

CANADA / JUDGMENT

R. v. Reimer

2020 BCCA 102

COURT

British Columbia Court of Appeal

DECIDED

27 March 2020

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2020 BCCA 102 R. v. Reimer

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Reimer,

2020 BCCA 102

Date: 20200327

Docket: CA46627

Between:

Regina

Respondent

And

James Reimer

Appellant

Before:

The Honourable Madam Justice Saunders

The Honourable Mr. Justice Groberman

The Honourable Mr. Justice Abrioux

On appeal from: An order of the Provincial Court of British Columbia, dated
October 31, 2019 (R. v. Reimer, Port Coquitlam Dockets 101734-1K; 101734-2KA;
101734-3KA; 101734-4KA; 101734-5KA; and 102618-1, and Nanaimo Dockets

86142-1KA; 86142-2KA; and 86319-1).

Oral Reasons for Judgment

Counsel for the Appellant

(via teleconference):

T.J. Russell

Counsel for the Respondent

(via teleconference):

C. Lusk

Place and Date of Hearing:

Vancouver, British Columbia

March 24, 2020

Place and Date of Judgment:

Vancouver, British Columbia

March 27, 2020

Summary:

The appellant pleaded guilty to ten charges: uttering threats, nuisance, being found in a dwelling house, and several breaches of recognizances. The judge imposed an effective sentence of 16 months, reduced to nine months after credit for time served. The day before the sentencing hearing, his counsel was contacted by a prosecutor who advised him that if he adjourned the hearing to the following week, she would appear for the Crown, and would take a more lenient approach to sentencing than the prosecutor who was appearing on the scheduled date. The appellant chose to proceed on the scheduled date, but now contends that the conduct of the Crown made the sentencing "unfair". He also raises issues with respect to the length of the sentence, and with the probation conditions that were imposed. On appeal, held: There was no unfairness in the way the sentencing took place, though the discrepancy between the positions of two Crown counsel underlines the need for the Court to carefully consider the fitness of the sentence. The sentence was not unfit, apart from the sentencing judge's failure to give effect to the totality principle. The global sentence should be reduced by one month.

With respect to probation conditions, the Court expresses concern with respect to overloading probation orders. Counsel and judges must be mindful of the rationale for probation conditions, and, should generally give some explanation of why they are imposed. In this case, two of the conditions were unreasonable, and several required modification.

- [1] GROBERMAN J.A.: Mr. Reimer applies for leave to appeal sentence, and, if granted, appeals in respect of a sentence imposed on him following guilty pleas to ten charges. He received an effective global sentence of 16 months, reduced to nine months to account for time served in pre-sentence custody. The custodial sentence is to be followed by two years' probation, which probation includes numerous conditions. He seeks a reduction in the length of the custodial sentence, as well as the elimination or modification of some of the terms of probation.
- [2] Mr. Reimer says that the Crown acted unfairly on sentencing, because two prosecutors involved in the case took disparate positions on the appropriate sentence. He says that he was put in an invidious position by having to choose between adjourning sentencing to accommodate the schedule of the prosecutor who was prepared to take the more lenient position, or proceeding as scheduled, with the prosecutor seeking a harsher sentence. He says that it is a principle of law that "the Crown must speak with one voice", and seeks a modest reduction of his sentence to account for the unfairness.
- [3] Mr. Reimer also contends that the sentence imposed was, in any event, excessive, and says that the judge placed too much weight on negative factors in his background, and too little on mitigating considerations. Finally, with respect to the length of the sentence, he says that inadequate attention was paid to the totality principle.
- [4] With respect to probation conditions, he argues that a number of the conditions are unreasonable, manifestly inappropriate or unauthorized.

The Circumstances of the Offences

- [5] Mr. Reimer was in a long-term relationship with Ms. M beginning in about 2013. The relationship ended toward the end of 2018. In March 2019, there was an incident in which he attended at her home, and she called the police. Mr. Reimer met with the police, and told them that he would stop bothering her.
- [6] He did not comply with that commitment. Instead, on March 25, he sent a series of threatening emails to her. As a result of the emails, he was arrested the following day and charged with uttering threats to cause death or bodily harm, contrary to s. 264.1(1)(a) of the Criminal Code, R.S.C. 1985, c. C-46. He pleaded guilty to the charge on April 3, 2019. He was released on a recognizance that included conditions prohibiting him from having any contact with Ms. M and requiring him to wear an electronic monitoring bracelet.
- [7] Mr. Reimer breached the no-contact condition by sending disturbing messages to Ms. M on several occasions between April 13 and April 23. He was charged with a breach of the no-contact provision of his recognizance, under s. 145(3) of the Criminal Code.
- [8] Mr. Reimer was, as a condition of a bail order, required to observe a curfew, and to be at his residence between 10:00 p.m. and 6:00 a.m. On May 11, 2019, at approximately 10:30 p.m., Mr. Reimer's electronic monitoring bracelet showed that he was not at his residence. When

police attended at the residence, the owner advised that Mr. Reimer had not been there all day, and that she no longer wanted him there. Mr. Reimer was, with the assistance of the monitoring bracelet, located at another residence, and was arrested and charged with a breach of the curfew provision, under s. 145(3) of the Criminal Code. He was again released, this time on a recognizance to report to a bail supervisor by 4:00 p.m. on May 14, 2019.

- [9] He failed to comply with that reporting condition, and on May 15, his monitoring bracelet ceased to function, as he had neglected to charge the battery. When he was eventually located, he was charged with one count of failing to comply with the May 14 reporting condition, again contrary to s. 145(3) of the Criminal Code. He was not immediately charged with a failure to abide by the condition that he maintain his monitoring bracelet, though, as I will indicate, he was subsequently charged for that breach of condition.
- [10] On May 22, 2019, at approximately 1:15 a.m., Mr. Reimer was apprehended by police when he was riding his bicycle through the Broadway-Commercial Skytrain station, and yelling at people. He was again arrested and charged with breaching curfew contrary to s. 145(3) of the Criminal Code. He was released later that day. One of the conditions of release was that he report to a bail supervisor the next business day.
- [11] On May 24, 2019, Mr. Reimer sent Facebook messages to Ms. M, again breaching the no-contact condition of his recognizance. On June 3, 2019, he was charged with breaching his recognizance under s. 145(3) of the Criminal Code.
- [12] In the meantime, Mr. Reimer had failed to comply with the condition of his release that required him to report to a bail supervisor and he was still not maintaining his monitoring bracelet in working order. On June 7, 2019, he was charged with a further two counts of breaching his recognizance, contrary to s. 145(3) of the Criminal Code: one in respect of his failure to report, and one in respect of his failure to maintain his monitoring bracelet.
- [13] On June 8, 2019, a homeowner reported that someone had broken into their camper trailer. Police attended, and found Mr. Reimer in the camper. He was charged with one count of mischief under \$5,000, contrary to s. 430(4) of the Criminal Code.
- [14] Mr. Reimer appears to have entered guilty pleas on all of the extant charges on July 26, 2019, apart from the original charge of uttering threats, to which he had pleaded guilty on April 3, 2019.
- [15] On August 13, 2019, the owner of a coach house reported to police that someone had broken into it. Mr. Reimer had been a former tenant, and there was a Supreme Court of British Columbia order prohibiting him from re-entering it. On investigation, the police found that the person in the coach house was Mr. Reimer. He was charged with breaking and entering into a dwelling house with intent to commit an indictable offence (Criminal Code s. 348(1) (a)), but on October 30, 2019, (the date set for sentencing on the other matters), the Crown accepted a guilty plea to the lesser included offence of being unlawfully in a dwelling house with intent to commit an indictable offence, contrary to s. 349(1) of the Criminal Code.

