
CANADA / JUDGMENT

R. v. Learning

2017 BCSC 1594

COURT

Supreme Court of British Columbia

DECIDED

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2017 BCSC 1594 R. v. Learning

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Learning,

2017 BCSC 1594

Date: 20170705

Docket: 49880-3

49939-2

Registry: Vernon

Regina

v.

Ronald Charles Learning

Before: The Honourable Mr. Justice G.P. Weatherill

Oral Reasons for Sentence

Counsel for the Crown:

J.S. Guild

Counsel for the Accused:

G.A.P. Verdurmen

Place and Date of Trial/Hearing:

Vernon, B.C.

March 9 and July 4, 2017

Place and Date of Judgment:

Vernon, B.C.

July 5, 2017

[1] THE COURT: On January 5, 2017, I convicted Mr. Learning of 21 offences out of a 22-count indictment relating to the possession of restricted handguns, prohibited ammunition, false identification, and various illicit drugs for the purpose of trafficking ("Convictions"). There were 15 convictions related to ss. 86(2), 92(1), 95(1), 96(1), and 108(1)(b) of the Criminal Code; there were two convictions related to s. 56.1(1) of the Code; there was a single conviction related to s. 91(2) of the Code; and there were three convictions related to s. 5(2) of the Controlled Drugs and Substances Act. During his sentencing hearing related to the Convictions, Mr. Learning pled guilty to five counts of possession of firearms and ammunition while prohibited by a recognizance that he entered into in Saskatchewan on November 17, 2011, following importation-of-cocaine-related charges filed against him. These charges are the subject of a separate indictment, Number 49939-2, and will be referred to in these reasons as "Breaches of Recognizance". By agreement, Mr. Learning is to be sentenced for the Breaches of Recognizance at the same time as for the Convictions.

Background

- [2] The circumstances of the offences leading to the Convictions are set out in detailed reasons I delivered on January 5, 2017, indexed as 2017 BCSC 2. I do not propose to recite those circumstances in detail, but will give a brief overview. The genesis of the Convictions was a police investigation into a box containing heroin that was imported into Canada ("Box"). It was seized at the Vancouver Airport by the Canadian Border Services Agency as it entered Canada by mail and was turned over to the RCMP who made a controlled delivery of the Box and kept it under surveillance. The accused was arrested when he attempted to pick up the Box on January 12, 2015, at a residence in Vernon, British Columbia. A subsequent search of the accused's home on January 13, 2015, uncovered the handguns, ammunition, false identification, and drugs that resulted in Mr. Learning being charged, tried, and the ensuing Convictions.
- [3] The sentencing hearing for the Convictions commenced on March 9, 2017. Crown submitted that Mr. Learning's sentence should take into account various aggravating circumstances, including that he knew the Box contained heroin. Mr. Verdurmen disputed those circumstances and took the position that a Gardiner hearing (*R. v. Gardiner*, [1982] 2 S.C.R. 368) was needed and that the Crown was required to prove the aggravating circumstances upon which it relied beyond a reasonable doubt. Although Mr. Learning was never charged with anything arising out of the fact that he picked up the Box containing heroin, Crown argues that I should take the circumstances of Mr. Learning's possession of the Box into

account in considering a fit and proper sentence. Mr. Verdurmen's position was that I could not take that into account because, firstly, he was never charged with any offence arising out of his possession of the Box and, secondly, the Crown did not prove that Mr. Learning had knowledge of the Box's contents. Ultimately, the Crown agreed with Mr. Verdurmen's position and the sentencing hearing was adjourned to July 4 and 5, 2017, for a Gardiner hearing on the point. The Gardiner hearing was to commence yesterday, with the Crown calling witnesses to prove those circumstances. Instead, Crown took the position that no Gardiner hearing was required to prove the aggravating facts it sought to rely on because it could simply rely on the trial evidence. Those aggravating facts are:

- (a) that Mr. Learning had knowledge of and was in possession of the heroin in the Box and that the heroin was for the purpose of trafficking;
- (b) that Mr. Learning was part of an organized drug trade business for the purpose of distributing heroin and drugs found in his house; and
- (c) that Mr. Learning was a mid to high-level trafficker in illicit narcotics,

("Aggravating Factors").

[4] The Crown referred to and relied on *R. v. Gauthier*, (1996) 108 C.C.C. (3d) 231; (BCCA); *R. v. B.L.*, 2002 ABCA 44; *R. v. Angelillo*, 2006 SCC 55; and *R. v. Larche*, 2006 SCC 56, in support of its position that the Crown is permitted to rely on background facts proven at trial as set out in my reasons for the Convictions and there is no need for further evidence to be led. Crown argued that there was considerable evidence that strongly supported the Crown's theory of Mr. Learning's involvement in the heroin drug trade including:

- (a) he was found in possession of three sets of scales which are not needed for pills;
- (b) large Ziploc baggies typically used to traffic ounces of heroin and are not needed for pills;
- (c) larger quantities of cash packaged in bundles consistent with a higher level of drug dealing that was kept separate from his personal money;
- (d) he had four pit bull dogs in his basement suite, likely for intimidation and protection; and
- (e) money transfer receipts coinciding with the timing of the delivery of the Box.

