

CANADA / JUDGMENT

R. v. MacPherson

2024 BCSC 2675

COURT

Supreme Court of British Columbia

DECIDED

4 June 2024

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2024 BCSC 2675 R. v. MacPherson IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. MacPherson, 2024 BCSC 2675 Date: 20240604 Docket: 100252-1; 98711-2-C; 99517-1; 99565-1; 99829-1 Registry: Kelowna Docket: 36293-1-W Registry: Vancouver Docket: 27315-1 Registry: Castlegar Rex v. Jason Patrick MacPherson Before: The Honourable Justice Wilson Oral Reasons for Sentence In Chambers Counsel for the Crown: T. Sicotte Counsel for the Accused: N. Selamaj Place and Date of Trial/Hearing: Kelowna, B.C. June 4, 2024 Place and Date of Judgment: Kelowna, B.C. June 4, 2024

- [1] THE COURT: Mr. MacPherson is before the court today for sentencing, having pleaded guilty to various offences earlier this morning. I do not intend to go over the various offences in any great detail other than to recount some of what I was advised by Crown.
- [2] There are a series of informations that are before the court today, all of which took place over a period of some approximately 13 or 14 months or so. The offences to which he has pleaded guilty include:
- a) theft of a motor vehicle that was running while he was in Castlegar;
 - b) the subsequent theft of another vehicle from the Queensway Bus Loop area in Kelowna that subsequently resulted in a PIT maneuver by the police in order to stop the vehicle as it fled;
 - c) there was a theft from a liquor store of a case of beer;
 - d) possession of a pry bar, contrary to an existing court order; and
 - e) creating a disturbance outside of the London Drugs followed by some yelling and some threatening types of behaviour.
- [3] The circumstances here are somewhat unusual. Mr. MacPherson has two sisters, both of whom are nurses. He has lived in Kelowna for virtually all of his life. His father died suddenly in 2019, and that appears to have been the commencement of a deterioration of his mental health. His background is that he has 11 years of education before he went into custody and has since obtained his Dogwood while there.

- [4] His work background is in the construction business, and his troubles were precipitated by an eviction from a residence, the result of which was that he lost all of his belongings. He then became homeless and deteriorated into a period of instability, and these various charges are what has resulted from that.
- [5] The joint submission is for a time-served sentence with 18 months of probation and, rather than making everybody wait until the end, I confirm that I will accept the joint submission.
- [6] In terms of the aggravating and mitigating factors, Mr. MacPherson is almost 38 years of age, and until these offences started, which was in December of 2022, and for a period of approximately 13 months, Mr. MacPherson had only one prior criminal conviction which was an impaired charge from what is now 16 years ago. So essentially, while that is not an irrelevant consideration, he has really no criminal past until the events that have led to him being in this position with a series of offences, all of which appear to relate to mental-health-related concerns as his sister has been able to identify.
- [7] The diminished moral blameworthiness, the Crown concedes, is it flows from those mental health concerns. This is not a person who appears to be a risk to society under normal circumstances. The fact that he was able to get to roughly 36 years-of-age with no criminal record but for the single impaired suggests that Mr. MacPherson is somebody who, generally speaking, will live a prosocial life. Indeed, I note from his demeanor today, including the two comments that he had for me, and I can contrast that with what appears to be ongoing mental health concerns that were evident from the transcript that I read from the prior bail decision, this was originally going to be a bail review, and it is apparent from that that Mr. MacPherson was frankly struggling at that point.
- [8] Other mitigating factors here are the fact that Mr. MacPherson has pleaded guilty to a number of matters and while it is likely that, and certainly in some instances because there are video recordings, that he would have been found guilty, nonetheless there are a series of informations, each of which would have necessitated a trial, and as a result even if those trials may have been relatively brief there was a significant amount of saving of court time and resources, including police officers' time, that has resulted from the guilty pleas.
- [9] All of that is to say that it appears that what Mr. MacPherson needs is medical assistance in terms of addressing the mental health concerns, because his past would suggest that he is quite capable of living a prosocial life. He just needs to make sure that he gets the assistance that he requires.
- [10] In these circumstances the principles of sentencing that focus on denunciation and deterrence or rehabilitation are of significant import in somebody such as Mr. MacPherson where he has been a prosocial individual for the vast majority of his life and has had significant challenges over a relatively brief period of time and there appears to be a plan in place to have those matters dealt with.

