
CANADA / JUDGMENT

R. v. Osborne

2007 BCSC 1840

COURT

Supreme Court of British Columbia

DECIDED

16 November 2007

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Osborne,

2007 BCSC 1840

Date: 20071116

Docket: X068917

Registry: New Westminster

Regina

v.

Scott Douglas Osborne

Before: The Honourable Madam Justice Bennett

Oral Reasons for Sentence

November 16, 2007

Counsel for the Crown

R.G. Dempsey

Counsel for the Accused, Osborne

P. Wilson

Place of Hearing:

Vancouver, B.C.

- [1] THE COURT: Mr. Osborne pleaded guilty on October 30, 2007, to two offences: trafficking in cocaine and possession for the purpose of trafficking in cocaine contrary to s. 5(1) and s. 5(2) of the Controlled Drugs and Substances Act. These offences occurred on August 27, 2004. On that date at approximately 4:35 in the afternoon, an undercover officer made a phone call to a telephone number which had been provided to him. He suspected the number was connected to what is referred to as a "dial-a-dope" operation.
- [2] The officer called in order to purchase crack cocaine. There was some difficulty with contact, but eventually there was contact with a person on the telephone. The officer said he was at the corner of 66th Avenue and 128th Street in Surrey, British Columbia, and that he wanted to "buy". There was further discussion and the person on the phone said that he would be there in about 15 minutes. At five o'clock, no one having shown, the officer phoned again. A different person answered the phone and there was more conversation. The first man took the phone again and eventually they arranged to meet at 64th Avenue and 128th Street.
- [3] Eventually, at 5:15 p.m., a vehicle with an Alberta licence plate pulled up. The driver of the vehicle was the co-accused, Mr. Ali, and Mr. Osborne was in the passenger seat. Mr. Osborne rolled down the window, showed the officer drugs, which were packaged in a small yellow round package. Mr. Osborne said it was, "\$30" and the police officer handed \$30 to Mr. Osborne. The policeman took the drugs and walked away. The money handed to Mr. Osborne was marked. The vehicle drove away, but the police stopped it shortly afterwards. Mr. Osborne got out of the vehicle and ran, however he was pursued and apprehended.
- [4] There was a large bag with 95 packages of crack cocaine and heroin in the car. Mr. Ali had the marked \$30 and \$1,580. Mr. Osborne was in possession of a list of names with cross streets noted, including the name of the undercover operator and the cross street used for their meeting. In the 95 packages, there were 20.1 grams of cocaine and 6.4 grams of heroin. The police also found paper which I infer was drug paraphernalia and cell phones. A cell phone was ringing constantly.
- [5] The following is Mr. Osborne's criminal record:
- November 17, 2004, New Westminster, British Columbia: Theft under \$5,000. He received a conditional discharge and probation for six months.
 - November 30, 2004, Port Coquitlam: Failing to comply with a recognizance and assault. He received a sentence of one day, taking into account 28 days of pretrial custody, and probation for 18 months, on both counts.
 - February 2, 2005, Port Coquitlam: Three counts of failing to comply with a probation order. He received a sentence of two months taking into account 28 days pre-trial custody.
 - August 4, 2005, Port Coquitlam: Assault and mischief under \$5,000. He was sentenced to a \$500 fine and probation for 18 months on each charge.

- August 8, 2005, New Westminster: Possession of property obtained by crime and taking a vehicle without the owner's consent. He received 10 days and probation for one year on each count.
- August 30, 2005: Breach of probation. He was sentenced to 21 days in jail.
- March 8, 2006, Surrey, British Columbia: Theft under \$5,000. He received a one-day sentence, two months and two weeks pretrial custody. On the same day, for a theft over \$5,000, he received a 15-month conditional sentence order and, for breach of probation, he received one day plus two months and two weeks pretrial custody.

- [6] He was initially on bail for these offences. He failed to report on a number of dates and eventually there was a bench warrant issued for his arrest for failing to attend court. He did not serve any pre-trial custody for this offence.
- [7] The Crown's position is that this offence should be in the range of six to nine months and initially opposed a conditional sentencing order. However, after hearing the submissions of defence counsel, he no longer opposes a conditional sentence, which is a reasonable position for the Crown to take in the circumstances.
- [8] Normally, one would not expect that for these offences, with this quantity of drugs involved, that a conditional sentence order would be appropriate. However, there are considerable mitigating circumstances in this case which I will now outline. The first is that all of Mr. Osborne's criminal record occurred after this offence. Obviously, I can take his criminal record into account in assessing what is a fit sentence and I will do that. However, it is a significant factor in terms of the "jump" principle (that is sentences should increase incrementally and not "jump"), that his convictions were all after this offence occurred. His criminal record comprises of a very short time period in his life.
- [9] Mr. Osborne is 28 years old. He lives in Surrey, British Columbia, and up until a short time ago was living with a roommate. The roommate attacked Mr. Osborne with a hammer at the end of October. The roommate is suffering from schizophrenia. Mr. Osborne now has to find a new place to live because he cannot afford the rent in the premises he was in by himself. His mother lives in Langley and is employed. His father committed suicide when he was four years old. His mother remarried and, although the marriage took place about 10 years ago, she has been with her second husband for about 20 years. The relationship with the stepfather and Mr. Osborne is described as, "rocky" and his relationship with his mother as, "not close but pretty good". His aunt is in court today offering her support and will help him find a new place to live.
- [10] Mr. Osborne completed grade 12. He then worked in a sawmill until the sawmill closed. He worked at Petro-Canada for a couple of years. He now works for an organization called Labour Ready which organizes casual labour. He can earn up to \$500 a month to supplement his disability pension and I am told that he tries to do this every month. He has had a problem with drugs and alcohol since his early teens. This problem escalated and he was using cocaine and was addicted to heroin. His life started to turn around when he received

