

CANADA / JUDGMENT

R. v. Lawrence

2018 BCSC 1319

COURT

Supreme Court of British Columbia

DECIDED

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2018 BCSC 1319 R. v. lawrence

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Lawrence,

2018 BCSC 1319

Date: 20180529

Docket: 85349

Registry: Kelowna

Regina

v.

Jay David Lawrence

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Before: The Honourable Mr. Justice Blok

Oral Reasons for Sentence

Counsel for the Crown:

A. Ross

Counsel for the Accused:

M. Patterson

Place and Date of Hearing:

Kelowna, B.C.

May 28, 2018

Place and Date of Judgment:

Kelowna, B.C.

May 29, 2018

[1] THE COURT: All right, I am about to give my reasons for judgment in this matter. As with all reasons given in this fashion, I reserve the right, should a transcript be ordered, as it inevitably will be, I expect, I reserve the right to edit that transcript, correct any errors, to put in such things as headings and perhaps fuller case references, but otherwise I will, of course, not change any of the underlying reasoning or the ultimate result.

I. Introduction

[2] On February 7, 2018, Jay Lawrence was convicted of six offences related to a break-in and related events that occurred on August 11, 2016, at an address on Old Vernon Road in Kelowna. In brief, I concluded that the Crown had shown, beyond a reasonable doubt, that Mr. Lawrence broke into a residence in Kelowna and stole two handguns, among other things, and was then found inside a nearby vehicle that was not his, trying to start it. Items stolen from the nearby residence were found inside that vehicle with Mr. Lawrence, including the two handguns and ammunition for one of those handguns.

[3] As I have indicated, the foregoing is a mere summary of the events. The full circumstances of the offences are set out in my reasons for judgment of February 7, 2018, which are indexed as 2018 BCSC 662.

[4] Mr. Lawrence was convicted of the following offences:

Count 1: breaking and entering a dwelling house and committing the indictable offence of theft;

Count 2: attempting to commit theft of a motor vehicle;

Count 3: breaking and entering and stealing two handguns;

Count 4: possession of two handguns knowing they were obtained by commission of an offence;

Count 5: possessing a prohibited or restricted firearm, a Norinco handgun, together with readily accessible ammunition, without being the holder of an authorization or licence; and

Count 6: possessing a prohibited or restricted firearm, that is, both handguns, knowing that he was not the holder of a licence or knowing that he was not the holder of a registration certificate.

- [5] The Crown submits that it is not appropriate to enter stays of proceedings on any of the counts based on the Kienapple principle (*R. v. Kienapple*, [1975] 1 S.C.R. 729), which is the principle that multiple convictions ought not to be entered for the same offending conduct. Mr. Lawrence argues otherwise. I will return to that later.

II. Impact on the Victims

- [6] The owner of the home broken into by Mr. Lawrence reports that he is now very worried and anxious every time he leaves his house. Also, his firearms were unavailable to him for two years while this matter played out, as they were exhibits at the trial and will not be released to him until its conclusion.
- [7] The owner of the car Mr. Lawrence attempted to steal said he disposed of the car because there were drug remnants and paraphernalia on the front seat and he did not want the health of his family compromised. He said he lost income due to the trial and this has caused him a great deal of stress.

