CANADA / JUDGMENT

R. v. Picard

2016 BCSC 2052

COURT
Supreme Court of British Columbia

DECIDED
26 August 2016

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2016 BCSC 2052 R. v. Picard

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Picard,

2016 BCSC 2052

Date: 20160826

Docket: 32130

Registry: Williams Lake

Regina

v.

Roch Joseph Claude Picard (Also known as Rock George Picard)

and Linda Elizabeth Stinson

Before: The Honourable Mr. Justice Butler

Oral Ruling re Constitutional Challenge

and

Oral Reasons for Sentence re Accused Linda Elizabeth Stinson

Counsel for the Crown:

Alexander R. Clarkson

Counsel for the Accused, Linda Elizabeth Stinson:

William J. Herdy

Place and Date of Trial/Hearing:

Williams Lake, B.C.

June 2, 2016

Place and Date of Judgment:

Williams Lake, B.C.

August 26, 2016

[1] THE COURT: On July 17, 2015, I found Linda Stinson guilty of production of marihuana and possession of marihuana for the purpose of trafficking, contrary to ss. 7(1) and 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 [CDSA], in reasons indexed as R. v. Picard, 2015 BCSC 1748 (the "Conviction Reasons").

[2] The circumstances of the offence involved an indoor marihuana grow operation ("grow op") on a rural property near Forest Grove, British Columbia, registered to Ms. Stinson in joint tenancy with Roch Picard, her now-estranged husband. Mr. Picard was charged jointly with Ms. Stinson, but was found not guilty on both counts.

[3] The police executed a search warrant and found approximately 500 plants located in a barn on the property and in the basement of the house. The grow op was reasonably sophisticated and well organized. Mature plants ready to harvest were found in the barn and mature clones were found in the basement of the house. A quantity of drying marihuana was found upstairs.

[4] The Crown expert at trial, Corporal Ringelberg, testified that a grow op of this size could be expected to produce some 94 pounds of marihuana worth approximately $169,000 if sold by the pound.

[5] Ms. Stinson filed a notice of constitutional challenge to a sentencing provision applicable to her conviction. I heard argument regarding that challenge and sentencing generally on June 2, 2016. Ms. Stinson is now before the Court to hear my ruling regarding the constitutional challenge, and for sentencing.

Challenged Provision

[6] Amendments to the CDSA in 2012 by the Safe Streets and Communities Act, S.C. 2012, c. 1, ss. 39-46, brought in a new regime of graduated mandatory minimum sentences applicable to marihuana production offences. These sentences vary, depending on the number of plants involved and the presence of enumerated aggravating factors. I concluded that at the time of arrest, Ms. Stinson had just fewer than 500 plants in her home and outbuilding.

[7] Section 7(2)(b)(iii) is applicable to Ms. Stinson and causes her to be subject to a mandatory minimum sentence of imprisonment of one year. The graduated marihuana production sentencing regime of the CDSA is set out in s. 7 and includes the following:

7 (1) Except as authorized under the regulations, no person shall produce a substance included in Schedule I, II, III or IV.

(2) Every person who contravenes subsection (1)

(b) if the subject matter of the offence is cannabis (marijuana), is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years, and to a minimum punishment of

(i) imprisonment for a term of six months if the number of plants produced is less than 201 and more than five, and the production is for the purpose of trafficking,

(ii) imprisonment for a term of nine months if the number of plants produced is less than 201 and more than five, the production is for the purpose of trafficking and any of the factors set out in subsection (3) apply,

(iii) imprisonment for a term of one year if the number of plants produced is more than 200 and less than 501,

(iv) imprisonment for a term of 18 months if the number of plants produced is more than 200 and less than 501 and any of the factors set out in subsection (3) apply,

[8] Subsection (3) then sets out aggravating factors which apply where the grow operation in question involved the production of more than 200 plants. I note that none of the aggravating factors in subsection (3) are applicable in this case.