the 15-month conditional sentence order in March of 2006.

[11] Mr. Osborne has been diagnosed as a schizophrenic for which he is being treated. His community sentence supervisor made arrangements for him to attend the Maple Ridge Treatment Centre and then the Lifelines Recovery House in Surrey. He has not had a perfect record with respect to drug abstinence, he is doing much better than before and, as noted, he has had no convictions since March of 2006. Mr. Wilson has confirmed that Ms. Osborne is on a supervised program of methadone maintenance. He also is on considerable other medication which is dispensed to him on a daily basis, which is to deal with his schizophrenia and other medical issues. He receives \$280 as a disability pension plus \$375 for rent, so he has considerable financial issues. This offence occurred when he was himself a drug addict and supporting his habit.

[12] The principles of sentencing are set out in the Criminal Code in 718, 718.1, and 718.2 as follows:

718 The fundamental purpose of sentencing is 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;
- (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 and to the community.

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

718.2 A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender,
- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
- (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, with particular attention to the circumstances of aboriginal offenders.

[13] The conditional sentence order may be imposed:

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.

[14] In spite of the serious nature of the offences, this is a case where rehabilitation plays a significant role. Mr. Osborne is very likely on a brink of either turning the corner and living his life without coming into conflict with the law or he is not. It seems to me that the progress he has made over the past year and a half is something that he should be given an opportunity to try and continue. There are concerns that he will re-offend if he does not stay on his medication, including the methadone. In my view, when balancing the applicable principles, it is appropriate to have him serve a conditional sentence and probation with conditions. If he does comply with the terms of the order, and I expect he will because he has not had any problems with his conditional sentence order from 2006, then any danger to the community is substantially reduced.

[15] I have not overlooked the fact that Mr. Osborne has a number of convictions for failing to comply with orders. However, those occurred when he was a younger man and, in addition, he had no breach of his conditional sentence order. His supervisor indicated that he probably could have breached him, but in his view, Mr. Osborne was trying and it was better to let to him continue to try. That is the conclusion that I have reached, as well.

[16] Therefore, Mr. Osborne, I will ask you to stand now.

[17] I am going to sentence you to nine months to be served conditionally in the community to be followed by two years probation.

[18] With respect to the conditional sentence order, you are to keep the peace and be of good behaviour. You are to appear before the court when required to do so by the court. You are to report to a supervisor no later than Monday, November 19, 2007 at 4:00 p.m., and you are to report to that supervisor as directed by the supervisor. You are to remain within the jurisdiction of the court which is within the Province of British Columbia unless written provision to go outside the jurisdiction is obtained either from the court or from your

supervisor. You are to notify the court or supervisor in advance of any change of name or address and promptly notify the court or the supervisor of any change of employment or occupation.

- [19] In addition, I am going to impose the following terms: that you are to abstain from the consumption of drugs except in accordance with a medical prescription, that you are to attend counselling and any program directed by your supervisor. You are, by consent, to continue with the methadone program under the direction of your physician, and you will abide by a curfew which means you need to be in your home by 7:00 p.m. and you are not to leave your home until 6:00 a.m. the next morning, save and except for a medical emergency. You are to seek and maintain employment under the direction of your supervisor.
- [20] I would propose to have the same terms for the probation order save and except the condition for curfew.
- [21] That sentence will be imposed on each count concurrent. As well, there will be a probation order for two years attached to each count concurrent with those same conditions save and except the curfew provision.
- [22] With respect to the ancillary orders, there will be a forfeiture order made with respect to money and cell phones seized from Mr. Osborne, subject to any claim that Mr. Ali may make with respect to the money.
- [23] The victim fine surcharge is waived as Mr. Osborne clearly does not have the financial ability to pay that. Further, I make an order under s. 109(1)(c) of the Criminal Code with respect to a firearms prohibition. He is prohibited from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, and explosive substance for a period of 10 years. He will have 72 hours to surrender any of those things he may have in his possession to the R.C.M.P.

"E. Bennett J."

The Honourable Madam Justice Bennett

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