

CANADA / JUDGMENT

R. v. Sekulich

2024 BCSC 1826

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 1826 R. v. Sekulich

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Sekulich,

2024 BCSC 1826

Date: 20240912

Docket: 27171-2

Registry: Nelson

Rex

v.

Chad Michael Sekulich

Before: The Honourable Madam Justice L. Lyster

Oral Reasons for Sentence

Counsel for the Crown:

K. Schechter

Counsel for the Accused:

D.J. White

Place and Date of Trial/Hearing:

Nelson, B.C.

September 11, 2024

Place and Date of Judgment:

Nelson, B.C.

September 12, 2024

[1] THE COURT: These are my oral reasons for decision with respect to the sentence to be imposed upon Mr. Sekulich. Mr. Sekulich has pleaded guilty to two counts on Information 27171-2. He has pleaded guilty to Count 4 which provides that:

on or about the 16th day of August, 2022, at or near Nakusp, in the Province of British Columbia, [he] did possess a prohibited firearm, restricted firearm or non-restricted firearm, knowing that he was not the holder of a licence under which he may possess the firearm or knowing that he was not the holder of a registration certificate for the firearm, contrary to Section 92(1) of the Criminal Code.

[2] He has also pleaded guilty to Count 8 which provides that:

on or about the 16th day of August, 2022, at or near Nakusp, in the Province of British Columbia, [he] did possess a firearm, [a] Weatherby shotgun, while he was prohibited from doing so by any order under this Act or any other Act of Parliament, contrary to Section 117.01(1) of the Criminal Code.

[3] The Crown and defence counsel have brought forward a joint submission with respect to the sentence to be imposed on Mr. Sekulich. The submission is that Mr. Sekulich be sentenced to 12 months on Count 4, with 12 months less a day on Count 8, the sentences to run consecutively, for a total sentence of two years less a day. They further jointly submit that the court should impose a conditional sentence order ("CSO") which would mean that Mr. Sekulich would serve his sentence in the community. Finally, they submit that Mr. Sekulich's sentence should be followed by an 18-month probation order.

[4] The circumstances of these offences were provided by the Crown and agreed to by the defence. They are as follows. On August 16, 2022, Mr. Sekulich was married and living with Ms. Sekulich near Nakusp, British Columbia. On that date, Ms. Sekulich called the police to report an allegation of intimate partner violence. When the police arrived, she led them to where a shotgun was located under the bed in the bedroom. The shotgun is the 12-gauge Weatherby referred to in Count 8. It had five rounds in it, there was no lock on the magazine, and it was unsecured. The shotgun was found in a sleeve under the bed.

[5] The next day, August 17, 2022, Ms. Sekulich again called the police to report an allegation of intimate partner violence. On this occasion, she led them to a crawlspace where another shotgun, a 12-gauge Maverick, was found in a storage bin. The Maverick had three rounds in the magazine, had no lock, and was unsecured.

- [6] Mr. Sekulich has been subject to a lifetime prohibition pursuant to s. 109 of the Criminal Code, R.S.C. 1985, c. C-46 [Code] on possessing any firearms since September 16, 2008. It goes without saying that he had no authorization or licence to possess either shotgun.
- [7] The law is that I must accept a joint submission 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, at para. 32. A joint submission should not be rejected lightly. Rejection denotes a submission that is so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons aware of all of the relevant circumstances, including the importance of promoting certainty and resolution discussions, to believe that the proper functioning of the justice system has broken down. This is obviously a very high threshold.
- [8] In considering whether to accept the joint submission, I must have regard to the principles of sentencing. Section 718 of the Code sets out the fundamental principles and purpose of sentencing as follows:

Purpose

718 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 that have one or more of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
 - (b) to deter the offender and other persons from committing offences;
 - (c) to separate offenders from society, where necessary;
 - (d) to assist in rehabilitating offenders;
 - (e) to provide reparations for harm done to victims or to the community; and
 - (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.
- [9] Section 718.2(e) instructs me to consider all available sanctions other than imprisonment that are reasonable in the circumstances and consistent with the harm done to victims or to the community for all offenders.
- [10] The parties are proposing a CSO. A CSO is a sentence of imprisonment which is served in the community rather than in jail. It is served under strict conditions, usually house arrest, although I note that the term proposed here is for a curfew. A CSO can provide denunciation and deterrence as well as promote restorative objectives such as rehabilitation: *R. v. Proulx*, 2000 SCC 5, at para. 22.