[5] The Crown also relied on Sergeant McMillan's evidence which I accepted in its entirety that proves Mr. Learning was engaged in the drug trade at a mid to high-level. Sergeant McMillan testified that heroin is typically shipped to an unsuspecting Canadian addressee with a clean criminal record. The ultimate recipient then retrieves the package from the unsuspecting addressee when the coast is clear. The Crown argues that there can be no reasonable doubt that Mr. Learning was the ultimate recipient of the heroin in the Box. These uncharged and unproven offences, if they are considered, would be treated as aggravating circumstances within the meaning of s. 718.2(a) and related provisions.

- [6] After hearing brief submissions from Mr. Verdurmen, I ruled that the Crown had proven the Aggravating Factors. I am satisfied that the evidence proves beyond a reasonable doubt that Mr. Learning was engaged at a mid to high-level in the importation and distribution of heroin and other illicit drugs. Indeed, the evidence points to no other conclusion but that he was the importer and knew the Box contained heroin.
- [7] One of the key findings I made at trial was that the accused was indeed involved in the business of trafficking illegal drugs. Specifically at paragraph 131 of my reasons, I stated:
- Ultimately, I agree with the Crown that all the evidence points to the accused being involved in the business of selling illegal drugs and the accused's knowledge and control of the items seized at his residence are consistent with his role as a drug trafficker.
- [8] Section 725(1)(c) of the Code permits me to consider the Aggravating Factors that could constitute the basis for separate charges.
- [9] Next, is the Saskatchewan conviction. On April 14, 2016, while awaiting trial in this case, Mr. Learning was convicted in Saskatchewan of importing some 25 kilos of cocaine into Canada. He was sentenced to nine years' incarceration ("Saskatchewan Conviction"). He was serving that sentence when I handed down the Convictions in this case. As of July 4, 2017, he has seven years and 213 days remaining to serve on the Saskatchewan Conviction. At the time of the events of January 13, 2015, that resulted in the charges leading to the Convictions, Mr. Learning had no criminal record. Accordingly, both Crown and Mr. Verdurmen submit that because of the timing, I am to treat Mr. Learning as a first-time offender despite the fact that he was also treated as a first-time offender when he was sentenced for the Saskatchewan Conviction.

Crown's Position on Sentence

- [10] The Crown seeks the following sentences for the 26 offences comprising the Convictions and the Breaches of Recognizance.
- [11] Firstly, the firearm offences:
- (a) s. 95(1), possession of loaded handguns, Counts 10, 11 and 13, there are three counts, the Crown seeks a sentence of five to seven years each;
 - (b) s. 86(2), unlawful storage of handguns, Counts 1, 2, 3 and 4, that was four counts, Crown seeks one year each;
 - (c) s. 92(1), possession of handguns without a licence, Counts 5, 6, 7 and 8, also four counts, the Crown seeks three years on each offence;
 - (d) s. 96(1), possession of a stolen handgun, that is Counts 12 and 14, there is two counts, and the Crown seeks three years each;

