
CANADA / JUDGMENT

R. v. Jones

2016 BCSC 304

COURT

Supreme Court of British Columbia

DECIDED

1 February 2016

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2016 BCSC 304 R. v. Jones

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Jones,

2016 BCSC 304

Date: 20160201

Docket: 36753-2

Registry: Prince George

Regina

v.

Evan Iovko Jones

Before: The Honourable Mr. Justice R.S. Tindale

Oral Reasons for Sentence

Counsel for the Crown:

J. Whiting

Counsel for the Accused:

B. Gilson, Q.C.

Place and Date of Hearing:

Prince George, B.C.

February 1, 2016

Place and Date of Sentence:

Prince George, B.C.

February 1, 2016

[1] THE COURT: Mr. Evan Jones has entered guilty pleas to Counts 2 and 3 on Indictment number 36753-2. Count 2 reads:

on or about the 15th day of May, 2012, at or near the City of Prince George, in the Province of British Columbia, did unlawfully possess a controlled substance, to wit: Cannabis (marihuana), for the purpose of trafficking, contrary to Section 5(2) of the Controlled Drugs and Substances Act.

[2] Count 3 reads:

on or about the 15th day of May, 2012, at or near the City of Prince George, in the Province of British Columbia, fraudulently, maliciously, or without colour of right, did consume electricity, the property of British Columbia Power and Hydro Authority, of a value exceeding five thousand dollars (\$5,000.00) and did thereby commit theft contrary to Section 326(1)(a) of the Criminal Code.

[3] The facts of this case are relatively straightforward and unfortunately from the Court's perspective, quite common in this area. B.C. Hydro staff became concerned with regard to the usage of electricity at a residence at 26805 Westlake Road in the City of Prince George. The Hydro meter was registering approximately 2,000 watts of power being used when in fact it was somewhere in the neighbourhood of 17,000 watts.

[4] B.C. Hydro staff reported this to the RCMP who began an investigation. This particular property is approximately 153 acres. There is a two-storey residence on the property and there are two large outbuildings on the property. A search warrant was executed on May 15, 2012. Mr. Jones was the only occupant in the residence. He answered the door when the police came there.

[5] The police during their search found, inside the residence, approximately 200 clones under the stairway to the upper top floor of that residence. There were additional documents, which were found in the residence, which would indicate that Mr. Jones was living there.

[6] The police obtained a search warrant pursuant to the CDSA for the outbuildings and in searching those outbuildings there were four rooms which contained various marihuana plants and growing equipment. The marihuana plants were at different stages of growth. In total between the house and the outbuildings there were 670 plants. An RCMP constable estimated that amount of marihuana would yield approximately 127 pounds if all the plants matured in a single crop. The approximate value at the pound level would be somewhere between \$254,000 and \$355,600. There was also growing equipment including lights and the like found in the residence.

