

CANADA / JUDGMENT

R. v. Sagmoen

2020 BCSC 1229

COURT

Supreme Court of British Columbia

DECIDED

19 June 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 1229 R. v. Sagmoen

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Sagmoen,

2020 BCSC 1229

Date: 20200619

Docket: 52598

Registry: Vernon

Regina

v.

Curtis Wayne Sagmoen

Restriction on Publication: A publication ban has been imposed under s. 486.5 of the Criminal Code of Canada restricting the publication, broadcasting or transmission in any way of evidence that could identify a complainant or witness referred to in this judgment. This publication ban applies indefinitely unless otherwise ordered.

Before: The Honourable Mr. Justice G.C. Weatherill

Oral Reasons for Sentence

Counsel for the Crown:

S. McCallum

Counsel for the Accused:

L. Helps

Place and Date of Hearing:

Vernon, B.C.

June 19, 2020

Place and Date of Judgment:

Vernon, B.C.

June 19, 2020

[1] THE COURT: On February 11, 2020, Mr. Sagmoen was convicted of one count of assault causing bodily harm contrary to s. 267(b) of the Criminal Code., R.S.C. 1985 c. C-46.

circumstances of the offence

[2] On the evening of August 9, 2017, J.L., an escort providing dating services on an out-call basis, received a telephone call from Mr. Sagmoen requesting her services. He asked her to attend his property at 2290 Salmon River Road which is located between Falkland and Salmon Arm, British Columbia. J.L. put off the date until the following day because she did not want to attend that property at night.

[3] Upon her arrival the following day and at Mr. Sagmoen's request, she got on the back of his all-terrain vehicle ("ATV") and he drove her up a dirt road located on his property. After receiving from him what she considered to be ridiculous excuses for not being paid in advance for her services, J.L. got off the ATV and began walking back down the dirt road towards her car.

[4] A short time later, she heard the ATV approaching from behind at a high rate of speed. She did not look back. Assuming Mr. Sagmoen was going to drive by her, she stepped towards the side of the road to let the ATV pass. Instead of passing by her, the ATV struck J.L. from behind and she was thrown over the top of it. She spun once or twice in mid-air and landed flat and face-down on the road. She suffered a large lump to her head, bruises, and what she described as "road rash" on her leg as well as an injured tailbone.

[5] Mr. Sagmoen did not testify or call evidence in his defence.

[6] I accepted J.L.'s evidence of the event and found that the Crown had shown beyond a reasonable doubt that Mr. Sagmoen intentionally drove his ATV into J.L. likely because he was angry at her for walking away from him, thereby thwarting whatever plans he had for her that day.

[7] Crown counsel emphasized during her oral submissions on sentencing that Mr. Sagmoen's criminal conduct in this case was confined to the event that I have outlined and that there were no aggravating circumstances beyond that.

principles of sentencing

[8] Section 718 of the Criminal Code provides that:

The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions

[9] This purpose is achieved by imposing sentences which have, among others, the following objectives:

- a) denouncing unlawful conduct and the harm to victims and/or the community caused by unlawful conduct;
- b) deterring the offender and other persons from committing offences;
- c) separating offenders from society, where necessary;
- d) assisting in the rehabilitation of offenders;
- e) providing reparations for harm done to victims and to the community; and
- f) promoting a sense of responsibility in offenders and acknowledgment of the harm done to the victims and to the community.

[10] Section 718.1 of the Criminal Code stipulates that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. It is a highly individualized process which requires consideration of all relevant circumstances: *R. v. L.M.*, 2008 SCC 31, at para. 22.

