
CANADA / JUDGMENT

R. v. Mooney

2011 BCSC 1640

COURT

Supreme Court of British Columbia

DECIDED

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2011 BCSC 1640 R. v. Mooney

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Mooney,

2011 BCSC 1640

Date: 20111130

Dockets: 58443 and 58449

Registry: Chilliwack

Between:

Regina

Respondent

And

Michelle Mooney

Appellant

Before: The Honourable Mr. Justice Joyce

On appeal from: Provincial Court of British Columbia

February 10, 2011 (Abbotsford Registry Docket 71107-1 / 71347-2-C)

Reasons for Judgment

Counsel for the Appellant:

R. Dhanu

Counsel for the Respondent:

J.L. Powrie

Place and Date of Hearing:

Chilliwack, B.C.

November 25, 2011

Place and Date of Judgment:

Chilliwack, B.C.

November 30, 2011

INTRODUCTION

- [1] On November 27, 2010, the appellant pleaded guilty to one count of assault causing bodily harm, contrary to s. 267(b) of the Criminal Code of Canada, R.S.C. 1985, c. C-46. On January 28, 2011, she pleaded guilty to one count of uttering threats to cause death or bodily harm, contrary to s. 264.1 of the Criminal Code. On February 10, 2011, the appellant received a custodial sentence of six months on the assault conviction and 45 days, concurrent, on the threatening conviction, to be followed by three years probation.
- [2] In this appeal, the appellant seeks to have a conditional sentence of six months substituted for the custodial sentences. The appellant also seeks leave to introduce fresh evidence with respect to the sentencing.

FRESH EVIDENCE

- [3] The appellant sought the admission on this appeal of a letter from a psychiatrist that contains an update with regard to the appellant's mental health status since her release on bail pending the hearing of this appeal. The letter deals with the impact of incarceration on the appellant's mental health.
- [4] Counsel for the Crown took no position with respect to the application to adduce fresh evidence. I concluded the evidence was relevant and, because it deals with matters after the date of sentencing, it is not something that the appellant could have provided at the sentencing hearing. Accordingly, I admitted the evidence.

GROUND OF APPEAL

- [5] In her factum, the appellant sets out six grounds of appeal:
1. The sentence of six months of incarceration is demonstrably unfit.
 2. The sentencing judge erred in failing to give proper considerations to a conditional sentence.

3. The sentencing judge erred in placing too much weight on the protection of the public and failed to give sufficient weight to the principle of rehabilitation.
 4. The sentencing judge erred in failing to give sufficient weight to mitigating factors, namely, guilty pleas, lack of criminal record, mental health issues, difficult personal background, steps taken towards rehabilitation, remorse and willingness to continue treatment.
 5. The sentencing judge erred in placing too much weight on case law cited by the prosecutor that reflected circumstances more aggravated than the case at bar, while ignoring case law cited by the defence.
 6. The sentencing judge erred in ignoring the medical report that indicated that incarceration would be seriously deleterious to the appellant's rehabilitation due to her mental health issues.
- [6] With regard to the first ground of appeal, the appellant does not suggest that a six-month jail sentence and three years of probation is demonstrably unfit; rather, her position is that the sentence is unfit because a custodial sentence was imposed rather than a conditional sentence, which would allow the appellant to serve the jail sentence in the community.
- [7] The other grounds of appeal essentially set out the reasons why the appellant submits that the sentencing judge erred in not properly considering a conditional sentence.

BACKGROUND

- [8] The assault occurred on March 3, 2009. The appellant was a patient in the psychiatric ward of the Abbotsford Regional Hospital receiving treatment for poly-substance abuse and personality disorder. Arrangements had been made through her regular treating psychiatrist to have the appellant reside at hospital and receive treatment there, then transition into an outpatient situation. In early March 2009, her regular treating psychiatrist was away and Dr. Sidhu was filling in. On March 2, 2009, Dr. Sidhu cancelled the appellant's day pass so that she could go to work from the hospital. This upset the appellant and she became verbally abusive towards Dr. Sidhu. The appellant continued her abusive conduct the following day when she encountered Dr. Sidhu. She swore at and used abusive language towards Dr. Sidhu. Dr. Sidhu told the appellant that if she continued to use abusive language she would be discharged from hospital because she was not psychotic, suicidal or suffering from a mood disorder.
- [9] When the appellant continued her abusive conduct, Dr. Sidhu told her she was being discharged. The appellant then approached Dr. Sidhu, kicked her, pushed her off a chair and began to punch her in the face and head. The appellant threw Dr. Sidhu to the floor and continued to punch and kick her. The appellant was finally restrained by hospital staff members. The police were called and the appellant was arrested.