- (e) s. 108(1)(b), possession of a handgun with the serial number removed, Counts 15 and 16, Crown seeks a sentence of two years on each count; and
 - (f) s. 91(2), possession of prohibited ammunition, that is Count 19, the Crown seeks two years concurrent to the firearms offences.
- [12] The Crown submits that the sentences for these firearm offences should all be served concurrently.
- [13] Secondly, the stolen identify offences:
- (a) s. 56.1(1), possession of a stolen passport, Count 17, the Crown seeks a one-year sentence; and
 - (b) s. 56.1(1), possession of a stolen birth certificate, Count 18, the Crown seeks a six months' sentence.
- [14] The Crown submits that the stolen identity offences should be served concurrently with each other, but consecutive to the firearms offences.
- [15] Thirdly, the drug offences: s. 5(2) of the Controlled Drugs and Substances Act, possession of controlled drugs for the purposes of trafficking, Counts 20, 21 and 22, there are three charges, the Crown seeks a sentence of 18 months on each count. The Crown submits that the drug offences should be served concurrently within one another, but consecutive to the firearms and identity offences.
- [16] Lastly, the Breaches of Recognizance, s. 117.01(1), breach of firearms prohibition in the recognizance, Counts 1 through 5, the Crown seeks a sentence of 12 months on each count. The Crown submits that the breach of recognizance offences should be served concurrently with each other and consecutive to the firearms, identity, and drug offences.
- [17] On a global basis, the Crown submits that a fit and proper sentence for Mr. Learning, after taking into account the totality principle of sentencing, is seven to nine years' incarceration consecutive to the Saskatchewan Conviction he is now serving.
- [18] In support of its submissions, the Crown relies on *R. v. Holt*, 2015 BCCA 302; *R. v. Chin*, 2009 ABCA 226; *R. v. Bedi*, 2015 ABCA 361; *R. v. Rider*, 2013 MBQB 116; *R. v. Connolly*, 2015 MBPC 25; *R. v. Mullings*, [2013] O.J. No. 4522; *R. v. Brown*, 2014 ONSC 7285; *R. v. Sanghera*, 2012 BCSC 901; *R. v. McCormick*, 2017 BCPC 22; *R. v. Kilcollins*, 2014 BCPC 213; *R. v. Ball*, 2014 BCCA 120; *R. v. Beuger*, 1994 CanLII 409 (B.C.C.A.); *R. v. Stauffer*, 2007 BCCA 7; and *R. v. Swales*, 2016 BCCA 502.
- [19] For the Crown, Mr. Guild emphasized the importance of denunciation and deterrence. He points out that the B.C. Court of Appeal recently directed in *R. v. Holt* that the ranges of sentences for weapons offences in British Columbia must be increased to better align with sentences for weapons elsewhere in the country because of the increasing gun violence in the community. For "criminal-style" offending, the bottom end for weapons-related offences

in British Columbia is now 30 months. Mr. Guild argues that, despite this court's repeated attempts to send the message to would-be criminals that gun violence and possession of prohibited and restricted weapons as part and parcel of the illegal drug trade industry will not be tolerated, the message is not getting across. That means that sentences being handed out are too low. The Crown argues that this is not a case where Mr. Learning was duped or was naïve. He knowingly took the risk and must suffer the consequences. In all the circumstances, and taking the totality principle into account, the Crown seeks a global sentence of seven to nine years to be served consecutive to the Saskatchewan Conviction.

Mr. Learning's Position on Sentence

- [20] Mr. Verdurmen argues that Mr. Learning is a first-time offender and must be sentenced as such. He is already serving a nine-year sentence for the Saskatchewan Conviction and, if I were to impose a sentence in the range of what the Crown suggests, he will have to serve another seven to nine years for a total of 16 to 18 years which would be grossly inappropriate. Such sentences, he argues, are reserved for significant crimes such as murder and would offend the sentencing principles of proportionality and totality. Mr. Verdurmen argues that the Crown's range of sentence is far too high for the circumstances of this case. Even the low end of what the Crown proposes ignores and impairs any possible rehabilitation for Mr. Learning and that such a sentence would well lead to institutionalization.
- [21] Mr. Verdurmen argues that the Crown is improperly asking for a seven to nine-year sentence because of the heroin in the Box. Mr. Learning was never charged with anything to do with the heroin and, therefore, cannot be sentenced for it. Even if he was charged and convicted in relation to the heroin, his sentence would be much less than what the Crown suggests. He argues that the sentence in the range suggested by the Crown would be crushing and would violate the principles set out in the Supreme Court of Canada in *R. v. M.(C.A.)*, [1996] 1 S.C.R. 500. There, the court held that in the context of consecutive sentences, the general principles of proportionality and totality require a sentencing judge, who orders the offender to serve consecutive sentences for multiple offences, to ensure that the cumulative sentence rendered does not exceed the overall culpability of the offender. The combined sentence cannot be crushing. Further, he argues that cases relied on by the Crown have far worse circumstances and a much higher level of culpability than in Mr. Learning's case and involved persons with significant prior records.
- [22] In this case, Mr. Learning is culpable for possession of weapons, pills, stolen identification, and breaches of his recognizance, but combined with the Saskatchewan Conviction, Mr. Verdurmen argues that he should not have to serve the time that the Crown suggests. Here, the handguns in Mr. Learning's home were hidden and not easily accessible. He cooperated with the police when he was arrested. He had no weapons on him. Mr. Verdurmen argues that there is a distinction to be drawn between possession of weapons in the public and possession of weapons at an accused's residence. Further, Mr. Learning has a history of

being a productive member of society in the past. He hopes to obtain a trade while incarcerated for the Saskatchewan Conviction, perhaps learning to be an electrician. He argues that while what Mr. Learning has done must be denounced, it cannot be at the expense of his rehabilitation.

