
CANADA / JUDGMENT

R. v. Olson

2021 BCSC 61

COURT

Supreme Court of British Columbia

DECIDED

13 January 2021

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2021 BCSC 61 R. v. Olson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Olson,

2021 BCSC 61

Date: 20210113

Docket: 66670

Registry: Chilliwack

Regina

v.

Jonathan David Olson and Brodie Tyrel Takahashi Robinson

Corrected Judgment: The text of the judgment was corrected at paragraph 118 on January 15, 2021 and in paragraph 2 on February 11, 2021

Before: The Honourable Madam Justice Humphries

Oral Reasons for Sentence: Olson

Counsel for Crown:

Henry Waldock

Counsel for Mr. Olson:

David Ferguson

Place and Date of Trial/Hearing:

New Westminster, B.C.

December 3, 7, 10, 2020

Place and Date of Judgment:

New Westminster, B.C.

January 13, 2021

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- [1] In view of the length of these reasons, shortage of court time, and the presence of Crown and Mr. Olson by MS Teams and video, I briefly reviewed the structure of the reasons and then read the entire portion from "Discussion" to the end in open court and advised counsel I would have the entirety of these reasons posted the same day.
- [2] Mr. Olson was found guilty, following a trial, of assault with a weapon, contrary to s. 267(a) of the Criminal Code, R.S.C. 1985, c. C-46 (Count 1), the reckless discharge of a firearm, contrary to Section 244.2(1)(b) (Count 4), possession of a loaded prohibited firearm (a sawed off shotgun) without a licence, contrary to s. 95(1) (Count 5), possession of a firearm while prohibited (s. 117.01(1)) (Count 6), possession of stolen property in excess of \$5000 (s. 355(a) (Count 7), resist or wilfully obstruct a peace officer (s. 129(a) (Count 8). These events took place in June and July of 2017. The reasons for conviction can be found at 2019 BCSC 1432. The trial took place in Chilliwack, B.C., in June and July of 2019.
- [3] The co-accused, Mr. Robinson, was found guilty of reckless discharge of a firearm, possession of a firearm without a licence, and possession of cocaine for the purpose of trafficking. He has been sentenced on January 27, 2020, to 5 years and 6 months on the reckless discharge of a firearm, 1 year on Count 9 (possession of a firearm without a licence), concurrent, and 9 months on Count 10, possession of cocaine for the purpose of trafficking, consecutive. He received 9 months credit for time served.
- [4] The delay in sentencing Mr. Olson is due partly to the Crown's intention to pursue dangerous offender proceedings, an intention they abandoned a few months ago, and for defence to review expert reports. As well, Mr. Olson recently spoke with his mother for the first time in many years and learned that he possibly has indigenous heritage. Thus a Gladue report was obtained.
- [5] The Crown called Dr. Lohrasbe, a forensic psychiatrist, at the sentencing hearing.

Facts

- [6] These convictions arise out of a series of events on June 30, 2017, continuing into July 2, 2017.
- [7] Mr. Robinson drove to a Husky Station near Chilliwack, B.C. on the late evening of June 30, 2017, with Mr. Olson, with whom he was jointly charged. They met Dane Miller there and an altercation took place, apparently over a drug dispute. This altercation was caught on camera and resulted in Mr. Olson acknowledging his guilt at the conclusion of the trial on a charge of assault with a weapon (Count 1). I found Mr. Robinson not guilty of this count and both Mr. Robinson and Mr. Olson not guilty of two counts related to an alleged attempted

kidnapping of Mr. Miller.

- [8] Mr. Miller ran away, got into his vehicle and drove off along Highway #1 with Mr. Robinson and Mr. Olson in pursuit. The two vehicles crossed an overpass several kilometers down the highway and shots were fired from the Robinson/Olson vehicle into Mr. Miller's vehicle. There was no evidence that other cars or people were in the vicinity. Mr. Miller was shot in the head, and the bullet remains lodged there. Mr. Miller was able to drive himself to the hospital where he was treated and released the next day.
- [9] While it must have been Mr. Olson who was actually firing the gun as Mr. Robinson drove the vehicle, no argument was advanced against the Crown's position that, if I were satisfied beyond a reasonable doubt that Mr. Robinson and Mr. Olson were pursuing Mr. Miller over the overpass and one of them was shooting at him and one of them was driving the car, that both men were guilty of the offence of reckless discharge of a firearm (Count 4).
- [10] Mr. Miller was a most reluctant witness at trial and has not provided a victim impact statement.
- [11] A series of events took place on July 2, 2017 which involved only Mr. Olson. Mr. Olson was behaving in a suspicious manner near a campsite at the Vedder Canal and a citizen made a call to the police. Mr. Olson was found to be in possession of a stolen truck (Count 7). In that vehicle was the sawed-off shotgun with Mr. Miller's DNA on it (Count 5). The shotgun was loaded. Another shotgun was found in the vehicle (Count 6). Mr. Olson fled from the vehicle upon being confronted by a police officer and a dog, and was tracked into the river, and then located some time later hiding in the bushes (Count 8).