- [10] As a result of the assault, Dr. Sidhu suffered a tear to her right iris that disrupted her vision for months and swelling around her right eye. Hair was torn from Dr. Sidhu's scalp. She had lacerations and scrapes on her left hand and arm and knee. Dr. Sidhu also experienced pain and tenderness in her neck and headaches.
- [11] The other offence occurred when, on May 23, 2009, the appellant accused Ms. Wiltshire, the manager of a pub in Abbotsford, of having had a relationship with her boyfriend and threatened her with death or bodily harm.
- [12] The sentencing judge was provided with a pre-sentencing report, which included a psychiatric assessment, as well as letters from two other psychiatrists, including the appellant's current psychiatrist, which outlined her medical history.
- [13] The appellant was 35 years of age when she committed the offences and nearly 37 years of age when she was sentenced. She was born in Ontario and grew up in a very dysfunctional family. She reported being the victim of abuse, including sexual abuse by members of her father's family. Her father is now deceased and the appellant is estranged from her mother and other family members.
- [14] The appellant has a long history of mental health issues and apparently received various diagnoses from different psychiatrists. The one common diagnosis is Borderline Personality Disorder. The appellant moved a lot and has been hospitalized psychiatric wards in a number of Provinces. There emerges from her history a pattern of instability in her living arrangements and relationships with others. She often had problems with her temper and mood, and frequently became involved in altercations with family members and co-workers, although it is significant that there is no indication that these were of a violent nature.
- [15] Despite the fact that the appellant has, at times, lived a rather transient lifestyle, had difficulty interacting with other people, and struggled with mental health issues, she was able to graduate from high school and completed a three-year business course. She has also been able, at times, to maintain employment in the food service industry for significant periods of time.
- [16] The appellant has never married and has no children. At the present time, she is not involved in any intimate relationship.
- [17] The appellant is currently living in Nanaimo, where she used to work for a hotel in the catering department. She no longer has that employment, for reasons that are not known to me. At present, I believe that her current source of income is a CPP disability pension. She is under the care of a psychiatrist, Dr. Wiggers, who indicated that the appellant is compliant with her medications and seems to be stable.
- [18] At the sentencing hearing, the Crown took the position that the appropriate sentence was a global sentence of one year in custody followed by three years probation. The defence sought a suspended sentence and probation, or, in the alternative, a conditional sentence.

DECISION OF THE SENTENCING JUDGE

[19] After reviewing the circumstances of the offences and the positions of the parties, the sentencing judge referred at paras. 7-9 to the mitigating factors relied on by the defence:

7 The defence has outlined a number of mitigating factors, including the guilty pleas and his client's lack of criminal history; the only previous one that she has is an impaired driving. Ms. Mooney has had a difficult personal history which has resulted in a history of mental health issues. She has been diagnosed with personality disorder.

8 Counsel has pointed to a number of positive steps she has taken since being placed on a recognizance. She has secured employment and she has continued to receive psychiatric care. Counsel, on behalf of Ms. Mooney, also says that she is remorseful for her actions. He has provided the court with the report of Dr. Altman, dated October 5th, 2010. Her father died in May of 2009, two months after the assault on Dr. Sidhu. According to Dr. Altman, Ms. Mooney shows remorse about the assault on the physician, explaining that she lost control and regrets that kind of action. She says she would like to continue with her counseling.

9 I have also read the reports of Dr. Joris Wiggers, dated December 14th, 2010 and January 21st, 2011. Dr. Wiggers has diagnosed Ms. Mooney with post-traumatic stress disorder, borderline personality disorder, depression, and has made a handwritten addition of bipolar disorder. Dr. Wiggers is concerned that incarceration would be very stressful for Ms. Michelle Mooney. Dr. Wiggers points to her employment, her stable housing situation and support in the community. She now avoids alcohol and drugs. She is now working with her psychiatrist and taking her medications. He offers the following opinion, that Ms. Mooney is likely to suffer greatly if imprisoned and her particular personality style, prior history of violence and past trauma all make her especially vulnerable to confinement. She is described as being at a high risk of violence directly outwardly or inwardly if imprisoned.