- [23] Mr. Verdurmen suggests that a fit and proper sentence should be a global sentence of 26 months for all offences to be served concurrently with the Saskatchewan Conviction.
- [24] In support of his submissions, Mr. Verdurmen relies on *R. v. Borecky*, 2013 BCCA 163; *R. v. Ash*, 2010 BCCA 604; *R. v. Brereton*, 2015 BCSC 1553; *R. v. Carrillo*, 2015 BCCA 192; *R. v. Lucas*, [2010] O.J. No. 3300; *R. v. Walsh*, 2016 BCSC 2388; *R. v. Ball*, 2014 BCCA 120; *R. v. Murray*, 2009 BCCA 426; and *R. v. Sears*, 2016 BCSC 965.

Discussion

i. Circumstances of the Offender

- [25] I will begin with Mr. Learning's circumstances and background as set out by his counsel during submissions. Mr. Learning is 34 years old and, as mentioned, is presently in custody serving a nine-year sentence related to the Saskatchewan Conviction. Mr. Learning was born in Kelowna, B.C. and completed his grade 12 education there. His father was a photographer, his mother a registered nurse. His mother died of cancer in 2008. Mr. Learning has one sibling who resides and works in Vancouver. After completing high school, Mr. Learning worked for four years as a chef in a Kelowna restaurant and then as a chef at the Kicking Horse between 2007 and 2009. He then obtained employment in the logging industry where he sustained some sort of work-related injury. The details of his injury are sparse, but he apparently became addicted to Percocet he was prescribed for the pain. He says he had a heavy addiction to Percocet from 2015 onward. He attributes his difficulties in life to this addiction. This led to the presence of the pain-related medications found in his house that resulted in the drug-trafficking charges. He does not drink alcohol. At the time of his arrest for these charges, he did not have a criminal record.

ii. Aggravating Circumstances

- [26] The aggravating circumstances of Mr. Learning's offences are numerous and readily apparent and include the following:
- (a) He was on bail for the 2011 Saskatchewan offences at the time he committed these offences;
 - (b) His possession of the weapons was planned and premeditated;
 - (c) He had multiple firearms, namely, four handguns;
 - (d) The firearms were all semiautomatic weapons, two of which were stolen and two had altered face serial numbers;
 - (e) The Star was a prohibited firearm with two magazines;

- (f) The Sig Sauer had an over-capacity cartridge;
- (g) Three of the guns were loaded;
- (h) There was plenty of ammunition. There was eight .45 calibre and 60 nine millimetre ammunitions at his home;
- (i) The Star gun was stored under the mattress in an unsafe manner and was ready to use. The other guns were wrapped in a cloth in a vent behind a couch and ready to use;
- (j) The guns were in Mr. Learning's possession as part of his illicit drug business and used for financial gain;
- (k) Mr. Learning was in the mid to high-level of whatever drug trade operation he was part of. The handguns were part and parcel of that operation and were, therefore, for a criminal purpose, namely, to aid in his illicit drug-trafficking business; and
- (l) The guns were kept in Mr. Learning's basement suite in a residential neighbourhood and put that neighbourhood at risk.

iii. The Mitigating Circumstances

- [27] There are little, if any, mitigating circumstances. As Crown counsel pointed out, it is more of a case of lack of aggravating factors such as Mr. Learning having no prior criminal record at the time of these offences.

iv. Impact on the Community

- [28] The overall collective security of the community is seriously compromised by offences like those Mr. Learning was convicted of engaging in. I am satisfied that the offences occurred in the context of a mid to high-level involvement by Mr. Learning in the world of illicit drugs. Indeed, the evidence at trial and on the sentencing hearing is overwhelming that Mr. Learning was involved at a high enough level that he had garnered the trust of others so involved. To reach that level takes time. I have no doubt that Mr. Learning had been involved in that trade for a substantial time. He knew the risks and chose to continue the enterprise showing a complete disregard for the law. The drug culture focuses on making money from the importation and sale of illicit drugs with little, if any, regard for the consequences these drugs could potentially have on members of the community particularly the youth or those who may be struggling on the lower fringes of society. The news is replete with the negative and often tragic consequences of the illicit drug trade and the effect it continues to have on our society. In a word, it is a scourge.
- [29] With illicit drugs come firearms. Gun violence is also increasing in our community and needs to be taken into account. Those that would break the laws respecting weapons do not seem to be getting the message. They are seemingly prepared to take the risk of getting caught. The impact of firearms offences on the community is also as serious as it is broad. The public is acutely aware of the dangers and consequences associated with the serious

rash of firearms-related offences that has developed as of late and it rightly looks to the courts to ensure that offenders convicted of firearms offences are treated fairly but firmly. In short, the increase in the use of handguns and other firearms in Canadian communities is troubling and grave. These are deadly weapons that create a serious risk for those who choose to carry them and use them as well as to innocent bystanders who may just be in the wrong place at the wrong time.