Previous Criminal History

- [12] Mr. Olson, now 41, has a very lengthy criminal record, reaching back to 2001, with 58 prior convictions.
- [13] The Crown provided a table of the types of offences and dates of conviction. Mr. Olson has sixteen offences for breach of bail or probation, two break and enter (2002 and 2016), ten convictions for possession of stolen property between 2002 and 2014, five convictions for theft between 2003 and 2013, impaired driving in 2003, two convictions for mischief in 2004, one failure to attend court in 2007, eight convictions for driving while prohibited or disqualified between 2006 and 2018, four dangerous driving convictions (2006 - 2009), flight from police (2006), obstruct peace officer (2008), two convictions for robbery (2004, 2016), two convictions for threatening (2002, 2013), assault peace officer (2002), assault with a weapon (2008), and use of a firearm in the commission of an offence (2016). The longest sentence he has received was in 2016, for breaking and entering with intent to commit robbery, with a firearm (46 months).

- [14] Mr. Olson has not managed perform well in the community upon his release from these various offences, and has spent about 15 of the past 18 years in custody. The present offences were committed 66 days after his previous release.

Gladue Report

- [15] Mr. Olson, who had a troubled childhood and felt unfairly treated by his stepfather, has not had contact with his family for some time. He recently reconnected with his mother and learned that there could be some indigenous heritage on his mother's side, that is, her father's grandmother (Mr. Olson's great great grandmother) was believed to be First Nations. According to the Gladue report, Mr. Olson has six children with different mothers, and maintains some limited contact with one of his children.
- [16] The Gladue report writer, who noted that the indigenous lineage could not be independently corroborated, focussed on corrections and community resources available to Mr. Olson arising out of this somewhat tenuous connection.

Dr. Lohrasbe

- [17] Dr. Lohrasbe was called by the Crown to address the issue of Mr. Olson's risk to reoffend.
- [18] Mr. Olson declined to be interviewed by Dr. Lohrasbe. Dr. Lohrasbe said this was a detriment to an informed opinion on risk as, ideally, he would want to know what Mr. Olson's attitude is towards risk management.
- [19] Based on the materials provided to him, he was of the opinion that Mr. Olson poses a high risk for acts of violence in the foreseeable future, and the consequences for any future victim could be severe. He said it was unusual for the severity of violence to increase with age, but this has occurred with Mr. Olson.
- [20] Dr. Lohrasbe said there is a possibility, and only a possibility, that high-intensity treatment programs would reduce Mr. Olson's risk but it depends heavily on his willingness to cooperate with monitoring and supervision. Lengthy follow-up upon release is crucial for ongoing risk reduction and risk management for long-term violent offenders.
- [21] Dr. Lohrasbe said offenders who have become institutionalized from a young age have no skills to allow them to cope with the ups and downs of life. A single incident with a parole officer, once an inmate is released, can be seen as the whole system letting them down, something the inmate cannot cope with, thus leading to a breakdown of the release program.
- [22] Dr. Lohrasbe said in direct examination that he could not say if Mr. Olson could be managed in the community. However he acknowledged that the extent of programming he had done at Surrey pretrial could demonstrate the beginning of some sort of "buy-in" to rehabilitation. However, as mentioned, Dr. Lohrasbe was handicapped by the lack of an interview with Mr. Olson.

- [23] In cross-examination, Dr. Lohrasbe acknowledged that Mr. Olson has made sincere attempts at treatment on earlier occasions and has some insight into his situation, according to the documents he examined from the Corrections authorities.
- [24] Dr. Lohrasbe said the aboriginal programs are helpful because non-verbal approaches intuitively resonate with many offenders. He also mentioned the benefits of mediation and mindfulness, techniques which are routinely used for offenders who are willing to use them. Cognitive behaviour therapy has some overlap with this. Mr. Olson has had some exposure to these latter therapeutic techniques.

