

CANADA / JUDGMENT

R. v. Jerace

2019 BCSC 742

COURT

Supreme Court of British Columbia

DECIDED

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2019 BCSC 742 R. v. Jerace IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Jerace, 2019 BCSC 742 Date: 20190408 Docket: 27650-3 Registry: Vancouver Regina v. Michael Joseph Jerace Before: The Honourable Mr. Justice McEwan Oral Reasons for Sentence Counsel for the Crown: D.L. Mulligan Counsel for the Accused: K. Westell Place and Date of Trial/Hearing: Vancouver, B.C. March 14 & 25, 2019 Place and Date of Judgment: Vancouver, B.C. April 8, 2019

- [1] THE COURT: On November 29, 2018, Mr. Jerace was found guilty by a jury of the single count of the indictment, failure to comply with a condition of his long-term supervision order, contrary to s. 753.3(1), by consuming alcohol. The offence occurred on May 5, 2018.
- [2] The Crown is seeking:
- 1) a sentence of imprisonment of 18 to 24 months in prison with credit for time served in custody on this offence. The Crown has proceeded by indictment in this case. The maximum penalty set out in s. 753.3(1) is 10 years;
 - 2) an order in Form 5.04 authorizing the taking of bodily substance for forensic DNA analysis pursuant to s. 487.051(3)(b) of the Criminal Code, pursuant to s. 487.04, which is a secondary designated offence and consequently calls for a discretionary order; and
 - 3) as a result of R. v. Boudreault, the Crown is not seeking a victim surcharge pursuant to s. 737(1).
- [3] Section 724(2) provides assistance to the court in determining facts relevant to the appropriate sentence: 724 (2) Where the court is composed of a judge and jury, the court
- (a) shall accept as proven all facts, express or implied, that are essential to the jury's verdict of guilty; and
 - (b) may find any other relevant fact that was disclosed by evidence at the trial to be proven, or hear evidence presented by either party with respect to that fact.
- [4] The Crown offers the following summary of facts that were disclosed by the evidence in this case.

- [5] On December 19, 2016, Mr. Jerace was sentenced by Mr. Justice Harvey as a result of a conviction for sexual assault with a minor. In addition to time served, he was given a long-term offender designation and placed on a 10-year supervision order. He was given letters of introduction -- instruction by the Parole Board of Canada with numerous conditions, including a condition that he not consume, possess, or purchase alcohol. His parole officer, Reetu Rode, testified that she reviewed the conditions with Mr. Jerace, confirmed that he understood, and witnessed his signature.
- [6] On May 5, 2018, Mr. Jerace was observed leaving his residence at the Harbour Light Centre, joining a friend and attending to the Rogue Kitchen and Wet Bar at the Seabus terminal. Police officers observed Mr. Jerace and his friend sitting on the outdoor patio and ordering two buckets containing three large cans of beer each, in each bucket. Over the course of approximately 45 minutes, Mr. Jerace was seen pouring beer into the glass and was drinking beer. At times, the police officer observed Mr. Jerace's actions from directly in front of the patio.
- [7] Mr. Jerace was arrested at this location. Police attended at his table and confirmed that it was beer in his glass.
- [8] Mr. Jerace's background is extensive. It includes offences dating back to 1988. It includes counts of sexual assault, the last of which attracted a sentence of six years, and a long-term offender order involving a 10-year supervision order.
- [9] The Crown is seeking to file as an exhibit a copy of Mr. Jerace's criminal history, along with a collection of background documents. Below is a summary of his relevant convictions, particularly crimes of violence and breaches of court orders: · 1988, fail to appear times two, cash fines; · 1989, assault causing bodily harm, 45 days in jail and a probation term of four months; · 1989 July, fail to appear, \$150 fine; · 1990, fail to comply with a recognizance, \$100 fine; · 1995 July, assault, \$300 fine; · 1999 April, sexual assault three times, forcible confinement, the sentence was jail, three years on each concurrent, described in Jerace; · 2004 December 29, fail to appear, jail, one fine; · 2005 February, fail to comply with a recognizance, \$200 fine; · 2011, attempted sexual assault and forcible confinement, jail 2.5 years time served plus 18 months on each concurrent; · 2011 June, fail to comply with a recognizance, a \$500 fine; · 2016 December 19, sexual assault and sexual interference, six years in jail, nine months time served plus one day, long-term offender designation; · 2018/11/29, breach of LTSO, currently before the court.
- [10] The Crown seeks to review background documents provided to the court prior to his sentencing in 2016, the sentencing decision in 2016, and a selection of Correction Canada documents that have been prepared since then.