- [16] As the final charge was proceeded with by indictment, s. 675(1.1) of the Criminal Code is applicable, and Mr. Reimer is entitled to seek leave to bring the appeals from the summary conviction sentences to this Court directly, along with the appeal from the sentence for the indictable offence. At the outset of this hearing, on being satisfied that the conditions set out in s. 675(1.1) had been met, we granted leave to include the summary conviction sentence appeals in the appeal to this Court.

Circumstances of the Offender

- [17] At the time of sentencing, Mr. Reimer was 50 years old. His upbringing had been a difficult one. Both his parents were alcoholics, and his father was violent and abused his mother. His parents divorced when he was six years old. His mother then entered into a relationship with a man who became Mr. Reimer's stepfather. Mr. Reimer described him as being physically abusive towards him. The relationship between his mother and stepfather ended when Mr. Reimer was 12.
- [18] Mr. Reimer grew up in difficult financial circumstances. After the breakdown of the relationship between his mother and stepfather, his mother was unable to afford to pay for sports activities, which had been important to him. He dropped out of school and left home at the age of 15. He subsequently completed his GED while in custody, however, and qualified as a Red Seal carpenter.
- [19] As an adult, Mr. Reimer has had little to do with his parents or siblings. His father died in 2002, and his mother and sisters have indicated that they do not wish to have contact with him. They described his past behaviour as being angry and aggressive, and characterized him as a "ticking time bomb".
- [20] Mr. Reimer has one son, who was 33 at the time of sentencing, as well as a grandson. According to the pre-sentence report, he had "recently reconnected" with his son, but his son had "set boundaries [and would] not be part of his life until [Mr. Reimer was] stable and sober in the community".
- [21] The sentencing judge found that Mr. Reimer has few supports from the community, a conclusion that appears well-supported by the pre-sentence report.
- [22] Mr. Reimer has, throughout his adult life, had struggles with addictions to drugs. While he appears to have had a level of success in those struggles in the years immediately prior to his breakup with Ms. M, he relapsed into hard drug use after the breakup.
- [23] His drug use increased and he began to work less and less in early 2019. By March of that year, he had been evicted from his residence. It was at that time that he began committing the crimes with which he was charged.

- [24] Mr. Reimer's criminal record is a lengthy one, spanning over 30 years, and including more than 30 convictions. Many of the convictions are for property crime, but there are also crimes of violence, including aggravated assault (for which he was sentenced to 30 months in prison) and break and enter and robbery. The latter was in respect of an elderly couple, and resulted in a sentence of nine years.
- [25] The sentencing judge had the benefit of a detailed pre-sentence report. The court had ordered a psychological assessment, as well, but Mr. Reimer declined to participate in the evaluation. In her reasons for judgment, the judge commented that "this is unfortunate, as this means there is no current professional assessment before the court to assess Mr. Reimer's risk to the community".
- [26] At the time of sentencing, Mr. Reimer had taken steps to arrange a placement in a drug recovery house upon his release. The judge accepted that Mr. Reimer's desire to turn his life around was sincere.

Positions on Sentencing

- [27] The Crown contended that the appropriate global sentence for the various offences was 17.5 months. It indicated that the total ought to be reduced to 15 months on the basis of the totality principle. It also accepted that Mr. Reimer was entitled to credit for seven months for his time in custody prior to sentencing. It therefore sought a sentence of eight months in addition to time served. The Crown also sought a three-year period of probation following the custodial portion of the sentence.
- [28] The Crown prosecutor (Ms. G) communicated this position well in advance of the sentencing hearing, which was set to go ahead on October 30, 2019. On October 29, however, a different Crown prosecutor (Ms. F) returned to work after a period of leave. She had had previous involvement with the Reimer files, and there was some discussion in the Crown office as to whether she would resume conduct of them.
- [29] Ms. F communicated with counsel for Mr. Reimer that day. She advised that if she represented the Crown at sentencing, her position would be to seek an effective sentence of only six to eight months, with two years' probation. This would have resulted in a custodial sentence of one month or less in addition to time served. Ms. F indicated, however, that she would be unable to speak to sentence on the scheduled date, and that sentencing would have to be adjourned to the following week if Mr. Reimer wished to have her proceed with the matter. In the alternative, she advised, Mr. Reimer would "have to go ahead with Ms. G tomorrow".
- [30] In phone calls on the afternoon of October 29 and on the morning of October 30, the Crown emphasized that Ms. F and Ms. G were not in agreement as to the appropriate sentence, and that if the hearing proceeded on October 30, Ms. G would be arguing for the lengthier sentence.

- [31] Mr. Reimer opted to proceed with sentencing on October 30 with Ms. G prosecuting. He was, apparently, of the view that his counsel could persuade the judge to a more lenient position, given that he had developed a release plan involving placement in a drug treatment centre. It appears that he was averse to any delay in the sentencing hearing.
- [32] His counsel sought a global sentence of time served, together with a period of two to three years' probation. Defence counsel did not, on the sentencing hearing, raise any issue with respect to the discrepancy between the position taken by Ms. G and the position that would have been taken by Ms. F.
- [33] On October 31, 2019, having reserved judgment overnight, the judge imposed a global custodial sentence that was one month longer than the one argued for by Ms. G, though she imposed only two years' probation rather than three.

Did the Crown Act "Unfairly"?