Event in Custody While at Surrey Pretrial Center

- [25] The Crown sought to adduce evidence of an incident on May 24, 2020, at the Surrey Pretrial Centre involving Mr. Olson. Defence objects to the admissibility of this evidence.
- [26] An agreed statement of facts was put before the court, with admissibility to be ruled on in these reasons.
- [27] Mr. Olson and two other inmates were seen on video approaching the cell of another inmate, Smith. Mr. Olson was second in line to enter the cell. Another inmate entered, and closed the door. Smith came out, covering his head. The four inmates kicked and punched him for 20 seconds. Mr. Olson stamped on his head and Smith stopped moving. Olson kicked him twice more, bent over as if speaking to him, and punched him once more in the head.
- [28] In recorded phone calls, Mr. Olson later explained that Smith had been stealing from him and other inmates and had threatened inmates with a knife. He said a correctional supervisor had asked him if there were problems with Smith but Mr. Olson refused to make a complaint.
- [29] The Crown seeks to have this evidence considered on the issue of continuing risk, as the thrust of defence's submissions is that Mr. Olson has begun to "buy in" to rehabilitation and a new way of life.
- [30] Dr. Lohrasbe testified that this incident deepens his concern about Mr. Olson's risk to reoffend but does not impact his opinion. He said the event was disappointing, in that it was a pre-planned coordinated assault, and was done with a sentencing hearing coming up. However, he said that the custodial setting can be violent and is not necessarily representative of risk in the community. He said Mr. Olson's refusal to let the correctional supervisor assist is not very significant in terms of whether he would buy in to assistance in the community.

- [31] Defence challenges the admissibility of this incident. Counsel informed the court that Mr. Olson has disputed his guilt on this charge. He refers to Dr. Lohrasbe's testimony that incidents in custody are unique, with many factors playing into them and it is hazardous to draw conclusions. Defence says this incident should not undermine all the efforts Mr. Olson has made over the past three years while in custody on the present offences.

Crown Position

- [32] The Crown referred to the principles of sentence set out in s. 718, 718.1, and 718.2, particularly 718.2(b)-(e). The Crown takes the position that denunciation and deterrence and protection of the public are the primary factors to consider in setting an appropriate sentence for Mr. Olson. Mr. Olson is, according to Dr. Lohrasbe, institutionalized. He does not function well outside the prison setting. In fact, he told his case manager in 2017 that he feels safest when the cell door closes behind him.
- [33] The Crown acknowledges that rehabilitation should not be ignored, but says that in the present case, that can only be accomplished by a lengthy period of supervision under parole.
- [34] The Crown says, given the possibility of rehabilitation if Mr. Olson "buys in" to a different approach, only supervision will help him in the community. Therefore a lengthy sentence is required, not only to reflect the principles of sentence, but to ensure that adequate supervision is available to help Mr. Olson function once released.
- [35] The Crown says this can be accomplished by a series of consecutive sentences, moderated by the totality principles, or by concurrent sentences in which interconnected offences are used as aggravating factors to increase the sentence on the primary offence, but in either case, the range is 13-14 years.
- [36] As for mitigating factors, the Crown acknowledges that Mr. Olson allowed numerous admissions to be made at trial, thus allowing a saving of court time. However, the Crown says the Gladue factors, if any, are minimal here, given the seriousness of the offences and the nature of the connection to an indigenous heritage in this case.

Count 1: Assault with a weapon

- [37] This Count involved an assault by Mr. Olson on Mr. Miller. Mr. Miller was looking into a vehicle with Mr. Robinson when Mr. Olson approached with a sawed off shot gun, struck Mr. Miller in the head and chased him in the parking lot of a Husky station. The loaded gun with Mr. Miller's DNA on it was later found in the stolen truck Mr. Olson was driving two days later.

- [38] The Crown says 18-24 months is appropriate for this offence, referring to *R. v. Chand*, 2013 BCSC 163, in which the accused received 18 months for assaulting two men with a gun, and one year consecutive for using an imitation firearm in the assault. Mr. Chand had a very old record for manslaughter. He had been trying to quiet down some noisy party-goers in his rental suite.
- [39] In *R. v. Brown* 2020 BCPC 137, an offender who struck a man with a firearm was given 9 months. He pleaded guilty and had a much shorter record than Mr. Olson does.

Count 4: Reckless Discharge of a Firearm

- [40] Both Crown and Defence acknowledge that this is the most serious offence for which Mr. Olson must be sentenced.
- [41] This offence occurred when Mr. Robinson and Mr. Olson pursued Mr. Miller from the Husky station down the highway. Mr. Robinson was driving. They chased Mr. Miller for several kilometers, and when he turned off onto an overpass, several shots were fired, obviously by Mr. Olson since Mr. Robinson was driving. One bullet lodged in Mr. Miller's head, and is still there. Mr. Miller was able to drive himself to the hospital. The handgun used in this offence was later located in Mr. Robinson's possession.
- [42] The Crown points out that the two engaged in a fairly lengthy pursuit; the bullet, which came from a restricted firearm, was fired deliberately at Mr. Miller's car and struck Mr. Miller in his head. This caused risk not only to Mr. Miller but to other users of the highway, although there was no traffic on the overpass at the time of the shooting, which was late evening.
- [43] The Crown provided a number of sentencing cases for reckless discharge of a firearm, noting that such an offence committed with a rifle would require a minimum sentence of 4 years, even though offences with handguns no longer have a minimum sentence. At the time of these offences, Mr. Olson was under three prohibitions regarding possession of firearms.
- [44] The Crown referred to the following cases, setting out factors in each that militated for a higher or lower sentence for Mr. Olson, and submitted that a sentence of 7-11 years is appropriate in the present case:
- [45] *R. v. Hassan*, 2012 BCCA 201 - 7 years: the offender, who was on bail at the time, fired seven shots from a handgun at a nightclub, striking a bouncer, with whom he had had an earlier interaction, in the leg. He pleaded guilty.
- [46] *R. v. Oud*, 2016 BCCA 332 - 5 years: the offender fired seven shots from a rifle at the closed door of a basement suite into which a woman, to whom he had given money for cocaine, had gone but not returned. One bullet grazed a man who was in the suite; three shots lodged in the wall above another woman.