- [11] In addition to his criminal record for breaches of court orders, Mr. Jerace has had numerous incidents where breaches of his LTSO resulted in suspensions or warnings. In summary, Mr. Jerace's history demonstrates he is not compliant with community supervision and disregards court orders.
- [12] Supervisor Reetu Rode testified that she reviewed the conditions of the LTSO for Mr. Jerace in detail several times, both formally, conditions read, and informally, conditions discussed. The certificate, Exhibit 4 at the trial, was signed by Mr. Jerace on April 13, 2018, just weeks before the breach. Ms. Rode had also discussed with Mr. Jerace the correlation between substance abuse and his sexual offending. Moreover, Mr. Jerace was warned by Ms. Rode in February 2018, as a result of reports that he had been attending drinking establishments. Despite these instructions, reminders, and warnings, Mr. Jerace consumed alcohol in violation of his long-term order.
- [13] The court submits that there is very little else that could have been done to help or remind Mr. Jerace to abide by this condition.
- [14] According to the Corrections Canada documents, Mr. Jerace breached his conditions on many occasions prior to the incident at bar. The warnings and suspensions that resulted from those breaches did not deter him.
- [15] Mr. Jerace was out of custody for less than two weeks before the incident. He was released on April 23, 2018, and Mr. Jerace's breach was flagrant and abrasive. He flouted the conditions of the LTSO by drinking beer on a patio in open view. The Crown submits that this demonstrates that he has no regard whatsoever for his responsibilities pursuant to the long-term supervision order.
- [16] Section 718 sets out the purposes and principles of sentencing: 718 The fundamental purpose of sentencing is . . . 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.

- [17] Section 718.1 provides: 718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.
- [18] Additional sentencing principles are set out in s. 718.2 and include the need to account for aggravating and mitigating circumstances, and the rule that sentences should be similar to those imposed on similar offenders in similar circumstances.
- [19] Section 718.2(e) sets out as follows: 718.2 (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.
- [20] Given Mr. Jerace's demonstrated performance while under court orders, and in particular his long-term supervision order, his prospects for rehabilitation are poor. Consequently, the primary sentencing considerations in this case are specific deterrence, denunciation, and the need to separate Mr. Jerace from society.
- [21] The Crown submits that time served or time spent in custody by the person as a result of the offence, as described in s. 719(3), with respect to LTO breaches commences when the information is sworn and not when the LTSO is suspended or he is taken into custody.
- [22] Mr. Jerace's LTSO was suspended by Corrections Canada on May 5, 2018. However, the information charging him with this offence was sworn June 29, 2018. From June 29, 2018, to April 8 is 284 days?
- [23] MR. MULLIGAN: That was my count, My Lord.
- [24] THE COURT: Yes, I will go with it. Mr. Jerace has served 284 days in custody. Multiplying that by 1.5, he has served the equivalent of -- what is the half again?
- [25] MR. MULLIGAN: I am opening my calculator, My Lord.
- [26] MR. WESTELL: I have 426, My Lord.
- [27] THE COURT: All right, 426 days in custody.
- [28] Taking the submissions I have heard, including those of the Crown and of the defence, I am of the view that the appropriate sentence in this regard is 18 months, which will be calculated in accordance with the mathematics that I have undertaken and will therefore be short that period of time.
- [29] So 400 and . . . ?
- [30] MR. WESTELL: Sorry, 26 -- 426.
- [31] THE COURT: Four hundred and 26 days is the credit he is given.
- [32] Is there anything else?

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- [33] MR. MULLIGAN: Has Your Lordship decided whether or not to impose the order for a DNA sample?
- [34] THE COURT: Oh yes, I will order the order for DNA.
- [35] MR. MULLIGAN: So I just want to be -- I just want to be clear, the sentence is 18 months with credit for --
- [36] THE COURT: Yes.
- [37] MR. MULLIGAN: -- 426 days' time served.
- [38] THE COURT: That is right.
- [39] MR. MULLIGAN: That is everything that I can think of.
- [40] MR. WESTELL: Thank you, My Lord.
- [41] THE COURT: All right. "McEwan J."
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