[11] Section 718.2 of the Criminal Code sets out other sentencing principles that must be taken into account. Of particular relevance is s. 718.2(a) which stipulates that when imposing a sentence, the court shall take into consideration any relevant aggravating and mitigating circumstances relating to the offence or to the offender. As well, s. 718.2(d) and (e) provides as follows:

- d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
- e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

[12] Jurisprudence in British Columbia emphasizes that there is a need to denounce violence against sex trade workers in the strongest terms and to impose sentences that will deliver a deterrent message to others: *R. v. Edwards*, 2013 BCPC 222 at para. 20. As was noted by that court in *Edwards*, sex trade workers often meet people they do not know in locations they are not familiar with and where help is not readily at hand. That vulnerability is frequently magnified by the difference in physical size and strength between men and women.

victim impact statement

- [13] J.L. attended court for the sentencing hearing this morning and read a victim impact statement which she had prepared. In summary, she stated that the assault upon her by Mr. Sagmoen has forever changed her life in a way she never could have imagined or prepared for. It has caused her to endure both physical and emotional trauma in a variety of forms which she detailed during her statement. The pain from her physical injuries continues to this day. She struggles to find the right words to finish sentences or describe things. She often has trouble focusing or completing tasks and is easily overwhelmed. She struggles with anxiety and fear. She has difficulty trusting people. She constantly looks over her shoulder.
- [14] Mr. Sagmoen has expressed through his counsel that he is very sorry that he harmed Ms. Lang while driving the ATV in the manner that he did. He acknowledges through his counsel that his acts were at the very least reckless with a disregard for J.L.'s safety and personal security. He feels terrible about her injuries and has expressed his understanding that it could have been a great deal more serious. He has advised that he is grateful that J.L. did not suffer any additional harm.

Circumstances of the offender

- [15] Mr. Sagmoen is 30 years old. He was raised in Maple Ridge, British Columbia, where he attended and graduated high school. In May 2004, he moved to his present home along Salmon River Road with his parents.
- [16] At the time of the offence for which Mr. Sagmoen is now being sentenced, he had no prior criminal record other than a conviction for driving while impaired for which he received a fine of \$1,000. However, after the date of the offence, Mr. Sagmoen was charged and convicted of the following:
- a) On February 4, 2019, he was convicted of assault contrary to s. 266 of the Criminal Code for an offence that took place on January 6, 2013 for which he received a sentence of 30 days' time served and 24 months' probation; and
 - b) On December 20, 2019, Mr. Sagmoen was convicted of three offences:
 - i. disguising his face with intent to commit an indictable offence, contrary to s. 351(2) of the Criminal Code (offence date August 27, 2017), for which he was sentenced to 11 months and 36 months' probation;
 - ii. using a firearm while committing an indictable offence, contrary to s. 85(1) of the Criminal Code (offence date August 27, 2017), for which he was sentenced to 12 months' presentence custody and 36 months' probation; and
 - iii. on December 20, 2019, he was convicted of possession-of-controlled-substance contrary to s. 4(1) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 (offence date September 5, 2017), for which he was sentenced to one-day presentence custody consecutive with the other

sentences.

- [17] It is noteworthy that the victims in both the assault and the use of a firearm while committing indictable offences were female escort workers who had advertised their services on the Internet and had set up a meeting with Mr. Sagmoen after he had contacted them by telephone. In the first case, Mr. Sagmoen assaulted the victim following a dispute over payment for her services. In the second case, the incident occurred on the same property as the offence against J.L. When the victim arrived, Mr. Sagmoen was holding a shotgun and had his face covered by a bandana. When the victim attempted to leave, Mr. Sagmoen pointed the gun into her driver's side window. The victim fled on foot. Later, a bullet hole was found in the front driver's tire and debris from a shotgun was found inside the tire. The incident occurred late at night.
- [18] It is also noteworthy that the three offences which resulted in convictions on December 20, 2019 as well as the offence for which Mr. Sagmoen is now being sentenced all occurred over a period of less than one month between August 10, 2017 and September 5, 2017, at a time when Mr. Sagmoen was addicted to and using methamphetamine.
- [19] As I have already indicated, Mr. Sagmoen has been bound by a probation order since his convictions on December 20, 2019. At that time, he was released from custody on the basis of credit for time served. He has also been bound by a recognizance of bail in connection with the offence against J.L. for which he is now being sentenced.
- [20] The Crown has advised the court that Mr. Sagmoen has been reporting to his probation officer as required and that there have been no issues with his compliance. However, the probation officer had indicated to Crown Counsel that there is a concern that Mr. Sagmoen is not a suitable candidate for the group counselling programs operated by Community Corrections in Salmon Arm and that individual counselling is likely the only suitable option. The probation officer has also advised Crown Counsel that Mr. Sagmoen may have employment opportunities, but they will involve temporary absences from Salmon Arm.
- [21] While in custody, prior to his release on December 20, 2019, Mr. Sagmoen completed the Essential Skills to Success program which include substance abuse modules and health living habits. He has since been drug-free and indeed has been drug-free since going into custody.
- [22] Mr. Sagmoen is a member of the Pile Drivers, Bridgemen and Dock Workers' Union Local 2404. Prior to going into custody, he was working regularly in work camps and jobsites across British Columbia. He is anxious to resume his employment, if and when he is permitted to do so, through probation conditions. Mr. Sagmoen is close to his parents and brothers and they are supportive of him.