- [34] Mr. Reimer acknowledges that neither Ms. G nor Ms. F harboured ill-will or malice towards him. Although he does say that the sentence sought by Ms. G was excessive and, if imposed, would have been unfit, he does not allege impropriety on her part. He says, however, that "the Crown must speak with one voice -- that of the Attorney General -- who must show at least some semblance of consistency among his various agents". He argues, further, that "it is unfair to put an offender, who has organized a release plan for a scheduled sentencing the following day, in the position of having to choose between a substantially lighter Crown position on a date uncertain sometime down the road, or to gamble on the much heavier Crown position on the day scheduled".
- [35] At the oral hearing of this appeal, he moderated his position somewhat, suggesting that the unfairness argument might be considered as a factor in determining the fitness of the sentence rather than as a standalone ground of appeal.
- [36] The first question that arises in respect to the unfairness issue is whether Mr. Reimer ought to be able to advance it at all. The issue was not canvassed in the court below, and so the record of the Provincial Court does not include any evidence of the position put forward by Ms. F. Mr. Reimer applies to adduce fresh evidence on appeal to remedy the omission.
- [37] In my view, the fresh evidence should not be admitted. I am inclined to think that Mr. Reimer's failure to raise the issue in the court below is fatal to his argument. He did not exercise due diligence in getting the evidence before the trial court (a normal requirement of the test for the admission of fresh evidence enunciated in *Palmer v. The Queen*, [1980] 1 S.C.R. 759). It is, however, unnecessary to reach any definitive conclusion on that issue, because even if the evidence were admitted, it could have no effect on the appeal.

- [38] The process of formulating an appropriate sentence has been described as being a "profoundly subjective process": *R. v. Shropshire*, [1995] 4 S.C.R. 227 at para. 46 (see also *R. v. Lacasse*, 2015 SCC 64 at para. 40). The judge has broad discretion over the sentence imposed. It is equally the case that the Crown has discretion as to what sentence it seeks.
- [39] In general, courts have recognized that they are not well-placed to supervise the exercise of prosecutorial discretion. In *R. v. Power*, [1994] 1 S.C.R. 601, L'Heureux-Dubé J., speaking for the majority, said, at 621, "[i]t is manifest that, as a matter of principle and policy, courts should not interfere with prosecutorial discretion. This appears clearly to stem from the respect of separation of powers and the rule of law". (See also *R. v. Regan*, 2002 SCC 12).
- [40] In *R. v. Anderson*, [2014] 2 S.C.R. 167, the Court established that courts will intervene in matters of prosecutorial discretion only where the exercise of that discretion amounts to an abuse of process:
- [48] Manifestly, prosecutorial discretion is entitled to considerable deference. It is not, however, immune from all judicial oversight. This Court has repeatedly affirmed that prosecutorial discretion is reviewable for abuse of process: *Krieger* [*Krieger v. Law Society of Alberta*, 2002 SCC 65], at para. 32; *Nixon* [*R. v. Nixon*, 2011 SCC 34], at para. 31; *Miazga* [*Miazga v. Kvello Estate*, 2009 SCC 51], at para. 46.
- [49] The jurisprudence pertaining to the review of prosecutorial discretion has employed a range of terminology to describe the type of prosecutorial conduct that constitutes abuse of process. In *Krieger*, this Court used the term "flagrant impropriety" (para. 49). In *Nixon*, the Court held that the abuse of process doctrine is available where there is evidence that the Crown's decision "undermines the integrity of the judicial process" or "results in trial unfairness" (para. 64). The Court also referred to "improper motive[s]" and "bad faith" in its discussion (para. 68).
- [50] Regardless of the precise language used, the key point is this: abuse of process refers to Crown conduct that is egregious and seriously compromises trial fairness and/or the integrity of the justice system.
- [41] The Court further elaborated on the concept of "abuse of process" in *R. v. Babos*, 2014 SCC 16. It discussed two categories of abuse of process: the "main" category, consisting of cases where "state conduct compromises the fairness of an accused's trial" and the "residual" category, where "state conduct creates no threat to trial fairness but risks undermining the integrity of the judicial process".
- [42] In this case, it cannot be suggested that the fairness of Mr. Reimer's trial was compromised by the fact that two Crown prosecutors proposed to take different positions on sentencing. Mr. Reimer was not taken by surprise, nor was he denied the opportunity to fully present his position to the Court. The alleged abuse did not in any way affect the evidence available to the Court, nor did it hamper the judge in reaching a decision.

- [43] Nor is this a case falling within the residual category of abuse of process. There was, in this case, no egregious Crown conduct, and no oppressive circumstances imposed on Mr. Reimer.
- [44] In *Nixon*, where the Crown resiled from a plea bargain that it had entered into, the Supreme Court of Canada found that there was no abuse of process. The Crown's conduct in this case is even further from egregious conduct; there was no plea arrangement between Mr. Reimer and the Crown, and the Crown did not, at any point, change or withdraw a position that it had put forward.
- [45] Finally, the suggestion that the "Crown must speak with one voice" does not appear to be a principle endorsed by the law, at least in the context in which Mr. Reimer advances it. The Attorney General is entitled to delegate prosecutorial discretion to line prosecutors. Any requirement that prosecutors must always be of the same view as to an appropriate sentence would be antithetical to the established principle that sentencing involves broad discretion, and subjective elements. Counsel prosecuting a case is entitled to form a view as to the appropriate sentence independent of the views of other prosecutors. While it may be open (as in *Nixon*) for more senior officials in the prosecution service to interfere with the discretion of individual Crown counsel, there is no requirement that they do so.
- [46] In saying this, I do not, of course, ignore the importance of consistency in sentencing. Section 718.2(b) of the Criminal Code states that "a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances". A fortiori, the sentence imposed on a particular offender in particular circumstances should not depend, to any great extent, on the identity of the judge or prosecutor. For that reason, I agree with counsel for Mr. Reimer that the substantial difference between the positions assumed by two Crown counsel (an effective custodial sentence of six to eight months as opposed to 15 months) serves to underline the need for the Court to examine the fitness of the sentence with particular care. The fact that the judge imposed a custodial sentence that exceeded the one sought by the Crown adds to the concern.
- [47] This concern, however, does not render the conduct of the Crown unfair, and I would not give effect to the argument that the Crown's conduct amounted to an abuse of process.

Was the Custodial Sentence Excessive or Unfit?