- [30] The safety of the public must receive priority. Those who would possess these kinds of weapons, even if they are found in private residences such as was the case here, must know the consequences upon conviction will be serious. So, too, persons who chose to disregard orders of prohibition and continue to possess firearms must know that such breaches will result in very serious consequences.

v. Legal Parameters

- [31] Section 718.3(4) of the Code speaks to cumulative punishments in situations where the accused is, at the time of sentencing, already serving time for unrelated offences. It says:

The court that sentences an accused shall consider directing

- (a) that the term of imprisonment that it imposes be served consecutively to a sentence of imprisonment to which the accused is subject at the time of sentencing; and
- (b) that the terms of imprisonment that it imposes at the same time for more than one offence be served consecutively, including when
 - (i) the offences do not arise out of the same event or series of events,
 - (ii) one of the offences was committed while the accused was on judicial interim release, including pending the determination of an appeal

- [32] Mr. Learning was found guilty of importing cocaine in April 2016, some 15 months after he was arrested for the offences I have found him guilty of. He was on bail in Vernon at the time of his arrest on the instant charges.

- [33] Both counsel provided a number of authorities that deal with sentences for similar offences in British Columbia and other provinces. Counsel have summarized the cases during the course of their submissions and I have had the opportunity to read them again. I do not propose to review them. Considered collectively, the cases provide a wide range of sentences for offences similar to the Convictions and the Breaches of Recognizance. Each case is specific.

- [34] As a consequence of his involvement in the drug-trafficking business, I find that Mr. Learning needed weapons to protect himself and his business and that is why he possessed them. They were part and parcel of his illegal drug trade enterprise as were the passport, birth certificate, drugs, pit bull dogs, scales, drug paraphernalia, and cash found in his home.
- [35] In my view, the defence position that Mr. Learning's sentence should be 26 months' concurrent for all offences would be entirely unfit. The cases relied on by the defence are not comparable and are of limited assistance. They are mostly pre *R. v. Holt* and they do not have the Aggravating Factors that are present in this case. The defence position on sentence ignores the choices that Mr. Learning made to continue to be involved in the drug trade despite agreeing when he signed his recognizance on November 17, 2011, that he would, among other things, agree to keep the peace and be of good behaviour, abstain from all use, consumption, and/or possession of illicit non-prescription drugs, and not possess any firearm or ammunition. A significant driving factor in arriving at a fit sentence for the Convictions is, as I have found, that Mr. Learning was involved at a mid to high-level heroin importing and drug distribution enterprise and the Convictions all relate to it. That fact cannot be minimized. I agree with Crown counsel that the epidemic of gun violence is rampant in this Province and is not restricted to the large urban centres. In his written submissions, the Crown argues:

The increase in the prevalence of gun crime calls for an exemplary sentence to send out the message that guns have no part in Canadian society save where they are permitted by our laws. An exemplary sentence is clearly justified on the facts of this case. Four semiautomatic handguns, three of them loaded with ammunition ready to fire in defence of and as part of the mid to high-level importer/wholesaler dealer in the illicit drug trade where the possessor was specifically prohibited from their possession by a court order.

- [36] I agree with these comments.
- [37] The goal of sentencing is to determine a just and appropriate punishment that reflects the gravity of the offence committed and the moral blameworthiness of the offender. The primary issue in this case is what is a just and fit sentence for Mr. Learning given that his possession of the handguns related to his mid to high-level involvement in the illegal drug trade industry in the community of Vernon.
- [38] The purposes and principles of sentencing are described in s. 718 of the Code. Briefly, they are to contribute to the respect for the law and the maintenance of a just, peaceful, and safe society by imposing just sanctions which:
- (a) denounce unlawful conduct;
 - (b) deter the offender and other persons from committing offences;
 - (c) separate offenders from society where necessary to protect the public;

- (d) assist in rehabilitating offenders;
- (e) provide reparations for harm to victims or to the community; and
- (f) promote a sense of responsibility in offenders and acknowledge of the harm done to victims and the community.

[39] Further, as provided in s. 718.1 of the Code, it is a fundamental principle of sentencing that the sentence imposed:

... must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[40] The sentence for these offences must be tailored to the degree of moral fault of the offender. The offender's moral blameworthiness is a significant factor that operates to distinguish between cases where a low to moderate penitentiary term is appropriate and those that attract a lengthier sentence. Section 718.2 of the Code enumerates a number of other principles of sentencing the court shall take into account including the aggravating and mitigating circumstances of the offences and that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. Restraint and resort to imprisonment and the length of imprisonment fall within the provisions of s. 718.2 of the Code, as well.

[41] In addition, s. 10 of the Controlled Drugs and Substances Act sets out factors that must be considered in sentencing for an offence under that Act and I have considered them, as well. Section 10(1) says:

Without restricting the generality of the Criminal Code, the fundamental purpose of any sentence for an offence under this Part is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation, and treatment in appropriate circumstances, of offenders and acknowledging the harm done to victims and to the community.

