

CANADA / JUDGMENT

## R. v. Morgan

2023 BCSC 2236

### COURT

Supreme Court of British Columbia

### DECIDED

20 November 2023

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2023 BCSC 2236 R. v. Morgan

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Morgan,

2023 BCSC 2236

Date: 20231120

Docket: 77363-2

Registry: Prince George

Rex

v.

Brent Jameson Morgan

Before: The Honourable Justice A. Ross

Oral Reasons for Sentence

Counsel for the Crown:

R. Roach

Counsel for the Defence:

J. Michi

Place and Date of Trial/Hearing:

Prince George, B.C.

November 20, 2023

Place and Date of Judgment:

Prince George, B.C.

**November 20, 2023**

- [1] THE COURT: For the sake of expediency, I am delivering these reasons orally. Should either party request a copy of the reasons, I reserve the right to edit them for grammar and syntax. The result will not change.
- [2] Brent Morgan is before the court today for sentencing on two counts:
- a) flight from a police officer, and
  - b) dangerous driving.
- [3] The charges relate to an incident on October 22, 2022. Crown seeks a period of incarceration of three to four years plus ancillary orders. Defence submits that a term of two years would be appropriate. The defence does not take issue with the Crown's proposed ancillary orders. For the reasons set out below, I am imposing a sentence of two and a half years, or 912 days imprisonment.
- [4] There is no dispute on the factual underpinning of the charges. On October 22, 2022, at approximately 1:30 a.m., Constable Kepke of the Prince George RCMP observed a red Chevrolet Cavalier bearing licence plate BW7 56W parked at 7605 Gladstone Drive, as well as a white Acura MDX with licence plate LD1 79A. The local RCMP were aware that the Cavalier was associated to Angeline Hammerstrom and had the vehicle under watch for some time. Constable Kepke set up surveillance on the Cavalier and notified other members of the detachment to provide blocks at other potential points of exit for the vehicles.
- [5] At approximately 2:30 a.m., Constable Kepke observed the Cavalier and Acura travelling northbound on Gladstone with the Cavalier driving close behind the Acura. The driver of the Acura was later identified as Brent Morgan and the passenger was Angeline Hammerstrom.
- [6] Constable Kepke activated emergency lights and initiated a traffic stop. The two vehicles initially slowed or stopped, but both vehicles then took off together at a high rate of speed down Fairmont Crescent. Constable Kepke advised other members over the air. He pulled over and deactivated his emergency equipment. He noted that the road the vehicles had driven down looped back to a nearby location to which Constable Kepke drove. He positioned his vehicle to block that traffic. A few minutes later Constable Kepke reacquired the white Acura at the intersection of Fairmont and Simon Fraser. Constable Kepke attempted to conduct a traffic stop with the Acura. The Acura proceeded to ram the front end of Constable Kepke's vehicle in an effort to escape.
- [7] At 2:33 a.m., Constable Kepke declared a pursuit and followed the suspect vehicle into the St. Lawrence Avenue and Southridge area of Prince George. Constable Kepke observed the vehicle to be driving over curbs, into yards, in the wrong direction for traffic of its lane, and

through stop signs. Constable Kepke followed the Acura onto St. John Crescent where it drove onto the grass at the front of a home. Constable Kepke attempted to block the Acura in, but Mr. Morgan drove through several trees in the yard and onto an adjacent driveway where he struck two vehicles. Constable Kepke approached the Acura with his gun drawn, stating that the driver was under arrest. Mr. Morgan reversed the Acura, hitting a lamp standard, then rammed the police vehicle, nearly hitting Constable Kepke in the process. At that point Constable Kepke's cruiser was undriveable. He radioed for assistance in the pursuit. The Acura was reacquired on Domano Boulevard where a spike belt was successfully deployed, and ultimately the vehicle was stopped on Moriarty Crescent by other officers. Both Mr. Morgan and Ms. Hammerstrom were arrested and held for court pending a variety of charges.

[8] I am informed by the Crown that the physical damage consisted of the destruction of one police cruiser, plus damage to the two vehicles struck in the driveway totalling \$1,086. (That being the amount of the deductible paid by the owners of the two civilian vehicles.) I note that the total damage/repairs to the two civilian vehicles were, in fact, in excess of \$13,000. As discussed below, the Crown seeks a restitution order in the amount \$1,086.

[9] There were originally four counts on the indictment. Mr. Morgan has pled guilty to Counts 2 and 3. Those charges are:

Count 2: Brent Jameson Morgan, on or about the 22nd day of October, 2022, at or near Prince George, in the Province of British Columbia, while operating a motor vehicle while being pursued by a peace officer, did fail, without reasonable excuse, to stop the motor vehicle as soon as was reasonable in the circumstances, contrary to Section 320.17 of the Criminal Code.