- [7] With regard to the Hydro by-pass, it was set up in such a way that the Hydro was diverted before it went to the meter so the residence's actual electrical usage would not show on the monthly bills, and the electrical theft was over \$5,000.
- [8] Mr. Jones is a young man. He was 22 years of age at the time, 25 years old now. He is a construction worker. He also has the ability to operate heavy equipment. His explanation is typical in these matters. He succumbed to the allure of easy money. He is a Grade 12 graduate, he apparently comes from a good home, and his family has taken care of the monetary restitution with regard to the B.C. Hydro theft.
- [9] Counsel, in this case, are recommending a joint submission, on Count 2, of 12 months in jail, and Count 3 one month in jail, concurrent. Apparently, Mr. Jones was initially released on a promise to appear. During the court proceeding he absconded though ultimately turned himself in. I am told he has been in custody for 67 days. I will credit him with one and a-half days for every one day pre-trial detention, pursuant to R. v. Summers; that would be approximately 100.5 days or 101 days credit.
- [10] The joint submission is for 365 days less the 101 days or 264 days jail. As well, I am told Mr. Jones is agreeable to a DNA order as this is a secondary DNA offence, and Crown is seeking a forfeiture order. Mr. Jones has indicated that he has no interest in the items that Crown is seeking to forfeit, however, Crown counsel has indicated they have not given notice to the property owner and as such they are seeking to deal with that matter on another day, noting that Mr. Jones indicates he has no interest in the matter.
- [11] As I said, these grow operations are common unfortunately. This is not a huge operation, but it is not small either and it is, somewhat sophisticated in terms of the Hydro by-pass, and certainly given the explanation by Mr. Jones it is for strictly commercial purposes.
- [12] However, as I indicated earlier Mr. Jones is a young man. He has indicated that he is remorseful which I accept. I think he clearly understands where the attraction of easy money has taken him and obviously there has been a lot of thought put into this particular submission. Mr. Gilson, on behalf of Mr. Jones, had indicated that perhaps it might have went a little bit differently in terms of the trial if Mr. Jones had not absconded.
- [13] In any event, between Crown counsel and defence counsel there are many years of experience and this is a well thought out submission, so I am going to accede to the joint submission.
- [14] Sir with regard to Count 2, a fit sentence would be 12 months in jail. I am going to give you credit for the 67 days that you spent in custody at a ratio of one and a-half days for every day you spent in pre-trial detention, so I am giving you credit for 101 days. The remaining sentence is 264 days on Count 2 in jail. On Count 3, there will be 30 days in jail concurrent to Count No. 2.

- [15] Also, as this is a secondary DNA offence on Count 2, I will make an order pursuant to s. 487.051(3)(b) of the Criminal Code, making an order in Form 5.04 authorizing the taking of the number of samples of bodily substances by any peace officer for the Province of British Columbia that is reasonably required for the purpose of forensic DNA analysis and registration in the National DNA Databank.
- [16] Also sir, pursuant to s. 109 of the Criminal Code, you are prohibited from possessing any firearm other than a prohibited firearm or restricted firearm and any crossbow, restricted weapon, ammunition, explosive substance for a period of 10 years, and any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.
- [17] With regard to the forfeiture order, as I said, it will be noted that Mr. Jones indicates he has no interest in the property that the Crown is seeking to forfeit and do you just want this matter adjourned generally until you can bring it back on?
- [18] MR. WHITING: Yes, My Lord, and I will speak to scheduling and have it brought back at sometime you are available and likely appear with an affidavit if that is agreeable.
- [19] THE COURT: So, I will adjourn the application for forfeiture of items generally and the Crown can reset that one so they are in a position to deal with it.
- [20] Finally, Mr. Jones is requesting that I give a recommendation that he serve his sentence in the Lower Mainland. He indicates that, really for two reasons, first of all, Prince George Regional Correctional Centre is not likely to have any programs that he would be able to take, and secondly, he has family in the Lower Mainland. I am prepared to make that recommendation, sir. I am not sure where that will take you. It is ultimately up to the Warden of the jail, but I will make that recommendation that your sentence be served in the Lower Mainland.
- [21] MR. GILSON: Thank you, My Lord.
- [22] THE COURT: Anything further?
- [23] MR. WHITING: I think just My Lord, I am not sure of my friend's position on the victim fine surcharge. At this time, there was still that section under 737 that allowed the Court to waive it if undue hardship. Considering Mr. Jones is going into custody, my friend may have a position on that.
- [24] MR. GILSON: In brief, my position would be that he is going to be spending at least almost six more months in jail with respect to this. His family and he have come up and spent their savings paying back B.C. Hydro. I would ask for consideration that it be waived.
- [25] THE COURT: All right. Well, given those submissions and the fact that they have paid for the B.C. Hydro theft, and it is certainly still open to me to do that given the offence date, I will waive the victim fine surcharge.

[26] MR. GILSON: Thank you, My Lord.

[27] MR. WHITING: Thank you.

"R. S. Tindale, J."

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