positions on sentencing

The Crown

- [23] At the time of the offence, J.L. was in a vulnerable position by virtue of her employment. She was alone at an unfamiliar location. Although her physical injuries may have been relatively modest, she was also injured emotionally by the manner in which the incident occurred. The Crown submits that J.L.'s vulnerability is an aggravating factor. It submits that equally aggravating was Mr. Sagmoen's use of his quad to strike her because that conduct engaged a serious risk of personal harm.
- [24] The Crown notes that Mr. Sagmoen had no criminal record for violence at the time of the offence and, in that respect, his situation is similar to that of a first-time offender. Mr. Sagmoen has served many months in pre-trial custody in connection with this offence. The Crown submits that returning him to custody raises a concern in terms of his rehabilitation in that his access to counselling and ability to re-enter the workforce will be delayed.
- [25] The Crown further submits that lengthy and restrictive terms of probation will address the relevant principles set out in s. 718 and will impress upon Mr. Sagmoen a sense of responsibility for his actions. The Crown submits that the terms of probation proposed by it have been crafted to not only address public safety concerns by minimizing Mr. Sagmoen's opportunity to reoffend, but also provide a meaningful consequence for the offence such that it will deter both Mr. Sagmoen and others from similar conduct in the future.
- [26] In addition to the Edwards case that I have mentioned, the Crown relies on the following cases involving assault causing bodily harm regarding the appropriate sentence to be imposed in this case:
- R. v. Janzen, 2015 BCSC 652;
 - R. v. Papp, 2014 SKPC 211;
 - R. v. Sharma, 2015 BCSC 735; and
 - R. v. Cardinal, 2007 ABCA 46.
- [27] In Janzen, the British Columbia Court of Appeal noted that there is a wide range of sentences imposed for the offence of assault causing bodily harm. Offences involving statutory aggravating factors, offences resulting in higher levels of injury, and offences directed at vulnerable victims will attract more onerous sentences. The offender's criminal history and personal circumstances are relevant factors.
- [28] Most of the jurisprudence dealing with sentencing in cases regarding offences against escort workers involves more aggravating circumstances and injuries than are present in this case. However, in Sharma, the sentence was one month in jail for assault causing bodily harm against a sex trade worker. Mr. Sharma, who had no previous criminal record, but suffered from depression and substance abuse issues, chased the victim, swung a steering-wheel lock at her, and fractured her wrist in the process. The mitigating factors included that Mr. Sharma suffered loss of both his employment and estrangement from some family members

as a result of the charges against him.

- [29] Cardinal and Papp are cases of assault causing bodily harm involving the use of ATVs. Both involved circumstances that were more aggravated than those in Mr. Sagmoen's case. Both involved offenders with no previous criminal record. Mr. Cardinal was sentenced to 13 months in jail followed by nine months' probation. Mr. Papp received an 18-month conditional sentence order.
- [30] In this case, the Crown is not seeking an additional custodial term for Mr. Sagmoen beyond the time he has already served, but seeks a period of probation of 36 months on strict terms.