[9] It should also be noted that several amendments to the Criminal Code combine with these CDSA sentencing provisions to preclude the availability of a conditional sentence. The existence of a mandatory minimum, a maximum sentence of 14 years, and the maximum sentence of over 10 years for an offence involving the trafficking or production of drugs, each independently remove this sentencing option pursuant to s. 742.1(b), (c), and (e)(ii) respectively. This means Ms. Stinson is facing, at minimum, a one-year custodial sentence if her constitutional challenge is not successful.

[10] Ms. Stinson's notice of constitutional challenge alleges that the mandatory minimum sentence imposed under s. 7(2)(b)(iii) of the CDSA infringes s. 12 of the Charter of Rights and Freedoms. That section provides:

12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

[11] Ms. Stinson argues that the mandatory minimum sentence applicable to her circumstances results in cruel and unusual punishment.

[12] The Crown submits that the mandatory minimum applicable in this case is not cruel and unusual punishment within the meaning of s. 12, because it is part of a broader sentencing regime carefully tailored to address the relative seriousness and moral blameworthiness of a range of drug-offending conduct. Further, the Crown states that the impugned provision of the CDSA is entitled to deference under s. 12, and that the Court is bound to uphold it unless it is shown to lead to a grossly disproportionate punishment.

Applicable Law

[13] Section 12 of the Charter grants the right "not to be subjected to any cruel and unusual treatment or punishment". The phrase "cruel and unusual" has been interpreted to refer to punishment so harsh or excessive as to outrage the standards of decency. In other words, it applies where the punishment is grossly disproportionate, such that Canadians would find the punishment "abhorrent or intolerable": R. v. Morrisey, 2000 SCC 39 at para. 26.

[14] Grossly disproportionate is a high standard to meet and will only be met in the clearest of cases, having regard to the nature of the offence and the circumstances of the offender: R. v. Nur, 2015 SCC 15 at para. 39. It is "aimed at punishments that are more than merely excessive": R. v. Smith, [1987] 1 S.C.R. 1045 at 1072; R. v. Ferguson, 2008 SCC 6 at para. 14. The test "is not one which is quick to invalidate sentences crafted by legislators. The means and purposes of legislative bodies are not to be easily upset in a challenge under s. 12": R. v. Goltz, [1991] 3 S.C.R. 485 at 501.

[15] The Supreme Court of Canada has recently summarized and clarified the law on s. 12 challenges in Nur at para. 39:

[39] This Court has set a high bar for what constitutes "cruel and unusual . . . punishment" under s. 12 of the Charter. A sentence attacked on this ground must be grossly disproportionate to the punishment that is appropriate, having regard to the nature of the offence and the circumstances of the offender: R. v. Smith, [1987] 1 S.C.R. 1045, at p. 1073. Lamer J. (as he then was) explained at p. 1072 that the test of gross disproportionality "is aimed at punishments that are more than merely excessive". He added, "[w]e should be careful not to stigmatize every disproportionate or excessive sentence as being a constitutional violation". A prescribed sentence may be grossly disproportionate as applied to the offender before the court or because it would have a grossly disproportionate impact on others, rendering the law unconstitutional.

[16] The procedure to follow when facing a challenge under s. 12 is to embark on a two-stage process consisting first of determining whether the sentencing provision in question provides for punishment that is grossly disproportionate as applied to the individual offender. This is referred to as the particularized inquiry. If the provision is not found to be grossly disproportionate in the circumstances of the particular offender, the inquiry then shifts to the second stage to consider whether the provision provides for a punishment that is grossly disproportionate in reasonable hypothetical scenarios.

[17] The particularized inquiry takes into account several factors when assessing whether a mandatory minimum sentence is grossly disproportionate. The factors are summarized in Morrisey at paras. 27-28:

· the gravity of the offence;

· personal characteristics of the offender;

· the circumstances of the offence;

· the actual effect of the punishment on the particular offender;

· the penological goals and sentencing principles reflected in the mandatory minimum sentence;

· the existence of valid effective alternatives to the mandatory minimum; and

· a comparison of punishments previously imposed for similar crimes.