[42] The principles of deterrence, denunciation, and protection of the public must, in cases like this, be paramount and receive primary emphasis. In imposing sentence for any case, sentencing judges must consider all the principles and purposes of sentencing which are codified in s. 718 to 718.2 of the Criminal Code. I have considered all those principles in arriving at my conclusion in this case.

[43] With the following comments, the Court of Appeal has recently held that the sentencing range for gun possession should be increased. Quoting from paragraph 18 of *R. v. Holt*, 2015 BCCA 302:

[18] In my view, the possession of a loaded firearm does pose a serious threat, and a growing one, to communities across Canada. There is no reason why British Columbia courts should take this threat less seriously than other Canadian courts now do. As Mr. Justice Code stated in Nur:

social norms and judicial responses to them, have changed since the 1980s and 1990s. The proliferation of handguns has increased, homicides involving handguns have increased, and the justice system has responded to public alarm by stiffening its approach to sentencing in cases involving handguns. It is a common phenomenon, in the law of sentencing, for sentences to increase and decrease as societal and judicial knowledge and attitudes about certain offences change. In its seminal decision setting out the modern principles of sentencing, *R. v. Willaert* (1953), 105 C.C.C. 172 at 176 (Ont. C.A.), the Court of Appeal made it clear that appropriate sentences will change over time as the "needs of society" change:

I am respectfully of opinion that the true function of criminal law in regard to punishment is in a wise blending of the deterrent and the reformatory, with retribution not entirely disregarded, and with a constant appreciation that the matter concerns not merely the Court and the offender but also the public and society as a going concern. Punishment is, therefore, an art - a very difficult art - essentially practical, and directly related to the existing needs of society. A punishment appropriate today might have been quite unacceptable two hundred years ago and probably would be absurd two hundred years hence. It is therefore impossible to lay down hard and fast and permanent rules.

[44] Defence counsel argues Mr. Learning was not as morally blameworthy as in many of the cases the Crown has cited. I do not agree. I do not see a diminished level of moral blameworthiness in this case. His moral blameworthiness must be placed at the upper end. He continued to pursue the illegal drug trade enterprise despite the recognizance that he entered into in Saskatchewan.

[45] Given the gravity of the totality of the circumstances, I feel compelled to make a specific comment, as well, on Mr. Learning's possession of firearms while subject to a prohibition order. Such conduct is very troubling. Notwithstanding the recognizance he entered into, he had ready access to four handguns and related ammunition. Such conduct constitutes deliberate defiance of the court's order and must be taken into account in sentencing.

vi. Concurrent and Consecutive Sentences

[46] In determining whether Mr. Learning's sentences should be served concurrently or consecutively, I must consider the overarching principles of totality. If consecutive, I am aware that they must not exceed the overall culpability of the offender or result in the imposition of a disproportionate, harsh, or crushing sentence. The totality principle mandates that when sentencing an offender for consecutive sentences for multiple offences, the sentencing judge ought not to impose a cumulative sentence that exceeds the overall culpability of the offender.

vii. Sentence

- [47] Balancing all the competing principles of sentencing and having considered the circumstances of the offences including the various aggravating and mitigating circumstances, Mr. Learning's circumstances, the evidence adduced, the submissions of counsel, and the authorities provided, I have determined what I consider the appropriate and fit sentence for each offence should be absent deduction for the time spent in presentence custody.
- [48] Now, Mr. Learning, would you please stand.
- [49] Prior to passing sentence, is there anything you wish to say to me or to the court?
- [50] THE ACCUSED: I am kind of at a loss for words right now.
- [51] THE COURT: This is your opportunity to --
- [52] THE ACCUSED: Yes, I understand. I know what was done was wrong and I do not know how to express that more than just saying that, and I know it seems like I am a threat to the public, but I am not. Taking into account the dogs that were found in the house, they were puppies, you know, they were not full grown animals. They were six months old or four months old at the time. They were not -- so -- and I had another residence at the time. I know I did not give evidence to that, but I -- yes, all I can say is I am aware of, you know, how everything looks in the public's eye and I am not the person that is made out today. That is not me.
- [53] THE COURT: Anything further?
- [54] THE ACCUSED: No.
- [55] THE COURT: All right, thank you. You may sit down.
- [56] The sentences I impose which I consider to be fit sentences in the circumstances will be as follows.
- [57] With respect to Count 1, relating to the storage of a Star nine millimetre handgun contrary to s. 86(2) of the Code, I sentence you to one year.
- [58] With respect to Count 2, relating to the storage of a Llama .45 calibre handgun contrary to s. 86(2) of the Code, I sentence you to one year.
- [59] With respect to Count 3, relating to the storage of Sig Sauer P250 handgun contrary to s. 86(2) of the Code, I sentence you to one year.
- [60] With respect to Count 4, relating to the storage of a Jericho handgun contrary to s. 86(2) of the Code, I sentence you to one year.
- [61] With respect to Count 5, relating to the possession of a Star nine millimetre handgun contrary to s. 92(1) of the Code, I sentence you to three years.