- [47] R. v. Dingwall, 2018 BCSC 1041 - 4 ½ years: the offender, an aboriginal woman, was a getaway driver for a group of people, one of whom fired six shots into the yard of a residence, injuring one.
- [48] R. v. Agin, 2018 BCCA 133 - 11 years (for robbery with intent to wound): the offender robbed a marijuana grow operation, deliberately shot one employee in the leg, and shot at another, missing him.
- [49] R. v. Hall, 2018 BCSC 1229 - 4 years: the intoxicated offender shot six shots from a rifle at an occupied house, and threatened an occupant at another house, throwing the rifle through the window. No one was injured.
- [50] R. v. Jefferson, 2014 ONCA 434 - 10 years (discharge with intent to wound): The offender, who was prohibited from owning a firearm, shot a drug rival, who was a passenger in a moving car.
- [51] R. v. Mohammed, 2017 ONCJ 298 - 6 ½ years: the offender, who had a prior gun conviction and was prohibited from owning a weapon, was the driver of a car from which another man fired at another moving car in heavy traffic.
- [52] R. v. Arcand, 2019 SKQB 131 - 7 + 1 years: the indigenous offender locked himself out of his car and broke into it. The police attended; he kept them at bay by pointing a zip gun at them, and discharged his gun at one of them, missing him. He tried to run but was caught, and was shot and injured by police. The sentence for reckless discharge was 7 years; possession of the firearm was 1 year.
- [53] R. v. Skinner, 2016 NSCA 54 - 7 years + 1: the offender was a passenger in a vehicle following another. In a residential neighborhood, he fired six shots into the driver's side door. No one was struck. He received 7 years for reckless discharge; 1 year for possession of the firearm.
- [54] R. v. Brown, 2020 BCPC 137 - 6 years: Mr. Brown, while prohibited, discharged a restricted firearm in the hallway of a rooming house. He then went to a nearby rooming house and struck a man with the firearm. He pleaded guilty.
- [55] R. v. Robinson, 2020 BCSC 684 - 5 ½ years: Mr. Olson's co-accused, who drove the car while Mr. Olson shot at Mr. Miler, received 5 ½ years for this offence.

Count 5: Possession of a Loaded Prohibited Firearm

- [56] Mr. Olson was found driving a stolen truck two days after the previous events. A loaded sawed off shot gun with Mr. Miller's DNA on it was located in the truck, along with another gun that is the subject of Count 6.

- [57] The Crown refers to *R. v. Nur*, 2015 SCC 15, where the offender carried a loaded handgun in a public place. He was 19, had no record and threatened no violence. Nevertheless the SCC upheld a sentence of 40 months. The Crown says Mr. Olson's circumstances are much more serious. He used his firearm to hit Mr. Miller. His assault was related to enforcement in the drug business. Mr. Olson has made no positive contribution to society for any of his adult life. He has a long criminal history, and three prohibitions from possessing firearms.
- [58] In *R. v. Charles*, 2015 SCC 15 (heard with the Nur appeal), the offender, with a lengthy record and under prohibition, was given a six year sentence after pleading guilty to possession of a semi-automatic handgun. He received a further year for contravening the prohibition order.
- [59] The Crown also referred to *R. v. Mills*, 2019 BCSC 713, (6+1 years); and *R. v. Homeniuk*, 2019 BCSC 2068 (5 ½ years).
- [60] The Crown says, given all the various aggravating and mitigating factors in these cases and in Mr. Olson's case, Mr. Olson's sentence should exceed 6 years.

Count 6: Possession of a Firearm While Prohibited

- [61] As mentioned, the truck contained not only the sawed-off shotgun used to strike Mr. Miller, but another shotgun as well. Mr. Olson was under three prohibitions at the time. The Crown says the usual sentence for possession while prohibited is 6 - 12 months (*R. v. Ball*, 2014 BCCA 120), but here, the aggravating factors require a sentence of 18 month - 2 years, consecutive. The Crown refers to Mills (supra); and *R. v. Crawford*, 2014 BCSC 852, where a sentence of 18 months was imposed.