- [48] Mr. Reimer contends that the judge made numerous errors in weighing evidence and in reaching conclusions as to what sentencing factors were most important in this case. As Lacasse indicates, judges have considerable discretion in sentencing. Appellate courts must not interfere with that discretion unless: (i) the sentencing judge erred in principle, failed to consider a relevant factor, or erroneously considered an aggravating or mitigating factor and that error had an impact on sentence; or (ii) the sentencing judge imposed a sentence that is demonstrably unfit: *R. v. Joe*, 2017 YKCA 13 at para. 36; *R. v. Agin*, 2018 BCCA 133 at paras. 42-48.

- [49] In this case, Mr. Reimer makes several arguments. First, he says that the sentencing judge "likely gave too much weight to the appellant's criminal history, and not enough weight to the other mitigating factors". This contention amounts to a bare statement that the judge ought to have weighed factors in a manner more favourable to Mr. Reimer than she did. Such an argument cannot succeed. The relative weight to be assigned to various factors was for the judge to determine. Unless the sentence itself was demonstrably unfit (an issue to which I will come), this Court will not interfere with the judge's assessment of the importance of various factors.
- [50] Second, he takes issue with para. 30 of the judge's reasons, in which the judge stated:
- [30] Mr. Reimer refused to participate in the psychological assessment ordered by the court for sentencing purposes. This is unfortunate, as this means there is no current professional assessment before the court to assess Mr. Reimer's risk to the community. Mr. Reimer did, however, participate in the interview with the probation officer who authored the pre-sentence report.
- [51] He contends that this paragraph discloses that the judge "may have drawn an adverse inference from this 'refusal'". I see no support for that speculation in the judgment. The judge fully considered the pre-sentence report as well as Mr. Reimer's expressed intentions. While she did indicate that she would have preferred to have an up-to-date professional assessment, there is no suggestion in her judgment that she drew any inference adverse to Mr. Reimer from the absence of a report.
- [52] Mr. Reimer also criticizes the judge for her references to a 2016 report that was in evidence, saying that "the trial judge likely put too much weight on the historical assessment". The judge was fully entitled to consider Mr. Reimer's history, and I see no indication in her judgment that she took into account irrelevant considerations, or ignored relevant ones. Again, the weight that the judge gave to different factors was for her to decide.
- [53] Mr. Reimer suggests other instances where the judge may have erred in her weighing of evidence, or misapprehended evidence, but, as with the examples I have already cited, the "errors" alleged are either matters that were within the sentencing judge's discretion, or amount to speculation by the appellant that the judge made errors that are not demonstrably present in her reasons.
- [54] In a similar vein, Mr. Reimer points to the judge's statement in her reasons that he knew, when he began to spiral downward in early 2019, that he "could have sought medical or mental health support services to help him cope with his grief and distress but he chose not to do so". He says that while the evidence supported the idea that he knew he could have sought support services, the evidence did not support the finding that he "chose not to do so". I note, that in his own presentation to the judge, Mr. Reimer spoke of having "chose[n] [another course of conduct] instead of going to counselling when I needed it the most".

- [55] In my view, the judge was entitled, on all of the evidence, to draw the inference that Mr. Reimer decided that he would not pursue support services. I do not agree with Mr. Reimer's suggestion that the judge treated that "choice" as a "significant aggravating factor". Rather, it appears to me to have simply been an observation to the effect that, despite his addictions and personal difficulties, Mr. Reimer was not blameless in respect of his crimes. I do not see that the judge treated a failure to pursue counselling as an aggravating factor. Further, the question of whether he had options available to him was an important consideration in determining the role of specific deterrence in the imposition of sentence.
- [56] Mr. Reimer argues that the judge erred by imposing an excessive sentence on the uttering threats offence, and also failed to properly apply the totality principle.
- [57] With respect to the offence of uttering threats, the judge imposed a sentence of seven months' imprisonment. In doing so, she said, at para. 40:
- [40] The Crown submits that the sentencing range for the threatening offence is between six to nine months imprisonment and cites four authorities in support of this position. These cases involved threats against domestic partners or family members. Like the circumstances at bar, the victims received threats of death or serious bodily harm by the accused and each victim feared for his or her safety. In each of these cases, the jail sentences were followed by significant terms of probation.
- [58] On the uttering threats offence, the position actually taken by the Crown was that the appropriate sentence was five months. The cases cited by the Crown did, however, involve effective sentences of six months (*R. v. Bullerwell*, 2016 BCSC 1024; and *R. v. Myers*, 2019 BCSC 457) and nine months in *R. v. Ram*, [1991] B.C.J. No. 3865. In the fourth case, *R. v. Ekland*, 2007 BCPC 290, the judge imposed an actual sentence of four months, but indicated that the sentence would have been six months but for a credit for time served and for providing certain information. At the conclusion of her oral reasons, the Crown brought to the judge's attention that its position had been that five months was the appropriate sentence for the uttering threats offence. The following exchange occurred:

CROWN COUNSEL: I just wanted to clarify, Your Honour, one point. It could have just been an error. Your Honour stated that the Crown's position was six to nine months on the uttering threats. It was, in fact, five months' jail.

THE COURT: No, you are correct. Your - the case range -

CROWN COUNSEL: Right, okay.

THE COURT: - is six to nine months. The Crown's position on the uttering threat charge is five months.

CROWN COUNSEL: That's right.

THE COURT: That's one of those things that will be corrected and I'll make note that that will be reflected in the reasons for judgment

- [59] It does not appear that the correction was ultimately made in the transcript of the reasons. It does seem clear, however, that the judge merely misspoke insofar as her remarks suggested that the Crown was seeking a sentence of six months or more.
- [60] With respect to the fitness of the seven-month sentence imposed on the uttering threats charge, the judge considered the circumstances to be serious. She made no error in that regard. Mr. Reimer was capable of violence, and made repeated and serious threats to Ms. M, a former domestic partner. She was in a vulnerable position, as Mr. Reimer was very familiar with her lifestyle and habits. The harm that he threatened was both serious and credible, and the threats came within the context of repeated failures to abide by warnings not to make contact with, or bother, Ms. M.
- [61] The seven-month sentence is not out of keeping with the sentences imposed in the cases brought to the trial judge's attention. Arguably, the circumstances in Ram were more aggravated, but the nine-month sentence was appreciably longer than the sentence imposed in this case. The Myers sentence was imposed following a jury trial. It was not a case involving a guilty plea. It is noteworthy, however, that the uttering threats charge was not the main offence under consideration. The offender in that case received a sentence of 25 months for criminal harassment. The uttering threats charge was closely related, and resulted in a concurrent sentence. There is limited discussion of the judge's reasoning for settling on a six-month sentence for the uttering threats, which is understandable given that it was to be served concurrently with a much longer sentence.
- [62] The circumstances of Bullerwell were, in some respects, less serious than those in this case. The threat there occurred in the course of a chance encounter, and was unplanned. The offender does not appear to have had a criminal record for crimes of violence.
- [63] There are a number of factors on which this case might be distinguished from Ekland, but it is sufficient to say that the six-month effective sentence in that case does not suggest to me that a seven-month sentence in this case is unfit.