III. Circumstances of the Offender

A. Pre-Sentence Reports

- [8] There were three pre-sentence reports (PSRs) available to the court for sentencing purposes. The first is a report dated January 10, 2017, which was prepared for other court proceedings. An update to that report, specific to this matter, was prepared and is dated February 22, 2018. A third report dated May 12, 2018, is styled as a Gladue report (*R. v. Gladue*, [1999] 1 S.C.R. 688). I will return to that later.
- [9] Mr. Lawrence, who is 41 years old, has had many struggles in life. His parents separated when he was two years old. He reports that he suffered years of physical and sexual abuse at the hands of an uncle, an assertion that was confirmed by his mother, and he says he was diagnosed with ADHD as a child.
- [10] Mr. Lawrence is a long-time drug addict. He attributes his drug use to the abuse he suffered as a child. He began using illicit drugs at age 11 and used various drugs after that. He began intravenous use of cocaine and heroin at age 15. At the time of these offences, he was using heroin, taken intravenously. The pre-sentence report indicates that he has not had a period of complete sobriety since age 11 and that he continues to use illicit drugs, even while in custody.
- [11] Mr. Lawrence has experience as a roofer and says he does not have trouble finding work in that field, but his drug use causes him difficulty in maintaining full-time employment.
- [12] Mr. Lawrence has had two long-term relationships and has children from those relationships. He has two children from the earlier relationship, who are now aged approximately 16 and 18, and he has one child, four years old, from a more recent relationship. He has not seen his older children for some years. The later relationship ended

in August 2017. Mr. Lawrence said he hopes to gain custody of, or at least access to, the younger child, though that child is in the care of the Ministry of Children and Families, evidently because of the mother's own drug problems.

- [13] Mr. Lawrence was living with his mother at the time of these offences. His father died in 1988. Mr. Lawrence's mother is his primary support in the community. In that regard, I note that Mr. Lawrence's mother has attended every day of the trial and sentencing hearing. Mr. Lawrence also has support from a former employer, a roofing contractor, who describes Mr. Lawrence as a very good, indeed a "phenomenal" worker, "who produces outstanding work so long as he stays away from the drugs and negative influences". That employer also said he has a job waiting for Mr. Lawrence "whenever he is released from jail and ready and able to come back to work".
- [14] The first PSR indicates Mr. Lawrence has not had treatment or counselling for substance abuse. That appears to have been attributable, in part at least, to his frequent moves to various locations in British Columbia and Alberta. He did have three counselling sessions directed at victims of sexual abuse, but these were discontinued at the instigation of the counsellor because Mr. Lawrence was not able to participate appropriately due to his ongoing drug use. The PSR author indicates that Mr. Lawrence is receptive to a drug treatment program, including residential treatment, but Mr. Lawrence did not think he needed treatment. The author said:

Although he expressed remorse [for the 2015 offences] he did not appear to appreciate the gravity of his offences and his responsibility in the commission of the offences. He was quick to blame substance use and other people for his actions.

- [15] The author of the updated PSR noted that Mr. Lawrence has remained in custody since the time of the earlier report. She reported that the concurrent disorder counsellor at the correctional facility saw Mr. Lawrence for one session and then referred him to the in-custody psychologist. The psychologist discussed with Mr. Lawrence the anxiety, panic attacks and difficulty sleeping that Mr. Lawrence was experiencing. The psychologist diagnosed Mr. Lawrence with Post-Traumatic Stress Disorder and Anti-Social Personality Disorder traits. Mr. Lawrence was then referred to the in-custody psychiatrist, but the only session with that psychiatrist ended when he called her a "fucking goof" and left the session.
- [16] The author of the 2018 PSR reports that Mr. Lawrence has been on the Suboxone program with no issues for nearly eight months, but that in the correctional institution he has been warned for diverting his medications as recently as February 14, 2018. Although he told the PSR author that he had not used any illicit substances for nearly 20 months, in October 2017 his cell was searched and contraband was found, including tin foil, snorting tubes, a Ziploc bag, a water bottle containing fermenting fruit liquid, and a box with white powder inside. Mr. Lawrence admitted to correctional staff that the contraband was his.

- [17] As noted earlier, a Gladue report was also prepared. It is a bit puzzling why this was done, as there is no evidence that Mr. Lawrence is aboriginal, has an aboriginal background, or self-identifies as aboriginal. The sole reference to aboriginal background is Mr. Lawrence's speculation that there may have been indigenous lineage on his mother's side and that his father was a member of a First Nation from the Prince George area. However, Mr. Lawrence's mother said her family was not aboriginal and she did not know why her son would believe his father was aboriginal. The manager of a Prince George area Band that was referenced by Mr. Lawrence did not support Mr. Lawrence's claim that his father was a member of that First Nation. Mr. Lawrence's paternal uncle told the Gladue report author that Mr. Lawrence's paternal grandparents were of Scottish-Canadian heritage, not aboriginal heritage.
- [18] Accordingly, there are no Gladue considerations to take into account in this case. Nonetheless, the Gladue report in this case added some further information that was useful in understanding aspects of Mr. Lawrence's life and character.

