

CANADA / JUDGMENT

R. v. Sanderson

2005 BCCA 423

COURT

British Columbia Court of Appeal

DECIDED

15 August 2005

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2005 BCCA 423 R. v. Sanderson COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Sanderson, 2005 BCCA 423 Date: 20050815 Docket: CA032899 Between: Regina Respondent And Christopher Jumal Sanderson Appellant Before: The Honourable Madam Justice Ryan The Honourable Madam Justice Huddart The Honourable Madam Justice Levine Oral Reasons for Judgment T.E. La Liberté, Q.C. Counsel for the Appellant M.T. Ainslie Counsel for the Respondent Place and Date: Vancouver, British Columbia August 15, 2005

- [1] LEVINE J.A.: Christopher Jumal Sanderson applies for leave to appeal, and if leave is granted, appeals his sentence of seven months in prison imposed after he pleaded guilty to stealing a motor vehicle having a value of over \$5,000. In addition to the sentence of imprisonment, the sentencing judge imposed two years of probation. Mr. Sanderson does not appeal the probationary term of the sentence.
- [2] Mr. Sanderson took the motor vehicle to drive himself home from Chilliwack to Burnaby after he was released from an overnight stay in prison following his arrest for an alleged assault. After arresting him in Burnaby, transporting him to Chilliwack and holding him overnight, police determined that he was in prison on the day of the alleged offence and therefore could not have committed it. On his release, Mr. Sanderson had no money to afford transportation, he was wearing borrowed, ill-fitting shoes, and his appearance was "scruffy" from his night in jail. It was evening and getting dark. He walked three miles to Highway 1 and attempted, unsuccessfully, to hitchhike.
- [3] The motor vehicle in question was a "bait car" parked by police at a highway exit. Mr. Sanderson came upon it, found the keys in the lock and took it to drive to Burnaby. Police caught up with him in Surrey and arrested him without incident.
- [4] At the sentencing hearing, Crown counsel sought a jail term of unspecified length, after giving Mr. Sanderson credit for pre-sentencing custody of just over one month. Crown counsel emphasized "the general deterrence issue on car theft since [the offence] involve[d] a bait car". Defence suggested an appropriate sentence in the circumstances would be time served, giving credit of two months, followed by probation.

- [5] The sentencing judge referred to Mr. Sanderson's "lengthy, continual related record" of "roughly ten or 12 previous property offences". He commented that it made little difference that Mr. Sanderson was not, as defence counsel put it, "out on the prowl". He cited the need for general deterrence, noting that the car was a bait car and that: Car theft is epidemic in this and communities throughout our province, and the matter has to be dealt with seriously. A message has to be sent out that this conduct is not going to be tolerated. If you get caught, it will have consequences.
- [6] The sentencing judge stated that had Mr. Sanderson been "on the prowl", the sentence would be 18 months, but "taking into account the extenuating circumstances", imposed a sentence of nine months, reduced by two months for pre-sentencing custody.
- [7] Mr. Sanderson has served almost five months of the sentence. His release date, on parole, would be this Saturday, August 20, 2005.
- [8] Counsel for the appellant argued that the sentence imposed was harsh and excessive given the circumstances of the offence. Crown counsel takes the position that the sentence is not excessive when compared with sentences of similar offenders for similar offences committed in similar circumstances. Crown counsel provided five decisions of this Court in which sentences of from one to three years for offences of possessing stolen motor vehicles were upheld. I note that in all of those cases, there were other charges for which the offender was sentenced and in one case, *R. v. Jeff* (1997), 87 B.C.A.C. 166, there was evidence that the car had been damaged. In some of the cases, the sentence was a global sentence for more than one offence.
- [9] In my opinion, the sentence imposed is somewhat high in all of the circumstances of this particular case. It cannot be disputed that car theft is a serious crime and that general deterrence is one the principles of sentencing that is appropriately taken into account. In my opinion, however, the sentencing judge overemphasized the need to "send a message" about the epidemic of car theft in the context of this particular case. While the appellant had the necessary mens rea for the offence, in that he knew he was taking a car that did not belong to him, he did not steal the car for a joyride, to sell it or for some other more culpable reason than attempting to return home after spending a night in jail on a false charge and having no other reasonable means of transportation.
- [10] I would in the circumstances grant leave to appeal and allow the appeal by varying the sentence to time served. The probationary term of two years will remain in force.
- [11] RYAN J.A.: I agree for the reasons given by my colleague, Madam Justice Levine. In my view, the sentence is unfit.
- [12] HUDDART J.A.: I agree.
- [13] RYAN J.A.: Leave is granted, the appeal is allowed; the sentence of imprisonment is reduced to time served and the probation order will remain. "The Honourable Madam Justice Levine"

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