Did the Judge Fail to Properly Consider the Totality Principle?

- [64] The global sentence imposed was, effectively, 16 months. The Crown had sought a global sentence of 17.5 months, and acknowledged that that total should be reduced to take account of the "totality principle". It suggested a reduction of two-and-a-half months, to 15 months. Mr. Reimer received seven months' credit for time served while awaiting sentencing.

- [65] The judge's approach to the totality principle was an unusual one. She provided scant discussion of her rationale for the sentences on individual counts, though she did discuss, in general terms, the seriousness of the uttering threats charge. Apart from that discussion, she merely mentioned the sentences suggested by the Crown and indicated that the defence was seeking a global sentence of time served.
- [66] Her first discussion of the length of the sentences that she was imposing comes at paras. 62 and 63 of her judgment, where she says:
- [62] I have concluded that an overall appropriate sentence for you on these offences, based on an objective and measured balancing of all the sentencing considerations, a careful review of the case authorities, together with the submissions of counsel, is a 16-month jail sentence to be followed by a period of two years' probation.
- [63] I do not consider this sentence would be unduly harsh when one considers your record and your prospects for rehabilitation .
- [67] After a mention of the totality principle, which I shall come to, she allocated the 16 months among the various charges at paras. 66-73. The allocation was as follows:

Uttering a Threat - 7 months

Breach of recognizance (violation of no contact order between April 13 and April 23) - 2 months consecutive

Breach of recognizance (curfew violation on May 11) - 1 month consecutive

Breach of recognizance (failure to report on May 14) - 1 month concurrent to sentence for May 11 curfew violation)

Breach of recognizance (curfew violation on May 22) - 1 month consecutive

Breach of recognizance (violation of no contact order) - 2 months consecutive

Breach of recognizance (failure to report on May 23) - 1 month consecutive

Breach of recognizance (failure to keep monitoring bracelet in working order) - 1 month concurrent to sentence for failure to report on May 23.

Mischief (June 8) - 1 month consecutive

Being unlawfully in a dwelling house (1 month consecutive)

- [68] Apart from the seven-month sentence for uttering threats, which I have already discussed, Mr. Reimer does not contend that any of the individual sentences were unfit. He does say, however, that the judge ought to have reduced the total sentence to take account of the totality principle.

- [69] That principle was discussed in *R. v. Li*, 2009 BCCA 85, where this Court recommended a two-stage approach to sentencing where an accused is sentenced for multiple offences:
- [26] Whether sentences for multiple offences are made consecutive or concurrent, it is the task of the sentencing judge to fix an appropriate global sentence that reflects the specific circumstances of the offences and the unique circumstances of the offender. The importance of this balancing is reflected in the principle of proportionality, which has been codified in s. 718.1 of the Criminal Code under the heading "fundamental principle":

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

- [28] [T]here is a two-stage approach to sentencing an offender convicted of multiple offences. The first stage is to determine the appropriate sentence for each offence, and decide whether the individual sentences should be made consecutive or concurrent. If consecutive sentences are imposed, then the second stage is to determine whether the sentences, in the aggregate, offend the totality principle. If the sentence, as a whole, is unduly harsh or disproportionate, then the length of the individual sentences should be adjusted in order to arrive at an appropriate global sentence. See *R. v. P.P.H.*, 2003 BCCA 591.
- [70] In the case before us, the sentencing judge did not follow this model. Instead, she appears to have begun with a global sentence in mind, then divided up the sentence among the various counts. Finally, she stated that the global sentence was not unduly lengthy.
- [71] In *R. v. Joseph*, 2010 BCCA 525, the Court made it clear that the recommended two-stage approach is not an absolute requirement, but rather a means of ensuring that the sentencing judge has properly considered the appropriate penalty on each individual count, as well as the totality principle:
- [17] While I do not suggest that sentencing judges are required to follow a rigid two-step approach in sentencing for multiple offences, there should be something in the reasons for sentence which reflects that the totality principle was taken into account, and the two-step approach makes that clear.
- [18] The question remains whether, even if the sentencing judge erred in failing to take into account the totality principle, the sentence was, nonetheless fit
- [72] While the judge in this case mentioned the totality principle in her judgment, it is not clear that she gave adequate consideration to it. After stating that a global sentence of 16 months was appropriate, and not overly harsh, she said, simply, "[h]owever, taking the totality principle into account, an aggregate sentence of 16 months is a fit and just sentence, in my opinion". It is not at all clear in what sense this involved "taking the totality principle into account".

- [73] The offences in this case took place over a relatively short time, and were connected in the sense that they occurred during a period of upheaval in which Mr. Reimer was in a downward spiral. Sentencing principles such as rehabilitation and specific deterrence will, in the circumstances of this case, not be particularly tied to each individual count, but rather to the sentence as a whole. In light of the sheer number of counts, there was a real potential for the total sentence to be harsher than it needed to be.
- [74] The sentencing judge is entitled to deference in respect of the totality principle, as with other aspects of sentencing. However, in this case, the judgment does not reveal any genuine consideration of its applicability. The procedure followed did not comply with the procedure recommended in *Li*, and I have some difficulty seeing the mention of the totality principle as anything more than perfunctory.
- [75] In my view, the global sentence in this case should be seen as being harsher than the sum of its parts, and some modification to the sentence would have been made had the totality principle been correctly applied. That said, I cannot see that the modification would have been particularly substantial, given the circumstances of the various offences. In my view, a modest reduction of one month is appropriate recognition of the effect of the totality principle. I would accomplish that reduction by making the second sentence for a curfew violation concurrent with the sentence for the first curfew violation.

Probation Conditions:

- [76] The sentence included a two-year period of probation following the custodial part of the sentence. In addition to the three "statutory" conditions mandated by s. 732.1(2) of the Criminal Code, it included 22 other conditions, some of which included multiple prohibitions or requirements.
- [77] There was almost no discussion of the probation conditions during the sentencing hearing, and no discussion of the rationale for imposing them in the judgment. While this Court is cognizant of the fact that the Provincial Court works under significant pressures, as do counsel appearing before that court, it is critical for everyone to understand that probation conditions are part of the sentence imposed on the offender, and that they can represent serious incursions on liberty and impediments to returning to normal life. At the very least, the Crown should give careful attention to the conditions that it seeks, and defence counsel should take seriously their role in safeguarding their clients' liberties and rights.
- [78] In recent years, probation conditions have been pre-packaged into a "picklist". The list has some advantages over a bespoke approach to imposing probation conditions. The conditions in the list can be carefully drafted, and modified as case law develops around them. At least theoretically, this should lead to clarity and enforceability.
- [79] A potential difficulty of a "picklist", however, is what might be termed "buffet syndrome". Because of the ease of adding one more item, the plate may easily become overfilled.

