

CANADA / JUDGMENT

R. v. Myles

2020 BCSC 564

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 564 R. v. Myles IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Myles, 2020 BCSC 564 Date: 20200115 Docket: 41763-2 Registry: Duncan Regina v. Nathan Clifford Kenneth Myles Before: The Honourable Madam Justice J. A. Power Oral Reasons for Sentence Counsel for the Crown: L. Thomson Counsel for the Accused: J. Watt Place and Date of Trial/Hearing: Duncan, B.C. December 12, 2019 Place and Date of Judgment: Duncan, B.C. January 15, 2020

INTRODUCTION

- [1] THE COURT: Nathan Clifford Kenneth Myles was convicted on October 11, 2019 in Duncan, British Columbia, of 13 counts on a 21-count indictment. The counts, broadly speaking, related to offences involving firearms which were found in Mr. Myles' vehicle, and possession of stolen property, which was identification of other individuals.
- [2] At the outset of the trial, the Crown entered a stay of proceedings on Counts 4, 9, 14, 20 and 21. At the conclusion of the trial, I entered a judicial stay of proceedings as a result of the principle in R. v. Kienapple (1974), [1975] 1 S.C.R. 729 on Counts 1, 2 and 3, which related to possessing the firearms without a licence.
- [3] Accordingly, Mr. Myles is to be sentenced today for the following offences: · Count 5, possessing a firearm, a Ruger .22-calibre semi-automatic rifle, knowing that the serial number on it had been altered, defaced or removed, contrary to s. 108(1)(b) of the Criminal Code; · Count 6, occupying a vehicle, knowing that there was a Ruger .22-calibre semi-automatic rifle in the vehicle, contrary to s. 94(1) of the Criminal Code; · Count 7, occupying a vehicle knowing there was a bolt action rifle in the vehicle, contrary to s. 94(1) of the Criminal Code; · Count 8, occupying a vehicle knowing that there was a 16-gauge shotgun in the vehicle, contrary to s. 94(1) of the Criminal Code; · Counts 10, 11, 12, possessing those same firearms while he was prohibited from doing so, contrary to s. 117.01(1) of the Criminal Code; · Count 13, possessing ammunition while he was prohibited from doing so, contrary to s. 117.01(1) of the Criminal Code; · Count 15, storing a Ruger .22-calibre semi-automatic rifle in a careless manner or without reasonable precautions for the safety of other persons, contrary to s. 86(1) of the Criminal Code; · Count 16, storing a 16-gauge

shotgun in a careless manner or without reasonable precautions for the safety of other persons, contrary to s. 86(1) of the Criminal Code; and · Counts 17, 18, and 19, possession of property of a value not in excess of five thousand dollars (\$5,000), knowing that it was obtained by the commission in Canada of an indictable offence, contrary to s. 355(b) of the Criminal Code. That was the identification of other individuals that I referenced.

- [4] In summary, I am sentencing Mr. Myles for 13 offences, all of which occurred in Chemainus, British Columbia, on January 2, 2019.

BACKGROUND

- [5] The background circumstances are set out in my decision at the trial, but the brief background is that Mr. Myles was observed driving and then standing a short distance away from a burgundy red sedan. He was approached by Constable Laing of the Duncan-Cowichan RCMP, who was conducting a traffic stop.
- [6] Ultimately, three long gun firearms, ammunition, and stolen property in the form of identification, was found in the vehicle as a result of a search. The three long guns were found in the vehicle. As noted in Counts 5, 6, 10, and 15, a .22-calibre semi-automatic rifle with its serial number defaced and one bullet in the chamber was found, with a magazine of 59 bullets inserted in the firearm. A bolt action rifle, referenced in Counts 7 and 11, and a 16-gauge shotgun, referenced in Counts 8, 12, and 16 were also found in the vehicle. Various ammunition was discovered in the vehicle, including 16-gauge shotgun shells and a .45 automatic bullet.
- [7] The Crown is seeking a global sentence of 28 to 31 months, less time served, which at the time of submissions on December 12, 2019 amounted to 136 days' time served for 204 days' credit.
- [8] The defence is asking the Court to impose a sentence of 12 months, and asks the Court to consider all of the principles of sentencing, including the totality principle. The defence also asks the Court to impose concurrent time for some of the offences, specifically the s. 117.01(1) offences, involving possession of the firearms and ammunition when Mr. Myles was prohibited to possess them, due to a court order. The defence submits generally that all of these offences occurred as a result of the same incident.
- [9] For the reasons that follow, I have determined that I should impose a global sentence of 21 months, less time served, which I calculate today at 170 days of time served. Giving Mr. Myles credit at time and a half, 255 days will be deducted from the sentence I impose.
- [10] My reasons are as follows. PERSONAL CIRCUMSTANCES OF MR. MYLES