B. Criminal Record

- [19] Mr. Lawrence's criminal record commences in 1992, when he was a 15-year-old youth. He explained that he committed a robbery, as well as a break and enter with intent, at that time in order to go to jail and avoid a resumption of his uncle's abuse.
- [20] His record shows 28 convictions for various offences. There are four convictions for theft, four drug-related convictions, seven driving offences consisting of one "over 80" and six driving while prohibited or suspended, and eight offences against the justice system, consisting of four breach-type offences, two obstruction offences, and two failures to appear. There are also offences involving some level of violence. Leaving aside the 1992 robbery and associated break and enter, in 2013 he was convicted of uttering threats and assault with a weapon, evidently arising from an attack on his girlfriend with a knife while under a drug-induced psychosis. There is also a mischief conviction stemming from a 2015 incident where, while under a drug-induced delusion, he broke the window of an elderly couple's home and went inside.
- [21] His sentences have included fines, probation of one and two years' duration, and jail sentences ranging from seven days up to an effective sentence of nine months before remand time was taken into account.

C. Address to the Court

- [22] Mr. Lawrence addressed the court, saying that he does recognize his need for treatment, and particularly because he has a four-year-old son whom he wants to retrieve from the care of the Ministry of Children and Families.

IV. Positions of Crown and Defence

A. Crown

- [23] The Crown submits that offences involving prohibited or restricted firearms are serious offences that require denunciation and deterrence to be the primary sentencing factors. This means substantial periods of incarceration. The offence of breaking and entering with intent, where a dwelling house is involved, is also a serious offence, and it is all the more serious where firearms are stolen.
- [24] The Crown noted that there is a relatively wide range of sentences for automobile theft, five months to five years. Counsel urged the court to impose a consecutive sentence for the attempt auto theft count, Count 2, as it was a distinct offence from the other offences.
- [25] The Crown described the PSRs as being negative. Crown said Mr. Lawrence has a lengthy criminal record reflective of "an entrenched criminal lifestyle and entrenched drug problem". Mr. Lawrence has taken no steps to deal with his drug problem and has not demonstrated any commitment to deal with his problems or changing his lifestyle. He is abusing drugs even while in custody. He blames his offending on drug addiction and historical sexual abuse and does not accept responsibility or demonstrate remorse.
- [26] The Crown submits that the aggravating factors on sentencing are: (1) Mr. Lawrence's criminal record; (2) the fact that he was under two firearms prohibitions at the time; (3) the victims of the break and enter and attempted auto theft were adversely affected by the offences; and (4) Mr. Lawrence was under the influence of heroin at the time of the offences and the proximity of the firearms at the time he was apprehended meant the victims and witnesses were in "real danger".
- [27] The Crown said that there are no mitigating circumstances.
- [28] The Crown's sentencing position on each of the counts is as follows: Count 1 (break and enter a dwelling house and committing an indictable offence) - three to four years; Count 2 (attempted theft of a motor vehicle) - 18 to 20 months, consecutive; Count 3 (break and enter and stealing firearms) - five to six years; Count 4 (possession of handguns knowing they were obtained through an offence) -three years; Count 5 (possession of a prohibited or restricted firearm with readily available ammunition) - four to five years; and Count 6 (which is possession of a prohibited or restricted firearm knowing he was not the holder of a licence) - two to three years.