Count 7: Possession of Stolen Property Over \$5000

- [62] This count arises out of Mr. Olson's possession of a truck, knowing it to be stolen. He was located near the Vedder River, driving the truck hard, getting it stuck in the mud, and breaking off the "headache rack" to try and pry the truck out of the mud. The owner testified that the transmission was damaged.
- [63] In 2014 Mr. Olson received 8 months for a similar offence. The Crown suggests this current event is worth much more, perhaps 18-24 months, given the value of the truck and the damage he did to it. Crown referred to two cases involving thefts of motor vehicles, *R. v. Fuller*, 2007 BCCA 353 (5 years upheld for recidivist with an extraordinary record); and *R. v. McLaren*, 2015 BCCA 478 (12 months for stealing a motor home).

Count 8: Resist or Wilfully Obstruct a Peace Officer

[64] Mr. Olson ran from the police when they came to investigate the truck, tried to cross the Vedder River, and was discovered by a police dog. He has a history of attempts to escape the police. The Crown points out that many resources were required to catch Mr. Olson, that the police officer and dog were put at risk by Mr. Olson's plunge into the river, and given all the factors, a consecutive sentence of 9 months is appropriate.

Totality

[65] Once all the Crown's suggested sentences are added up, the total is 18-24 years. The Crown says such a sentence would not accord with the principles of restraint set out in s. 718.2(d). The total sentence should be adjusted to be between 13-14 years.

[66] As mentioned, the Crown says crafting an appropriate sentence can be accomplished by the imposition of consecutive sentences or by increasing concurrent sentences to reflect the aggravating factors and cumulative effect of the various offences.

[67] The Crown provided the following tables:

Count

Sentence

1

2 years concurrent to court 4

4

11 years

5

7 years concurrent to count 4

6

2 years consecutive to count 4

7

2 years concurrent to count 6

8

9 months consecutive to count 6

Total

13 ³/₄ years

Count

Sentence that would have been imposed

* Reduced for totality

1

2 years concurrent to 4

2 years concurrent to count 4

4

9 years

8 years *

5

7 years

5 years consecutive to count 4 *

6

18 months

1 year consecutive to count 5 *

7

18 months

18 months concurrent to count 5

8

9 months

9 months concurrent to count 5 *

Total

19 ³/₄ years

14 years*

Defence Position

[68] The Defence submits that an appropriate sentence for Mr. Olson is 8 years.

[69] Defence counsel spent some time examining Mr. Olson's past, but concentrated on his efforts to take classes and courses during his incarceration while on remand for the present offences.

- [70] Mr. Olson has suffered from anxiety for some time. He reports that he had a strict upbringing with little affection from his parents. He began to act out at school and began to spend time with an alcoholic uncle who introduced him to alcohol. The uncle's girlfriend made sexual advances to him that were unwelcome and confused him, although Mr. Olson feels the Gladue report over-emphasized this aspect of his history.
- [71] He has had little or no community support, but has recently re-established contact, not only with his mother, but with a family friend, Ms. Woodside, who is willing to offer him community support. She says he would live in her household on an acreage, and she would assist him in obtaining counselling and education. He has a very strong interest in cars and would like to become an auto mechanic. He is also a talented artist.
- [72] While in custody, Mr. Olson has finished his high school equivalency and taken many steps which defence says shows he is ready to "buy in" to his long-term rehabilitation. He has taken all of the Essential Skills to Success Programing that is available, including Substance Abuse Management, Healthy Relationships, Employability, Money Management, Nutrition and Health. He was admitted to the Non-Violence initiative unit in Surrey Pretrial following good behaviour, and after being interviewed. He completed programs for Communications, Stress Management, Conflict Resolution, Values and Morals, and Better With Boundaries. He has participated in workshops on meditation and spiritual teaching, anger management, cognitive behavioural therapy, PTSD/anxiety, and release planning. He and another inmate were asked to lead the cognitive behavioural therapy course and assist in teaching. This has given Mr. Olson a sense of pride in his ability to stand in front of peers and relay what he has learned.
- [73] Mr. Olson wrote a letter to the court to describe the difference these programs and his full participation in them have made in his life. He says he values the opportunities he has been presented with and feels for the first time a sense of excitement for his future. In court, he apologized for his behaviour and said he knows it is up to him to prove himself.
- [74] Defence points out that only five of Mr. Olson's many convictions are for crimes of violence and those are all over ten years ago, except for the robbery offence in 2016.

Count 1: Assault with a Weapon

- [75] Defence refers to R. v. Bedard, [1998] O.J. No. 20178 (10 months); R. v. Taylor, [2017] O.J. NO. 139 (ONSC) (1 year); and R. v. Brown, 2020 BCPC 137 (9 months) in support of their contention that an appropriate sentence for Mr. Olson on this count is 12 months.