- [11] Before considering the principles of sentencing that I must apply, I will outline Mr. Myles' personal circumstances, which were outlined to me by way of counsel's submission. Mr. Myles is 39 years old, born February 13, 1980. He was born in Burnaby, British Columbia, but lived most of his childhood in Winnipeg, returning to British Columbia in 1997. I am advised he had a difficult childhood. His father was involved in a criminal lifestyle and Mr. Myles was exposed at an early age to that criminal lifestyle.
- [12] Mr. Myles returned to British Columbia from Manitoba around 1997, and has lived primarily in the Duncan area since then. He is of Métis descent and has been attempting to reconnect or rebuild his relationship with his father who has been battling cancer. He has a daughter who is now 18 and lives in Thunder Bay, Ontario, and I understand from what I was told that he is attempting to rebuild that relationship as well.
- [13] I note that a pre-sentence report and a Gladue report were not ordered for the sentencing in this case. I did inquire of defence, who expressed the view that sentencing could occur by way of counsel's submission and without the benefit of those reports.
- [14] Mr. Myles has a Grade 12 education and has, in addition to his Grade 12, some business courses and a welding certificate. When Mr. Myles moved to British Columbia in 1997, he set up a towing company and I am advised he was living a productive lifestyle until he unfortunately started to use illicit substances. Ultimately he became addicted to harder substances, including crystal methamphetamine and heroin. I am advised that he has been involved in the naloxone program and has a positive, optimistic plan for his release, which includes continuing to live a drug free lifestyle. His counsel submits that Mr. Myles wishes to become a productive member of society. SENTENCING PRINCIPLES
- [15] Mr. Myles has a lengthy criminal record commencing in 2008, and it appears from his record that it is a direct result of his addictions. The record is too lengthy to set out in this decision, but it includes multiple offences of assault, drug offences, unlawful confinement, breach of probation, and other offences. It appears from Mr. Myles' record that the lengthiest global sentence he has received is 29 months. He has been convicted of prior offences under s. 117 of the Criminal Code and he has received the equivalent of 90 to 105 days for those previous offences.
- [16] The Crown advises that Mr. Myles was on a total of five separate prohibition orders at the time of the January 2, 2019 offences, so that by possessing the firearms and ammunition, he was in breach of five separate orders that ordered him not to do so. That is clearly an aggravating factor that I must consider on this sentencing.
- [17] Other aggravating factors include the fact that three firearms were found here and there was a large quantity of ammunition. I must consider as well that Mr. Myles was on bail at the time of the offences, and he had been released only days before the January 2, 2019 offences.

- [18] In structuring a fit sentence for Mr. Myles, I must keep in mind the principles of sentencing set out in s. 718 of the Criminal Code, including the fundamental principle that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender (s. 718.1). I must keep in mind the other sentencing principles set out in s. 718.2 of the Criminal Code, including s. 718.2(c), which sets out the totality principle.
- [19] I must consider, as the Court did in *R. v. Radjenovic*, 2011 BCSC 1225 at para. 9, *aff'd* 2013 BCCA 522, leave to appeal *ref'd* [2014] S.C.C.A. No. 121, that there is overwhelming unanimity of the courts in this country that firearms offences must carry strong denunciatory sentences. Words to a similar effect were considered in *R. v. Holt*, 2015 BCCA 302 at para. 18. In my view, I must give primary consideration to denunciation and deterrence here.
- [20] I must also consider distinguishing circumstances as noted by both counsel that these firearms were not handguns, but long guns, and long guns are not as easily concealed as handguns. I must consider the circumstances that they were in a vehicle trunk in a semi-rural area, as opposed to on Mr. Myles' person.
- [21] In determining whether the s. 117.01(1) offences should be consecutive or concurrent, I have kept in mind the helpful summary in *Radjenovic* at paras. 157 to 164, including the two-stage approach to sentencing an offender convicted of multiple offences. I have also kept in mind the statement from our Court of Appeal in *R. v. Ball*, 2014 BCCA 120 at para. 24, that sentences of s. 117 offences will generally, but not always, be consecutive.
- [22] In determining a fit sentence, I have balanced all of the competing principles of sentencing and all of the aggravating factors, including the number of orders that Mr. Myles was in breach of by possessing the firearms and ammunition, and the fact that he did not have a licence to possess said firearms. I have considered as well Mr. Myles' difficult personal background, including his stated desire to turn his life around and become a productive member of society. I consider the totality principle and Mr. Myles' criminal record in making my determination on sentence.
- [23] Mr. Myles, please stand.
- [24] Before I do so, should ask you, do you have anything that you wish to say before I pass sentence?
- [25] THE ACCUSED: It's too late now. I have more time than eight months in, that's for sure. Like, I don't understand why you said 255 days, for one. Other than that, I thought what I had to say was to be considered in sentencing, not where sentencing is already done and then I'm asked for something to say. So nothing I -- I --
- [26] THE COURT: All right.
- [27] THE ACCUSED: One thing is I that I have more than 255 days, a lot more. So I don't know how you got that number.