[20] The sentencing judge dealt with the issue of remorse at para. 11 of his Reasons:

11 As to the issue of remorse, Ms. Mooney reported to the doctor that she did not know what injuries Dr. Sidhu had suffered. I'm referring to the report of Dr. Latorre dated February 2nd of 2010. He told her the report indicated rather extensive injury to the right eye and injuries to the scalp, neck, left hand, left elbow and both knees, and also reported the ongoing difficulties and the loss of income that Dr. Sidhu had been experiencing. In response to the list of injuries, Ms. Mooney volunteered, "She has no idea what injuries I suffered. Put her out on the street. Someone like her would have no idea what it's like. She is the professional. You don't throw someone out like that with no medication."

[21] The sentencing judge then referred to two cases cited by the Crown, *R. v. Rauner*, [2008] B.C.J. No. 993 (Prov. Ct.); and *R. v. J.F.S.*, [2005] B.C.J. No. 511 (Prov. Ct.), and specifically, to passages in those cases that spoke of the need, in some circumstances, to emphasize protection of the public by separating offenders from society over rehabilitation. In both of those cases the sentencing judges concluded that Federal sentences were required because

of the seriousness of the offences and the offenders' criminal records, so conditional sentences were not an option.

[22] The learned sentencing judge then stated at para. 14:

14 It is difficult to assess from where I'm sitting, the level of remorse Ms. Mooney has for her actions. What is far easier to assess is the physical damage and the traumatic effect it had on the victim, Dr. Sidhu. Also, Ms. Mooney's violent actions must have had a traumatic effect on the medical staff which had to intervene to prevent further injury being inflicted upon Dr. Sidhu. In my view, it's not part of the job description of nurses to try and assist doctors who have been assaulted or are being assaulted by their patients. In any event, they were presented with a situation where they had to act This is not a situation where the assailant realizes they have gone overboard in attacking someone and come to their senses and stop, knowing they have inflicted serious physical harm to another person. As I have said, it took the intervention of five nurses to stop the inexcusable assault on a defenceless victim.

[23] He then stated, in the next paragraph, his conclusion as to the appropriate sentence:

15 Having considered the facts of these two incidents, the Presentence Report and psychiatric reports, the relevant case law, the sentencing provisions of the Criminal Code and the submissions of counsel, I have concluded that a fit and proper sentence on the assault causing bodily harm of Dr. Sidhu is six months incarceration. On the threatening conviction, there will be 45 days concurrent.

DISCUSSION

1. Standard of Review

[24] With regard to the standard of review, I refer to what was said in *R. v. L.M.*, 2008 SCC 31 at para. 14:

14 In its past decisions, this Court has established that appellate courts must show great deference in reviewing decisions of trial judges where appeals against sentence are concerned. An appellate court may not vary a sentence simply because it would have ordered a different one. The court must be "convinced it is not fit", that is, "that ... the sentence [is] clearly unreasonable" (*R. v. Shropshire*, [1995] 4 S.C.R. 227, at para. 46, quoted in *R. v. McDonnell*, [1997] 1 S.C.R. 948, at para. 15). This Court also made the following comment in *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, at para. 90:

... absent an error in principle, failure to consider a relevant factor, or an overemphasis of the appropriate factors, a court of appeal should only intervene to vary a sentence imposed at trial if the sentence is demonstrably unfit.

2. Failure to consider evidence of the deleterious effect of incarceration on this offender and weight given to the various sentencing factors

- [25] Counsel for the appellant argues that the sentencing judge gave too little weight to the mitigating factors and failed to consider the medical evidence with regard to the deleterious effect that incarceration would have on the appellant. While he did not discuss these matters in any depth, with the exception of the issue of remorse, the sentencing judge specifically referred to the mitigating factors relied on by defence counsel and referred to the steps that the appellant had taken towards her rehabilitation prior to sentencing, including securing a residence and full-time employment as well as receiving regular psychiatric care.
- [26] The sentencing judge did not ignore the issue of remorse; he found that he could not conclude on the evidence that was before him whether or not that mitigating factor was present. I cannot say he erred in that regard.
- [27] The sentencing judge also expressly referred to the medical opinion with regard to the effect that incarceration would have on the appellant.
- [28] It is not for the appellant court to substitute its view of the amount of weight that should be given to the various factors that are to be taken into account in sentencing for those of the sentencing judge, unless it can be said that there is an error of principle.

