

CANADA / JUDGMENT

R. v. Permes

2024 BCSC 397

COURT

Supreme Court of British Columbia

DECIDED

5 February 2024

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2024 BCSC 397 R. v. Permes

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Permes,

2024 BCSC 397

Date: 20240205

Docket: 93967-2

Registry: Kelowna

Rex

v.

Kyle Andrew Permes and Kathleen Judith Tinning

- and -

Docket: 93964-2

Registry: Kelowna

Rex

v.

Kyle Andrew Permes

Before: The Honourable Justice Fitzpatrick

Oral Reasons for Sentence

(Re Kyle Andrew Permes)

Counsel for the Crown:

J.M. Le Dressay

Counsel for the Accused, Kyle Andrew Permes:

M.S. Lowe

Counsel for the Accused, Kathleen Judith Tinning:

N. Jacob

Place and Date of Hearing:

Kelowna, B.C.

February 5, 2024

Place and Date of Judgment and Clarification:

Kelowna, B.C.

February 5 and 8, 2024

- [1] THE COURT: The matter before the Court today is the sentencing of Kyle Andrew Permes with respect to two separate indictments.
- [2] In indictment 93964-2, Mr. Permes has pled guilty to Count 3. That Count states that, on or about February 11, 2021, in Kelowna, BC, he possessed a cross-bow, while he was prohibited from doing so, contrary to s. 117.01(1) of the Criminal Code, R.S.C. 1985, c. C-46. In indictment 93967-2, Mr. Permes has pled guilty to Counts 1 and 2. Those Counts state that, also on or about February 11, 2021, in Kelowna, BC, Mr. Permes unlawfully possessed controlled substances, namely, methamphetamine and fentanyl, for the purpose of trafficking, contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19.
- [3] There are other counts in the two indictments referred to above, although the Crown will be directing a stay of proceedings at the conclusion of this sentencing.

Circumstances of the Offences

- [4] The facts of the matter have been briefly summarized by the Crown. In February 2021, the police had received complaints from neighbours who lived near Mr. Permes' Kelowna residence (the "Residence"). Ultimately, that led the police to conduct an investigation with respect to Mr. Permes and perhaps others, and also commence surveillance at the Residence. As a result, the police obtained a search warrant for the Residence. Upon execution of the search warrant, the police discovered a number of items, including a large quantity of drugs, weapons and also, some stolen items.

- [5] The drugs that were found at the Residence included 47 grams (1.6 ounces) of fentanyl. The Crown advises that, at the gram or street level, the street value of these drugs would be \$9,400-14,000. In addition, the police found 193 grams (6.8 ounces) of methamphetamine. The Crown advises that, at the gram or street level, those drugs would have been worth \$15,440-19,000. I agree with the Crown that the volume of drugs found at the Residence can be described as significant.
- [6] Finally, the police found a cross-bow at the Residence, as depicted in Exhibit 1. The cross-bow was found with arrows that were presumably to be used in that weapon.

Circumstances of the Offender

- [7] Mr. Permes is presently 31 years of age. He was born in Kamloops. He describes himself as having Métis heritage.
- [8] Mr. Permes grew up in Kelowna and describes the difficulties that he faced in terms of his upbringing. His mother faced addiction issues. His mother and father separated when he was ten years old. He was kicked out of the family home when he was age 16. He moved in with his grandmother but, apparently, there were also issues in that household. At two separate times, Mr. Permes had to cope with the death of very important people in his life: his grandmother in 2010, and his mother in 2018. Apparently, Mr. Permes still maintains a relationship with his father who lives in Vernon, BC. Mr. Permes has siblings, although he describes himself as not close to them.
- [9] Mr. Permes is short of having received a high school education, given his expulsion from school when he was about 16 years of age. His counsel describes that he has had some training in the trades through an apprenticeship program in the electrician's field. I am told that he did work for some time in the construction industry, supposedly using his skills that he had learned at that time. Nevertheless, there is not much by way of an employment record. At the time of the offences in February 2021, Mr. Permes was receiving social assistance.
- [10] As somewhat relevant to the offence, Mr. Permes describes himself as experiencing substance abuse issues. He began using marihuana when he was young and that led to an opioid addiction, which I am assuming he is still addressing at this time.
- [11] Mr. Permes has a criminal record. The first offences were in January 2013. Those offences are very relevant to today's hearing, in the sense that they included convictions for unauthorized possession of firearms, careless use or storage of firearms and also, three convictions for possession for the purpose of trafficking. For those offences, Mr. Permes received one year in jail. He also received a mandatory ten-year firearms prohibition, which has led to the current charge relating to the cross-bow.

