
CANADA / JUDGMENT

R. v. Leung

2008 BCSC 1121

COURT

Supreme Court of British Columbia

DECIDED

11 August 2008

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Leung,

2008 BCSC 1121

Date: 20080811

Docket: 24332

Registry: Vancouver

Regina

v.

Yue Heng Leung

Before: The Honourable Mr. Justice Wong

Oral Reasons for Sentence

August 11, 2008

Counsel for the Crown:

S.L. Snyder

Counsel for the Accused:

T.E. La Liberté, Q.C.

Place of Hearing:

Vancouver, B.C.

- [1] THE COURT: Yue Heng Leung, you have pled guilty before me on an amended indictment that during the month of January 2006, between the dates of January 5 and 12, 2006, on several occasions, you did sell some rock cocaine to Royal Canadian Mounted Police officers acting in an undercover capacity in North Vancouver; colloquially called a dial-a-dope operation.
- [2] I do not need to review all of the circumstances, but what it appears to be is that each time the police officer called a certain number, which apparently was the cell phone you had in your possession, you met with the officer and sold them various quantities of rock cocaine ranging from \$40; on another occasion, \$115; and on another occasion \$180.
- [3] Subsequently, you were arrested and, at that time of the offence, you were 23 years of age. You were a student, with no prior criminal convictions, having come into this country at a young age. The presentence report indicates that you have a stable family background, but the family had high expectations of which you were no doubt concerned. You told the probation officer that the reason for participating in this offence was as a result of suggestions by some friends at the time and financial difficulties you were experiencing while trying to pay for your tuition in your studies. Concerned that you may not have the funds to complete your studies, you gave in and agreed to participate for the money.
- [4] As you have heard from Crown counsel and the line of cases that have come down from the Court of Appeal, where there is some evidence of either participation in higher echelon of a dial-a-dope operation or indication of more extensive sales of a sophisticated operation, it calls for a definite jail sentence. The problem as pointed out by your counsel is whether or not you fit into those categories. It is agreed between counsel that a nine-month sentence is appropriate in this case whether it is on straight custodial time or under a conditional sentence of house arrest. I have to take into account that the evidence indicates that you were more of a runner in this case rather than a higher rung participant of this dial-a-dope operation.
- [5] There is indication that you have indeed been remorseful as to your participation and you candidly admitted that to the probation officer who prepared the pre sentence report. In addition, you are currently studying; hopefully, to enter into a certified general accountancy program and you are currently employed by a major funeral home in an accounting position. Letters filed in support of your work habits have been complimentary. In addition, there is a letter which indicates that you have also participated in church activities, particularly with respect to youth, and they speak well of your participation. You have indicated, also, to the probation officer that you have now gained insight that this is clearly not only legally wrong but, also inconsistent with Christian moral values.

- [6] I have also taken into account, as submitted by your counsel, your family dynamics in this case. You are most concerned that your parents not find out about this, no doubt as a concern of personal shame and humiliation inconsistent with your family's values, but as I said to you, eventually your family may well find out in any event and you will have to find some mature way of explaining and dealing with it with your family.
- [7] Considering all of the circumstances, I am of the view that it would be in the public interest and not contrary to danger of the public in this case to impose a conditional sentence of nine months. In addition, there will be a probation order to follow of one year after the serving of the nine-month conditional sentence. Crown counsel has indicated that what might be in order in this case is a staggered form of strict house arrest and then gradually cascading to a curfew. I have considered the responsibilities as outlined by your employer, who is aware of this particular charge, and has indicated that there are times when in the course of your employment there may be some evening work, especially for visitations by clients between the hours of 5:00 p.m. and 9:00 p.m.
- [8] Accordingly, I am going to direct that, except with the written permission of your conditional sentence officer, that you will obey a curfew between the hours of 10:00 p.m. to 6:00 a.m., seven days a week, and not be outside of your approved residence during those times.
- [9] MR. LA LIBERTÉ: I sort of hesitate to interrupt, My Lord, but I think even the Crown -- except for education -- sometimes there may be evening classes. Except for education or employment?
- [10] THE COURT: Well, I have set it for the time of 10:00 p.m. to 6:00 a.m., and if there are some education hours, that will have to fit within the category of specific approval by the conditional sentence supervisor.
- [11] You will allow for the preparation of an electronic monitoring technical suitability report, and if you and your residence are deemed suitable, you will allow for the installation of any equipment necessary for electronic monitoring and be subject to electronic monitoring. During that time, you will comply with the rules and regulations of the electronic monitoring program.
- [12] Next, you are to present yourself at the door of your residence or on the telephone when requested by your supervisor or police in order to confirm curfew compliance. When outside of your residence, you will carry a copy of any written permission with you at all times and present it to a police officer or a supervisor upon request. This refers to any specific approval to be outside of the residence outside the curfew hours.
- [13] You are not to have possession, or consumption of alcohol or drugs for the first three months of this order.