Defence

- [31] Mr. Sagmoen's counsel, Ms. Helps, submits the Crown's position on sentencing in this case is appropriate in the circumstances in this case and will serve the sentencing goals of denunciation and deterrence. In essence, the Crown and Ms. Helps are making a joint submission on sentencing. They are in agreement on what the sentence should be.
- [32] Ms. Helps points out that Mr. Sagmoen was in custody for 795 actual days between October 17, 2017 and December 20, 2019, which, at 1.5 times pre-trial credit for which he is entitled, equals 1,192.5 days in pre-trial custody. From this total, 30 days must be deducted in respect of the February 4, 2019 conviction and 760 days in respect of the December 20, 2019 convictions, leaving 432.5 days to be allocated for pre-trial custody time in respect of this matter.
- [33] A five-month custodial sentence at the high end of the range that the Crown is suggesting equates to 155 days. Imposing that sentence will result in Mr. Sagmoen having an additional 277.5 credited days in custody.

analysis

- [34] As noted, sentencing is an individualized process. However, as part of its analysis on sentencing, the court considers and may be guided by the range of sentences imposed for similar offenders committing similar offences.
- [35] As was recently stated by the Quebec Court of Appeal in *Barchichat v. Regina*, 2020 QCCA 282, at paras. 11 and 20:
- [11] Courts must adequately weigh all sentencing objectives. The objectives of deterrence and denunciation must be considered in light of the circumstances of each case and cannot a priori exclude a sentencing choice solely due to the objective gravity of a crime.
- [20] With all due respect for the trial judge, whose decision is otherwise more than adequately substantiated, I am of the view that she erred in law by emphasizing deterrence and denunciation to such an extent that she did not follow the approach set out in *[R. v. Proulx, [2000] 1 S.C.R. 61]* to exclude a conditional sentence in the present case.

- [36] As I have said, counsel in this case are in agreement that in cases involving assault causing bodily harm, the law is clear that the need for denunciation and deterrence is paramount.
- [37] I accept that the aggravating factors enunciated by the Crown are present in this case. However, a joint submission, which is effectively what is before me, on the appropriate sentence should not be rejected unless the proposed sentence would bring the administration of justice into disrepute or otherwise be contrary to the public interest: *R. v. Anthony-Cook*, 2016 SCC 43.
- [38] Mr. Sagmoen, would you please stand.
- [39] Is there anything that you wish to say to me before I sentence you?
- [40] THE ACCUSED: No.
- [41] THE COURT: All right, thank you. You can have a seat.
- [42] Sentencing of any offender is a difficult task. I have given the circumstances of this case as well as the very helpful submissions of counsel both in writing and orally considerable thought.
- [43] In my view, a custodial sentence of five months is appropriate in this case, given the nature and seriousness of the offence. Such a sentence will meet the objectives of deterrence and denunciation set out in s. 718 and is in accordance with the case law.
- [44] Accordingly, I accept what are, in essence, joint submissions of counsel.
- the sentence
- [45] I am imposing a sentence of one day plus custodial time served.
- [46] In addition, I am imposing a term of probation for 36 months on the following conditions:
- a) you will keep the peace and be of good behaviour;
 - b) you will appear before the court when required to do so by the court;
 - c) you will notify the court or your probation officer in advance of any change of name or address, and you will promptly notify the court or your probation officer of any change of employment or occupation;
 - d) you must reside at 2290 Salmon River Road, Salmon Arm, British Columbia. You must provide your probation officer with your phone number, and you must not change your residence or your phone number without written permission from your probation officer. You must provide any new address and names of current occupants to your probation officer in advance for his or her approval;

