

CANADA / JUDGMENT

# R. v. Randhawa

2019 BCCA 429

## COURT

British Columbia Court of Appeal

## DECIDED

22 November 2019

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2019 BCCA 429 R. v. Randhawa COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Randhawa, 2019 BCCA 429 Date: 20191122 Docket: CA45077 Between: Regina Respondent And Gursher Singh Randhawa Appellant Before: The Honourable Madam Justice Fenlon The Honourable Madam Justice Dickson The Honourable Mr. Justice Butler On appeal from: An order of the Supreme Court of British Columbia, dated February 7, 2018 (R. v. Randhawa, 2018 BCSC 545, Vancouver Docket 27071). Oral Reasons for Judgment Counsel for the Appellant: P.J. Wilson, Q.C. Counsel for the Respondent: M.A. Street Place and Date of Hearing: Vancouver, British Columbia November 12, 2019 Place and Date of Judgment: Vancouver, British Columbia November 22, 2019 Summary: The accused appeals a sentence of 18 months' imprisonment for five counts of aggravated assault and one count of possession of a weapon for a dangerous purpose arising out of a bar fight. At trial, the jury rejected the claim of self-defence because, although the accused acted for the purpose of defending himself, his actions in using a knife in a crowded bar to stab five people were unreasonable. Held: Appeal dismissed. The judge appropriately recognized that the sentencing range for aggravated assault is a guideline that does not preclude lesser or suspended sentences in exceptional circumstances. The near self-defence context justified a sentence towards the low end of the range, but the moral culpability of the accused associated with his use of a weapon and the number of victims nevertheless justifies a period of incarceration.

- [1] FENLON J.A.: Mr. Randhawa appeals a sentence of 18 months' imprisonment imposed following his conviction by jury of five counts of aggravated assault and one count of possession of a weapon for a dangerous purpose. The convictions arose out of events at a nightclub. A fight started when Mr. Randhawa was taking a photograph of two people on the dance floor at their request, and one of the victims got in the way. Words were exchanged, and although the witness accounts vary, it was clear that the argument almost immediately turned into a brawl.
- [2] The sentencing judge described the brawl at para. 4 of his reasons for judgment (indexed at 2018 BCSC 545):

- [4] ... Mr. Randhawa described the situation as a melee, which is a fair characterization. At one point, Mr. Randhawa and others fell to the ground in what one witness described as a "dogpile". Mr. Randhawa found himself on the bottom of that dogpile. Mr. Randhawa testified that he fought his way back to his feet and that he pulled out his knife to get people away from him, but when that did not work, he continued to wave or slash with his knife.
- [3] The man who was involved in the initial altercation with Mr. Randhawa suffered a significant stab wound to his abdomen. He required surgery and was in hospital for a number of days. Two of his friends who had joined in the brawl received stab wounds to their arms, as did the bouncer and another man who tried to intervene to stop the fighting.
- [4] The main issue at trial was whether Mr. Randhawa had acted in self-defence. In this regard the judge said:
- [10] At trial, Mr. Randhawa acknowledged that he inflicted the stab wounds on the complainants, but he claimed that he acted in self-defence. That was the central issue before the jury, which rejected the defence. Based on the evidence before the jury and the position taken by the Crown, I am satisfied that the jury found Mr. Randhawa met the first two elements of the self-defence test, namely, that he believed on reasonable grounds that force was being used against him and that he acted for the purpose of defending himself. I am also satisfied that the jury rejected the claim of self-defence based on the third element of the test and found that Mr. Randhawa's actions were not reasonable.
- [5] At the sentencing hearing, the Crown sought a global sentence of three-and-a-half to four years. The defence sought a suspended sentence given Mr. Randhawa's relatively young age (26 at the time the offence), his previously unblemished record, otherwise upstanding character, the overwhelming support of his family and community, his remorse, admissions at trial, and the near self-defence nature of the offence. As noted earlier, the judge imposed a global sentence of 18 months' incarceration followed by two years' probation.
- [6] Mr. Randhawa contends on appeal that the sentence is unfit because the judge failed to give appropriate weight to the special circumstances of his case, and in particular the near self-defence context of the offence. Mr. Randhawa submits that, as a result, the judge imposed a sentence that did not reflect his moral blameworthiness and over-emphasized deterrence and denunciation.
- [7] Mr. Randhawa says the judge erred in part because he focussed on the consequences of the actions taken, rather than on Mr. Randhawa's moral culpability for the actions themselves -- which were actions taken in a near self-defence context. The difficulty with this submission is that determination of a punishment that properly reflects moral culpability of the offender must have "regard to the intentional risk-taking of the offender, the consequential harm caused by the offender, and the normative character of the offender's conduct": *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500 at para. 80. Further, Mr. Randhawa's moral culpability for his actions included carrying a knife into a nightclub and using it indiscriminately when he felt threatened.

- [8] Mr. Randhawa also submits that the judge failed to impose a sentence in keeping with sentences imposed in comparable cases. He contends the judge departed from the principles of proportionality and parity because he failed to appreciate that Mr. Randhawa's moral culpability was comparable to that of offenders in other cases who had been given much lighter and suspended sentences.
- [9] I would not accede to that submission. In my view, the judge carefully considered and distinguished the cases relied on by defence to support the submission that a suspended sentence was appropriate: *R. v. Nakamura*, 2012 BCSC 327; *R. v. Nicholls*, 2013 BCSC 1145; and *R. v. Voong*, 2015 BCCA 285. Further, in considering a comparable sentence of 18 months for aggravated assault in *R. v. Slizak*, 2017 BCCA 279, which involved an unprovoked attack and a vicious stomp on the victim's head, the judge expressly noted, at para. 36, the differences between that case and the present case, finding in the end that the viciousness of the assault and absence of the self-defence context in Mr. Slizak's case were offset in the present case by Mr. Randhawa's use of a weapon and the number of victims.
- [10] I accept Mr. Wilson's characterization of Mr. Randhawa's conduct that night as "a dreadful mistake" that was not in keeping with his general character. There is much in Mr. Randhawa's circumstances that is sympathetic. But even good people who make mistakes must take responsibility for and bear the consequences of their actions.
- [11] The sentencing judge in this case recognized that the sentencing range for the offence of aggravated assault of between 16 months and six years (at para. 19) is a guideline that does not preclude lesser or greater sentences in exceptional circumstances (at para. 20). He was alive to all of the mitigating factors present in Mr. Randhawa's circumstances. He expressly identified the near self-defence context in which the assaults occurred, noting that it was Mr. Randhawa's circumstances "plus the fact that he was acting to defend himself," that justified a sentence towards the low end of the range (at para. 36).
- [12] In summary, I am of the view that this is not a case in which the sentencing judge erred in principle, failed to consider a relevant factor, or erred in the consideration of an aggravating or mitigating factor. Nor do I find the sentence imposed to be demonstrably unfit. The standard of review of a discretionary sentencing decision is highly deferential. The sentencing exercise is a complex one, which requires the judge to balance numerous objectives and to consider all of the circumstances. It is not the role of this Court to interfere with a sentence on the basis that different weight should have been given to one or more of the various considerations: *R. v. Padda*, 2019 BCCA 351 at para. 35.
- [13] In conclusion, I see no basis upon which this Court could interfere with the sentence imposed in this case, and would accordingly dismiss the appeal from sentence.
- [14] DICKSON J.A.: I agree.
- [15] BUTLER J.A.: I agree.

[16] FENLON J.A.: The appeal is dismissed. "The Honourable Madam Justice Fenlon"

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Prepared on 29 October 2026 · Esheria