B. Defence

- [29] Defence counsel noted that most of the Crown's cases have aggravating facts and were easily distinguished from the present case. One of the Crown's cases, for example, involved a home invasion. There was no violence in the case at bar. Other cases cited by the Crown were decided at a time when there was still a three-year mandatory minimum for possessing a loaded prohibited firearm.

- [30] Counsel said Mr. Lawrence's history was far better than that of the offenders in the Crown cases. His past offending is, for the most part, petty in nature, and it stems from drug use which, in turn, was caused by the psychological trauma associated with the years of sexual and physical abuse he endured as a child.
- [31] Counsel said that all of the offences, save for the attempted theft of a motor vehicle, are really one transaction. He submits that the Crown has piled on the charges in order to stack the sentences so as to achieve a wholly unreasonable overall sentence.
- [32] Counsel said that while denunciation and deterrence are important factors here, rehabilitation is also important. Mr. Lawrence has, in fact, sought treatment but has never had the opportunity to undergo the residential treatment that he needs.
- [33] Defence counsel said that all the important sentencing objectives, including rehabilitation, can be achieved through a sentence crafted to meet Mr. Lawrence's individual situation. Counsel proposed that Mr. Lawrence be sentenced to six months at a residential treatment facility, where he would effectively be under house arrest, followed by a period of house arrest with electronic monitoring at his mother's home, plus a period of probation.

V. Discussion

A. Sentence Maximums

- [34] The maximum sentence for each of Counts 1 and 3 is a life sentence. The remainder of the counts have maximum sentences of 10 years in jail. Count 4 has a one-year minimum sentence.
- [35] Although the maximum sentences are not engaged here, these maximums do indicate the seriousness with which Parliament views these types of offences.

B. General Principles of Sentencing

- [36] The purpose and principles of sentencing are set out in the Criminal Code, particularly ss. 718, 718.1, and 718.2. I will not repeat all of those here, but I of course have taken them all into account. Section 718 says:
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;
 - (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 and to the community.
- [37] Section 718.1 states that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.
- [38] Section 718.2 sets out a number of further principles, including the principle that a sentence should be increased or reduced to reflect aggravating or mitigating circumstances, a sentence should be similar to sentences imposed on similar offenders for similar offences, and where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh.

C. Application of the Kienapple Principle

- [39] There is no question but that the breaking and entering counts and the firearms counts arise out of the same event. The authorities indicate, however, that this is not enough to trigger the operation of the Kienapple principle. There must also be a sufficient proximity or nexus, not just on the facts, but on the offences themselves. As the Supreme Court of Canada said in *R. v. Prince*, [1986] 2 S.C.R. 480 at 495:

There must be a relationship firstly as between the facts, and secondly as between the offences, which form the basis of two or more charges for which it is sought to invoke the rule against multiple convictions.

- [40] On the matter of sufficient proximity between offences, the court said, at 498-499:

I conclude, therefore, that the requirement of sufficient proximity between offences will only be satisfied if there is no additional and distinguishing element that goes to guilt contained in the offence for which a conviction is sought to be precluded by the Kienapple principle.

There is, however, a corollary to this conclusion. Where the offences are of unequal gravity, Kienapple may bar a conviction for a lesser offence, notwithstanding that there are additional elements in the greater offence for which a conviction has been registered, provided that there are no distinct additional elements in the lesser offence.

- [41] In *R. v. Heaney*, 2013 BCCA 177, the court summarized the factors that will defeat a claim that different offences have a sufficient legal nexus, at para. 26:

26] Chief Justice Dickson in *Prince* articulated three factors that will defeat a claim that different offences have the legal nexus to warrant the application of Kienapple (at 51-54). In *R.K., Doherty J.A.* summarized these factors at para. 38. First, where the offences are designed to protect different societal interests, convictions for both offences will not offend the Kienapple rule. Second, where the offences concern violence against different victims, Kienapple will not foreclose convictions for offences relating to each victim. Third, where the offences pr[e]scribe different consequences, Kienapple will not bar multiple convictions. These factors, however,

remain subject to Parliament, which, if it so chose, and clearly imparted, could create two separate offences out of the same wrong.