Count 4: Reckless Discharge of a Firearm

- [76] Defence refers to some of the same cases as does the Crown - Hassan; Oud; Hall; Brown, in support of its position that the sentence for this count should be 6 ½ years.
- [77] In addition to the cases cited by the Crown, defence provided:

- [78] R. v. Rodney, 2017 ONCJ 68 (4years): Rodney, 22 years old, and Mohammed discharged at least four bullets into a home and one came close to hitting a child. Rodney drove Mohammed to the scene.
- [79] R. v. Baptiste, 2019 BCSC 2339 (4.5 years): the offender left his residence during an argument with his intimate partner and purchased a rifle. He returned and pointed the gun at her, pulling the trigger while aiming away from her.
- [80] R. v. Seymour, 2011 BCSC 1682 (6 years): the offender discharged a restricted semi-automatic pistol through an occupied motor vehicle into an occupied apartment building narrowly missing a woman inside. He was under two weapons prohibitions at the time.
- [81] R. v. Chand, 2014 BCSC 579 (7 years): Mr. Chand, 22 years old, shot the victim in the back as he ran away up the stairs at a Skytrain station following a dispute over a debt.
- [82] R. v. Barr, 2016 BCSC 193 (7 years): Over a drug dispute, Mr. Barr shot the victim, hitting him three separate times and continued to fire as the victim tried to run away. The injuries were life threatening.
- [83] Defence also makes reference to the sentence given Mr. Robinson for this same offence. He received 5 ½ years plus a concurrent sentence of one year for possession of a firearm.
- [84] In support of his position for a 6 1/2 year sentence for Mr. Olson on this count, defence counsel submits that there are mitigating circumstances, while acknowledging that Mr. Olson has a longer record than most of the cases: Mr. Miller did not suffer severe injuries (despite having a bullet lodged in his head), this was not a pre-planned act, unlike Hassan; Oud; and Baptiste, where the perpetrators returned to the scene to commit further acts of violence, and he did not terrorize Mr. Miller, although the Crown takes issue with this, saying that the pursuit down the highway and the shots would indeed be terrorizing.

Count 5: Possession of Loaded Prohibited Firearm

- [85] Defence referred to the concurrent sentences imposed in Hassan (4 years for possession, concurrent to a 7 year sentence for reckless discharge); Seymour (4 years); and Brown (5 years) in support of their position that the same approach should be used for Mr. Olson; that is, the sentence for possession should be concurrent to the reckless discharge sentence for Count 4.

Count 6: Possession of a Firearm while Prohibited

- [86] Defence acknowledges that sentences for this offence are generally consecutive, but refers to R. v. Gladish, 2014 BCSC 977 where a concurrent sentence was imposed. Mr. Justice Halfyard found a sufficient degree of interconnection between the possession of the firearm and the prohibition to warrant a concurrent sentence of six months. In Brown, the 6 month sentence was also concurrent because Brown had no prior record for weapons offences.

[87] Defence suggests a similar sentence could be imposed, and acknowledges it could well be consecutive, or the possession sentence could be considered as an aggravating factor in counts 4 and 5.

Count 7: Possession of a Stolen Property Over \$5000

[88] Defence suggests that the prior sentences imposed on Mr. Olson for property offences should be considered. The Crown's cases (Fuller and McLaren) are theft cases. Defence suggests 12 months is an appropriate sentence for this count.

Count 8: Resist or Wilfully Obstruct at Peace Officer

[89] Defence acknowledges that a consecutive sentence is not unusual for such offences but, given the connection with the other events of July 2 by the river, a concurrent sentence of 6 months could be considered.

Totality

[90] The Defence submits an appropriate total sentence is eight years. Counsel provided the following table:

Count

Sentence

(1) - Assault with weapon (s. 267(a))

12 months

(4) - Reckless discharge of a firearm (s. 244.2)

6 ½ years

(5) - Possess loaded prohibited firearm (s. 95(1))

4 years concurrent with Count 4

(6) - Possess firearm while prohibited (s. 117.01)

12 months consecutive to counts (1), (4), & (5), but concurrent to count (7)

(7) - Possess stolen property (s. 355(a))

12 months concurrent to count (6)

(8) - Resist or obstruct (s. 129)

6 months consecutive to count (6)

Total

8 years [my addition makes this 9 years unless Count 1 is concurrent to another count]

[91] Defence also suggests that the difficult circumstances under which Mr. Olson has been incarcerated, that is, the past year of the pandemic, can also inform the court's consideration of appropriate sentences. This approach was taken in *R. v. Hearn*, 2020 ONSC 2365. Two cases in our court have declined to follow *Hearn*: *R. v. Zhao*, 2020 BCSC 1552; and *R. v. Greer*, 2020 BCSC 1131, saying such considerations should be left to the National Parole Board as the duration and effects of the pandemic are unknown at this time.