- [12] Mr. Permes' second conviction arose from an offence in May 2014 which was also trafficking in a controlled substance. In May 2014, Mr. Permes received a one-year jail sentence consecutive to the previous offences that I described. Again, the Court imposed a mandatory lifetime firearms prohibition.
- [13] Three later convictions occurred in May 2017 for possession of controlled substances (21 days jail before credit). In June 2017, Mr. Permes was convicted of theft under \$5,000 (7 days jail). In October 2018, he was convicted of break and enter and a theft under \$5,000 (12-month probation and 90-day CSO). Finally, in May 2020, Mr. Permes was convicted of breach of a probation order (1-day jail).
- [14] As stated above, Mr. Permes identifies as Métis and I have therefore received the benefit of a Gladue report dated May 12, 2020. Although the report is dated, it appears to be relevant to Mr. Permes' life as relevant to the three counts that are before me.
- [15] The Gladue report outlines his unstable childhood circumstances and addiction problems that I have already referred to. In addition, in the report, Amery Schultz outlines various Gladue considerations and they are what I would call the typical Gladue circumstances, including loss of parenting skills and familial composition, normalization of violence and neglect, substance use, addiction, mental health issues, high rates of unemployment and poverty and low levels of educational attainment.
- [16] The Criminal Code mandates that I consider those matters as may be relevant to Mr. Permes and the offences and they are to be considered within the overall sentence.

Discussion

- [17] Neither counsel have referred to any legal parameters in respect of these offences beyond the provisions of the Criminal Code that outline sentencing principles and considerations.
- [18] The Crown and defence positions are put forward as a joint submission. Therefore, I must undertake the approach set out in *R. v. Anthony-Cook*, 2016 SCC 43 at para. 42, in that I am apply a public interest test. That test requires that I accept the joint submission unless it would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system.
- [19] In this case, the joint submission is:
- a) Counts 1 and 2 in indictment 93967-2 (PPT charges), the proposed sentence is two and a half years in jail; and
 - b) Count 3 in indictment 93964-1 (possession of a cross-bow), the proposed sentence is six-months in jail, to be served consecutively with the above sentence.

- [20] Therefore, the overall sentence is 1,096 days. Mr. Permes has been in custody for 67 days which, with the usual one and a half credit, would result in a total credit of 101 days. And there are various ancillary orders which I will deal with in a moment.
- [21] Neither counsel has referred me to the case law, save and except for Mr. Permes' counsel.
- [22] Ms. Lowe refers to the R. v. Smith, 2017 BCCA 112 which speaks to the fact that fentanyl is a serious and incredibly harmful drug that is raining much trauma and grief on our society. Smith at para. 45 speaks of a range of between 18-36 months, although it must be remembered that ranges are not immutable parameters and are just ranges.
- [23] The obvious mitigating factor is Mr. Permes' guilty plea. The aggravating factors includes, of course, the matter of the fentanyl and the consequences of it in the community, which would support the primacy of the sentencing principles of denunciation and deterrence.
- [24] In all of the circumstances, I am satisfied that there is no reason to depart from the joint sentence proposed by the Crown and defence.
- [25] I appreciate that the proposed sentence has been finely calibrated in light of the various and numerous counts in these two indictments. As Ms. Lowe notes, there were various triable issues to be addressed if this matter was to proceed. Most prominently, the issues included a challenge to the search warrant which, of course, led to the discovery of all of the items that were found in the Residence. A successful challenge to the search warrant would have meant that the Crown's case was standing on quicksand, as they say.
- [26] I have no doubt that there has been substantial negotiations between the Crown and defence towards arriving at a fit sentence that is appropriate in the circumstances, in light of the circumstances of the offence, the circumstances of Mr. Permes, and the impact of these offences on the community, particularly with respect to the fentanyl.
- [27] Turning to the ancillary orders, there will be following orders. Firstly, there will be an order under s. 109 with respect to all three counts, being a lifetime ban with respect to weapons. Secondly, there will be a forfeiture order with respect to the ammunition and weapons that were discovered at the Residence.
- [28] I am told that there has already been a DNA order, so that need not be ordered. There will also be no victim surcharge imposed.
- [29] Mr. Permes, would you please stand. After having considered submissions by Crown and defence counsel, I am convicting you on both of the indictments that are before me. With respect to Counts 1 and 2 in indictment 93967-2 (PPT charges), I am sentencing you to two and a half years' imprisonment. With respect to Count 3 in indictment 93964-2 (possession of a cross-bow), I am sentencing you to a six-month jail sentence, which is to be served consecutively with respect to the previous two counts.

- [30] The total sentence is three years or, as your counsel has calculated, 1,096 days. You will be given credit for pretrial custody of 101 days, which is your time in custody of 67 days with the usual one-and-a-half-day credit. That leaves a net sentence of 995 days of new time.
- [31] On February 8, 2024, I clarified to counsel on the record that 101 days will be credited to the PPT charges in indictment 93967-2, resulting in a net sentence for those convictions of 813 days. In addition, the sentence for the cross-bow conviction in indictment 93964-2 will be 182 days. Anything further, Mr. Le Dressay?
- [32] CNSL J. LE DRESSAY: No, thank you.
- [33] THE COURT: Anything further, Ms. Lowe?
- [34] CNSL M. LOWE: Stays of proceedings? Stay the proceedings on the outstanding counts?
- [35] THE COURT: Are you going to direct a stay of proceedings?
- [36] CNSL J. LE DRESSAY: Yes, I have got quite a few stays to enter. Crown is directing stays in respect of Indictment 93964-2 on Counts 1, 2, and 4; in respect of Indictment 93967-2, Crown directs a stay of proceedings on Counts 3-8.
- [37] THE COURT: All right, good luck, Mr. Permes.
- [38] THE ACCUSED: Thank you, Your Honour.
- "Fitzpatrick J."

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Prepared on 29 October 2026 · Esheria