3. Failure properly to consider a conditional sentence

- [29] The appellant submits that the sentencing judge's reasons or lack of reasons demonstrate an error in principle in failing to give proper consideration to whether a conditional sentence would be a fit and proper sentence in these circumstances.
- [30] When considering the applicability of a conditional sentence, the sentencing judge must be guided by, amongst other things, the principles set out in 718.2(d) and (e) of the Criminal Code, which state:
- (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances" and;
 - (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders.
- [31] The conditional sentence provisions of the Criminal Code in force and applicable in this case read as follows:

742.1 Where a person is convicted of an offence, except an offence that is punishable by a minimum term of imprisonment, and the court

- (a) imposes a sentence of imprisonment of less than two years, and
- (b) is satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2,

the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the offender's complying with the conditions of a conditional sentence order made under section 742.3.

[32] If the first three prerequisites are satisfied - (1) no mandatory minimum; (2) a sentence of less than two years; and (3) serving the sentence in the community would not endanger the safety of the community - the sentencing judge must give serious consideration to whether a conditional sentence would be appropriate. As Lamer C.J.C. stated in *R. v. Proulx*, 2000 SCC 5 at para. 90:

90 ... a consideration of ss. 718.2(d) and 718.2(e) leads me to the conclusion that serious consideration should be given to the imposition of a conditional sentence in all cases where the first three statutory prerequisites are satisfied.

[33] In the present case, there is no question that the first two prerequisites are satisfied.

[34] With regard to whether serving the sentence in the community would or would not endanger the community, the sentencing judge did not articulate his findings of fact with any degree of clarity. He referred to and quoted from two cases where the court emphasized deterrence and safety of the public over rehabilitation, but leaves the reader to infer that he considered those cases to be similar to the case he was dealing with. However, those cases dealt with offenders with lengthy criminal records and more egregious circumstances. The respondent submits that the Reasons disclose three concerns about the safety of the community from which one can conclude that the sentencing judge determined that a conditional sentence would endanger the community:

- (a) the appellant was being sentenced for two offences;
- (b) the sentencing judge was unable to find that the appellant was remorseful; and
- (c) the sentencing judge was concerned that the appellant was unable to stop herself.

[35] While those matters were mentioned by the sentencing judge, he does not indicate whether it is any one of them in particular or the combination that leads him to find that the community would be unsafe if the appellant were to serve her sentence in the community. Indeed, it is unclear whether he rejected a conditional sentence on the basis of the safety of the community or because he concluded that a conditional sentence would not be "consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2, which is the final step of the analysis that is required.

[36] Having referred to the two cases the sentencing judge simply says, in conclusory language, that he has considered the circumstances of the offences, the evidence presented at the hearing, the law and the submissions of counsel and then pronounces his sentence. He does not say how he has considered those things and does not tell us why he is rejecting a conditional sentence.

[37] Of even greater concern, in my view, is the failure by the sentencing judge to say why the conditions that could be attached to a conditional sentence would not be able to reduce the risk to an acceptable level. That is a necessary part of the analysis that the sentencing judge was required to undertake. In Proulx at para. 72, the Court said:

72 The risk of re-offence should also be assessed in light of the conditions attached to the sentence. Where an offender might pose some risk of endangering the safety of the community, it is possible that this risk be reduced to a minimal one by the imposition of appropriate conditions to the sentence.

[38] The failure to undertake that assessment is an error in principle (*R. v. Veranski*, 2010 BCCA 211 [Veranski] at para. 31; and *R. v. Jilg*, 2010 BCSC 1476 [Jilg] at paras. 56-57).

[39] I find, therefore, that the learned sentencing judge erred in principle in not properly considering the availability and appropriateness of a conditional sentence.

5. Should this court impose a Conditional Sentence?

[40] Having found that the learned trial judge committed an error in principle in failing properly to consider a conditional sentence, it is open to this court to consider whether a conditional sentence, with appropriate conditions, would reduce the risk of endangering the public to an acceptable level and would be consistent with the purpose and principles of sentencing set out in sections 718 to 718.2 of the Criminal Code.

[41] In assessing whether a conditional sentence would endanger the safety of the community two factors must be considered: (1) the risk of the offender re-offending; and (2) the gravity of the damage that could ensue in the event of re-offence (Proulx at para. 69).

