

CANADA / JUDGMENT

R. v. Russell

2013 BCSC 697

COURT

Supreme Court of British Columbia

DECIDED

19 April 2013

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2013 BCSC 697 R. v. Russell IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Russell, 2013 BCSC 697 Date: 20130419 Docket: 26303 Registry: Vancouver Regina v. Daniel Ronald Russell Before: Associate Chief Justice Cullen Reasons for Sentence not subject to Ban on Publication Counsel for the Crown: R. Keefer, E. Rennie, P. Sebellin & A. Mandell Counsel for the Accused: L. Doust, Q.C. & A. Doolittle Place and Date of Hearing: Vancouver, B.C. April 16, 2013 Place and Date of Judgment: Vancouver, B.C. April 19, 2013

- [1] Daniel Ronald Russell has pleaded guilty to two charges. The first charge is that between January 1, 2008 and February 17, 2009, in and about British Columbia he conspired with various others to commit the murders of Jonathan David Bacon, James Kyle Bacon and Jarrod Wayne Bacon and their associates, contrary to s. 465(1)(a) of the Criminal Code of Canada.
- [2] The second count is that on or about May 9, 2008 or at near Burnaby, in the Province of British Columbia, he did use a firearm to commit manslaughter of Jonathan Barber, contrary to s. 236(a) of the Criminal Code of Canada.
- [3] As this is a joint submission for a sentence of 12 years concurrent on each of the two charges to which the accused has pleaded guilty, it is necessary to consider whether the sentence agreed to by the Crown and the defence should be given effect to by the Court.
- [4] As was pointed out by counsel, particularly Mr. Doust, in submissions, the Court owes considerable deference to joint submissions arrived at by negotiations between counsel who are thoroughly familiar with all the issues in the case, the implications of the guilty plea, and the impact of the sentencing. That deference is particularly important where, as here, the plea has been negotiated by senior and responsible counsel who are certain to have considered the effect of the joint submission from all perspectives, including that of its impact on the repute of the administration of justice.
- [5] He has pleaded guilty to two very serious charges, each carrying a maximum sentence of life imprisonment.

- [6] That there are exceptional circumstances to this case cannot be doubted, based on all the evidence and the submissions I have heard and read. In those circumstances, and given the 12-year sentence jointly advanced, I am satisfied that it is appropriate to accept counsel's submissions. I come to that conclusion, whether the test for departure from a joint submission is the more onerous one of the Ontario Court of Appeal in *R. v. Dorsey* (1999), 123 O.A.C. 342: ... where the trial judge considers the joint submission to be contrary to the public interest and a submission which if accepted would bring the admission of justice into disrepute. Or whether the test is a less onerous one leading a judge to "conclude the sentence proposed was unfit", as articulated in *R. v. Bezdan*, 2001 BCCA 215. Such a departure is not justified in this case.
- [7] In reaching that conclusion, I want to emphasize that the sentence in this case reflects the highly exceptional circumstances on foot including the mitigating circumstances of the offender's guilty plea and the other salient factors at play.
- [8] Generally, offences of this sort, given the circumstances outlined in the evidence before me, would attract a more severe sentence reflecting the need to denounce and deter the sort of sophisticated, coordinated and ongoing violent criminal activity at issue.
- [9] Those who engage in well-organized criminal activity for profit, enforced by violence, live outside any reasonable norm. They enter a world of moral squalor and brutish behaviour. Where, as here, such offenders jeopardize or destroy the lives of those who choose to live productively in a way that contributes to the well being of family, friends and the community, it is important that sentences carry a strong message of repudiation.
- [10] In this case, I read the victim impact statement written by Jonathan Barber's father. It reinforces that tragic circumstances can and often do flow from the conduct engaged in by the offender and others. Mr. Barber was in the wrong place at the wrong time and for that he lost his life and his family and friends must bear that burden for the balance of theirs.
- [11] Having regard for all the circumstances however, I impose a sentence of 12 years on this offender. As conceded by counsel for the Crown, as his pre-trial detention commenced before recent changes to the Criminal Code affecting credit to be given for pre-trial custody, he is entitled to double time for his pre-trial custody. In those circumstances, he is credited with seven years and 10 months for the three years and 11 months that he has served in pre-trial custody and accordingly, I sentence him to an additional four years and two months. There will be the following ancillary orders:
1. There will be an order pursuant to s. 109(2)(a)(ii) of the Criminal Code prohibiting Daniel Ronald Russell from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, and explosive substance from April 19, 2013 and ending not earlier than 10 years after Mr. Russell's release from imprisonment after conviction.

2. There will be an order pursuant to s. 487.051(2) authorizing the taking of the number of samples of bodily substances that is reasonably required for the purpose of forensic DNA analysis.
3. There will be a non-communication order pursuant to s. 743.21 of the Criminal Code prohibiting any communication by the offender with Vicki King, the parents or family of Jonathan Barber and all the indicted and unindicted co-conspirators referred to in the Appendix of the Crown's contextual evidence document. "A.F. Cullen ACJ."

Associate Chief Justice Cullen

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