
CANADA / JUDGMENT

R. v. Roper

2014 BCSC 1869

COURT

Supreme Court of British Columbia

DECIDED

9 September 2014

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Roper,

2014 BCSC 1869

Date: 20140909

Docket: 26010

Registry: Vancouver

Regina

v.

James Lee Roper

Before: The Honourable Madam Justice Dickson

Oral Ruling re Application for Section 752.1 Assessment

Counsel for the Crown:

Dasein G. Nearing

Counsel for the Accused:

Michael Ritzker

Place and Date of Hearing:

Vancouver, B.C.

September 9, 2014

Place and Date of Judgment:

Vancouver, B.C.

September 9, 2014

- [1] THE COURT: On December 27, 2013, James Roper pleaded guilty to the offences of unlawful confinement, discharge of a prohibited firearm, possession of a loaded prohibited firearm, and aggravated assault. The offences relate to an incident on January 7, 2011 in which Mr. Roper held a woman hostage in an apartment, punched, kicked, and terrorized her, and fired a gunshot through the wall when police attended. The bullet grazed a responding police officer's ear.
- [2] On January 21, 2014, the Crown applied for an order remanding Mr. Roper for a psychiatric assessment for use in determining whether he should be designated a dangerous offender or a long-term offender. For the reasons that follow, I have concluded that such an order should be made.

Legal Framework

- [3] Pursuant to s. 752.1 of the Criminal Code, R.S.C. 1985, c. C-46, an expert assessment may be ordered if an offender has been convicted of a serious personal injury offence and there are reasonable grounds to believe the offender might be found to be a dangerous offender or a long-term offender. Section 752.1(1) provides:

752.1(1) On application by the prosecutor, if the court is of the opinion that there are reasonable grounds to believe that an offender who is convicted of a serious personal injury offence or an offence referred to in paragraph 753.1(2)(a) might be found to be a dangerous offender under section 753 or a long-term offender under section 753.1, the court shall, by order in writing, before sentence is imposed, remand the offender, for a period not exceeding 60 days, to the custody of a person designated by the court who can perform an assessment or have an assessment performed by experts for use as evidence in an application under section 753 or 753.1.

- [4] The threshold for an assessment remand order is a low one. As Dawson J. of the Saskatchewan Court of Queen's Bench noted in *R. v. Keepness*, 2010 SKQB 118, it concerns possibilities, not probabilities. On an application for an assessment order, the court must have sufficient evidence to establish a real possibility exists that the offender might be found to be a dangerous offender or a long-term offender.
- [5] A "serious personal injury offence" is defined, in relevant part, in s. 752 of the Criminal Code, as:

"serious personal injury offence" means

- (a) an indictable offence, other than high treason, treason, first degree murder or second degree murder, involving
- (i) the use or attempted use of violence against another person, or
- (ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage on another person,

and for which the offender may be sentenced to imprisonment for ten years or more

[6] The dangerous offender provisions are targeted to apply to a very small group of offenders whose personal characteristics and particular circumstances militate strenuously in favour of preventative incarceration: *R. v. Neve*, 1999 ABCA 206. Section 753 and 753.1 of the Code set out the requirements for a finding that an offender is a dangerous offender or a long-term offender. These sections provide, in relevant part:

753(1) On application made under this Part after an assessment report is filed under subsection 752.1(2), the court shall find the offender to be a dangerous offender if it is satisfied

- (a) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (a) of the definition of that expression in section 752 and the offender constitutes a threat to the life, safety or physical or mental well-being of other persons on the basis of evidence establishing
 - (i) a pattern of repetitive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a failure to restrain his or her behaviour and a likelihood of causing death or injury to other persons, or inflicting severe psychological damage on other persons, through failure in the future to restrain his or her behaviour,
 - (ii) a pattern of persistent aggressive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a substantial degree of indifference on the part of the offender respecting the reasonably foreseeable consequences to other persons of his or her behaviour, or
 - (iii) any behaviour by the offender, associated with the offence for which he or she has been convicted, that is of such a brutal nature as to compel the conclusion that the offender's behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint;
- (4) If the court finds an offender to be a dangerous offender, it shall
- (a) impose a sentence of detention in a penitentiary for an indeterminate period;
 - (b) impose a sentence for the offence for which the offender has been convicted -- which must be a minimum punishment of imprisonment for a term of two years -- and order that the offender be subject to long-term supervision for a period that does not exceed 10 years; or
 - (c) impose a sentence for the offence for which the offender has been convicted.

