

CANADA / JUDGMENT

## R. v. Monteith

2021 BCSC 908

COURT

Supreme Court of British Columbia

DECIDED

22 April 2021

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2021 BCSC 908 R. v. Monteith

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Monteith,

2021 BCSC 908

Date: 20210422

Docket: X082255

Registry: New Westminster

Regina

v.

Carlos Nathaniel Monteith

Before: The Honourable Mr. Justice Riley

Oral Reasons for Sentence

Counsel for the Crown:

S.H. Quendack

Counsel for the Defence:

K. Westell

P. Gardner

Place and Date of Hearing:

New Westminster, B.C.

April 22, 2021

Place and Date of Judgment:

New Westminster, B.C.

### April 22, 2021

- [1] THE COURT: The accused Carlos Nathaniel Monteith is before the court for sentencing on two offences; namely, discharging a firearm with the intent to wound, maim, or disfigure the victim; and unlawful possession of a loaded firearm. Mr. Monteith entered guilty pleas to these two offences part way through his trial before a judge and jury on these and other charges.
- [2] The Crown and the defence now make a joint submission that Mr. Monteith should receive an effective global sentence of six and one half years for the two offences, which, after giving credit for time spent in custody, will result in a net sentence of four years and some months.

### The Circumstances of the Offences

- [3] The offences in question occurred on 17 November 2019, and thereafter, in New Westminster and Vancouver. At this point there is no dispute as to what occurred. The circumstances are still fresh in everyone's mind.
- [4] We heard testimony from the victim Ms. Baines earlier this week. Ms. Baines was known to Mr. Monteith. Mr. Monteith had been staying at her house on and off for a period of some weeks prior to the shooting incident that led to the charges. Mr. Monteith and Ms. Baines were involved together, to a significant extent, it appears, in the distribution of illegal drugs. A dispute arose between them concerning a debt and the amount of that debt.
- [5] On the date of the shooting, Ms. Baines was in her home, a residence in New Westminster, when Mr. Monteith came into her bedroom, shot her at close range multiple times. She was hit at least three times, once in the arm, once in the throat, and once in the chest, after which Mr. Monteith fled the house. Ms. Baines was left to call 9-1-1. She had difficulty doing so because of her injuries and because her phone battery was dead. She ultimately was able to do so. Police and EMTs arrived and she was taken to the hospital.
- [6] Mr. Monteith was arrested six days later outside a hotel in Vancouver. The police recovered a bag on the ground next to him containing a loaded restricted firearm, a SIG Sauer 9 mm handgun, with a loaded magazine and a bullet in the chamber. Mr. Monteith was taken into custody and has been in jail awaiting trial since then.
- [7] The victim Ms. Baines has lasting injuries and other significant effects as a result of the shooting. I have carefully read her victim impact statement which speaks to these matters. She still has a bullet in her body, which, evidently, could not be safely removed. Ms. Baines has suffered and continues to suffer physical pain, which she describes as constant. She has lost the use of her right arm, a permanent disability. She is unable to perform many basic

functions that require two working upper limbs. She has suffered emotionally because of the pain and trauma of the event and how it has affected her life. She has suffered financially because she is no longer able to work in her former occupation. And she is also now dependent on others, to some extent, for her care. She has been separated from her family, including two children, one of whom is still a teenager.

### **The Circumstances of the Offender**

- [8] The circumstances of the offender Mr. Monteith are as follows. He is a relatively young man, being 25 years old. He has a lengthy criminal record, with both youth and adult convictions, some for very serious offences. However, three other things emerge from Mr. Monteith's background with respect to his criminal record and his background more generally.
- [9] First, his longest previous sentence is some three and a half years in jail for unlawful firearms possession and other offences. The proposed sentence for the matters before me is basically twice as long as that, so it will be a significant step up, albeit a deserving one, considering the circumstances of the offences.
- [10] Second, counsel explains, and I have no difficulty accepting, based on what I have been told and what I have come to learn over the last few weeks, that Mr. Monteith has had a very difficult upbringing because of learning disabilities, a somewhat unstable home situation, and issues of physical and emotional abuse in his family. He had trouble in school at a young age, got into trouble with the law at a young age, and has, very regrettably, been on the wrong path since then. In light of his background and his continuing troubles with the law, Mr. Monteith has no real history of gainful employment.
- [11] Third, and this is very important going forward, Mr. Monteith is still a young man. Even if he serves the sentences that are recommended here, he will still be a relatively young man when these matters are behind him. Because of his youth and the availability of programming, there is still, certainly, opportunity for Mr. Monteith to rehabilitate, and hope that he will do so.