- [80] The conditions imposed in this case were numerous and daunting. Particularly in light of Mr. Reimer's recent history of homelessness and poverty, there is a real risk that the multiplication of conditions will have the effect of setting him up for failure.
- [81] This Court is rather poorly equipped to determine the appropriateness of probation conditions that were not the subject of discussion or analysis in the trial court. We are not a sentencing court, and cannot hear detailed submissions that refer to matters that are not in the record of the court below.
- [82] That said, we have heard extensive argument on certain of the conditions that form part of the probation order, and are prepared to make some modifications. This should not be seen as an invitation for offenders who have failed to oppose conditions in the sentencing court to try their luck with an appeal. In most cases, the failure to raise issues in the court below will make it inappropriate for this Court to intervene.
- [83] The parties do not disagree on the principles that apply to the imposition of probation conditions. I begin by observing that probation conditions are primarily forward-looking tools of sentencing. They are, for the most part, aimed at rehabilitation of the offender and protection of society. While probation orders do restrict the offender's liberty, they do not do so for the purpose of effecting punishment, per se. This Court summarized the situation in *R. v. Duguay*, 2019 BCCA 53:
- [60] As explained in *R. v. Proulx*, 2000 SCC 5 at para. 32, probation has traditionally been viewed as a rehabilitative sentencing tool. A probation order may have punitive effects or aspects. But punishment is not the dominant purpose of such an order nor is it an inherent aspect of that order.
- [61] While the primary purpose of a probation order is rehabilitative rather than punitive, its conditions will inevitably entail some restriction of liberty. As Bennett J.A. noted in *R. v. Voong*, 2015 BCCA 285 at para. 37, probation orders are designed not only to reintegrate offenders into the community but to protect society. The conditions imposed in pursuit of that goal will frequently be experienced by the offender as entailing "negative consequences". What is prohibited is the imposition of a term of probation for a primarily punitive purpose: *Shoker* at paras. 10, 13.
- [84] In *R. v. Shoker*, 2006 SCC 44, the Court described the general scope allowed for probation conditions, saying:
- [13] Before discussing the issue that arises in this case, I wish to make a few general comments about the power to impose optional conditions under s. 732.1(3). The residual power under s. 732.1(3)(h) speaks of "other reasonable conditions" imposed "for protecting society and for facilitating the offender's successful reintegration into the community". Such language is instructive, not only in respect of conditions crafted under this residual power, but in respect of the optional conditions listed under s. 732.1(3): before a condition can be imposed, it must be "reasonable" in the circumstances and must be ordered for the purpose

of protecting society and facilitating the particular offender's successful reintegration into the community. Reasonable conditions will generally be linked to the particular offence but need not be. What is required is a nexus between the offender, the protection of the community and his reintegration into the community .

- [14] The residual power to craft individualized conditions of probation is very broad. It constitutes an important sentencing tool. The purpose and principles of sentencing set out in ss. 718 to 718.2 of the Criminal Code make it clear that sentencing is an individualized process that must take into account both the circumstances of the offence and of the offender. It would be impossible for Parliament to spell out every possible condition of probation that can meet these sentence objectives. The sentencing judge is well placed to craft conditions that are tailored to the particular offender to assist in his rehabilitation and protect society. However, the residual power to impose individualized conditions is not unlimited.
- [85] Mr. Reimer does not contend that any of the probation conditions imposed on him were punitive, but does say that some are excessive and have no nexus to either the crimes he committed or to re-integrating him safely into the community. Further, he says that some are so imprecise as to be impossible to follow, and that others are clearly excessive.
- [86] As I have indicated, we are handicapped on this appeal by the paucity of the record. It is difficult, in many cases, to determine why conditions were sought or why the judge chose to impose them.
- [87] I will turn, now, to specific conditions that have been discussed on this appeal.

Condition 5: You must report in person to the probation officer at 2610 Mary Hill Road, Port Coquitlam, BC within 48 hours of your release and thereafter as directed by your probation officer.

- [88] Mr. Reimer is currently incarcerated on Vancouver Island, and has ties to Nanaimo. He expects to remain there, at least in the initial period of his probation. He asks that the reference to the probation officer in Port Coquitlam be replaced by a reference to the probation officer in Nanaimo, with the appropriate address included. The Crown does not oppose this change, and we agree that it is appropriate.

Condition 6: If you are detained in custody for any reason while subject to this order, you shall report to the probation officer within 48 hours of your release.

- [89] It is not entirely clear what the purpose of this condition is. It may simply be a provision requiring probation officers to be notified when Mr. Reimer is released from custody, so they can resume giving him their attention. On the other hand, Mr. Reimer suggests that the purpose of the provision is to facilitate criminal investigations, and the Crown says that it is to ensure that the offender does not become engaged in crime. If these latter purposes are intended, the provision, as drafted, is unsuitable, as it is limited to cases where the offender is "detained in custody". It would not appear to apply to criminal activity that does not lead to

detention in jail. It also does not indicate what it is that the offender is to report to probation officers, and in some cases, it might be seen as infringing on the offender's Charter rights.

- [90] We have not received an adequate explanation of the purpose of the provision, much less its nexus to the offender's crimes, to his rehabilitation, or to the protection of society. If a provision such as this one was to be imposed, it was incumbent on the Crown, or the sentencing judge, to furnish some rationale for it. I would strike condition 6.

Condition 7: [You] must not change your phone number without written permission from your probation officer.

- [91] It is apparent that the probation officer must know how to contact Mr. Reimer, and there can be no objection to a condition that he provide the probation officer with notification of a change of phone number if he changes it. That notification should be without delay. On the other hand, it is not clear why the offender should have to seek permission to change his phone number. There is no suggestion that he has been involved in fraud or in disguising his phone number. Particularly given the impoverished circumstances of Mr. Reimer, it is not far-fetched to suggest that he may need to replace his phone or SIM card from time to time, or change carriers. It may be simplest, in such circumstances, for him to also change his phone number. I would replace the words "without written permission from your probation officer" with "without immediately advising your probation officer of your new number".