- e) you must obtain your probation officer's prior written permission for any overnight absences from 2290 Salmon River Road or your approved residence, including any temporary absences for the purposes of employment, and if a temporary absence is permitted, you then must:
 - i. first provide your probation officer with the address where you will be staying and the duration of your stay; and
 - ii. report as directed to a local probation officer in the area where you are staying temporarily.
- f) you must obey all the rules of your residence so long as they do not conflict with the terms of this order or the directions of your probation officer. If there is a conflict, you must tell your probation officer about the conflict immediately;
- g) you must not go to 2310 Salmon River Road except for the sole purpose of using the easement on that property for the proper purpose of accessing the property at 2290 Salmon River Road for legitimate reasons incidental to farming and maintenance operations at 2290 Salmon River Road. When you are present on the easement on the property at 2310 Salmon River Road, you must stay on that easement that connects 2310 and 2290 Salmon River Road and not attend at any other parts of the property at 2310 Salmon River Road including any trails or waterways;
- h) you must not leave British Columbia unless you have the written permission of your probation officer, and you must carry the written permission with you if you are outside the province;
- i) you must provide your probation officer with the particulars of your employment or relationship status. You must inform your probation officer within two business days of any change in your employment or relationship status;
- j) you must not associate or have a relationship with anyone named by your probation officer if your probation officer has reasonably determined the relationship or association to be a risk to yourself or others or to be detrimental to your programming, counselling, reintegration into the community, or a risk to the protection of society. You must not have any contact in any way with any sex trade worker, escort, or person offering paid dating or companion services;
- k) you must attend, participate in, and successfully complete any intake, assessment, counselling, or program as directed by your probation officer. To the extent reasonably available, your counselling must include individual counselling in a program of one-on-one counselling sessions and include anger management and addiction management counselling;
- l) you are prohibited from using any mobile communication device capable of accessing the Internet, making telephone calls, or communicating via text message unless:

- i. it has only one phone number associated with it;
 - ii. it is used only for the purpose of contacting your probation officer, your lawyer, your immediate family members, for lawful day-to-day activities related to your family's farming activities, for lawful employment, or in case of a justified emergency;
 - iii. you provide your probation officer with the telephone number and the service provider and not change either without the written permission of your probation officer;
 - iv. you will retain a history of and not delete the call and text communications' history on that device;
 - v. this communications device must have the capacity to retain and display the Internet use history and you do not delete that history, as I have said;
 - vi. this device is not to be used in conjunction with the Internet to contact or to attempt to contact any person you know to be or reasonably suspect is a sex trade worker, escort, or a person providing paid dating or companion services;
 - vii. you will consent to the inspection of the communication device by your probation officer for the purpose of monitoring your compliance with this order; and
 - viii. you will provide the device and any password needed to unlock it to your probation officer upon request.
- m) you will not access any website or mobile application that advertises escort services, prostitution services, or paid dating or companion services;
 - n) you will not have any contact of any kind directly or indirectly with Ms. Lang or Ken Seymour;
 - o) you must not go to or be within 50 metres of any residence, school, or workplace of either Ms. Lang or Mr. Seymour;
 - p) you must abstain from the possession and consumption of drugs and other intoxicating substances except in accordance with a medical prescription in your name issued by a qualified physician.
 - q) you must not reside in any residence in which any other person keeps or stores any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, or explosive substance;
 - r) you must not possess any prohibited weapon, restricted weapon, prohibited device, ammunition, or explosive substance or any related authorizations or licences; and
 - s) you must report to a probation officer at 3101 29th Avenue, Vernon, British Columbia, before 4:00 p.m. today and, after that, as directed by your probation officer.

[47] Finally, I am making the following ancillary orders which are mandatory in this case:

- a) a ten-year weapons prohibition pursuant to s. 109 of the Criminal Code; and
- b) a mandatory DNA order pursuant to s. 487.051 of the Criminal Code.

[48] All right. Mr. Sagmoen, do you understand those conditions of probation?

[49] THE ACCUSED: Yes, I do.

[50] THE COURT: All right, and I assume that your counsel has explained what the consequences will be if you breach any of those conditions? Do you understand that the consequences may be serious?

[51] THE ACCUSED: Yes.

[52] THE COURT: All right, and I expect you to follow those probation conditions. Do I have your undertaking to do that?

[53] THE ACCUSED: Yes.

[54] THE COURT: To the best of your ability?

[55] THE ACCUSED: Yes.

[56] THE COURT: All right. Is there anything further?

[DISCUSSION RE MR. SAGMOEN CARRYING A COPY OF

THE PROBATION CONDITIONS]

[57] THE COURT: All right. Just to be clear that one of the conditions is that, Mr. Sagmoen, you will carry with you a copy of these probation conditions, understand that? All right. Is there anything further?