[18] I will begin with the particularized inquiry relating to Ms. Stinson and the circumstances of her case, and then move on to consider reasonable hypothetical scenarios, if necessary.

Particularized Inquiry

[19] I have already set out the circumstances of the offence which are also described in detail in the Conviction Reasons. The circumstances of Ms. Stinson are set out in the Pre-Sentence Report, as well as the testimony of Ms. Stinson. She was born in Vancouver, but her family spent time elsewhere as she was growing up. She is now 61 years old. She has a son who was born in 1977. She was married to Mr. Picard in 1997 and they separated ten years later. Ms. Stinson has worked at a variety of jobs to support herself. She has no prior criminal record.

[20] At the time of the offence, she owned and operated a laundromat. She currently collects $575 a month in social assistance benefits. Ms. Stinson described her current economic struggles in her testimony: her house is in foreclosure; she has large credit card debts; and she lived for 11 months without hydroelectric power at her home. This was only remedied when the mortgage holder agreed to pay for power to be hooked up to prevent damage to the plumbing in the winter.

[21] Ms. Stinson also has extensive health problems including arthritis, scoliosis, degenerative disc disease, chronic obstructive pulmonary disease, depression, and an anxiety disorder. These conditions require several medications. She also consumes about three ounces of marihuana each month to treat her medical conditions. Ms. Stinson held a licence to produce marihuana for her own medical use, but has discontinued the production because she could not afford the electricity. While no medical evidence was presented to support these health claims, the Crown accepts her poor health as a mitigating factor. Additionally, Ms. Stinson states that she has 16 animals that will lose their home if she is given a custodial sentence.

[22] The aggravating factors in this case are those arising from the circumstances of the offence. It was a large, relatively sophisticated grow op which was set up for the continuous production of marihuana. Ms. Stinson was the owner and occupant of the property and thus had control over the operation. Of course, the grow op was carried out for profit.

[23] The mitigating factors arise from Ms. Stinson's personal circumstances. She is 61 years old. This is her first offence. Her health is poor and so she may have difficulty in a prison setting.

[24] The parties made submissions regarding the sentence which would have been imposed but for the mandatory minimum provision in question. The defence relies on authorities which suggest a range of sentences for marihuana offences of 4 to 12 months in jail or a conditional sentence of 10 to 18 months. The defence referred to R. v. Elliott, 2016 BCSC 393; R. v. Lange, 2002 BCPC 483; and R. v. Small, 2001 BCCA 91. However, these cases considered smaller grow operations.

[25] The defence submits that a conditional sentence of six months to one year with conditions similar to those suggested on the Pre-Sentence Report would be a fit sentence for Ms. Stinson. The conditions include regular reporting to a probation officer, successful participation in and completion of counselling or psychiatric services, and a prohibition on the possession or consumption of drugs or alcohol, except as medically prescribed. Defence counsel submits that Ms. Stinson's medical condition is such that prison would be "a bit excessive".

[26] The Crown takes the position that absent the provisions of s. 7(2)(b)(iii), a sentence of one year's imprisonment would be a fit sentence for Ms. Stinson. While acknowledging that she is a mature offender, she chose to become involved in the commercial production of marihuana for personal gain and was an active participant in a sophisticated grow op. Additionally, Ms. Stinson did not plead guilty and continues to minimize her role in the offence. She does not take responsibility for her actions.