Condition 8: You are to reside at a residence approved in advance by your probation officer .

- [92] It is well-established that residential restrictions may be imposed in probation orders. Indeed, this Court approved such a condition in Duguay. Unfortunately, however, social circumstances at the time of Mr. Reimer's release are likely to include a severe shortage of appropriate housing. The presence of a viral pandemic (COVID-19) will greatly restrict Mr. Reimer's ability to find any accommodations at all. His past history of homelessness suggests that finding housing may be a difficulty for him.
- [93] That said, it is important that efforts be devoted to ensuring that the accommodations occupied by Mr. Reimer will be conducive to his rehabilitation, and will not pose a threat to the community.
- [94] In my view, it is unrealistic for Mr. Reimer to have to secure advance written approval before finding a place to live. In the unusual circumstances that we are facing, I would replace the provision with the following, admittedly imperfect, condition:

When you first report to your probation officer, you must provide the officer with the address of the place where you live, and seek the officer's confirmation that the residence is appropriate. You are required to consult with the probation officer prior to changing your residence, and must not unreasonably move into or continue to reside in a residence that the probation officer indicates is inappropriate. Subject to condition 9, you must live at your place of residence daily and not change residence without engaging in further consultation with the probation officer.

Condition 9: If discharged from your residence you must report to the probation officer the next business day.

[95] Mr. Reimer had sought to have condition 8 eliminated, in favour of a provision giving him complete freedom to choose his place of residence. He considered that, with the elimination of condition 8, condition 9 should also be removed. With the modifications to condition 8, condition 9 remains an appropriate way to deal with the possibility that Mr. Reimer will be required to leave a residence.

Condition 10: You must obey the rules of the residence you reside in.

[96] Mr. Reimer takes the position that this provision is overly broad, effectively delegating the power to make probation conditions to a landlord. The Crown does not disagree, saying that the provision was intended to apply only if Mr. Reimer was successful in being admitted to a treatment facility.

[97] If it is confined to such a situation, the provision is unobjectionable. I would amend the provision to say "In the event that you are admitted to a residential treatment facility with the approval of your probation officer, you are required to obey the rules of that residential treatment facility".

Condition 11: You must not publish or publicly make available any information respecting [Ms. M] via the Internet or social media including Facebook, Twitter, Myspace, Instagram, Snapchat or any other like service.

[98] Mr. Reimer says that this provision should be deleted, because he has not, in the past, used public areas of social media to harass or threaten Ms. M. In my view, the provision is not objectionable. Mr. Reimer has access to social media, and has, in the past, extended his harassment of Ms. M to communications to third parties. It is important to protect Ms. M against further harassment, and this condition will go some distance in doing that. There is no reason that Mr. Reimer should find himself in a position where he is compelled to violate it.

Condition 13: You are to attend, participate in and complete any counselling, programming and treatment as directed by your probation officer, including but not limited to Respectful Relationships Program and substance abuse programming.

[99] As Mr. Reimer points out, this provision was intended to deal with counselling and similar programs. He objects to the inclusion of the word "treatment". The Crown agrees with Mr. Reimer as to the purpose of the condition, and is amenable to the change he has suggested. Accordingly, the words "programming and treatment" should be replaced by the words "and programming".

[100] I will for the moment, skip over condition 14, which is closely tied to conditions 20 and 21. I will discuss the three conditions together.

Condition 15: You are to immediately advise your probation officer of any females you wish to enter into an intimate relationship, non-sexual relationship and friendships, and refrain from continuing with such relationships until those persons have been advised of your criminal record, pre-sentence report and these Reasons for Judgment in the presence of the probation officer.

[101] This provision is overly broad, both in the relationships to which it applies, and to the information that must be furnished. The circumstances of Mr. Reimer's offences included harassment and threatening of a recent domestic partner, and it is important that any women who enter into relationships with him are aware of that background. It is not, however, reasonable for people to have access to further intimate details of his past, such as are included in the pre-sentence report, nor is it reasonable that casual acquaintances who Mr. Reimer "wishes" to be his friends be furnished with the information.

[102] In *R. v. Bourque*, 2013 BCCA 447, this Court approved a probation condition that read "You shall immediately advise your Probation Officer of any close, intimate, familiar, or familial relationships and refrain from continuing such a relationship until that person has been advised of your criminal record and background in the presence of your Probation Officer." In my view, such a provision is more appropriate than condition 15. I would modify it somewhat, however, to say:

You shall immediately advise your Probation Officer of any close, intimate, familiar, or newly-formed familial relationship with a woman and refrain from continuing such a relationship until you have provided that woman with a copy of:

- a) the reasons for judgment of the Provincial Court in this case;
- b) a written document listing all of the crimes of which you have been convicted, including the dates of conviction; and
- c) a list of your probation conditions;

and have confirmed to your Probation Officer that you have provided that woman with the required information.

[103] Mr. Reimer consented to conditions 20 and 21, but now says that they are overly-broad or redundant. They are closely related to condition 14. I will reproduce all three conditions, and then discuss them:

Condition 14: You are to provide your probation officer with the list of all treating physicians and sign consent for your probation officer to share information on compliance, progress and area of outstanding concern.

Condition 20: Having consented you must do the following:

1. At the direction of your probation officer report to the Forensic Psychiatric Services or elsewhere for any intake, assessment, counselling or treatment.

2. Attend all scheduled appointments with your doctor, psychiatrist and counsellor.
3. Take all medications prescribed to you.
4. Give your doctor, psychiatrist and counsellor a copy of this order.
5. You must provide your probation officer with the names, addresses and phone numbers of your doctor, psychiatrist and counsellor.
6. Tell your doctor, psychiatrist and counsellor that if you do not follow the terms of this order, he or she is to inform your probation officer.

If you decide not to follow these directions, you must immediately report to your probation officer when his or her office is open and tell your probation officer.

Condition 21: Having consented, you must sign any waiver of confidentiality or release of information forms as will enable your probation officer, counsellors or treatment providers to monitor your attendance and completion of any intake, assessment, counselling or treatment programs and to collaboratively discuss your treatment needs.

[104] I will begin, as did counsel, by discussing condition 20. For the most part, Mr. Reimer continues to consent to the imposition of that condition, which is crucial to his treatment and rehabilitation. He has, however, certain concerns in respect of it.

[105] First, he says that paragraph 3 of the condition is too stringent. He says that he should be entitled to decline to use medications that he finds are ineffective or whose side effects he finds intolerable. He says that he must have the right to refuse medications.