- [62] With respect to Count 6, relating to the possession of the Llama .45 calibre handgun contrary to s. 92(1) of the Code, I sentence you to three years.
- [63] With respect to Count 7, related to the possession of the Sig Sauer P250 handgun contrary to s. 92(1) of the Code, I sentence you to three years.
- [64] With respect to Count 8, related to the possession of the Jericho handgun contrary to s. 92(1) of the Code, I sentence you to three years.
- [65] With respect to Count 10, related to the possession of the loaded Llama .45 calibre handgun contrary to s. 95(1) of the Code, I sentence you to five years.
- [66] With respect to Count 11, related to the possession of a loaded Sig Sauer handgun contrary to s. 95(1) of the Code, I sentence you to five years.
- [67] With respect to Count 12, related to the possession of the Jericho handgun contrary to s. 96(1) of the Code, I sentence you to three years.
- [68] With respect to Count 13, related to the possession of the loaded Jericho handgun contrary to s. 95(1) of the Code, I sentence you to five years.
- [69] With respect to Count 14, related to the possession of a Star nine millimetre handgun contrary to s. 96(1) of the Code, I sentence you to three years.
- [70] With respect to Count 15, related to the possession of the Sig Sauer P250 handgun knowing that the serial number had been removed contrary to s. 108(1)(b) of the Code, I sentence you to two years.
- [71] With respect to Count 16, related to the possession of a Llama .45 calibre handgun knowing that the serial number had been removed contrary to s. 108(1)(b) of the Code, I sentence you to two years.
- [72] With respect to Count 17, related to the possession of a Canadian passport belonging to another person contrary to s. 56.1(1) of the Code, I sentence you to one year.
- [73] With respect to Count 18, related to the possession of a birth certificate relating to another person contrary to s. 56.1(1) of the Code, I sentence you to six months.
- [74] With respect to Count 19, related to the possession of prohibited ammunition, a cartridge magazine, contrary to s. 91(2) of the Code, I sentence you to one year.
- [75] With respect to Count 20, related to the possession of OxyCodone for the purpose of trafficking contrary to s. 5(2) of the Controlled Drugs and Substances Act, I sentence you to 18 months.
- [76] With respect to Count 21, related to possession of hydromorphone for the purpose of trafficking contrary to s. 5(2) of the Controlled Drugs and Substances Act, I sentence you to 18 months.

- [77] With respect to Count 22, related to the possession of morphine for the purpose of trafficking, I sentence you to 18 months.
- [78] The firearms offences, namely, Counts 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, and 19, will be served concurrently. The possession of stolen identity offences, namely, Counts 17 and 18, will be served concurrently with the firearms offences, as well. These offences were part and parcel of the illegal drug operation that Mr. Learning was engaged in and, in my view, are sufficiently connected that a concurrent sentence is appropriate for those offences. Likewise, and for the same reason and in order to avoid a crushing sentence and give proper effect to the totality principle, the possession of drugs for the purpose of trafficking offences, namely, Counts 20, 21, and 22 will also be served concurrently with the firearms and the stolen identity charges.
- [79] With respect to Counts 1 through 5 of Indictment 49939-2, the possession of firearms and ammunition while prohibited by the recognizance, I sentence you to 12 months on each count to be served concurrently with each other, but to be served consecutively to the firearms offences, the identification offences, and the drug offences.
- [80] The net effect will be that you will serve five years on the firearms, identification, and drug charges and one year on the breach convictions consecutive for a total of six years.
- [81] I turn now to the application of the totality principle and consider whether the combined sentence exceeds the overall culpability of Mr. Learning. I have concluded on the basis of all the factors and principles I have reviewed above including the overarching principle of totality, the need for restraint, and consideration of the principle of rehabilitation, that a global sentence of six years is a fit and appropriate sentence before a deduction for pretrial custody is made and would not offend the totality principle. Consequently, I do not propose to adjust the length of the sentences I have imposed.
- [82] Pursuant to s. 718.3(4), I have considered when Mr. Learning's sentences should commence. I am satisfied that they should commence after the nine-year sentence for the Saskatchewan Conviction is fully served. The events that resulted in the Saskatchewan Conviction arose in 2011, some four years before he was arrested on the charges that I am dealing with. If I did not make his sentence consecutive to the Saskatchewan Conviction and he began serving the sentences I am imposing today now, the net effect would be that he would not serve any time for the Convictions or the Breaches of Recognizance and they would go unpunished. I am, therefore, satisfied that the sentences I have imposed should be served consecutive to the Saskatchewan Conviction and that, by making such an order, they would not offend the totality principle.
- [83] I will now turn to the issue of credit for pretrial custody. On January 13, 2015, when Mr. Learning was arrested on these charges, he was on bail related to the Saskatchewan matter. Following his arrest on January 13, 2015, he was held in custody in Vernon for 58 days and then released on bail by a Provincial Court judge. Counsel agree that Mr. Learning is entitled to receive one-and-a-half times' credit for the time spent in pretrial custody. He was detained

in custody on these offences for 58 days following his arrest. Mr. Learning's sentence will be reduced from the date this sentence begins by 87 days to account for his pretrial custody.