### **The Offences**

- [12] In terms of the offences, discharging a firearm with intent to wound, maim, disfigure, or endanger the life of a victim is a very serious offence. For the particular offence to which Mr. Monteith has pleaded guilty, the sentencing range set out in the Criminal Code, R.S.C. 1985, c. C-46 goes from a mandatory minimum of five years in jail up to a maximum of 14 years. I have been presented with a collection of cases discussing the sentencing range, but, of course, the facts of each case are different, so the cases can really only give me a general sense of the range.

- [13] In the case at bar, there are many aggravating factors, including the fact that Mr. Monteith was using an unregistered restricted firearm with the serial number removed; the fact that the shooting occurred inside the victim's residence; the fact that he shot the victim multiple times and hit her three times; the seriousness of the victim's injuries and the lasting impact on her; and the fact that the offender Mr. Monteith has a prior criminal history that includes offences of violence and firearms.
- [14] The offence of unlawful possession of a loaded firearm, under s. 95 of the Code, is also a very serious matter, although perhaps somewhat less serious than actually discharging a firearm with intent to wound, maim, or disfigure. The statutory minimum of three years has been struck down as unconstitutional, but the Court of Appeal has since held in *R. v. Holt*, 2015 BCCA 302 that, in cases of truly criminal possession of a loaded firearm, as in the case before me, as opposed to mere regulatory infractions, a sentence of two and a half years in jail is at the low end of the range.
- [15] Again, there are multiple aggravating factors in this case, including the circumstances of Mr. Monteith's possession; the manner in which the gun was loaded; the fact that the gun had an obliterated serial number; and, again, the fact that Mr. Monteith has prior convictions for firearms offences and for offences of violence.

## Sentencing Principles

- [16] In terms of sentencing principles, I must give serious consideration to the principle of denunciation, that is, to send a message that conduct of this sort is unacceptable and will not be tolerated by the courts or the community. I must also give consideration to the principle of deterrence, that is, the need to impose a sentence that demonstrates to Mr. Monteith and to others inclined towards gun violence that, if they are caught, they are likely to receive significant punishments; usually, and in this case, very long jail sentences.
- [17] In my view, in the circumstances of this case, denunciation and deterrence are the most important considerations. Were it not for the other circumstances, to which I am about to refer, I would have had no hesitation in finding that a sentence of a much longer than six and a half years in jail would be required to address these sentencing principles. However, the two factors which cause me to temper my view and to ultimately accept the joint submission that is proposed here are: (1) the fact that the parties are proposing a joint submission as to sentence; and (2) the relative youth of the offender and the consequential importance and value of rehabilitation.
- [18] With respect to the joint submission, the Supreme Court of Canada held in *R. v. Anthony-Cook*, 2016 SCC 43 that a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. The courts have recognized that joint submissions as to sentence bring many benefits to the criminal justice system. The courts have also recognized that joint submissions, in circumstances such as these, are the product

of careful consideration by experienced counsel for both the Crown and the defence. A joint submission, such as the one presented here, represents a recognition of the strengths and weaknesses of each side's case, which are then taken into account to arrive at a recommended sentence that provides a measure of certainty and predictability in the outcome. I find that to be the case here.

