

CANADA / JUDGMENT

R. v. Mattoon

2020 BCSC 2088

COURT

Supreme Court of British Columbia

DECIDED

14 September 2020

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2020 BCSC 2088 R. v. Mattoon IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Mattoon, 2020 BCSC 2088 Date: 20200914 Docket: 174148-2 Registry: Victoria Regina v. Lance Nolan Mattoon Before: The Honourable Mr. Justice Steeves Oral Reasons for Sentence Counsel for the Crown: N. Melling Counsel for the Accused: M. Munro Place and Date of Trial/Hearing: Victoria, B.C. September 14, 2020 Place and Date of Judgment: Victoria, B.C. September 14, 2020

- [1] THE COURT: 2:31:07 The accused, Lance Nolan Mattoon, is here today for sentencing. He has pled guilty to one count of breaking and entering in a dwelling contrary to s. 348(1)(b) of the Criminal Code. The offence occurred on October 16, 2017, and he was arrested on January 23, 2018. On October 31, 2019, I decided that two confessions he gave to police were voluntary. A trial had been set on January 24, 2020. Mr. Mattoon entered a guilty plea. A presentence report was prepared on March 17, 2020. Except for a brief time under arrest, Mr. Mattoon has not been held in custody.
- [2] The circumstances of the offence are that Mr. Mattoon was in the area of Esquimalt, B.C., in October 2017 and he decided he needed some money. He had been out of work. He went to a residence at 363 Lampson Street where he found an open window. He removed a screen and entered the house where, fortunately, no one was home. He then found jewellery and personal items valued at \$11,784 which he took with him when he left. Some of the personal items included family heirlooms such as military medals from the family. Mr. Mattoon also left his jacket. He sold the items for about \$350, he could not remember to who. The jacket contained DNA that was ultimately identified as being that of Mr. Mattoon.
- [3] On January 23, 2018, the police executed a DNA warrant and took Mr. Mattoon to the police detachment. While in the police vehicle, to the surprise of the police officers, he spontaneously confessed. A full interview at the detachment ended with a second and consistent confession. Mr. Mattoon challenged the voluntariness of these statements in a voir dire, but I decided on October 31, 2019, that they had been made voluntarily. Mr. Mattoon quickly changed his plea to guilty.

- [4] A presentence report dated March 17, 2020, reviewed the personal history of Mr. Mattoon, information from the victims, and the probation officer's conclusion from an interview he did with Mr. Mattoon. The following are noteworthy. Mr. Mattoon has been at the same address since 2009. He has a long criminal record, but the last conviction was in 2008. There are in excess of 40 convictions, virtually all of them related to property. His convictions were directly related to a heroin addiction. Mr. Mattoon worked as a janitor for the Salvation Army for 10 years. He cannot work there now because of medical issues, in particular, circulation problems in his legs. His financial problems at the time were the reason for the subject offence. Neither drugs or alcohol was involved. He has been on a methadone program for 10 years. A letter from his doctor diagnoses severe opioid disorder. He has apparently been clean for 10 years as demonstrated by regular urine monitoring.
- [5] Mr. Mattoon has taken full responsibility for his actions in the October 2017 break and enter. He "feels terrible" and would like to apologize to the victims. According to the PSR, he does minimize this by saying they have insurance. Other documents include a letter from Mr. Mattoon's addiction physician that confirms the 100-percent adherence to the methadone program. Further, he never misses appointments, he has worked hard to be sober, and he is "engaging well in establishing safe and sober living principles in his life." Other documents confirm the employment with the Salvation Army and that he had to leave for medical reasons.
- [6] There are victim statements from the two residents of the burgled residence. The robbery coincided with a serious illness to one of them so it was additionally traumatic. They felt violated and frightened and they still feel vulnerable. In addition, the loss of irreplaceable personal items such as military medals from the family were unnerving and left them feeling helpless. They still have flashbacks.
- [7] According to the Crown, the appropriate range of sentence here is two to two-and-a-half years in jail. The principles of deterrence and denunciation are emphasized. The Crown recognizes the 10-year gap between this offence and the previous ones. The demonstrated prospect for rehabilitation is also recognized. For these reasons, the Crown accepts that previous cases where the sentence was in the range of three to five years are not appropriate. The Crown relies on *R. v. Alexander*, [1988] B.C.J. No. 1814; *R. v. Thomas*, 2009 BCCA 233; *R. v. Groleau*, 2010 BCCA 363; *R. v. Cairns*, 2009 BCCA 105; *R. v. Essiambre*, [1991] B.C.J. No. 2139; and *R. v. Abaroa-Martinez*, 2007 BCSC 571.
- [8] The defence emphasizes the 10-year period in which Mr. Mattoon did not have any convictions. I am asked to give very little weight to his record prior to October 2017. His previous rehabilitation is noted as are his current medical problems and inability to work. He remains drug-free and a long-term participant in the methadone treatment program. The defence submits that a sentence of three years suspended with strict conditions is appropriate in this case. The decisions of *R. v. Lam*, 2017 BCPC 175, and *R. v. Voong*, 2015 BCAA 285, are relied upon. It is agreed that a conditional sentence is not available here. I also note that a suspended sentence is not governed by the same principles as a conditional

sentence; that is in R. v. Voong at para. 62.