- [11] Because this is a joint submission, the test is set out in *R. v. Anthony-Cook*, which is whether the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest, and I am satisfied that this is entirely reasonable and I accept the joint submission.
- [12] The sentences will therefore be as follows, and then I will go through the terms of the probation:
- a) Mr. MacPherson will receive 60 days in jail under file 27315 from Castlegar, theft of a motor vehicle;
 - b) 90 days consecutive for the theft of a motor vehicle under 98711-2-C; and
 - c) 60 days concurrent under count 3, the failure to stop;
 - d) Under file 99829 there will be a 7-day consecutive sentence for the theft of the beer from the liquor store;
 - e) Under 99565-1, 7 days consecutive for possessing the pry bar; and finally,
 - f) Under 100252-1:
 - i. Count 4, there will be 90 days consecutive to the other informations for the resisting and obstruction of a police officer; ii. Count 2 there will be 30 days concurrent for the possession of the wooden stake; and iii. 60 days concurrent also for the uttering threats to the security guard, Mr. Morell.
- [13] That, I am told, equals 254 days, and Mr. MacPherson, based on enhanced credit, has 258 days of credit. As such, he is now in a time-served position.
- [14] As it relates to the probation, from the Supreme Court picklist:
- a) 5001, Mr. MacPherson will be required to keep the peace and be of good behaviour;
 - b) 5002, report as directed. I think the first report should be in person, and after that as directed by the probation officer;
 - c) 5301, to notify of any change in address or telephone number;
 - d) 5101, no contact with the various victims, Kae Boodram, Reid Dellafortuna, Levi Renfrew, Thomas Morell;
 - e) 5105-1, no-goes with regard to those same individuals;
 - f) 5105-2, no-goes with regard to certain businesses that were a victim, that is, the 7-Eleven at 1901 Harvey Avenue, the Urban Liquor Store at 1171 Gordon Drive, and the Capri Hotel at 1171 Harvey Drive.

- g) There will be an order that he attend at Forensics, 5703 -- I just want to make sure I have the -- yes. So, Mr. MacPherson will attend psychiatric intake assessment or treatment through Forensic Psychiatric Services as directed by the probation officer;
- h) There will be an order for counselling as directed under 5701;
- i) 5905, the usual no-weapons term; and
- j) 2617 from the Provincial Court picklist, no break-in tools with the exception of while on his own property or tools that he requires in the course of his employment.
- [15] Mr. MacPherson, it sounds like you have got some family support that will help you with this, and it is just important to take advantage of all the opportunities that you now have.
- [16] THE ACCUSED: Right.
- [17] THE COURT: While you are on probation you will have access to those services. Once that is expired, those services may not be as available, so it is just important that you take advantage of the opportunity that you have because everything here suggests that this was a blip. It may be that it lasted quite a while, 13 odd months, and now you have been -- you are now closer to a year-and-a-half later since the first offence, but there is every reason to believe that if you take the advice and take the help that you are given that you will be just fine and you will return to the normal life that you presumably enjoyed before.
- [18] THE ACCUSED: Right. Yes. With -- with [indiscernible] that's what we're hoping for.
- [19] THE COURT: And fortunately for you, your sisters are both more knowledgeable than the average person, and --
- [20] THE ACCUSED: Yeah, I'm very lucky for that.
- [21] THE COURT: - Will be able to give you the direction you need. Just make sure you listen to them.
- [22] THE ACCUSED: Right.
- [23] THE CLERK: Can we just give him a specific date to -- for his first report?
- [24] THE COURT: Yes, we should do that.
- [25] CNSL N. SELAMAJ: Get a report by June 5th before -- by 3:00 p.m., please, in person at 1355 Water Street.
- [26] CNSL T. SICOTTE: No issue with that. Thank you.
- [27] THE COURT: All right. So that is by the end of day tomorrow; right?
- [28] CNSL N. SELAMAJ: Yes, it is.
- [29] THE COURT: All right. By close of business tomorrow you are to report to the probation office which is in the main floor of the courthouse here.

- [30] THE ACCUSED: All right.
- [31] THE COURT: All right. Anything else that we need to deal with?
- [32] CNSL T. SICOTTE: Yes, Justice. The Crown can direct a stay of proceedings on information 99517-1 and all outstanding counts on all other informations.
- [33] THE COURT: All right. Thank you. Anything else we need to address?
- [34] CNSL N. SELAMAJ: Justice, do you want to have him read into the order by the JP or -- or not?
- [35] THE COURT: The terms?
- [36] CNSL N. SELAMAJ: Of the probation order.
- [37] THE COURT: I think it is wise to do so. I did not read them out from the picklist, so I think it is appropriate that they be read to him and that he sign them.
- [38] CNSL N. SELAMAJ: I will also apply, Justice, to waive the victim surcharges that applies to each count. Mr. MacPherson is presently in custody. He has been there some time, and we are hoping that he is going to engage in some counselling for the time being.
- [39] CNSL T. SICOTTE: Yes, no issue with that, Justice.
- [40] THE COURT: Then the victim impact surcharge is waived. "Wilson J."

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