[11] Section 742.1 provides the prerequisites that must be met before a CSO may be imposed:

- a) the offender is not convicted of an offence that is excluded by s. 742.1 of the Code;
- b) the court would otherwise impose a term of imprisonment of less than two years;
- c) the safety of the community would not be endangered by the offender serving the sentence in the community; and
- d) service of the sentence in the community would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2.

[12] Thus, in order to accept this joint submission, I have to accept that a term of imprisonment of less than two years is appropriate, that the safety of the community would not be endangered by Mr. Sekulich serving his sentence in the community, and that serving his sentence in the community would be consistent with the purpose and principles of sentencing.

[13] There are aggravating circumstances present, the most serious of which is the inherent dangerousness in having two loaded firearms, not stored properly, present in a home. The shotguns were found after Ms. Sekulich reported that Mr. Sekulich had engaged in intimate partner violence. The Crown has chosen not to proceed with those charges and, obviously, Mr. Sekulich has not pleaded guilty or been found guilty of those charges, but it is a contextual circumstance which this court must take into account. The presence of loaded, unsecured firearms in a home presents a danger to all of its occupants, as well as to anyone else, such as the police, that might have occasion to enter the home.

[14] There are mitigating circumstances present. Importantly, Mr. Sekulich has chosen to plead guilty which has saved Ms. Sekulich from having to testify and the public from expending the court resources which would be necessary to try this case. There were triable issues in this case, including whether the Crown could prove that Mr. Sekulich possessed the firearms. There would also have been a s. 8 of the Charter issue which would have had to have been addressed arising from the manner in which the police entered the home. There would also have been an issue regarding surveillance video from the home which, it would appear, the police failed to secure and which the Crown, therefore, was unable to disclose to the defence. It is not clear precisely what the surveillance would have shown, but it would clearly have been potentially relevant.

[15] In addition, Mr. Sekulich has been in the community on a release order since on or about September 1, 2022. After an initial period of 16 days in custody, he was released on house arrest for a period of slightly over a year. The terms of his release were varied on consent on September 27, 2023, putting him on a curfew from 10:00 p.m. to 6:00 a.m. daily. There have been no issues reported with Mr. Sekulich's compliance with his release terms during this approximately two-year period.

- [16] Mr. Sekulich does have a criminal record, but it is relatively dated. The significant elements of it for present purposes include a 2001 conviction for possession for the purposes of trafficking and trafficking, which resulted in a mandatory order under s. 109 of the Code. In 2008, Mr. Sekulich was convicted of possession for the purposes of trafficking and possession of a firearm contrary to his s. 109 prohibition order. That resulted in the lifetime prohibition which he breached in committing the offences which now bring him before the court. Of note, his last recorded conviction was in 2012 for failure to comply with a recognizance. This is a significant period without any further convictions to date.
- [17] Counsel provided some submissions with respect to the appropriate range of sentence for these offences. The Crown referred to *R. v. Lambert*, 2021 BCSC 2199. At para. 29, Madam Justice Horsman, then of this court, referred to caselaw from the Court of Appeal indicating that the typical range of sentence under s. 117 is six to 12 months. He also referred to *R. v. Ahmadzai*, 2013 BCCA 80, in which the Court of Appeal upheld a sentence of one year for a conviction under s. 92.
- [18] The circumstances in the cases referred to by counsel are all distinguishable from the case at bar. I think it is fair to say that the circumstances in which persons are found guilty of these kinds of firearms offences are, really, infinitely variable, but the cases referred to by counsel do show that the length of sentence proposed, which would globally result in a sentence of two years less a day, is within the range for the offences to which Mr. Sekulich has pleaded guilty.
- [19] I accept that a sentence of two years less a day is an appropriate sentence for the offences to which Mr. Sekulich has pleaded guilty.
- [20] I turn to a consideration of whether the safety of the community would not be endangered by Mr. Sekulich serving that sentence in the community. The fact that Mr. Sekulich knowingly had two loaded shotguns in his home, where he lived with his then partner, while he was under a lifetime prohibition from possessing weapons, is very concerning to the court. This was, as I have said, an inherently dangerous situation. Mr. Sekulich says through his counsel that he was told at some unspecified time by an Edmonton police officer that his life was in danger and that this is why he had the shotguns. Accepting this information at face value, it means that he was prepared to knowingly breach the s. 109 prohibition and to keep these shotguns in his home unsecured, potentially, one would think, to use them to protect himself. The court must be concerned about the potential that Mr. Sekulich would do the same again if he thought it was necessary.
- [21] That said, and weighing against that concern, is the fact that there is no evidence that Mr. Sekulich used the firearms in connection with any other criminal activity. As submitted by defence counsel, for example, there were no drugs or alcohol found in the vicinity of the firearms, the shotguns were not being transported in a motor vehicle, and large sums of money were not found in the vicinity of the firearms which might have been indicative of other criminal activity.