- [42] Here, the Crown argues that the offences in question all relate to different societal interests or have different consequences. Defence counsel did not address the counts in the specific way the Crown did, but argued that there was one central offence in this case, break and enter of a dwelling house, in which items, including firearms, were taken. Defence counsel urged the court not to "parse the facts" to find distinctions between the various offences as charged in a situation involving what is essentially a single transaction.
- [43] I am satisfied that the counts in question involve different societal interests or have different penal consequences. In the case of Counts 5 and 6, for example, the offence charged in Count 5 is focused on loaded or readily loaded prohibited or restricted firearms, whereas Count 6 focuses on possession of firearms where the holder knows he does not have a licence or registration for the firearm. Count 4, which is possession of firearms knowing they were obtained by an offence, though factually similar, is distinct in its consequences because it carries with it a minimum punishment of one year in jail.
- [44] The break and enter counts, Counts 1 and 3, similarly focus on different societal interests. Section 348 of the Criminal Code, which is the charge in Count 1, focuses on society's interest in protecting homes, whereas s. 98 of the Code focuses on break and enters that result in stolen firearms that may be used criminally.
- [45] Mr. Lawrence, through his counsel, said that overlapping charges constituted over-charging designed to maximize the sentences imposed by stacking one upon the other, but I conclude that this concern can be addressed by making sentences concurrent.
- [46] I conclude that none of the charges ought to be conditionally stayed based on the Kienapple principle.

D. Aggravating and Mitigating Factors

- [47] I do not agree with the Crown's submission that Mr. Lawrence's criminal record is an aggravating factor. He does not have any prior record of firearms offences and the only prior conviction for breaking and entering was a youth conviction from 26 years ago. He does have convictions for theft in the mid-1990s and again in 2015 to 2016, but in my view his criminal record generally is more appropriately considered as part of the circumstances of the offender rather than as an aggravating factor.
- [48] Similarly, I do not consider that the effect on the victims in this case is an aggravating factor. Perhaps it will be in some cases, but here the effect on the victims is best considered as part of the circumstances of the offences.

- [49] Finally, I do not agree that it is an aggravating factor that Mr. Lawrence was under the influence of heroin at the time and that the witnesses were in real danger that he would use one of the guns. The reference by one of the witnesses that he thought Mr. Lawrence had started reaching toward a gun when he was first apprehended was a brief, fleeting, and somewhat speculative reference, and I do not consider that this fact was established on the evidence.
- [50] However, I do agree that it is an aggravating factor that Mr. Lawrence was under two firearms prohibitions at the time of these offences.
- [51] As for mitigating factors, it is clear from the circumstances that Mr. Lawrence's offending was driven by his drug addiction. While it may be arguable whether that is properly described as a mitigating factor, it is nonetheless a circumstance that puts the offences in their correct context.