- [9] Mr. Mattoon is 58 years old and apparently had a stable home environment as a child. He completed his General Education Diploma while serving a previous sentence. As above, he worked as a janitor for the Salvation Army for 10 years and had to quit for medical reasons. At the time of this offence, he had serious financial problems and he received money from his parents. He currently lives on income assistance of \$760 per month with about \$550 per month paid for rent and bills.
- [10] I begin by agreeing with the Crown that the primary sentencing principles under s. 718 of the Criminal Code here are denunciation and deterrence. Violating the safety of the home of citizens is a serious matter that requires a serious response from the courts. The consequences of that violation are amply set out in the victims' statements in this case.
- [11] With respect to the submission of Mr. Mattoon that a suspended sentence in this case is appropriate, I note that the cases demonstrate that incarceration is generally required for breaking and entering in a dwelling. The decision in Lam was a sentence of three years' probation, but that was for robbery of a business, albeit for goods of considerable value. As noted in that decision, the sanction for robbery of a business is lower than the sanction for robbery at a dwelling; that is para. 48. I also note that exceptional circumstances can exist at least for drug offences when, for example, simply being arrested, tried, and convicted has a deterrent effect; that is Voong at paras. 59 to 61.
- [12] To his credit, Mr. Mattoon has demonstrated that he is a good candidate for rehabilitation by living for 10 years drug and crime-free prior to the October 17 incident. Nonetheless, I do not think I can ignore his previous record. I do agree with his counsel that it should not be given great weight. People should be encouraged to live crime and drug-free and I accept his motivation for the offence was money and not drugs or alcohol. There is no history of violence or any violence as part of the October 2017 incident. It also has to be said that Mr. Mattoon is a reluctant criminal. The act of leaving his jacket at the scene was an invitation to be caught. His spontaneous blurting out an unsolicited confession in the police car was, similarly, not the act of someone trying to avoid the consequences of what he did. The Crown properly discounts the previous authorities it relies on for these reasons.
- [13] On the other hand, the high monetary value of the things stolen by Mr. Mattoon must also be considered. As above, that is \$11,784, only \$10,000 of which was covered by insurance. The other things taken such as family heirlooms may not have had the same financial value, but they had considerable emotional value to the owners of the residence. Unfortunately, the items were not recovered and nor could Mr. Mattoon remember where he sold them.
- [14] Taken overall, I conclude that the aggravating factors here are the fact of a robbery of a dwelling, the value of the goods taken and, to some extent, the record of Mr. Mattoon. The mitigating factors here, in my view, include the full cooperation of Mr. Mattoon, his spontaneous confession, and the 10-year hiatus in his criminal history. He also entered a guilty plea once the issue of voluntariness was decided against him and his statement to the

court, in my view, reflected genuine remorse on his part which bodes well for the recommencement of counselling as recommended in the presentence report.

[15] I note in the current circumstances applying to everyone and including the Corrections system, there are issues of the COVID pandemic. The evidence is that in the provincial correctional system there have been no confirmed cases of inmates there. The evidence in the federal system is not clear, but it may not have been as successful as in the British Columbia provincial system.

[16] Mr. Mattoon, would you please stand up.

[17] Sir, you have heard my assessment of the evidence in this case and the submissions made on your behalf. Considering all of that, I sentence you to 18 months in jail and one-year probation.

[18] I also make the following ancillary orders. There will be a DNA order under s. 487.04(viii) and (ix).

[19] As well, you will provide an apology to the people on Lampson Street. You have already indicated you will do that and, in fact, want to do that.

[20] During your probation period, the following pick items will apply to you.

[21] 2001, you will keep the peace.

[22] 2005, you will not go within one kilometre of 363 Lampson Street, Esquimalt.

[23] 2102, you will have no contact with the residents at 363 Lampson Street.

[24] You will report to your probation officer.

[25] 2105, you will report to your probation officer if arrested or detained on another offence.

[26] 2203, you will reside at a place approved by your probation officer.

[27] 2501, you will attend and participate in counselling as directed by your probation officer.

[28] 2508, you will sign any waiver with respect to information obtained during your probation.

[29] 2513, pursuant to s. 738, you will provide restitution to the residents at 738 Lampson, this will be after completion of your jail time, in the amount \$75 per month until the amount of \$1,784 is paid.

[30] From the pick list, 2617, you will possess no robbery tools.

[31] Anything else from counsel?

[32] MR. MELLING: Just if I could clarify, My Lord, the apology letter, that is a separate order or is that a condition of the probation order?

[33] THE COURT: It is a separate order.

- [34] MR. MELLING: Thank you, and the one other order the Crown was seeking was a no-contact order while Mr. Mattoon was in custody. I think it is 743.21 -- 743.21.
- [35] THE COURT: While he is in jail?
- [36] MR. MELLING: While he is in jail, that is right.
- [37] THE COURT: Yes. Yes, take that order.
- [38] MR. MELLING: Thank you, My Lord.
- [39] THE COURT: Mr. Munro?
- [40] MR. MUNRO: I would just ask, given the sentence imposed, that you consider the victim fine surcharge. You have the jurisdiction to waive that. I think it is \$200 a count if it is by indictment.
- [41] THE COURT: It is waived.
- [42] MR. MUNRO: Thank you. Thank you.
- [43] THE COURT: All right, thank you very much.
- [44] MR. MELLING: Thank you, My Lord.
- [45] THE COURT: Good luck, Mr. Mattoon. "J. J. Steeves, J." The Honourable Mr. Justice Steeves

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