Count 3: Brent Jameson Morgan, on or about the 22nd day of October, 2022, at or near Prince George, in the Province of British Columbia, did operate a conveyance in a manner that, having regard to all of the circumstances, was dangerous to the public, contrary to Section 320.13(1) of the Criminal Code.

[10] I note that at the request of the accused, this sentencing hearing came on rather precipitously. By that I mean that the matter was scheduled to proceed to trial today. Defence counsel received instructions to enter a guilty plea last week. As a result, there is no presentence nor Gladue report. The accused wishes to proceed to sentencing. Hence, the information below is based upon submissions of counsel which, in turn, were provided by Mr. Morgan.

[11] As to the background of the accused, Mr. Morgan is 32 years old. He is of Indigenous ancestry, his mother being Indigenous. He did not know his father. He spent the majority of his childhood in the care of the Ministry. He has two older and one younger sister. He is only in contact with the one sister, and she is a support to him. Mr. Morgan was born and raised in the Lower Mainland. He has a grade 9 education. He has worked in several fields, mostly construction related, including siding, log homes, and agriculture of some sort.

[12] He has a number of prior convictions which I outline below. Mr. Morgan acknowledges that he has a problem with drugs, in particular methamphetamines. He also acknowledges that he has attempted rehabilitation on several occasions with only limited success. Most recently he obtained release from custody on the current charges in order to attend a rehab facility in May 2023. That attempt failed fairly quickly, and he walked away from that facility. He notes that he had fair success some 10 years ago after attending the Sunrise program for Indigenous users in Calgary. Following that stint, he was sober for about a year. Counsel notes that there were no convictions between 2014 and 2020, and counsel credits the success at Sunrise for that gap.

[13] Defence counsel submits that upon his release, Mr. Morgan intends to relocate to the Lower Mainland and connect with an Alcoholics Anonymous group, as well as pursuing an outpatient drug rehab program. Counsel also notes that Mr. Morgan intends to write a letter of apology to Constable Kepke. The Crown submits that this is of little or no weight.

[14] I now turn to the principles of sentencing. Those principles are set out in s. 718 of the Criminal Code, R.S.C. 1985, c. C-46:

718 The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

[15] Both counsel agree that in this case the considerations of deterrence and denunciation are primary in large part because of the danger to the officers involved, particularly Constable Kepke, and the potential for injury or death to members of the public. There is no dispute that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Further, a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

- [16] There are further principles that are particular to Aboriginal offenders. As noted, Mr. Morgan identifies as Indigenous through his mother. He has had little exposure to his Indigenous culture. His counsel submits that I can take judicial notice of the effects of colonialism on his family. The Crown does not dispute that submission and I accept it. In this case the defence submits that the Gladue considerations, in addition to Mr. Morgan's unfortunate upbringing, are mitigating factors. I discuss that submission below.
- [17] Although s. 718.2(e) of the Criminal Code mandates that all available sanctions other than imprisonment should be considered for all offenders with particular attention to the circumstances of Aboriginal offenders, the defence does not submit that these are offences which should attract a conditional sentence or other non-incarcerative punishment.
- [18] I am addressing the process for sentencing Aboriginal offenders articulated by the Supreme Court of Canada in the decisions of *R. v. Gladue*, [1999] 1 S.C.R. 688, 1999 CanLII 679; and *R. v. Ipeelee*, 2012 SCC 13. Systematic and background factors are relevant to the extent that they may bear on the moral culpability of the accused, while the types of appropriate sanctions may be relevant to the effectiveness of a proposed sentence. The seriousness of an offence does not relieve the court from its duty to consider s. 718.2(e) of the Criminal Code when sentencing an Aboriginal offender.
- [19] As to aggravating and mitigating factors in this case, the Crown submits that the aggravating factors are the violence of the offences, the risk posed to the life and health of Constable Kepke and the public, and Mr. Morgan's prior record. The defence submits that the mitigating factors are the guilty plea, the Gladue factors, and Mr. Morgan's unfortunate upbringing.
- [20] Defence counsel also submits that I should consider Mr. Morgan's relative youth (his age at 32), plus his remorse as indicated by his offer to write an apology to Constable Kepke. In my opinion, neither of these last two factors is mitigating. Mr. Morgan is not a young man. He has been in trouble before. He knows the consequences of his acts. To be frank, I give no weight to an offer to write an apology to Constable Kepke.
- [21] I now turn to the submissions of counsel on the law.
- a) The Crown relies on three cases: *R. v. Sawchuk*, 2019 BCPC 381; *R. v. Suel*, 2010 BCSC 1054; and *R. v. Zaworski*, 2020 BCPC 46.
- b) The defence relies on two cases: *R. v. Louis Morgan*, 2020 BCSC 1397 (that "Morgan" is no relation to the current offender); and *R. v. McAlpine*, 2020 BCPC 183.
- [22] All cases are, of course, fact specific. The primary defence submission is that the sentence range sought by the Crown exceeds the sentence given to a person convicted of dangerous driving where a person died. The defence submits that the facts in the present case are less serious and the Crown's submission is not proportionate given the circumstances of Mr. Morgan.