E. Ranges of Sentences

- [52] In terms of sentencing ranges, the Crown cited a number of sentencing cases dealing with firearms, breaking and entering a dwelling house to steal firearms, theft of motor vehicles, and breaking and entering a dwelling house. These were, in the case of prohibited or restricted firearms: *R. v. Kachuol*, 2017 BCCA 292; *R. v. Marshall*, 2015 ONCA 692; *R. v. Holt*, 2015 BCCA 302; and *R. v. Guha*, 2012 BCCA 423.
- [53] The cases cited by the Crown on break and entering and stealing firearms were: *R. v. Burnett*, 2017 MBCA 122; *R. v. Neault*, 2013 SKPC 174; and *R. v. Ertmoed*, 2016 BCSC 344.
- [54] Cases on breaking and entering a dwelling house were: *R. v. Armstrong*, 2010 BCCA 451; *R. v. Penney*, 2010 BCCA 307; *R. v. Thomas*, 2009 BCCA 233; and *R. v. Cairns*, 2009 BCCA 105.
- [55] Finally, on attempted theft of motor vehicles, the Crown cited *R. v. McLaren*, 2015 BCCA 478; and *R. v. Lawson*, 2012 BCCA 508.
- [56] On the matter of sentencing range, the defence cited two cases, one dealing with breaking and entering and stealing firearms, and the other dealing with possession of a loaded handgun. The first was *R. v. Johnson*, 2014 BCSC 2226 and the second was *R. v. Sellars*, 2018 BCCA 195.
- [57] I will not review these authorities in detail, but will refer to some general principles and certain excerpts from the cases.
- [58] The appellate cases in British Columbia are consistent in stating that for firearms offences of the type in issue here, the paramount sentencing factors are denunciation and deterrence: see *Kachuol*, *Sellars*, *Guha*, and *Oud*, 2016 BCCA 332, the latter being an additional case not cited by counsel. In addition, those cases also emphasize the seriousness of those offences, that they fall within the definition of "truly criminal" conduct, the possession of a loaded prohibited or restricted firearm (or here, a firearm with ammunition at the ready), poses a

"serious threat", and they represent nothing short of a "tragedy in gestation": Guha at para. 30; Kachuol at para. 27, and Holt at para. 18.

- [59] In *R. v. Johnson*, Mr. Justice Tindale noted that "any time firearms are stolen, they are usually for resale, and that puts illegal firearms into the community". Similarly, in *R. v. Burnett*, the Manitoba case referred to earlier, the court said:
- [13] The offence of breaking, entering and stealing a firearm where the place broken into is a dwelling-house is a more aggravated form of break and enter than the historic offence in section 348 of the Code for two reasons. First, it is not uncommon, as is the case here, for such break-ins to be targeted because the victim is known to possess a firearm and firearms are a prized commodity on the black market. Second, the purpose of the crime is to acquire a dangerous item that can be used to facilitate violent crimes.
- [60] From the authorities cited, I conclude that except in cases involving exceptional circumstances, for the type of firearms offences involved in this case, the range of sentence for a first-time offender is from 30 months to five years in jail.
- [61] As for the theft or attempted theft of a motor vehicle, in *R. v. McLaren*, 2015 BCCA 478, the court noted the cases supported a range from five months to five years, and that such factors as forced break-ins, damage to the vehicle and dangerousness in the driving of the stolen vehicle, in addition to the offender's prior record, influenced the sentences within that range.
- [62] As for the offence of breaking and entering a dwelling house and committing an indictable offence, the cases cited by the Crown involved chronic offenders who had multiple property and breaking and entering convictions. I did not find that these provided much guidance for a sentencing range appropriate in the case at bar.
- [63] From my own brief review of the authorities, I am satisfied that sentences as low as three months in jail have been imposed for this type of offence.
- [64] In light of those ranges, it is clear that defence counsel's suggested sentence falls well outside the sentence ranges established by the authorities. Such a departure might be justifiable if there were very exceptional circumstances. Here counsel has emphasized that Mr. Lawrence's offending is ultimately attributable to the prolonged physical and sexual abuse he suffered as a child. It appears that is so, but although Mr. Lawrence has expressed an interest in treatment and rehabilitation, he has not demonstrated a commitment to it. For example, I found it particularly troubling that he brought his psychiatric consultation to an end by calling the psychiatrist a "fucking goof". This does not demonstrate an attitude of commitment to dealing with his underlying problems.
- [65] Similarly, he was awarded funding for counselling services to address the abuse he suffered, but he could not hold himself together enough to complete more than three sessions.