[58] MS. McCALLUM: Yes, My Lord, two more things. The first is Ms. Helps reminded me that neither of us are aware whether or not the Vernon probation office is open today. So we should probably confirm that before Mr. Sagmoen is finally directed to go there before 4 p.m.

[59] THE COURT: It is in this building, is it not? It is not? All right.

[60] MS. HELPS: No, My Lord, it is down near the highway and the issue is, is that at least on the Coast, they are only working intermittent days and there is only a duty officer in on certain days and that is a high volume office.

[61] THE COURT: All right. Well, I will modify the probation condition to read "you must report to a probation officer at 3109 29th Avenue, Vernon, British Columbia, before 4 p.m. today unless the probation office is closed in which case you will report as soon as possible thereafter."

[62] MS. HELPS: Perhaps, if it would be appropriate for the court, because he already has a relationship with his Salmon Arm probation officer and because he will be going back to Salmon Arm today and because they generally have been isolating because of COVID, perhaps the alternative might be to report to his probation -- I believe he has an appointment on Friday, in any event?

[DISCUSSION RE ADDRESS OF SALMON ARM PROBATION OFFICE]

[63] THE COURT: All right. So I am going to change the address for the probation office where Mr. Sagmoen is to report from the address in Vernon I mentioned earlier to 101-6th Street, NE, Salmon Arm, British Columbia, before 4 p.m. today unless the office is closed, in which case, it will be at that location as soon as reasonably practicable thereafter. All right.

[64] MS. McCALLUM: Thank you, My Lord, and just one last thing, with respect to the restrictions at s. (l), I believe, (l)(b) on the use of the communications device. So there is a similar condition that arises on Mr. Sagmoen's current probation order from the December conviction. It is a little more restrictive than this condition is and my friend and I had taken the liberty of putting that other file onto the court list today in the event that something like this happened so that we could have -- ask the court to consider having the condition conform to the condition that --

[65] THE COURT: Well, I am happy to do whatever counsel was content with -- and I do not have the conditions from the existing probation order.

[66] MS. McCALLUM: The file should be in the courtroom.

[DISCUSSION RE COMMUNICATIONS DEVICE PROBATION CONDITION CONFORMING TO COURT FILE 52333]

[67] THE COURT: So you want the existing order to be modified?

[68] MS. McCALLUM: That is right. Otherwise, Mr. Sagmoen will not be able to --

[69] THE COURT: All right. Well, I am content with that. I mean I struggled a little bit with the terms of this communication order and the two of you did, as well, from the exchanges I saw, and so the one I have read this morning I think works. So to the extent that the terms I have read this morning for his ability to communicate via mobile device will conflict with the existing terms, then I am content to amend the existing probation order terms in file number whatever it is 52333 such that the existing terms will now be modified to be identical to the terms I have just set out this morning. All right, is there anything further?

[70] MS. McCALLUM: No, My Lord, not from the Crown.

[71] MS. HELPS: Only a practical issue from the side of the defence, My Lord, I have not done a sentencing in Supreme Court since COVID. The registry, as I understand it, is closed. I am wondering what the procedure is for Mr. Sagmoen to sign off on the sentencing order so that I can assist him?

[72] THE COURT: Well, I am not sure what it is here, either. Madam Registrar, are you able to assist?

[73] THE CLERK: My Lord, I can get them a copy after this proceeding.

[74] MS. HELPS: Thank you, My Lord.

[75] THE COURT: All right. So, hopefully, that works and, just for clarification, I imposed the sentence of one day plus custodial time because that is my understanding that is necessary for the paperwork.

[76] MS. HELPS: Yes, My Lord, but Mr. Sagmoen does not go into custody? The one day is considered his time here in the courtroom today?

[77] THE COURT: Right. All right. I want to once again thank you both for your very helpful professional cooperative assistance. It is very much appreciated.

"G.C. Weatherill J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/12/2020BCSC1229.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-sagmoen-2020>

Prepared on 25 October 2026 · Esheria