

CANADA / JUDGMENT

R. v. McIntosh

2024 BCSC 876

COURT

Supreme Court of British Columbia

DECIDED

9 May 2024

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2024 BCSC 876 R. v. McIntosh IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. McIntosh, 2024 BCSC 876 Date: 20240509 Docket: 55000-2 55001-2 Registry: Vernon Rex v. David Lee Junior McIntosh Before: The Honourable Mr. Justice Wilson Oral Reasons for Sentence Counsel for the Crown: M. Reinhart Counsel for the Accused: M.S. Lowe Place and Date of Trial/Hearing: Vernon, B.C. May 9, 2024 Place and Date of Judgment: Vernon, B.C. May 9, 2024

- [1] THE COURT: I will give you my decision now and, just so that everyone is not wondering, I am going to accept the joint submission.
- [2] By way of background in this matter, Mr. McIntosh has pleaded guilty to three counts. One is possession for the purposes of trafficking of fentanyl, methamphetamine, and cocaine, the second relates to resisting and obstructing a police officer in the execution of their duty, and the third is operating a motor vehicle while prohibited. The circumstances of the offences are summarized in an agreed statement of facts.
- [3] The first in time, although not part of the charges, is an event of May 2022 where the police were following a stolen vehicle. Mr. McIntosh was apprehended and located in a bag that was close by him and assumed to be his was cash, 18.94 grams of fentanyl, 14.6 grams of cocaine, and 36 grams of methamphetamine together with some other drugs. That matter was not charged as a drug matter, but it was agreed that it would be taken into account on sentencing.
- [4] The next event was January of 2023 which gives rise to the charged offences. Mr. McIntosh was seen driving a motor vehicle which he was prohibited from doing. He was seen. The vehicle was stopped. He attempted to flee. A search revealed two bundles of cash, 6.9 grams of fentanyl, and 5.22 grams of methamphetamine. Another bag was found in the vehicle. 15.33 grams of fentanyl in five packages, 6.42 grams of crack cocaine, and 20.84 grams of powdered cocaine was found in that bag. In addition, there was a cellphone with texts that were consistent with drug trafficking. Mr. McIntosh was arrested and released on strict house arrest conditions which included not being in the driver's seat of a vehicle.

- [5] It was very shortly after that that Mr. McIntosh was seen driving a motor vehicle and it is agreed that that matter will be taken into account by way of an aggravating factor. When he was arrested, the vehicle that he had been driving was found to contain 8.39 grams of fentanyl, 27.82 grams of methamphetamine, and 1.43 grams of cocaine.
- [6] Those are the circumstances of the offence that give rise to the plea. The victims in cases that involve drug trafficking are, of course, the community at large. The fentanyl epidemic is well known in this province. There continues to be roughly seven deaths per day in this province with regard to unregulated drugs. The vast majority of those involve fentanyl and the perils of fentanyl have been addressed by this Court and other courts in numerous, numerous cases.
- [7] The circumstances of Mr. McIntosh are set out in the presentence report and were summarized by Ms. Lowe. Mr. McIntosh is 32 years of age. He was born in Edmonton. There was an unfortunate incident where he appears to have been run over by a car driven by his father. His parents separated. His mother went to Ontario and then he came to Vernon. He has no real relationship with his father and the presentence report details a dysfunctional, chaotic, and unstable upbringing. He was never surrounded by good influences and the sorts of behaviours that most do not have to experience were normal to him. He started to use drugs and alcohol at age 13, starting with cannabis. Over time, the drugs became stronger and, by 19, he was using heroin, methamphetamine, and by 23 years of age, using fentanyl. His background is that he did not finish high school, he got to approximately a grade 9 or 10 level, with little in the way of work history to this point.
- [8] It is believed that he has an indigenous background. The circumstances of that are somewhat unusual in that it is not clear which First Nation he belongs to. His brother -- or half-brother with whom he shares a mother is indigenous. A Gladue report was prepared and I have reviewed that report. Safe to say that many of the circumstances, regardless of background, that are experienced by Indigenous people in Canada are present in Mr. McIntosh's life including homelessness and poverty.
- [9] He has a relationship with a Ms. Arlt which he sees a positive relationship.
- [10] The key thing here is the steps that Mr. McIntosh has taken since he has been incarcerated and I will return to those shortly.
- [11] The joint submission for sentence is one of 1,640 days, being four-and-a-half years. He is entitled to credit of 459 actual days which is 689 days of credit, leaving 951 days remaining according to the joint submission.
- [12] The circumstances in terms of mitigating factors are the early guilty plea and the fact that Mr. McIntosh has had, by all accounts, a very unfortunate upbringing that leads him to the place that he is today.