[27] The Crown submits that s. 7(2)(b)(iii) closely reflects the sentences that were handed out prior to the amendments. The Crown referred to the oft-cited authorities which established the range of sentences for marihuana production. These include: R. v. Su, 2000 BCCA 480; R. v. Anderson, 2007 BCCA 581; R. v. Lau, 2014 BCCA 176; R. v. Vu, 2003 BCCA 339; R. v. Hill, 2007 BCCA 309 (and supplemental reasons from R. v. Hill, 2007 BCCA 340); R. v. Wallis, 2007 BCCA 377; R. v. Koenders, 2007 BCCA 378; R. v. Budd, 2010 BCCA 214; R. v. Kwiatkowski, 2010 BCCA 238; R. v. Bui, 2013 BCCA 168; and R. v. Van Santvoord, 2007 BCCA 23. The Crown says that these authorities establish a sentencing range of nine months to three years' incarceration for marihuana offences.

Analysis

[28] In the circumstances of this case, a fit sentence for Ms. Stinson would be a custodial sentence of 6 to 9 months or a conditional sentence in the range of 12 to 18 months, absent the statutory amendments and the mandatory minimum sentence. Such a sentence would

take into account the mitigating factors of Ms. Stinson being a 61-year-old first-time offender with reasonably serious health conditions. In other words, such a sentence would be at the lower end of the range which was in place prior to the amendments. That range, exemplified by cases such as Su and the court's discussion in Koenders, established that a custodial sentence in the range of one year was fit for mid-sized commercial operations involving 300 to 500 plants. While the difference in sentences depended on numerous factors, the number of plants had become a very significant factor in establishing the sentencing range.

[29] I agree with the Crown's submission that the mandatory minimum sentence in s. 7(2)(b)(iii) can be said to be fairly representative of the sentencing range for grow operations of 200 to 500 plants prior to the amendments.

[30] As previously mentioned, a conditional sentence is no longer available due to the provisions of s. 742.1 of the Criminal Code. The defence submitted that this sentencing option was appropriate for Ms. Stinson. I do not disagree that a conditional sentence might have been appropriate had it been available. If a CSO was available, I may have found that a conditional sentence of longer duration, namely 12 to 18 months, would have been appropriate in this case and not out of line with case law prior to the amendments to the CDSA. Conditional sentences are generally longer than a custodial sentence for the same offence: R. v. Proulx, [2000] 1 S.C.R. 61 at para. 54.

[31] I note that despite submitting that a conditional sentence would be appropriate for Ms. Stinson, the defence has not challenged the lack of availability of such a sentence based on the relevant subsections of s. 742.1 of the Criminal Code.

[32] The absence of conditional sentences as an option in sentencing under the new CDSA regime in s. 7 was considered recently by Duncan J. in R. v. Serov, 2016 BCSC 636. She stated as follows at para. 35:

[35] There is no constitutional right to a conditional sentence. Parliament has specifically carved out offences involving serious personal injury or abuse of children from the conditional sentence regime. And, by enacting a mandatory minimum sentence for production of marijuana in the circumstances before me, a conditional sentence is no longer available. I am not persuaded on the materials before me that this informs the gross disproportionality analysis in Mr. Serov's case.

[33] Serov was a challenge to s. 7(2)(b)(iv) of the CDSA. The case involved 248 plants which would have brought it under the same subsection as Ms. Stinson, however, the grow op was located on property owned by a third party, triggering the aggravating factor under s. 7(3)(a) and pushing the mandatory minimum sentence to 18 months.

[34] I must also consider the penological goals and sentencing principles reflected in the challenged sentence. The Crown referred to provisions in Hansard, which it submits demonstrate Parliament's intention when enacting the amendments to the CDSA. In particular, the comments of Kerry-Lynne D. Findlay, then Parliamentary Secretary to the

Minister of Justice: Hansard, 41st Parl., 1st Sess., No. 17 (21 September 2011) at 1645. Parliament was motivated by the significant increase in marihuana grow ops, particularly in British Columbia. The mandatory minimum sentence in s. 7(2)(b)(iii), as well as those in the related provisions, reflect a choice by Parliament to prioritize the objectives of denunciation and deterrence when sentencing offenders for commercial production of marihuana.