[84] Now, Mr. Guild, is there anything you wish to request regarding ancillary orders?

[SUBMISSIONS RE ANCILLARY ORDERS]

[85] THE COURT: All right. So, in addition to the sentences I have imposed, there will be the following ancillary orders which were not opposed.

[86] There will be an order pursuant to s. 109(3) of the Code prohibiting Mr. Learning from possessing any firearm, crossbow, restricted weapon, ammunition, and explosive substance for life.

[87] THE CLERK: My Lord, that will attach to all counts on 49880-3?

[88] THE COURT: No, that is attached to Counts 10, 11, and 13 and Counts 20, 21, and 22.

[89] THE CLERK: Thank you, My Lord.

[90] THE COURT: In so far as the discretionary DNA order is concerned, and having heard no submissions or strong objections from Mr. Verdurmen, I will order that Mr. Learning will be subject to a DNA order pursuant to s. 487.051(3)(b) of the Code.

[91] THE CLERK: And that will attach to the same counts, My Lord?

[92] THE COURT: That is attached to Counts 20, 21, and 22.

[93] I am satisfied in the circumstances that it is in the best interest of the administration of justice that I exercise my discretion and order that a DNA sample be provided. He will provide a sample of bodily substance that is reasonably required for the purpose of forensic DNA analysis as a result of being convicted of these secondary designated offences in the Controlled Drugs and Substances Act. The analysis will be entered into the DNA database.

[94] There will also be an order pursuant to s. 490.1(1)(a) of the Code for the forfeiture of all firearms, ammunition, and related devices that were seized by the RCMP at Mr. Learning's residence as a result of the investigation of these offences.

[95] Finally, there will be a victim fine surcharge pursuant to s. 737. Mr. Verdurmen advises that Mr. Learning is unable to pay the victim surcharge which I calculate at \$200 per count times 26 counts is \$4,400 and, in accordance with the recent decision of R. v. Bateman, 2015 BCSC 2071, Mr. Learning will be found in default and that he will serve two days for each victim fine surcharge consecutive to all offences. That translates into two days per offence times 26 offences equals 52 days. So he will serve an additional 52 days consecutive to the sentences that I have imposed.

[96] Is there anything else, counsel?

- [97] MR. GUILD: Yes, My Lord, if I understood, the forfeiture order related only to the firearms and the ammunition. Now, the Crown is seeking forfeiture of all items seized by the police. That would include, of course, all of the pills and money, wrapping, scales, all of those items because they are all offence-related property.
- [98] THE COURT: Well, that is what I intended to say. If I missed that, then --
- [99] MR. GUILD: Oh, I am sorry, that if I -- if I misheard, I am apologizing, My Lord.
- [100] THE COURT: All items seized by the RCMP during the course of their investigation are ordered forfeited.
- [101] MR. GUILD: Thank you, My Lord.
- [102] THE COURT: Anything further, Mr. Verdurmen?
- [103] MR. VERDURMEN: Nothing further, My Lord.
- [104] THE COURT: All right, thank you.
- [105] MR. VERDURMEN: Oh, sorry. Mr. Learning had something he wanted to address the court with. It is not sort of within his criminal defence aspect, but has to do with --
- [106] THE COURT: Yes, Mr. Learning.
- [107] THE ACCUSED: On March 9th, you made an application -- or you made an order to have the RCMP release the Ford F-350 to Alicia Bell. Alicia Bell went to the RCMP, this is with your order, to have it released, and they refused to release it. I am just wondering if you can enforce your original order?
- [108] THE COURT: I saw that. There was an order that came across my desk just, I think, yesterday dealing with that, and I signed it.
- [SUBMISSIONS RE CIVIL FORFEITURE ACT AND FORD F-350 TRUCK]
- [109] THE COURT: Well, I think the best thing for Ms. Bell to do is to take that matter up with the Provincial Government, Department of Civil Forfeiture, and if need be, bring an application in that action, in the civil action, and that matter will be dealt with there, and it is going to be -- it might be a matter of timing, but that is something she should look into and deal with directly on the civil side. So I am not prepared today to do anything about that. A formal application will need to be brought in the civil action.

"G.P. Weatherill J."

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