- [19] Next, with respect to rehabilitation, and I want to end with this point. I recognize and emphasize again that Mr. Monteith is a young man. He has had a very difficult upbringing and he has faced challenges in terms of learning disabilities, an unstable family life, and difficulties in school and with the justice system, which have led him to this point in his life. I want to again make the point that even after serving the sentence in this matter, Mr. Monteith, you will still be a young man, and I urge you to seriously reflect on your conduct, the life choices that have led you to this point that you are at now, and whether you want to continue to go down the same road in the future. There will be programs made available to you in the penitentiary system to improve your education, to give you skills, both educational work skills, life skills. Take advantage of those programs and reflect on your conduct. Make a decision to leave prison moving in the right direction. I certainly have every reason to believe that you will benefit from that. Certainly, your family will benefit from that, and the public as a whole will benefit from that, if you leave prison moving in the right direction, determined to avoid future conflict with the law.

#### Sentence Imposed

- [20] So, having said all of that, I am accepting the joint submission. Mr. Monteith, could you stand, please.
- [21] In respect of these matters, I am sentencing you to an effective sentence of six and a half years in jail. Now, after taking into account credit for time spent in custody, the actual sentence going forward is going to be less than that, but the sentence I am imposing is an effective sentence of six and a half years in jail. Okay, sir, you can have a seat, because I am going to deal with the mechanics of it.
- [22] In terms of how this sentence is to be structured and the net sentence, by my calculations, using the figures that I have been given by counsel, six and a half years in jail comes out to 2,372.5 days, less credit of 862.5 days, which, just for the sake of the warrant of committal, if this is also required, it is 28 months and 23 days of credit (862.5 days of credit). This leaves a net sentence of 1510 days. I have converted that, at 30 days per month, into a sentence of 50 months and 10 days. That is different, Mr. Quendack, from the number that you gave, but that is because I have used 30 days per month to calculate this figure. So it is 50 months and 10 days. That is the sentence on Count Number 2.
- [23] There will be a concurrent sentence on Count Number 3, the firearms offence. And what was the concurrent sentence to be for, Mr. Quendack? The duration?
- [24] MR. QUENDACK: Sorry, My Lord. The Crown was submitting three years for that.

- [25] THE COURT: Okay. A concurrent sentence, on Count 3, of three years.
- [26] I am also imposing a lifetime firearms prohibition under s. 109(3) of the Criminal Code. And I am directing that Mr. Monteith provide a DNA sample for the DNA Databank, pursuant to s. 487.051 of the Criminal Code, this being a primary designated offence, and the order being presumptive, and there being a joint submission that that term should be made.
- [27] So those are the terms of the sentence. Again, I will just specify, on Count 2, it is 50 months and 10 days, with credit for 862.5 days of time spent in custody, and on Count 3, to make it the same, Madam Clerk, it should be 36 months, to express it in months.
- [28] THE COURT: Is there anything arising, Mr. Quendack?
- [29] MR. QUENDACK: Not with respect to that, My Lord.
- [30] MR. WESTELL: Nothing from the defence, My Lord.
- [31] THE COURT: Yes. I should also say, I will also make an order, under s. 491 of the Criminal Code, forfeiting the firearms and ammunition that were the subject of the charges in question. It is Exhibit 7-A, 7-B, 7-C, and Exhibit 10. Those are all forfeited as offence-related property under s. 491 of the Criminal Code.
- [32] So, Mr. Westell, I am not sure if I asked you, is there anything arising?
- [33] MR. WESTELL: Nothing arising, My Lord.
- [34] THE COURT: No. Okay. Mr. Monteith, please take what I have said to heart. It is a long sentence that you have got. It is not as long as it might have been had there not been a joint submission and there not been a guilty plea, so you should consider that and consider yourself to have been treated leniently in this respect. Please take what I have said to you into account and please, as I say, focus, going forward, on taking advantage of the opportunities that might be available to you in the penitentiary system. Okay, sir. Thank you.
- [35] THE ACCUSED: All right. Thanks.
- [36] MR. WESTELL: Thank you, My Lord.
- [37] MR. QUENDACK: My Lord, the Crown is directing a stay of proceedings on the remaining counts.
- [38] THE COURT: Thank you, sir.
- [39] THE CLERK: Order in court, all rise.
- "Riley J."

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