- [13] By way of aggravating factors, Mr. McIntosh has a criminal record that includes prior convictions for these -- all of the -- or similar to these offences, prior convictions for possession for the purposes of trafficking, obstruction or flight of police officers, and numerous breaches.
- [14] The sentencing position of four-and-a-half years is above the range that the Court of Appeal said would apply for first-time offenders in the Smith case. Indeed, it is reasonable to expect that the sentence would be above the range in Smith because Smith was for first-time offenders and Mr. McIntosh is not a first-time offender.
- [15] What is significant here is the steps that Mr. McIntosh has taken since he has been in custody. He has not, as he said, been wasting his time and has taken full opportunity of the opportunities that have been presented to him. He has been involving in the Right Living Unit, something he had to apply for, while at KRCC. He has undertaken therapy with a Dr. Webster which has enabled him to determine that, in fact, the path that he is on or was on is not the path that he has to follow moving forward.
- [16] Mr. McIntosh has explained to the Court that although he has been exposed to programming before, he did not really listen and he did not really care and would shut down and ignore it. That is not what he has been doing this time. He has finished his grade 12 and told me of the courses that he has taken, including getting 73 percent in Workplace Math and 99 percent in an Automotive Technician Program.
- [17] It is clear that Mr. McIntosh sounds like he has now recognized that what has happened in the past he can put behind him and he can look forward to creating a new life. This is providing him with an opportunity for a reset and to recognize that what has happened in the past does not necessarily have to happen in the future and that it is within his control to do something with his life. He is still only 32 years of age. He has more life ahead of him than he has behind him and this will provide him with that opportunity. He has expressed an interest in a firefighting program offered through Thompson Rivers University. Once Mr. McIntosh is released, the best thing that can happen for him is to find work because it is very rewarding to earn your own money and to be a contributing member of society.
- [18] In all of the circumstances, I am satisfied that the joint submission is appropriate. Mr. McIntosh, I am therefore sentencing you to four-and-a-half years. Four-and-a-half years is the sentence on Count 1, 45 days concurrent on Count 5, and 60 days concurrent on Count 6.
- [19] There will also be a s. 109 lifetime weapons ban and a DNA order, and I confirm that based on the calculations I have received that there are 951 days remaining to be served on Mr. McIntosh's sentence.
- [20] That concludes what I have to say.
- [21] CNSL M. REINHART: And, Justice, in terms of forfeiture, we generally address that with a desk order after the fact that would be sent to defence and then to the court.

- [22] THE COURT: I take it -- is there any issue with the forfeiture order, Ms. Lowe?
- [23] CNSL M. LOWE: There is not, Justice.
- [24] THE COURT: All right, so the forfeiture order will be prepared in the usual manner.
- [25] CNSL M. LOWE: And, Justice, just so the record is clear, I think the sentence needs to be pronounced in days with the credit applied for Count 1.
- [26] THE COURT: 1,640 days was what Ms. Reinhart told me was the full sentence and there is 951 days remaining to serve on it.
- [27] CNSL M. LOWE: Yes. So that would be applying 689 days of pretrial custody, correct?
- [28] THE COURT: Yes.
- [29] CNSL M. LOWE: Thank you, and sorry, Justice, did you address the victim fine surcharge?
- [30] THE COURT: I will waive it.
- [31] CNSL M. LOWE: Thank you.
- [32] THE COURT: Thank you.
- [33] CNSL M. REINHART: Thank you, Justice, and I can direct a stay of proceedings on all the remaining counts and on Information -- or Indictment 55001. "Wilson J."

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