- [23] In Sawchuk, the offender was being sentenced following a trial wherein he was convicted of a variety of offences, including flight from police and assault of a police officer with a hammer and a motor vehicle. I note that the court accepted that Mr. Sawchuk had no specific intention to injure anyone, but such an outcome was readily foreseeable given his actions. That case is similar to this. Judge Sheard in that case sentenced Mr. Sawchuk to a global sentence of four and a half years. As noted, there were a number of counts but each of the counts of flight from an officer and dangerous driving received a sentence of two years.
- [24] In Suel, the offender received a sentence of four and a half years imprisonment for charges of dangerous driving and flight from an officer. I accept that the facts in Suel were more egregious than Mr. Morgan's facts, particularly because the event took place at noon, in and around Chilliwack, and resulted in a 20-kilometre chase by police with shots being fired by police in a strip mall parking lot.
- [25] In Zaworski, Judge Malfair outlined the ranges of appropriate sentences for similar charges. Mr. Zaworski received two years for dangerous driving and two years for flight from an officer.
- [26] The Crown notes that Mr. Morgan has significant prior offences dating back to 2011 when he was approximately 20 years old. Of particular note, in 2019 Mr. Morgan received a jail term of 540 days for dangerous operation of a vehicle. The Crown submits that a sentence of three to four years would be an appropriate "step up" in that range of sentencing. Counsel notes that Constable Kepke avoided serious injury only by his own devices and not by any step taken by Mr. Morgan.
- [27] In response, the defence submits that the sentence sought by the Crown is not proportional to other more serious offences.
- [28] As noted, the Louis Morgan decision involved the offender receiving a sentence of two years in a case where there was dangerous driving causing death. I note that that case did not involve a pursuit by police. Further, the deceased was the offender's sister which may have had a mitigating effect on the judge.
- [29] In McAlpine, the offender pled to a number of counts. Hence, it is difficult to isolate a particular range for the offences of flight from an officer and dangerous driving given the principle of totality. However, that case involved a deliberate ramming of a police vehicle. Mr. McAlpine was 33 years old, an Indigenous male, and had 51 prior convictions, as well as a substance abuse problem. The judge in that case imposed a sentence of 615 days plus time credited.
- [30] I have considered the circumstances of Mr. Morgan and reviewed the cases submitted by counsel. In short, I accept the following submissions from the Crown:

- a) first, that no officer should risk life or serious injury by the actions of an offender like Mr. Morgan;
- b) second, that deterrence and denunciation in such cases are primary considerations;
- c) third, that it is appropriate to have a step up in the punishment meted out to Mr. Morgan with the starting point being his 2019 conviction for dangerous driving.

[31] From the defence, I accept the submissions that:

- a) Mr. Morgan's upbringing and Indigenous ancestry have the effect of reducing his moral blameworthiness; and
- b) the sentence sought by the Crown in this case is not proportionate to other cases given Mr. Morgan's circumstances.

[32] In respect of the last point, in my opinion the sentence sought by the Crown (of three to four years) would be appropriate without the specific circumstances of Mr. Morgan. I find that his unfortunate upbringing and, in particular, the considerations of the Gladue principles lower the appropriate range of sentence in this case because it lowers his moral blameworthiness.

[33] Mr. Morgan, would you please stand.

[34] Mr. Morgan, on the basis of my assessment above, I sentence you to a period of two-and-a-half years incarceration, which I calculate to be 912 days. I note that you have served a total of 312 days. With credit at time and a half, you are entitled to credit of 468 days. I will ask counsel following these reasons to confirm my calculations.

[35] Mr. Morgan, I also prohibit you pursuant to s. 320.24 of the Criminal Code from driving in British Columbia for a period of three years from today's date.

[36] Pursuant to s. 738 of the Criminal Code, I order that you pay restitution in the amount of \$1,086 to the owner of the two damaged trucks.

[37] Pursuant to s. 110(1)(a) of the Criminal Code, I prohibit you from possessing any weapons for the next 10 years. That prohibition includes firearms, restricted firearms, crossbows, restricted weapons, ammunition and explosives.

[38] Mr. Morgan, I hope that you will take advantage of the programs available during your incarceration, particularly in respect of drug rehabilitation. I am confident that, sober, you can be a contributing member of society and not be involved in these courts any longer. All right?

[39] Anything arising? Ms. Roach.

[40] THE CLERK: Counts 1 and 4?

[41] THE COURT: What is that?

[42] THE CLERK: Counts 1 and 4?

[43] THE COURT: Oh. Thank you for that, Madam Registrar. Counts 1 and 4?

[44] CNSL R. ROACH: Crown directs a stay of proceedings with respect to those counts.

[45] THE COURT: Thank you. You can have a seat. Thank you, Mr. Morgan. So directed stay on one and four.

"A. Ross J."

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