[35] I agree that the stated goals and principles are consistent with general sentencing principles contained in both s. 10 of the CDSA and ss. 718 and 718.1 of the Criminal Code. Further, it is within the scope of Parliament's ability to choose to focus specifically on the principles of denunciation and deterrence, and I must give deference to that decision: Goltz at 501.

[36] Given the high bar set for gross disproportionality, I cannot find that one year's imprisonment for Ms. Stinson offends s. 12. I am of the view that a sentence of either six to nine months' imprisonment or a 12- to 18-month conditional sentence, if available, would have been appropriate in this case without the mandatory minimum. The custodial sentence required by s. 7(2)(b)(iii) is not grossly disproportionate to such a sentence. A sentence that is merely higher than what would otherwise have been appropriate does not meet the level required to find that the punishment is cruel and unusual.

[37] Further, the minimum sentence represents a shift in focus from the goals of sentencing to denunciation and deterrence, which can also justify a higher sentence than may have been imposed in previous cases. Parliament has the right to establish or change the penological goals for specific offences and has done so here.

[38] The particularized inquiry has not resulted in a successful challenge under s. 12, and I will now turn to the reasonable hypothetical presented in this case.

Reasonable Hypothetical

[39] When attempting to demonstrate the gross disproportionality of a mandatory minimum sentence based on a reasonable hypothetical scenario, the defence bears the burden of identifying such a scenario. In Nur, McLachlin C.J.C. reviewed the jurisprudence and provided further guidance on what constitutes a reasonable hypothetical and how the test is to be applied. She stated as follows at paras. 57 and 68:

[57] Unfortunately, the word "hypothetical" has overwhelmed the word "reasonable" in the intervening years, leading to debate on how general or particular a hypothetical must be, and to the unfortunate suggestion that if a trial judge fails to assign a particular concatenation of characteristics to her hypothetical, the analysis is vitiated. With respect, this overcomplicates the matter. The question is simply whether it is reasonably foreseeable that the mandatory minimum sentence will impose sentences that are grossly disproportionate to some peoples' situations, resulting in a violation of s. 12. The terminology of "reasonable hypothetical" may be helpful in this regard, but the focus remains squarely on whether the sentence would be grossly disproportionate in reasonably foreseeable cases. At its core, the process is simply an application of well established

principles of legal and constitutional interpretation.

[68] The reasonable foreseeability test is not confined to situations that are likely to arise in the general day-to-day application of the law. Rather, it asks what situations may reasonably arise. It targets circumstances that are foreseeably captured by the minimum conduct caught by the offence. Only situations that are "remote" or "far-fetched" are excluded: Goltz, at p. 515.

[40] Ms. Stinson set out one hypothetical for the Court to consider in finding a violation of s. 12 of the Charter with respect to the mandatory minimum sentence in s. 7(2)(b)(iii) of the CDSA. The hypothetical scenario reads in its entirety:

1. A husband and wife jointly own and operate a small successful market garden business near Williams Lake.
2. When they reach their mid-seventies they prepare to retire.
3. They wish to continue residing in the area so they decide to lease out their greenhouse and gardens for a monthly fee - unrelated to production or profits.
4. As an accommodation to the lessees the owners keep the hydro account and the gardening supplies accounts in their own names, eliminating the requirement for credit checks.
5. However, the lessees are responsible to pay the accounts.
6. This arrangement is satisfactory with the first lessees.
7. The next lessee, Mr. X who is unknown to the owners, enters into the same type of agreement.
8. A few weeks later Mr. X approaches the owners with a license that states that he is authorized to produce medical marihuana.
9. The owners do not make any inquiries concerning the validity of the license - the license is fraudulent.
10. A few months later the RCMP attend and find 480 marihuana plants growing in the greenhouse.
11. Mr. X has disappeared and the owners are charged and convicted of cultivation and [possession for the purposes of trafficking].