- [66] I recognize that Mr. Lawrence's drug addiction and underlying sexual abuse history are the drivers of his offending behaviour. It is in everyone's interests, society's and Mr. Lawrence's, that these be dealt with, but his mere interest in rehabilitation falls well short of the exceptional rehabilitation steps taken in, for example, Sellars, to take this case outside of the established sentencing range.
- [67] I would add that Mr. Lawrence's history of breaching court orders and his apparent continuing of his drug use while in custody also does not weigh in favour of the type of sentence proposed by his counsel.
- [68] I do, however, consider that Mr. Lawrence's difficult history and the causes of his offending reduces his moral blameworthiness somewhat, such that a sentence at the low end of the range is appropriate here.
- [69] Finally, I agree that the attempted theft of the motor vehicle was a separate event, and so this calls for a consecutive sentence. In imposing a sentence on this count, however, I recognize that the offences here, while separate, are closely related in terms of time and place.
- [70] Based on R. v. Li, 2009 BCCA 85, at paras. 26 to 28, I will adjust the consecutive sentence imposed on the attempted theft of motor vehicle count to reflect the totality principle in order to arrive at an appropriate global sentence.
- [71] Before imposing the primary sentence, I will deal with the ancillary orders.
- [72] The ancillary orders sought by the Crown were not opposed by Mr. Lawrence. I therefore make the following orders:
- [73] There will be an order pursuant to s. 109 of the Criminal Code banning Mr. Lawrence from possessing firearms for life. This will be entered against Counts 3, 4, 5, and 6.
- [74] There will be an order pursuant to s. 487.051 of the Criminal Code requiring Mr. Lawrence to provide a sample suitable for DNA testing. This will be entered against Counts 1 and 3; Count 1, I believe, is a primary designated offence, Count 3 a secondary designated offence.
- [75] There will be a forfeiture order and order for return pursuant to ss. 491(1)(b) and 491(2) of the Criminal Code, for certain items entered as exhibits at trial, specifically: the two handguns entered as exhibits, their cases, two ammunition magazines, a non-functioning rifle and its case, and the ammunition. These will be forfeited to the Crown and then returned to the owner, G.C.
- [76] Finally, there will be an order pursuant to s. 743.21 prohibiting Mr. Lawrence from communicating, directly or indirectly, with either G.C. or K.P.

VI. Sentence Imposed

- [77] Mr. Lawrence, would you please stand.

[78] On Count 1, I sentence you to a period of incarceration of 12 months. I am going to skip Count 2 for the moment. On Count 3, I sentence you to a period of incarceration of 36 months. On Count 4, I sentence you to a period of incarceration of 36 months. On Count 5, I sentence you to a period of incarceration of 36 months. On Count 6, I sentence you to a period of incarceration for 24 months. Those counts will all be concurrent. On Count 2, I would have imposed a sentence of six months, but for the reasons given earlier, given the connection between these offences and the totality principle, I reduce that to four months consecutive, to arrive at a fit global sentence.

[79] Mr. Lawrence, you may now be seated, thank you.

[80] The total sentence imposed is 40 months. My calculation is that the sentence totals 1,200 days. He has spent 480 days in pre-sentence custody, it was 479 days as of yesterday, so 480 days as of today, which translates at 1.5 days for every day spent in custody, for a credit of 720 days.

[DISCUSSION RE CREDIT FOR TIME SERVED]

(PROCEEDINGS ADJOURNED)

(PROCEEDINGS RECONVENED)

[FURTHER DISCUSSION RE CREDIT FOR TIME SERVED]

[81] MS. ROSS: My friend and I did recalculate the numbers and we agree that the total pretrial credit at one point one-five credit is 751 days.

[82] THE COURT: Seven hundred and fifty-one days?

[83] MS. ROSS: Yes.

[84] THE COURT: And I had simply taken 40 months as 30-day months and that may be an incorrect approach. Do you have anything to say about that?

[85] MR. PATTERSON: Well, My Lord, the way we calculated it, the PTC before the 1.5 is 501.

[FURTHER DISCUSSION]

[86] THE COURT: Okay, okay. So it is 1,200 -- the sentence is 1,200 days. The credit is 751 days, for a net of -- did anyone do the net, or is that up to me?

[87] THE CLERK: Four forty-nine.

[88] THE COURT: Four forty-nine, thank you very much. So the net sentence is 449 days.

