

CANADA / JUDGMENT

R. v. Randhawa

2007 BCCA 598

COURT

British Columbia Court of Appeal

DECIDED

30 November 2007

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2007 BCCA 598 R. v. Randhawa COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Randhawa, 2007 BCCA 598 Date: 20071130 Docket: CA035210 Between: Regina Respondent And Amandeep Singh Randhawa Appellant Before: The Honourable Madam Justice Rowles The Honourable Mr. Justice Hall The Honourable Madam Justice Levine Oral Reasons for Judgment K.H. Johnston C. Sicotte Counsel for the Appellant F. Tischler Counsel for the (Crown) Respondent Place and Date of Hearing: Vancouver, British Columbia 28 November 2007 Place and Date of Judgment: 30 November 2007

- [1] HALL, J.A.: The appellant, a man aged 26 with no prior record, was sentenced in Provincial Court on 7 June 2007 to a concurrent sentence of 13 years for kidnapping and five years for robbery.
- [2] Taking into account a period served by the appellant in custody pre-trial, the actual sentence imposed was 12 years and two months. The victim of the crimes was a 22 year old woman, the daughter of a former employer of the appellant. A victim impact statement was filed narrating the psychological trauma caused to the victim.
- [3] The Crown advised the sentencing judge that the range of sentence was between 10 years and life for this type of offence of kidnapping. The defence submitted a sentence in the range of five to seven years. In his statement in this Court, the appellant now suggests a period of six to eight years would be appropriate. The Crown respondent submits the sentence imposed is appropriate and should not be altered.
- [4] A summary of the circumstances is as follows: The appellant had become familiar with the victim's family, having worked for the victim's father in one of the father's several stores. The appellant had been fired a couple of years before the kidnapping and seems to have held a grudge against the father because of this. During the kidnapping, the kidnappers told the victim that they had researched her family and knew the names of the family members and the cars they drove. The appellant also told the victim that he had planned to kidnap her or her sister the night before near a store parking lot. In fact, on the night before the incident, there was an aborted attempt to kidnap the sister of the victim outside another store owned by the father. On the next evening, as the victim was leaving the store where she worked that day, the appellant pointed out to her that a tire on her car was flat. The appellant, who was in

a van, offered to fix the tire and directed the victim to pull into a nearby parking lot. While going through the motions of fixing the tire, the appellant shoved the victim into the back of a van and shut the door behind her. Inside, the appellant's accomplice punched the victim, taped her mouth, and cuffed her hands behind her back. They blindfolded her, and took her cell phone. She remained blindfolded and handcuffed throughout some 6 hours of captivity. The sentencing judge noted that the kidnappers inflicted injuries to the face and throat of the victim. The victim was quite terrified by the incident. The kidnappers drove her to the appellant's residence and carried her in. They then phoned her father and demanded \$500,000 and threatened to kill the victim if the father contacted the police. The father did contact the police who, on an "inspired hunch", suspected the appellant and his accomplice and placed their residences under surveillance. The kidnappers made several phone calls to the father, threatening to kill his daughter. Over time they lowered their demands to \$70,000 and stopped making threats. The sentencing judge found as a fact that an implicit threat to kill the victim continued throughout the duration of the incident. The kidnappers eventually carried the victim out to the appellant's car and concealed her under a blanket on the back floor. In the car they forced the victim to reveal her bank card PIN which they used to withdraw money from her account. That was the robbery count. The kidnappers left the victim alone in the car near the appellant's house. It appears they feared the police were on their trail. After about 10 minutes of silence the victim managed to get out of the car and screamed for help. Nearby undercover police officers responded to her cries and rescued her. The police arrested the appellant and co-accused in the vicinity an hour later. The judge observed the whole venture was stupid and poorly planned but it cannot be doubted that this was a terrifying experience for the victim and her family.

- [5] Counsel have referred us to several cases. What I take from these cases is that in cases of kidnapping, sentences seem to range from nine or 10 years to life depending on the circumstances of the offence and the offender.
- [6] This case had elements of aggravation including the circumstance that there seemed to be an element of revenge against the father of the victim (the former employer of the appellant) and the appellant persisted in his plan to kidnap the victim despite being foiled a day earlier in an attempted kidnapping of her sister. In his favour, the appellant entered a plea in timely fashion and accepted guilt, obviating the need for a trial, which spared witnesses the stress that testifying at a trial would have imposed on them. In certain cases cited to us, such as *R. v. Poon*, [2006] B.C.J. No. 3166, the facts were more egregious, both in terms of the scope of planning associated with the crime and the very long period of the duration of the kidnapping. In the case of *Poon*, the crime extended over several days. In the case of *R. v. Lowman*, [2006] B.C.J. No. 2773, referred to by the sentencing judge, the decision of Cullen J. contains helpful statements of principle and notes that 10 years to life seems an accepted range of sentence. That is in accord with the earlier case of *R. v. Mills*, [1998] B.C.J. No. 2105, a judgment of this Court, wherein the Court observed that the range of sentence is as noted by Cullen J. in cases of kidnapping. The lesser sentences imposed in *Mills* were suggested as being more fitting as templates in the instant case by counsel for the appellant but I do not

find that argument persuasive. As this Court noted in that case, that was a clumsy case of a relatively short confinement as opposed to a true kidnapping like the case at bar.

- [7] Here the learned sentencing judge adverted to the timely guilty plea of the appellant as a mitigating factor. Although he adverted to it, I do not consider he gave sufficient weight to it. An early guilty plea in this sort of case spares the victims and family members from uncertainty and from the trauma of testifying and reliving the very unpleasant circumstances of these types of crimes. A guilty plea is also of benefit to the justice system in avoiding unnecessary trials. As well, it can also be said, as was observed by the sentencing judge, that such a disposition at an early stage of proceedings indicates an offender has taken responsibility for the crime and is a step on the road to rehabilitation of the offender.
- [8] Ultimately the consideration for this Court is the fitness of any sentence. I incline to the view that in this case a sentence of 11 as opposed to 13 years will suffice to mark the seriousness of this crime and serve the important objectives of denunciation and deterrence. Giving the same credit for earlier custody as thought appropriate by the sentencing judge, that results in a sentence of 10 years and two months on the kidnapping charge. The concurrent sentence for robbery is unchanged, as are the provisions concerning DNA samples and the weapons prohibition. I would allow the appeal to vary the sentence in the terms indicated.
- [9] ROWLES, J.A.: I agree.
- [10] LEVINE, J.A.: I agree.
- [11] ROWLES, J.A.: The appeal is allowed to the extent indicated by Mr. Justice Hall. "The Honourable Mr. Justice Hall"

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