[41] The defence submits that a one-year sentence for the hypothetical couple, if convicted as accomplices or principals, would be grossly disproportionate punishment given their moral culpability.

[42] The Crown says that a hypothetical based on circumstances which would not result in a conviction cannot be used for a s. 12 challenge. The Crown says that is the situation here; the hypothetical circumstances would allow the accused couple to raise a defence of honest and mistaken belief.

[43] Further, the Crown says there is now a compelling body of jurisprudence upholding the mandatory minimum sentences for offenders convicted of producing 200-plus plants. While those decisions are not strictly binding on me, the Crown submits that they are persuasive. Indeed, the Crown submits that the reason Ms. Stinson could not identify a reasonable hypothetical capable of demonstrating a disproportionate sentence is because her personal circumstances are such that this case is a useful indicator that the minimum sentence will not be grossly disproportionate to the wrongdoing.

Analysis

[44] I accept the Crown's submissions on the second stage of the analysis. The hypothetical scenario put forward by Ms. Stinson is not a reasonable hypothetical scenario which assists in the consideration of gross disproportionality. In order to properly assess whether a sentence is grossly disproportionate, the circumstances presented must not only have some reasonable prospect of arising, as stated in Nur, but the scenario presented also must be one in which an offence was committed. That is not the case with Ms. Stinson's hypothetical. The possibility of such a conviction on the facts put forward is remote and farfetched. I agree with the Crown that this hypothetical situation would likely not result in a conviction and, as such, it is of no value to the s. 12 analysis.

[45] The defence suggests that the hypothetical shows that landowners can be "duped" and made to look like they were participating in a grow op when they were not. I do not see this as representing a situation that "may reasonably arise", as required by Nur.

[46] I would like to briefly address the recent case of R. v Li, 2016 ONSC 1757, which dealt with a s. 12 challenge to the same mandatory minimum sentence in the CDSA: s. 7(2)(b)(iii). I note that this case is not binding authority for my decision. Li upheld the sentencing provision, both on the particularized inquiry and on the reasonable hypothetical inquiry. The personal circumstances of Mr. Li were sympathetic as the mandatory minimum sentence created immigration consequences for him as he was not a Canadian citizen. The arguments made in that case differ from those made before me. Mr. Li emphasized the arbitrariness of the bright line created for grow ops consisting of 201 plants or more. The court found that Parliament is justified in drawing a distinction at a certain number of plants (Li at para. 49). The trial judge concluded that even though he would have sentenced Mr. Li to six months less a day in order to avoid immigration consequences (at para. 41), the mandatory minimum sentence did not reach the standard of gross disproportionality. No true reasonable hypothetical was put forward in Li, because Mr. Li could not "conjure up a more sympathetic hypothetical offender than himself": at para. 45.

[47] Despite the differences between the circumstances in Li and the arguments put forward, I find the reasoning in Li persuasive in reaching my conclusion that s. 7(2)(b)(iii) does not violate s. 12 of the Charter as creating cruel and unusual punishment.

[48] One other case relied on by the defence was less relevant. In R. v. Elliott, 2016 BCSC 393, Fenlon J. (as she then was), found the mandatory minimum sentence in s. 7(2)(b)(i) of the CDSA violated s. 12 of the Charter. That provision set a minimum of six months' imprisonment for more than 5 and fewer than 201 marihuana plants, where the production is for the purpose of trafficking. The sentence, coupled with the expansive definition of "trafficking" in the CDSA, was found to "[cast] its net too broadly and [caught] offenders and offences involving little moral fault and little or no danger to the public" (Elliott at para. 64).

[49] This finding is not helpful to me in the present case, as the provision at issue in Elliott included as few as six plants and easily covered non-commercial operations where the marihuana was being shared among friends and not reaching the broader community. The provision under which Ms. Stinson is being sentenced involves grow ops of a size where trafficking is presumed, given the quantity of marihuana that can be harvested from 201 to 500 plants. The mandatory minimum currently at issue cannot be said to be too far-reaching in the same manner as found in Elliott.