[89] There are three other matters. Firstly, I had indicated that there -- I had made a no-contact order for the two victims, and I should have articulated that this no-contact order is during the custodial period of Mr. Lawrence's sentence. That is the first point.

- [90] Secondly, pursuant to s. 743.2 of the Criminal Code, I direct that my reasons for sentence be transcribed and forwarded to the Correctional Service of Canada, and that the two pre-sentence reports and the so-called Gladue report also be sent to those authorities.
- [91] Finally, there is the matter of the victim surcharge, and I invite counsel to make submissions on that.
- [92] MR. PATTERSON: My Lord, Mr. Lawrence has been in custody for a significant period of time. He will continue to be in custody for some time to come, but even on release, it is unlikely that he will be entering into work immediately. I would ask for the victim fine surcharge to be waived on a hardship basis.
- [93] MS. ROSS: And My Lord, Crown's submission is, given the information from the pre-sentence report that Mr. Lawrence has a job ready and waiting for him upon his release, that he would be in a position to pay the victim fine surcharge shortly after his release.
- [94] THE COURT: In the circumstances, I consider that the victim fine surcharge, which I believe would be \$1,200 in total for these offences, at \$200 per indictable offence, I believe, times six, would pose an undue hardship on Mr. Lawrence. I do not have the authority to waive it as we once did, but instead I will give him one day to pay and in default there will be a sentence of one day in custody to be served concurrently with his other sentences.
- [95] All right. Is there anything arising, counsel?
- [96] MR. PATTERSON: Not from me, My Lord.
- [97] MS. ROSS: No, My Lord.
- [98] THE COURT: All right, thank you very much.
- [99] THE CLERK: My Lord, which counts should the credit be applied to?
- [100] THE COURT: Madam Registrar has rightly drawn to my attention that the way we have to enter these sentences these days requires that the credit be allocated in a certain fashion. Do you have anything to say about that?

[SUBMISSIONS]

(PROCEEDINGS ADJOURNED FOR NOON RECESS)

(PROCEEDINGS RECONVENED)

- [101] THE COURT: Have you come to some consensus about how the credit is to be applied?
- [102] MS. ROSS: Yes, My Lord, and it was the difference between calculating everything in days and calculating everything in 30 month -- like 30 units for a month. So if I can pass this up, maybe this will assist. So on Count 1, the 12 months and less the credit of 751, he would have a time-served sentence. Count 3, which is 36 months, would be a hundred and -- or 1,080 days. If you had calculated everything in days originally then it would be 1,095

because of 365, so we have done it all by months and 30 units for each month. Then Count 3 would have remaining new days of, excuse me, the 1,080 less the 751, and for each of Counts 3, 4, 5 are the same. Count 6 is a time-served sentence because of the credit, and then adding on the consecutive sentence of 120 days, we get the original total of 449 remaining days. So I just need to correct the 1,080 minus -- so specifically on each of the counts, there's 329 days remaining on Counts --

[103] THE COURT: So it is 329 not the 344 you --

[104] MS. ROSS: Correct, yes, because I had to recalculate and I didn't finish there.

[105] THE COURT: So 329 and 120. All right, Mr. Patterson, you are satisfied with this revised calculation?

[106] MR. PATTERSON: I am, My Lord.

[107] THE COURT: And so the upshot is that when credit for time served is taken into account, the sentence actually imposed on Count 1 is time served. Jumping to number 3, to Count 3, the sentence is 329 further days, the same with Count 4, 329; Count 5, 329; Count 6, due to the time served credit -- sorry, due to the custodial credit, the sentence, net sentence is time served; and back to number 2, the consecutive sentence associated with Count 2 is 120 days. So the global sentence is the total of the 120 days for Count 2, the 329 further days on Counts 3, 4, and 5, for a total of 449 further days.

[108] MS. ROSS: Correct, My Lord.

[109] THE COURT: All right. That concludes these proceedings, thank you.

"Blok J."

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