- (5) If the court does not find an offender to be a dangerous offender,
 - (a) the court may treat the application as an application to find the offender to be a long-term offender, section 753.1 applies to the application and the court may either find that the offender is a long-term offender or hold another hearing for that purpose; or
 - (b) the court may impose sentence for the offence for which the offender has been convicted.

753.1(1) The court may, on application made under this Part following the filing of an assessment report under subsection 752.1(2), find an offender to be a long-term offender if it is satisfied that

- (a) it would be appropriate to impose a sentence of imprisonment of two years or more for the offence for which the offender has been convicted;
 - (b) there is a substantial risk that the offender will reoffend; and
 - (c) there is a reasonable possibility of eventual control of the risk in the community.
- (3) If the court finds an offender to be a long-term offender, it shall
- (a) impose a sentence for the offence for which the offender has been convicted, which must be a minimum punishment of imprisonment for a term of two years; and
 - (b) order that the offender be subject to long-term supervision for a period that does not exceed 10 years.
- (6) If the court does not find an offender to be a long-term offender, the court shall impose sentence for the offence for which the offender has been convicted.

Discussion

- [7] In this case, the Crown submits the facts of the index offences and the facts of Mr. Roper's prior criminal convictions satisfy the legislative requirements in the three disjunctive sections of s. 753(1)(a)(i) to (iii); that is to say, a pattern of repetitive behaviour showing a failure to restrain himself and a likelihood of causing serious damage through such failure in the future, or a pattern of persistent aggressive behaviour or behaviour of a brutal nature.
- [8] In support of her submission, Crown counsel focuses upon Mr. Roper's history of violence and weapons-related offences that date back some 19 years, to 1995. She says this history reveals a repetitive pattern of aggressive and sometimes brutal behaviour by Mr. Roper against women, both in the intimate partner context and against women in general. For example, she points to four separate assaults Mr. Roper committed against an intimate partner in which he kicked and punched the victim. She goes on to say there has been an escalation in such behaviour, most recently evidenced in the circumstances of the index offences.

- [9] Crown counsel further relies upon extracts from psychological evaluations of Mr. Roper conducted in 2003 and 2012. In one of the evaluations he is described as presenting a high risk to reoffend violently. All things considered, she submits the Crown has established there are reasonable grounds to believe that Mr. Roper might be found to be a dangerous offender. That being so, in her submission he should be remanded for psychiatric assessment in accordance with the provisions of the Criminal Code.
- [10] Defence counsel does not oppose the application for an order remanding Mr. Roper for psychiatric assessment. He sensibly acknowledges that the threshold is a low one and concedes the admissible evidence presented meets the low test. Nevertheless, he emphasizes that there are different ways in which the evidence might ultimately be interpreted. He also points to several areas of potential argument and analysis that could militate against the designation the Crown may seek in future. In summary, while acknowledging the assessment order sought is justified, defence counsel says a more optimistic view of Mr. Roper and his prospects than that advocated by the Crown will eventually be urged upon the court.
- [11] I am grateful to both counsel for their helpful and pragmatic approaches to this application. Taking into account all of the foregoing, I accept that, as Crown counsel submits and defence counsel concedes, Mr. Roper has been convicted of a serious personal injury offence and there are reasonable grounds to believe that he might be found to be a dangerous offender. Accordingly, I make the assessment order sought by the Crown.

"DICKSON J."

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