[50] Although s. 7(2)(b)(i) has been struck down in this province, other provisions of the amended sentencing regime have been upheld, both in this province and across Canada. The decision in Serov, which I have already referred to, is persuasive. Duncan J. upheld the provision and enforced the mandatory minimum of 18 months, despite finding that she would have sentenced him to 12 months' imprisonment absent the provision. As mentioned, the size of the grow op in the present case is the same as in Serov. The offender in Serov would have come under the same provision as Ms. Stinson, were it not for the applicable aggravating factors pursuant to s. 7(3). The case is not binding authority, but I concur with the court's analysis of the sentencing regime.

[51] There are additional examples of judicial approval of the provisions in the marihuana production sentencing regime. These include Li, relating to the same provision at issue here; Serov, upholding s. 7(2)(b)(iv); R. v. Hofer, 2016 BCSC 1442, upholding s. 7(2)(b)(v); R. v. Hanna, 2015 BCSC 986, upholding s. 7(2)(b)(v); R. v. Kennedy, 2016 ONSC 3438, upholding s. 7(2)(b)(v) and s. 7(2)(b)(vi); and R. v. Vu, 2015 ONSC 5834, striking down ss. 7(2)(b)(i) and (ii), and the residential aggravating factor in s. 7(3)(c). These decisions do not dictate the result of the present case; however, I agree with the Crown that there is now a substantial body of jurisprudence upholding the mandatory minimum sentences under s. 7(2) for commercial grow ops of more than 200 plants. I am not persuaded that I should arrive at a different conclusion in this case.

Disposition

[52] In conclusion, the defence has not met its burden, either under the particularized inquiry or the reasonable hypothetical scenario inquiry, that the mandatory minimum sentence in s. 7(2)(b)(iii) of the CDSA violates s. 12 of the Charter. I dismiss the defence application challenging that provision. Ms. Stinson will be subject to the sentencing regime established by the 2012 amendments to the CDSA.

[53] Finally, I must consider what sentence is appropriate for Ms. Stinson. Having decided that the provisions of s. 7(2)(b)(iii) are applicable, the minimum sentence is a one-year custodial sentence. The Crown submits that such a sentence is fit, given the circumstances of Ms. Stinson and of the offence. I agree. While the grow op was large and sophisticated, Ms. Stinson's personal circumstances are such that she should be given a sentence at the lowest end of the range. Accordingly, I will impose the minimum sentence.

[54] Ms. Stinson, can you please stand up.

[55] On Count 1, I sentence you to one year in prison for unlawful production of marihuana, contrary to s. 7(1) of the CDSA. I also impose a sentence of one year for Count 2, possession for the purposes of trafficking, contrary to s. 5(2) of the CDSA. Those sentences will be served concurrently.

[56] I am going to make the following ancillary orders, and you may be seated at this point Ms. Stinson.

[57] I order Ms. Stinson to provide a DNA sample pursuant to s. 487.051(2) of the Criminal Code.

[58] I also order a mandatory ten-year firearms ban pursuant to s. 109(2) of the Criminal Code.

[59] I also order that the items seized from the marihuana grow operation at the property in Forest Grove be forfeited as offence-related property pursuant to s. 16 of the CDSA.

[60] I did not receive any submissions on the victim surcharge, although I did hear a lot of evidence regarding the hardship of Ms. Stinson. I assume that the defence is making an application, as it is discretionary given the time of the offence; accordingly I waive the victim surcharge.

[61] That concludes my sentencing reasons.

"Butler J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://www.bccourts.ca/jdb-txt/sc/16/20/2016BCSC2052.htm

CASE PAGE https://chat.esheria.ai/case-law/canada/r-v-picard-2016

Prepared on 27 October 2026 · Esheria