[106] In my view, it has not been demonstrated that there is any likelihood that Mr. Reimer will refuse beneficial treatments. The indications are that he has considerable insight into his problems. In the circumstances, I agree that paragraph 3 is overly broad. In my view, it should be amended to read "take all medications as prescribed, or inform your probation officer, without delay, that you are refusing to take a particular medication, and the reason for that refusal". I understand that Mr. Reimer agrees to that amendment.

[107] Mr. Reimer also objects to paragraph 6 of condition 20, on the basis that it attempts to enforce conduct on persons who are not subject to the probation order. I do not agree that it does so, but am prepared to modify the wording of the paragraph to make that clear. It should read "6. Advise your doctor, psychiatrist and counsellor that if you do not follow the terms of this order, he or she has your permission to, and should, inform your probation officer."

- [108] The unnumbered paragraph after paragraph 6 is puzzling. Mr. Reimer is required to follow his probation conditions, not simply choose to refrain from doing so and then report himself. To the extent that the paragraph was designed to allow him to refuse drug treatments that did not agree with him, it is taken care of by the modification to paragraph 3. I see no purpose in retaining the unnumbered closing paragraph of condition 20, and would delete it.
- [109] Turning to condition 14, Mr. Reimer raises two objections. First, he says it is redundant, as it is covered by condition 20. Second, he says that it is overly broad, as it covers all sorts of medical treatment, including those that have nothing to do with his problems with mental health and addiction issues.
- [110] There is limited evidence before us as to the specific requirements that condition 14 must address. I am not persuaded, however, that it is objectionable or redundant, and would not delete it, nor would I modify it, except to limit it to areas of mental health and addiction treatment. I would replace the words "treating physicians" with "physicians who are treating you for mental health issues or substance use". The word "area" should, I believe, be "areas".
- [111] Mr. Reimer's objection to condition 21 is that it is redundant. It is not clear to me that that is a solid ground for interference by an appellate court. Further, I am not persuaded that condition 21 serves no purpose. I would not modify it.

Condition 25: You must not possess identification, credit cards, bank cards, identification documents, financial documents or information in any other name other than your own name.

- [112] Finally, Mr. Reimer challenges condition 25, which he says is an unreasonable condition, given that he has never been convicted or suspected of a crime involving personation or fraud. The Crown says that the condition was included because when found in the coach house on August 13, 2019, he had a credit card on his person that did not belong to him. There was no other evidence in respect of that card, and no suggestion that it had been used by Mr. Reimer, or even that he possessed it without permission.
- [113] I agree with Mr. Reimer that the Crown showed no basis for imposing condition 25, and would delete it.

Conclusion

- [114] I would grant leave to appeal the sentences. I would dismiss the application to adduce fresh evidence on appeal.
- [115] In respect of the custodial sentences, I would modify the order to make the one-month sentence on count 1 of Information 101734KA3 (breach of a curfew condition) concurrent with the one-month sentence on count 1 of Information 86142KA1 (breach of a curfew condition). This will reduce the effective sentence to fifteen months, which, after credit for time served prior to sentencing, will leave a custodial sentence of eight months.

[116] With respect to the probation conditions, I would delete conditions 6 and 25 and modify conditions 5, 7, 8, 10, 13, 14, 15, and 20 in the manners set out in these reasons.

[117] SAUNDERS J.A.: I agree.

[118] ABRIOUX J.A.: I agree.

[119] SAUNDERS J.A.: Leave to appeal the sentences is granted. The application to adduce fresh evidence is dismissed. In respect of the custodial sentences, the one-month sentence on count 1 of Information 101734KA3 (breach of a curfew condition) is made concurrent with the one-month sentence on count 1 of Information 86142KA1 (breach of a curfew condition). This will reduce the effective sentence to 15 months, which, with credit for time served prior to sentencing, will leave a custodial sentence of eight months. With respect to the probation conditions, the appeal is allowed to the following extent:

- 1) Conditions 6 and 25 are deleted from the conditions in the probation order; and
- 2) Conditions 5, 7, 8, 10, 13, 14, 15, and 20 are set aside and the following same conditions substituted:
 - a. Condition 5: You must report in person to the probation officer at [address in Nanaimo, BC] within 48 hours of your release, and thereafter as directed by your probation officer.
 - b. Condition 7: Upon first reporting to your probation officer, you must provide your probation officer with your telephone number and you must not change your phone number without immediately advising your probation officer of your new number.
 - c. Condition 8: When you first report to your probation officer, you must provide the officer with the address of the place where you live, and seek the officer's confirmation that the residence is appropriate. You are required to consult with the probation officer prior to changing your residence, and must not unreasonably move into or continue to reside in a residence that the probation officer indicates is inappropriate. Subject to the next condition in this order, you must live at your place of residence daily and not change residence without engaging in further consultation with the probation officer.
 - d. Condition 10: In the event that you are admitted to a residential treatment facility with the approval of your probation officer, you are required to obey the rules of that residential treatment facility.
 - e. Condition 13: You are to attend, participate in and complete any counselling and programming as directed by your probation officer, including but not limited to Respectful Relationships Programs and substance abuse programming.
 - f. Condition 14: You are to provide your probation officer with the list of all physicians who are treating you for mental health issues or substance use and sign consent for your probation officer to share information on compliance, progress and areas of outstanding concern.

- g. Condition 15: You shall immediately advise your Probation Officer of any close, intimate, familiar, or newly-formed familial relationship with a woman and refrain from continuing such a relationship until you have provided that woman with a copy of:
- i. the reasons for judgment of the Provincial Court in this case;
 - ii. a written document listing all of the crimes of which you have been convicted, including the dates of conviction, and
 - iii. a list of your probation conditions;
- and have confirmed to your Probation Officer that you have provided that woman with the required information.
- h. Condition 20: Having consented you must do the following:
- i. At the direction of your probation officer report to the Forensic Psychiatric Services or elsewhere for any intake, assessment, counselling or treatment.
 - ii. Attend all scheduled appointments with your doctor, psychiatrist and counsellor.
 - iii. Take all medications as prescribed, or inform your probation officer, without delay, that you are refusing to take a particular medication, and the reason for that refusal.
 - iv. Give your doctor, psychiatrist and counsellor a copy of this order.
 - v. Provide your probation officer with the names, addresses and phone numbers of your doctor, psychiatrist and counsellor.
 - vi. Advise your doctor, psychiatrist and counsellor that if you do not follow the terms of this order, he or she has your permission to, and should, inform your probation officer.

"The Honourable Mr. Justice Groberman"

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