[42] With regard to the risk of re-offending, the Court in Proulx said at paras. 70-72:

70 A variety of factors will be relevant in assessing the risk of re-offence. In Brady [*R. v. Brady* (1998), 121 C.C.C. (3d) 449], at paras. 117-27, Fraser C.J.A. suggested that consideration be given to whether the offender has previously complied with court orders and, more generally, to whether the offender has a criminal record that suggests that the offender will not abide by the conditional sentence. Rousseau-Houle J.A. in Maheu [*R. v. Maheu* (1997) 116 C.C.C. (3d) 361 (C.A.)], at p. 374 C.C.C. enumerated additional factors which may be of relevance:

[TRANSLATION] ... 1) the nature of the offence, 2) the relevant circumstances of the offence, which can put in issue prior and subsequent incidents, 3) the degree of participation of the accused, 4) the relationship of the accused with the victim, 5) the profile of the accused, that is, his [or her] occupation, lifestyle, criminal record, family situation, mental state, 6) his [or her] conduct following the commission of the offence, 7) the danger which the interim release of the accused represents for the community, notably that part of the community affected by the matter.

71 This list is instructive, but should not be considered exhaustive. The risk that a particular offender poses to the community must be assessed in each case, on its own facts. Moreover, the factors outlined above should not be applied mechanically. ...

72 The risk of re-offence should also be assessed in light of the conditions attached to the sentence. Where an offender might pose some risk of endangering the safety of the community, it is possible that this risk be reduced to a minimal one by the imposition of appropriate conditions to the sentence.

- [43] With regard to the gravity of the damage in the event of re-offending the Court in Proulx recognized that, particularly in the case of violent offenders, a small risk of very harmful future crime may warrant a conclusion that the prerequisite is not met (Proulx at para. 74).
- [44] In Veranski, the Court observed, at para. 40, that, support may be found for the conclusion that a conditional sentence will not pose a danger to the community if the offender has spent a lengthy time on bail in the community without incident.
- [45] In the present case, counsel for the Crown points to four factors in submitting that the appellant poses a danger to the community if she serves her sentence in the community: (1) she committed two offences in a short period of time; (2) the assault was serious and resulted in serious injury to the victim; (3) the appellant was unable to stop herself during the assault; and (4) the appellant is not truly remorseful.
- [46] It is true, of course, that the appellant committed two offences involving violence and the threat of violence. On the other hand, until that point, she had no record for violent offending despite the difficulties she faced as a result of her family background and, especially, her mental illness. In addition, she was on bail for nearly two years without incident before she was sentenced and has been on bail pending this appeal for some eight months without incident. Those lengthy periods when the appellant has abided by conditions of release without incident are significant, in my view.
- [47] Clearly, the appellant had no justification for committing either offence, but they should be viewed in the context of the surrounding circumstances. The appellant appears to have lashed out at Dr. Sidhu because she felt aggrieved at Dr. Sidhu having discharged her from the hospital, cutting off her psychiatric treatment and leaving her with no place to live. It was in that desperate situation that the appellant reacted in what was, obviously, a very violent manner. When she was released on bail, the appellant was in the position of being "flagged" by the Abbotsford hospital making it difficult for her to obtain treatment. She was de-stabilized in terms of her emotional state when she got into the altercation with the manager in the pub. Fortunately, on that occasion, her actions were confined to verbal attacks and threats rather than actual violence.
- [48] The appellant has a long history of instability, but not of actual violence. I do not see these two occasions, viewed in their context, as establishing a pattern of escalating violence, which would give real concern for her future conduct in the community.

- [49] I agree with the sentencing judge that it is difficult to say what level of remorse the appellant actually feels. She understands that her actions were wrong and she regrets them, but she still projects a degree of responsibility on Dr. Sidhu for placing her in the position where she acted out of frustration and desperation. However, it must be recognized that ultimately, the appellant accepted responsibility for her actions by pleading guilty to these two offences. Further, lack of remorse will not necessarily bar a conditional sentence (see Jilg).
- [50] It appears to me that the root cause of the appellant's problems is her mental health. When she receives suitable medical treatment, including prescribed medication and is in a stable environment as to housing and employment, she can function quite well and is not a risk to others. When those elements are missing, she can pose a danger to the community. Her treating psychiatrist opined, prior to the sentencing, that incarceration, would be deleterious to her emotional state and place her "at high risk for violence directed outwardly or inwardly". That indeed appears to have been the result. Her treating psychiatrist reported that her mental condition worsened dramatically after she was incarcerated and, that since her release on bail, she is beginning to recover.
- [51] In terms of the risk to the public that the appellant poses, the ultimate protection lies in her being able to deal effectively with her mental health issues and to create an environment where she has stable housing and employment. If she is incarcerated, those prospects will be unattainable for some time.
- [52] The risk of reoffending can never be completely eliminated, but I believe that a conditional sentence with stringent conditions will reduce the risk to an acceptable level and will not endanger the community.
- [53] With regard to the other principles of sentencing, I accept that denunciation and deterrence are important factors to consider. However, the courts, including the Supreme Court of Canada, have held that a conditional sentence with stringent conditions can achieve those principles, particularly if the length of the conditional sentence is increased over that which might be imposed in a custodial sentence.
- [54] Further, while denunciation and deterrence are important considerations, this is not a case where, in my view, rehabilitation should be abandoned. As I have said, it is my view that the appellant's mental health issues are at the heart of the problem. A conditional sentence, with the requirement to undertake appropriate medical treatments, attend violence prevention programs, maintain consistent housing and search out and maintain employment, is much more likely to benefit both society and this offender than is a short custodial sentence. In addition a curfew, provision in the conditional sentence can address the issue of the separation of the appellant from society and the safety of the community.
- [55] I conclude, therefore, that the requirements for the imposition of a conditional sentence are met in this case and that such a sentence is a fit and proper sentence.