- [28] THE COURT: All right.
- [29] THE ACCUSED: Even minus -- even minus another 90 days and 105 days and 110 days, that's -- that's still -- I've been in for a year so that's --
- [30] THE COURT: All right, well, I'll hear from your counsel on that then.
- [31] But I think what I will do is impose the sentence and then hear from you on the deduction, Mr. Watt?
- [32] MR. WATT: Yes.
- [33] THE COURT: All right. So with respect to Counts 6, 7 and 8, I am sentencing you to a period of custody of 15 months.
- [34] On Count 5, which relates to the serial number being effaced on the Ruger .22 calibre semi-automatic rifle, I am sentencing you to five months concurrent.
- [35] With respect to Counts 10, 11, 12 and 13, which relate to possessing the firearms and ammunition while subject to prohibition orders, and I have noted that those are five different prohibition orders, I am sentencing you to six months consecutive. They are concurrent to each other but consecutive to the 15 months that I have imposed on Counts 6, 7 and 8.
- [36] On Counts 15 and 16, the careless storage, I am sentencing you to 16 days concurrent to each other, and concurrent to all of the other offences on the indictment.
- [37] On Counts 17, 18 and 19, which is the possession of stolen identification, I am sentencing you to 60 days, concurrent to each other and concurrent to all of the offences on the indictment.
- [38] That results in a global sentence of new time of 21 months, and from that will be deducted the time that you have spent in custody.
- [39] Now I heard submissions on this on December 12 -- and my recollection is that that was 136 days at that point, for 204 to be deducted, and is there anything new?
- [40] MR. WATT: That's -- that's correct. I am going to have to speak to Mr. Myles about that calculation. THE COURT: All right. So what I have done is, I have added the days since -- to today's date, and my calculation is that it is an additional 34 days -- which means that it is 170 days. I am calculating, at time and a half on that 170 days, 255 days will be deducted --
- [41] MR. WATT: Yes.
- [42] THE COURT: -- from the global sentence of 21 months.
- [43] MR. WATT: Yes, no, I understand that, but I am going to -- unfortunately I will have to ask that we stand down for a few moments and I am going to have to speak to Mr. Myles.

- [44] THE COURT: Do you want to do that now?
- [45] MR. WATT: Yes.
- [46] THE COURT: The only other things that I was going to order was the prohibition.
- [47] MR. WATT: Yes, I can wait -- I can wait for that, yes.
- [48] THE COURT: All right. . So that would be the s. 109 prohibition from possessing firearms, ammunition, explosive substances, for life.
- [49] Under s. 487, I am ordering that you provide a sample of your DNA by means of the least intrusive method possible, as soon as that can be arranged.
- [50] With respect to the forfeiture, perhaps I can hear from counsel after the break. So we will stand down now.
- [51] MR. WATT: Thank you.
- [52] MR. THOMSON: Thank you. (PROCEEDINGS ADJOURNED) (PROCEEDINGS RECONVENED)
- [53] THE COURT: All right. So, Madam Registrar, then for the record the 170 days at time and a half is 255.
- [54] THE CLERK: Thank you.
- [55] THE COURT: Two hundred and fifty-five days should be deducted from the 21 months.
- [56] THE CLERK: That is correct.
- [57] THE COURT: Thank you.
- [58] THE CLERK: That is what I have.
- [59] THE COURT: Thank you, very much. (SUBMISSIONS RE FORFEITURE)
- [60] THE COURT: So with respect to all of those exhibits that have been referenced and the exhibit list will also be handed to Madam Registrar to assist with this order, but for the record it is what was at trial, Exhibits 8, 9, 12, 13, 14, 16, 17, 18 and 26 that will be forfeit and Crown will prepare the order.
- [61] MR. THOMSON: Yes. Thank you.
- [62] THE COURT: All right. That leaves us then completed in this matter, is that right?
- [63] MR. WATT: Yes, thank you very much, My Lady.
- [64] THE COURT: All right.
- [65] MR. THOMSON: Yes, My Lady.
- [66] THE COURT: Thank you very much for your helpful submissions.

[67] MR. THOMSON: Thank you.

[68] THE COURT: Thank you. "J. A. Power, J." The Honourable Madam Justice J. A. Power

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