

CANADA / JUDGMENT

R. v. Munton

2019 BCSC 224

COURT

Supreme Court of British Columbia

DECIDED

25 January 2019

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2019 BCSC 224 R. v. Munton IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Munton, 2019 BCSC 224 Date: 20190125 Docket: 51113-2 Registry: Vernon Regina v. William Murray Phelps Munton Restriction on publication: Pursuant to s. 486.5(1) of the Criminal Code, R.S.C. 1985, c. C-46. Before: The Honourable Mr. Justice Macintosh Oral Reasons for Sentence Counsel for the Crown: Juan M. O'Quinn Counsel for the Accused: Julian M. van der Walle Place and Date of Hearing: Vernon, B.C. January 25, 2019 Place and Date of Sentencing: Vernon, B.C. January 25, 2019

- [1] These reasons for sentence should be read with the submissions of the Crown and the defence, made to me earlier this afternoon. Because I have received a joint sentencing submission, which I will address below, these reasons will be relatively brief.
- [2] Mr. Munton has pleaded guilty to seven counts of arson committed in the Vernon area between June 9, 2014 and July 21, 2014, and on October 16, 2014.
- [3] He is 57. He has no criminal record apart from the convictions before me.
- [4] The Crown and the defence submit that the principle of concurrent sentencing can have application, in keeping with the reasoning of the New Brunswick Court of Appeal in R. v. Daye, 2010 NBCA 53. The point is arguable, but I am prepared to accept the joint submission and find that a concurrent sentence can be given.
- [5] The joint submission for sentence is 36 months in custody, concurrently on all counts, less time served. That sentence is at the low end of the available range, particularly given that one of the fires destroyed Vernon's historic Kin Race Track. None of the fires is insignificant, and Mr. Munton was simply very fortunate that two boys at one location were uninjured, and that two of the fires did not destroy the sites where the fires were set.
- [6] However, as I have noted, Mr. Munton has no criminal record, and he appears, from the letters in Exhibit 1 on the sentencing hearing, to be someone ordinarily having good character, and broad support from family and friends. I accept the defence submission as to the other factors named as mitigating factors.

- [7] The Crown presented four decisions, two from this Court and two from our Court of Appeal, showing that a three-year sentence is within the available range, albeit, as I have said, at the low end.
- [8] Perhaps most important in this case is that experienced counsel have presented the Court with their joint submission. The Supreme Court of Canada has spoken clearly on the advisability of the sentencing court ordinarily accepting such submissions, see *R. v. Anthony-Cook*, 2016 SCC 43. I find that the public interest test expressed there for a court accepting a joint submission is satisfied. The four case authorities addressing sentences for arson, mentioned above, the absence of a prior criminal record and the avoidance of a long, difficult, and uncertain trial with respect to several of the counts, satisfy me that the proposed sentence, in the eyes of a fully informed person, does not bring the administration of justice into disrepute. That is the governing test.
- [9] I will address the counts as the Crown did, in descending order of seriousness. Count 14 addresses the Kin Race Track grandstand fire. The sentence is 36 months in custody, plus a DNA order under s. 487.051 of the Criminal Code, R.S.C. 1985, c. C-46, and a mandatory weapons prohibition for 10 years under s. 109 of the Code.
- [10] For Count 15, which concerns the fire destroying apple crates, and my recollection from the sentencing submissions is that approximately 2,000 crates were destroyed, the sentence is 36 months in custody, to be served concurrently with the sentence imposed for Count 14. Again, there will be a DNA order and a weapons prohibition.
- [11] For Count 9, which is the burning of the Bayliner boat owned by Mr. Munton's forgiving friend, who wrote a letter of support in Exhibit 1, the sentence is 12 months in custody, to be served concurrently with the sentence for Count 14, with a DNA order and a weapons prohibition.
- [12] For Count 10, involving the RV in storage, the sentence is 12 months in custody, to be served concurrently with the sentence for Count 14, plus the DNA order and the weapons prohibition.
- [13] For Count 11, addressing the Chevrolet Lumina, the sentence is six months in custody, to be served concurrently with the sentence imposed for Count 14, with the DNA order and the mandatory weapons order.
- [14] For Count 13, addressing the fire at the house under construction on Hofer Drive, the sentence is six months in custody, to be served concurrently with the sentence for Count 14, with the DNA order and the weapons prohibition.
- [15] For Count 16, concerning a duplex under construction near Seaton, the sentence is six months in custody, to be served concurrently with the sentence imposed for Count 14, plus the DNA order and the weapons prohibition.

[16] Mr. Munton has spent 30 days in custody, for which he is to be given a credit of one-and-a-half times, or 45 days. That time will be deducted from the sentence of 36 months. When the 45 days are deducted, the resulting sentence is 1,050 days, or approximately two years, 10 months, and 15 days.

[17] MR. O'QUINN: My Lord, if I may, I will direct a stay on the other counts.

[18] THE COURT: Yes. "MACINTOSH J."

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