Discussion

- [92] The Crown says Mr. Olson has had a sorry life, and has contributed nothing to society. He has a terrible record and the events for which he is now being sentenced show, as Dr. Lohrasbe noted, an increasing level of violence. According to Dr. Lohrasbe, he is a serious risk for further violence.
- [93] However, the defence submits that the picture for Mr. Olson is not so bleak. According to the records reviewed and cited by Dr. Lohrasbe, one of the Case Managers who has worked with Mr. Olson over the years found him to be standoffish until he became comfortable, and then was quite personable, polite and respectful, always keeping his composure. His Case Manager in 2017 said that Mr. Olson reported to her that he had asked for help last time he was released as he wanted to change his criminal lifestyle but was not put in touch with anyone who could assist him in the community. He told her he hopes to better himself at North Fraser Pretrial through programming, schooling, and medical support to set himself up for a better chance of success for his release date.
- [94] In fact, he has made the most of his time in custody prior to trial. He has finished high school, taken a large number of courses, and has been asked to assist with teaching one of the courses, something he rightly feels proud of. He has developed some community support and has used his artistic talents.
- [95] I do not think the violent episode in the cells at Surrey pre-trial should be ignored. It is part of the risk picture, but it must be taken in context, that is, it occurred in the institutional world. Given the comments of Dr. Lohrasbe, it deepens the concern for Mr. Olson's risk of reoffending, but should not be taken to negate the advances Mr. Olson has made to try to gain some understanding and self-awareness during his time in custody. I find the evidence of this incident to be admissible, but it is to be viewed with caution.
- [96] Both Crown and defence acknowledge that Mr. Olson requires assistance to ensure that he does not reoffend once released, and supervision under parole is the way to accomplish that.

- [97] I do not consider the Gladue factors to have great impact in the circumstances of this case, given the seriousness of the charges and the tenuous connection to the possibility of an indigenous heritage. As well, I do not have enough information about the effects of Covid-19 to do other than acknowledge that it has caused difficulties for prisoners and staff during these difficult times.
- [98] It is clear from the nature of these offences and the risk of Mr. Olson reoffending that the principles of deterrence and denunciation are paramount, along with the protection of the public. However, there is a potential for rehabilitation that must also be taken into account. I have considered all the cases cited to me, which are of assistance in considering the principles set out in s. 718.2(b), (c), (d) and (e), that is, parity of sentencing, the totality principle, and restraint in imposing terms of imprisonment.
- [99] I note the approach to the totality principle referred to by the Court of Appeal at para 16 of Hassan: set the individual sentences, total them, if to be served consecutively, and look at whether the total exceeds the overall culpability of the offender. As a last step, the judge should apply the general principle of proportionality by examining the gravity of the offences, the offender's degree of guilt or moral blameworthiness, and if the total sentence exceeds what is appropriate given the overall culpability of the offender, it must be adjusted.
- [100] On the subject of concurrent sentences, the Court of Appeal said in *R. v. Robertson*, 2020 BCCA 65:

The test for determining whether concurrent or consecutive sentences are appropriate is "whether the acts constituting the offences were part of a linked series of acts within a single endeavour" [cites omitted]. Some of the factors to consider are: "the nature and quality of the criminal acts; the temporal and special dimension of the offences; the nature of the harm caused to the community or to the victims; the manner in which the criminal acts were perpetrated; and the offenders' role in the crimes" [cites omitted].

However, even when a link is present, consecutive sentences can be imposed when the offences committed protect different societal interests.

- [101] The Court referred to the decision of the Ontario Court of Appeal *R. v. Gummer* (1983), 38 C.R. (3d) 46:

We do not consider the rule that sentences for offences arising out of the same transaction or incident should normally be concurrent necessarily applies where the offences constitute invasions of different legally protected interests.

Sentences

- [102] This string of offences is long and involves violence. Although there are connections between some of the counts, the indictment has a number of offences from two separate days, with slight or no connections between the first and second sets of offences. It is difficult to determine an appropriate and fair approach. The consecutive numbers soon add

up to a sentence that offends the totality principle, but to determine the interconnectedness of the counts for the purposes of concurrent sentences is a complicated exercise. I will use concurrent sentences where appropriate, but because some of the sentences must necessarily be consecutive, the totality principle is still a consideration, as set out by the Supreme Court of Canada said in *R. v. M.(C.A.)*, [1996] S.C.R. 500:

[T]he totality principle requires a sentencing judge who orders an offender to serve consecutive sentences for multiple offences to ensure that the cumulative sentence rendered does not exceed the overall culpability of the offender. ...

[103] Counts 1, 4, and 5 are related in that Count 1 and Count 4 occurred sequentially in the pursuit of Mr. Miller on June 30, 2017. Mr. Miller was struck by Mr. Olson with the loaded sawed-off shotgun (a bullet was found at the scene of the assault), and then pursued down the highway and shot at with a different weapon. Count 5 is related in that the sawed-off shotgun used by Mr. Olson to strike Mr. Miller was found, loaded, in Mr. Olson's possession on July 2, 2017.