- [14] You are to have no contact directly or indirectly with the following persons: Nelson Wong, Anthony Sit [phonetic], Marilyn Verhiho [phonetic], or Andrew Kang [phonetic].
- [15] You will carry a copy of this order at all times while outside of your place of residence and produce it upon demand to a police officer or supervisor upon request.
- [16] Is it required to use a cell phone or pager with your employment?
- [17] THE ACCUSED: I do go out of one place. I do go between funeral homes many times during the day, and when my supervisor needs to contact me --
- [18] MR. LA LIBERTÉ: Speak up.
- [19] THE ACCUSED: When one of my supervisors needs to contact me, they usually contact me through the cell phone and I can have a cell phone with me.
- [20] THE COURT: When you are talking about the supervisor, are you talking about --
- [21] THE ACCUSED: My manager.
- [22] MR. LA LIBERTÉ: So it would be for employment purposes, My Lord.
- [23] THE COURT: All right. I will not put any restrictions on the use of a cell phone because it is necessary for your employment.
- [24] With respect to the probation order, you are to be under the supervision of a probation officer for the period of one year following the service of the conditional sentence order, and you are to report and be under the supervision at the times and manner directed by the probation officer during that one year, and you are to perform 80 hours of community work service under the direction of the probation officer and it is to be completed not later than nine months after the probation order comes into effect.
- [25] I should also inform you that if you fail to comply with any of these terms, with respect to during the term of the conditional sentence, you can be returned to the court and, the balance of the conditional sentence, will then have to be served in custody. So make sure you do not breach any of the terms of the conditional sentence order that I have imposed. In addition, if during the year of probation following, you commit any further offences or breach any of the terms that I have imposed on the probation order, you can also be charged with another offence known as breach of probation, and if you are convicted of that charge, you are subject to a separate and additional penalty of 18 months imprisonment. So bear that in mind.
- [26] The accused will be remanded into the custody of the sheriff's officer in order to comply with the necessary documentation of the conditional sentence order and also the probation order.
- [27] MS. SNYDER: And, again, Crown is seeking a DNA order and a s. 109 10-year weapons prohibition.

- [28] THE COURT: Those orders will be granted.
- [29] MS. SNYDER: Thank you.
- [30] THE COURT: Mr. Leung, the giving of a DNA sample and also the prohibition against firearms is a matter that is required by law automatically to follow these orders. Do you understand that?
- [31] THE ACCUSED: Yes.
- [32] THE COURT: Madam Registrar, I will give you these documents on the terms here.
- [33] MR. LA LIBERTÉ: Excuse me, My Lord, Mr. Sheriff indicates there is a bureaucratic problem. Because of the DNA order, unless you order otherwise, they have to take him down to Main Street to do the DNA unless you order it can be done within say 48 hours and he not be in custody and show up himself. I wasn't aware of that myself, but so I am going to ask that you simply say that he report within 48 hours to provide a DNA sample.
- [34] MS. SNYDER: And he would be reporting to the police station at 312 Main Street for that purpose.
- [35] MR. LA LIBERTÉ: Yes.
- [36] THE COURT: All right. He may do that within the next 48 hours with respect to the DNA sample, but the other parts will have to be complied with today.
- "The Honourable Mr. Justice Wong"

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