstances and s. 718.2(e) of the Criminal Code demand that restoration and rehabilitation also play a substantial role in his sentence. It is clear that Mr. Jasper had a troubled upbringing and he suffered as a result of the disconnect with his Indigenous heritage. He has long suffered from addiction issues, as well as mental health issues. It is a positive sign that he has taken meaningful steps to address these issues by exploring his Indigenous roots and by engaging in a number of programs aimed at personal growth and development.
- [42] The law dictates that I impose a sentence on Mr. Jasper that is proportionate and that appropriately balances the seriousness of the offences with Mr. Jasper's moral blameworthiness. In doing so, I am respectfully of the view that the sentence proposed by the Crown is excessive, in that it is based on authorities that involve more serious conduct, specifically dangerous driving causing bodily harm or death, and does not adequately account for the positive steps that Mr. Jasper has taken.
- [43] At the same time, I similarly do not consider the defence proposal to constitute a fit sentence in the circumstances of this case. In my view, it does not adequately reflect Mr. Jasper's criminal record and history of similar behaviour, and would not achieve the goals of denunciation and deterrence.

- [44] Considering the totality of the circumstances, the governing sentencing principles, and the relevant authorities, I have concluded that a fit and appropriate global sentence for Mr. Jasper is 30 months in custody. Specifically, Mr. Jasper, I sentence you to 18 months in custody on Count 1, being the theft of the taxi, 12 months on Count 2, being the attempted theft of Ms. Althorp's vehicle, these sentences to be served consecutively, and 18 months on Count 3, the dangerous driving offence, to be served concurrently with the sentences on Counts 1 and 2.
- [45] At the time of the sentencing hearing, Mr. Jasper had been in custody for the equivalent of 602 days or 20 months with credit calculated at time and a half. He has since been in custody for a further 14 days, or the equivalent of 21 days. He is therefore entitled to a further three weeks of credit, with the result that he will be required to remain in custody for a further nine months and one week. Counsel, you can correct my math on that if I am wrong.
- [46] Following his release, Mr. Jasper will be subject to a period of probation of two years on the following terms:
- a) Within 48 hours of your release, you must report to the probation supervisor at 275 East Cordova Street, Vancouver, and thereafter you shall report as required by the probation supervisor;
 - b) You must reside at a residence approved in advance by your probation officer;
 - c) You must provide your probation officer with your telephone number and you must not change your residence or your telephone number without written permission from your probation officer;
 - d) Having consented, you must attend and participate actively in a residential treatment program as directed by your probation officer, and:
 - i) You must comply with all of the rules of the program so long as the rules do not conflict with this order or the directions of your probation officer. If they do conflict, you must advise your probation officer as soon as possible;
 - ii) You must consent to staff at any such residential treatment program to report to your probation officer any non-compliance with the program's rules; and
 - iii) When the program ends, you must immediately provide proof of your completion of the program to your probation officer.
 - e) You must attend and participate actively in any intake, assessment, counselling, or program as directed by the probation officer. Without limiting the general nature of the condition, the intakes, assessments, counselling, or programs may relate to:
 - i) Anger management;
 - ii) Alcohol or drug abuse;

- iii) Mental health; and
 - iv) Violence prevention.
 - f) Having consented, you must:
 - i) At the direction of your probation officer, report to the Forensic Psychiatric Services or elsewhere for any intake, assessment, counselling or treatment;
 - ii) Attend all scheduled appointments with your doctor, psychiatrist, and counsellor;
 - iii) Take all medications prescribed to you;
 - iv) Give your doctor, psychiatrist, and counsellor a copy of this order;
 - v) Provide your probation officer with the names, addresses, and phone numbers of your doctor, psychiatrist, and counsellor;
 - vi) Tell your doctor, psychiatrist, and counsellor that if you do not follow any terms of this order, he or she is to inform your probation officer; and
 - vii) If you decide not to follow these conditions, you must immediately report to your probation officer when his or her office is open and tell your probation officer.
 - g) You must have no contact or communication, directly or indirectly, with Janine Althorp, David Kwok, or Baldeep Singh.
 - h) You must not go to any residence, school, or work place of David Kwok or Janine Althorp.
 - i) You must not call Blacktop Checker Cab Ltd., nor be found in any of their vehicles; and
 - j) You must not be present in any motor vehicle without the registered owner being present.
- [47] I make the following additional orders:
- a) a three-year driving prohibition pursuant to s. 320.24 of the Criminal Code;
 - b) a mandatory lifetime firearm prohibition under s. 109; and
 - c) a mandatory DNA order pursuant to s. 487.051.
- [48] Those are my reasons. Counsel, anything arising?
- [49] MR. LAKSHMAN: My Lord, just the section of the driving prohibition, in my submission this took place before the current amendments, and subject to what my friend has to say, I think it should be under section -- the old s. 259(2)(c).
- [50] THE COURT: Yes, I wondered about that. I think that is correct.
- [51] MR. LAKSHMAN: That's -- because the new provisions only reference the current section numbers, etc., so it -- to me, it makes sense that it be done under the old provisions.
- [52] THE COURT: Mr. Ross?

[53] MR. ROSS: Yes, I agree.

[54] THE COURT: I think that is right, so Madam Clerk, the three-year driving prohibition will be pursuant to s. 259(2).

[55] MR. LAKSHMAN: Thank you.

[56] THE COURT: Thank you. Good luck, Mr. Jasper.

[57] THE ACCUSED: Thank you.

"Skolrood J."

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Prepared on 29 October 2026 · Esheria