[104] I do not consider that the assault on Mr. Olson at the Husky station should simply be considered an aggravating factor for the subsequent shooting. The two incidents are separate and are different kinds of attacks; two different guns were used, one to strike Mr. Miller and another to shoot at him. I do, however, accept that there is an interconnection between the assault with the sawed-off shotgun and Mr. Olson's possession of that same gun two days later.

[105] Possession of a loaded prohibited weapon is a very serious offence. Mr. Olson was under three prohibitions for gun possession at the time of these offences. Unlike Hassan, this was not the same gun that was used in Count 4. He has previous convictions for violence and for weapons offences. On Count 5, possession of a loaded prohibited weapon, I would sentence Mr. Olson to 5 years, and on Count 1, 1 year concurrent to Count 5. However, the sentence on Count 5 will be reduced to 4 years to conform with the totality principle.

[106] On Count 4, it is important to keep in mind the sentence I gave Mr. Robinson for the same offence, that is 5 ½ years, but Mr. Robinson and Mr. Olson are not similar offenders. Mr. Olson is 41, Mr. Robinson is 27. Mr. Olson has an extremely lengthy record. Mr. Robinson's is nowhere near as long. Mr. Robinson has more community support, although he expressed no remorse or even acknowledgement for his offences, whereas Mr. Olson appears to be beginning to take some responsibility for his conduct.

[107] This is a very serious offence. Mr. Miller was pursued for some time down the highway and shot at several times as the two vehicles crossed the overpass. One bullet lodges in his head still. As I said when sentencing Mr. Robinson, it is fortunate Mr. Miller was not killed.

- [108] On this Count, after considering all the cases submitted to me, I would sentence Mr. Olson to 7 years, consecutive to the sentence on Counts 1 and 5, but will reduce the sentence on Count 4 to 6 years to conform with the totality principle, consecutive to the sentences on Counts 1 and 5.
- [109] On Count 6, possession of a shotgun while prohibited, it is important to emphasize the seriousness of offences involving weapons. Mr. Olson was in possession of two weapons on July 2, 2017, and was under three prohibitions at the time. One of the guns is not connected with the offences from June 30, 2017, but there is a link to the gun in Count 5 because the two guns were located together in the truck. On Count 6, I sentence Mr. Olson to 18 months, concurrent to Count 5, and all other sentences.
- [110] On Count 7, possession of a stolen truck, I consider that Mr. Olson was not merely in possession of a truck knowing it was stolen. He showed no respect for another's property. He drove the truck hard, damaging the transmission, got it stuck in the mud, and tore the headache rack off to try and pry the truck out of the mud. I sentence him to twelve months on this count, consecutive to all other sentences.
- [111] On Count 8, resist peace officer, Mr. Olson ran from the police and it required considerable resources to track him and arrest him. It is a separate offence from the possession of stolen property, although it has some connection to it. It could be an aggravating factor for that sentence, but in my view, is more appropriately viewed as a separate event in order to emphasize the importance of responding to a police command in these circumstances. I sentence Mr. Olson to six months on Count 8, consecutive to all other sentences.
- [112] By my calculation this makes a total of 11 ½ years, which is an appropriate cumulative sentence of this series of offences, and does not, in my view, offend the totality principle.

Credit for Time Served.

- [113] Counsel agree this is 1,098 days, credited as 1,647 days, as of the December 31, 2020. Taking into account the time from December 31, 2020 to January 13, 2021, that is 4 years, 6 months and 20 days.
- [114] Mr. Olson, please stand:
- [115] I have set out the sentences for each of the counts. I sentence you to a period of incarceration of 11 ½ years, less 4 years, 6 months and 20 days, that is 7 years less 20 days.

Ancillary Orders

- [116] The ancillary orders sought by the Crown are not opposed and are granted.
- [117] Provision of a DNA sample (s. 487.051(1) & (3)) is mandatory on Counts 1 and 4, and discretionary on Counts 5, 6, and 7. Mr. Olson will provide a DNA sample on all of those Counts.

- [118] There will be a lifetime firearms prohibition pursuant to s. 109(3) on Counts 1, 4, and 5.
- [119] While in custody, Mr. Olson is prohibited from communicating, directly or indirectly, with Dane Miller.
- [120] Dr. Lohrasbe's report, the Gladue report, and all the materials filed at the sentencing hearing will be sent to the Corrections authorities, along with a copy of my Reasons.
- [121] The Victim of Crime Surcharge will be waived.
- [122] Disposal of exhibits will be in accordance with the schedule provided by the Crown, and filed as Exhibit 4 on sentence.

"Humphries J."

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