DISPOSITION

[56] I therefore allow the appeal, set aside the sentence imposed below and substitute for it:

- (1) A sentence of nine months, to be served as a conditional sentence, for the conviction for assault causing bodily harm, and
- (2) A sentence of 3 months, to be served as a conditional sentence, for the conviction for uttering threats, to be served concurrently.

[57] Both sentences will begin to run from the date of this judgment.

[58] The conditional sentences will be subject to the following conditions:

- (1) To keep the peace and be of good behaviour;
- (2) To appear before the Court when required to do so by the Court;
- (3) To report to a Conditional Sentence Supervisor within two working days and thereafter, when required by the Conditional Sentence Supervisor and in the manner directed by the Conditional Sentence Supervisor, and, in any event, not less than once every two weeks;
- (4) To remain within British Columbia unless written permission to go outside of British Columbia is obtained from the Conditional Sentence Supervisor or the Court;
- (5) To notify the Court or Conditional Sentence Supervisor in advance of any change of name or address and promptly notify the Court or Conditional Sentence Supervisor of any change of employment or occupation;
- (6) Not to have any contact or communication, directly or indirectly, with Parmjit Sidhu, Wendy Wiltshire and David Stewart;
- (7) Not to attend at places known to the appellant where Parmjit Sidhu, Wendy Wiltshire or David Stuart reside, work or attend school;
- (8) To abstain from the consumption of alcohol or drugs as defined by the Controlled Drugs and Substances Act, S.C. 1996, c. 19, except in accordance with a medical prescription;
- (9) Not to own, possess or carry any weapon within the meaning of the Criminal Code;
- (10) To abstain from possessing any knives, except for the purpose of the consumption or preparation of food or during the course of lawful employment or volunteer activities;
- (11) To abide by a curfew from the hours of 8:00 p.m. until 6:00 a.m. daily except for the purpose of:
 - (a) attending for any scheduled medical treatments or counselling;
 - (b) attending for emergency medical treatments;

- (c) attending at any programs or activities as directed by the Conditional Sentence Supervisor;
and
- (d) attending at and travelling to and from employment.
- (12) To reside at a residence approved by the Conditional Sentence Supervisor;
- (13) The appellant must present herself at the door of her residence upon demand by a peace officer or Conditional Sentence Supervisor in order to ensure compliance with the curfew;
- (14) To attend any counselling and programs as directed by the Conditional Sentence Supervisor;
- (15) At the direction of the Conditional Sentence Supervisor, to attend from time to time upon Dr. Joris Wiggers for the purpose of receiving such medical treatment and counselling as may be recommended, except that the appellant shall not be required to submit to any treatment or medication to which she does not consent;
- (16) If the appellant does not consent to the form of medical treatment or medication prescribed or recommended, she must notify the Conditional Sentence Supervisor immediately;
- (17) The appellant must provide her treating physicians with a copy of this Order and the name, address and telephone number of her Conditional Sentence Supervisor;
- (18) The appellant must instruct her treating physicians that if she fails to take medications as prescribed by them, or fails to keep appointments with them, they are to advise her Conditional Sentence Supervisor immediately.
- [59] In addition to the terms of the Conditional Sentence, I believe that the three-year probation order made by the learned Provincial Court Judge will assist the appellant with her rehabilitation and that order will remain.
- [60] The firearms prohibition order made under s. 109 of the Criminal Code and the DNA order made under s. 487.051 of the Criminal Code will also remain in force.

"B.M. Joyce J."

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