

CANADA / JUDGMENT

R. v. Laroche

2011 BCSC 1081

COURT

Supreme Court of British Columbia

DECIDED

19 April 2011

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2011 BCSC 1081 R. v. Laroche IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Laroche, 2011 BCSC 1081 Date: 20110419 Docket: 66594 Registry: Kelowna Regina v. Sylvain Marco Laroche Before: The Honourable Mr. Justice Barrow Oral Reasons for Sentence In Chambers Counsel for the Crown: W. Kavanagh Counsel for the Defence: D. Johnson Place and Date of Hearing: Kelowna, B.C. April 19, 2011 Place and Date of Judgment: Kelowna, B.C. April 19, 2011

[1] THE COURT: Mr. Laroche --

[2] THE ACCUSED (via videoconference): Yes.

[3] THE COURT: -- I am going to pass sentence now, and I am going to just spell out the circumstances as I understand them, so that in case anybody wants to review the sentence, they will know the basis on which it was imposed.

[4] Mr. Laroche was sentenced to a period of incarceration to be served in the community under a conditional sentence order in October 2009.

[5] In August of 2010, he was convicted of breaching the terms of that order because there were a series of, as I recall, rather convoluted circumstances in which he changed his residence without telling his community supervisor that he was doing that. Not telling and not getting his community sentence supervisor's permission is a breach of one of the conditions of his order.

[6] At the conclusion of that hearing, I sentenced Mr. Laroche to a period of incarceration for 21 days. I did that, and at the same time, I explained to him clearly that it was his obligation to secure the permission of his community work service supervisor in advance of moving.

[7] At the time of that hearing, as I recall, Mr. Laroche attempted to persuade the court that he had been in constant communication with police officers, one officer in particular, and advanced that by way of explanation for or mitigation of the seriousness of his conduct. In effect, today, he explains his conduct in precisely the same way, suggesting that simply because he may have been in touch with a police officer, that in some way excuses his conduct. Even if that might have been a reasonable excuse in August, it is not a reasonable excuse now. He knew that that was not a reasonable excuse following his last appearance

before this court.

- [8] I accept that he may have had to travel to Ottawa on short notice, due to the illness of his father. I reject categorically the notion that he could not have simply telephoned his community work service officer and left a message and continued to try to contact that person. I say that, in part, because it appears that his own sister had no difficulty in contacting the very same official. If there was any doubt about that proposition, it is removed when one has regard to the fact that it was a full month after Mr. Laroche was back in this community before he was apprehended. He still had not contacted the community work service office, and indeed when he was apprehended, it was only by fortuitous work by the police.
- [9] I am told that he has 196 days left on his conditional sentence order, and I accept that that is the case. He has served 21 days in custody awaiting this disposition. I do not know whether he is entitled to extra credit or additional credit or whether the new laws relating to the credit for time served apply.
- [10] I will assume that he is entitled to additional credit, and on that basis, I am satisfied that an appropriate sentence is four months in jail. I am not cancelling the entire community sentence order, although I might rightly be criticized for not doing that, but in all of the circumstances, I consider a sentence of four months' new time to be appropriate and that is the sentence.
- [11] Thank you, Mr. Laroche. Thank you, Mr. Johnson and Ms. Kavanagh. We will just stand down, Madam Clerk, and let the other parties sort of --
- [12] MR. JOHNSON: Thank you, My Lord.
- [13] MS. KAVANAGH: My Lord, I wonder if we might just clarify - I am not sure if the court is in a position to do that - the driving prohibition. Apparently the ICBC documents reflect that he is prohibited under s. 259(1) of the Code, which is the impaired .08 section.
- [14] THE COURT: Yes.
- [15] MS. KAVANAGH: My file reflects that he was prohibited under 3.2, which is the dangerous driving section, and I wonder if it is possible to clarify that just so the ICBC documents and the court documents --
- [16] THE COURT: Yes.
- [17] MS. KAVANAGH: -- accurately reflect what they should.
- [18] THE COURT: I do not know. I mean, it sure is possible. What did -- I do not know what -- I guess you should look at the Record of Proceedings and see what it says --
- [19] MS. KAVANAGH: Okay.

- [20] THE COURT: -- and -- because I have no idea. I have my reasons upstairs, but I do not have them in front of me.
- [21] THE CLERK: [Indiscernible/not near microphone] matter.
- [22] MS. KAVANAGH: Oh, it looks like it was under 3.2, My Lord, and --
- [23] THE COURT: What I would suggest you do, for ICBC purposes then, is get a copy of that to them and let them amend their records. It sounds to me like it is their records that are wrong.
- [24] MS. KAVANAGH: Okay. And --
- [25] THE COURT: Or do you mean ICBC or the Superintendent?
- [26] MS. KAVANAGH: I think ICBC keeps the records for the Superintendent for these purposes.
- [27] THE COURT: But it is the Superintendent's records you are concerned about.
- [28] MS. KAVANAGH: Yes.
- [29] THE COURT: Yes.
- [30] MS. KAVANAGH: Yes.
- [31] THE COURT: That would be my suggestion. Mr. Johnson?
- [32] MR. JOHNSON: Oh.
- [33] THE COURT: It does not make any difference.
- [34] MR. JOHNSON: No.
- [35] THE COURT: It is six of one, and half a dozen of the other --
- [36] MR. JOHNSON: Yes.
- [37] THE COURT: -- from Mr. Laroche's point of view. Okay.
- [38] MS. KAVANAGH: I don't know whether or not Madam Clerk might be able to assist in terms of whether or not the registry has drawn up a document, one way or the other, for the prohibition.
- [39] THE COURT: Oh, I have --
- [40] MS. KAVANAGH: Whether or not --
- [41] THE COURT: -- no idea.
- [42] MS. KAVANAGH: Okay.
- [43] THE CLERK: I can [indiscernible/not near microphone] matter.
- [44] MS. KAVANAGH: Okay.

- [45] THE COURT: Okay. We will just stand down for the moment.
- [46] THE CLERK: But, My Lord, just for clarification of that four months in jail, is that applicable to Counts 2 and 3? Is that --
- [47] MS. KAVANAGH: That -- those --
- [48] THE COURT: Yes.
- [49] MS. KAVANAGH: Yes.
- [50] THE COURT: That is the only two, yes, and there will be a stay of proceedings, I gather, Ms. Kavanagh, on Count 1.
- [51] MS. KAVANAGH: Yes. Count 1 was Kineapple.
- [52] THE CLERK: Okay. Then --
- [53] THE COURT: No, Count 1 is no residence. Count 2 and 3 are the Kineapple ones I think.
- [54] MS. KAVANAGH: Oh, sorry. I am thinking of -- on the CSO. Is Madam Clerk referring to --
- [55] THE COURT: Yes. Count 1 is change residence. Two and three are the --
- [56] MS. KAVANAGH: Okay.
- [57] THE COURT: -- not in B.C., not in Kelowna. So, the sentence will be on Count 2. Count 3 will stay on the basis that it is Kineapple. Count 1, the Crown is going to stay because it is not necessary.
- [58] THE CLERK: Okay.
- [59] MS. KAVANAGH: Yes. Thank you. Barrow J.

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