- [22] Also weighing against the court's concerns regarding the circumstances of these offences is the fact that Mr. Sekulich has been on release in the community for two years with no reported concerns about his adherence to his release terms which, as I have said, included house arrest for the first year. He has been living with his mother, Doris Sekulich, on a rural acreage in High Prairie, Alberta. Mrs. Sekulich acted as his surety while he was on bail, and she was present in court at the sentencing hearing and today in support of her son. Mrs. Sekulich is elderly and has mobility problems. She recently lost her husband, Mr. Sekulich's father, after 67 years of marriage. Mr. Sekulich cares for his mother in her home, helping her with things like cleaning, laundry, and driving her to appointments. His counsel reports that there are no firearms on Mrs. Sekulich's property.
- [23] Mr. Sekulich has been in Alberta since his release. He is no longer in a relationship with his former partner and he has, by virtue of the conditions of his release, been isolated from his former connections in his former community in the Nakusp area.
- [24] Mr. Sekulich is now 51 years of age. He has some post-secondary education both from the University of Calgary and NAIT. He has worked in the past as a welder. At the time of these offences, he owned a café with his then partner in Silvertown where he worked as a baker. Mr. Sekulich is now reportedly unable to work due to significant injuries sustained in a motorcycle accident, but he has clearly been a productive member of society in the past and he is now responsible for caring for his mother.
- [25] Mr. Sekulich has one child, an adult daughter, with whom he is now in contact. He also has three brothers and a sister. There is no suggestion that his relatives are anything other than prosocial supports for him.
- [26] I must consider the CSO proposed within the framework provided by the Supreme Court of Canada in *Anthony-Cook*. Applying the deferential standard mandated in that case, I conclude that Mr. Sekulich, serving his sentence in the community, would not endanger the community. I will confess that I have come to this conclusion not without some difficulty, as the circumstances of the offences Mr. Sekulich has pled guilty to were inherently dangerous. However, the CSO proposed is not so unhinged from the circumstances of these offences and the circumstances of Mr. Sekulich that its acceptance would lead reasonable and informed persons, aware of all of the relevant circumstances, including the importance of promoting certainty and resolution discussions, to believe that the proper functioning of the justice system has broken down.
- [27] Mr. Sekulich, would you please stand?
- [28] Mr. Sekulich, I sentence you to 12 months on Count 4 and 12 months less a day on Count 8, the sentences to be served consecutively in the community. That will be followed by a probation term of 18 months. You can have a seat while I go through the terms of the CSO and the probation order.

[29] As proposed by counsel, the terms of the CSO largely mirror the release terms that Mr. Sekulich has been on for the last year with some changes and, as I go through, counsel, please advise if you have any concerns about what I say and I may ask you some questions as we go along, as well.

[30] In terms of the terms for the CSO, which will be two years less a day, the conditions include the compulsory conditions:

- You must keep the peace and be of good behaviour;
- You must appear before the court when required to do so by the court;
- You must notify the court or your CSO supervisor in advance of any change of name or address and promptly notify the court or supervisor of any change in employment or occupation.

[31] The fourth of the compulsory orders is that you must remain in British Columbia unless you have prior written permission from the court or your CSO supervisor to leave the province, and I believe, as discussed in the course of submissions yesterday, that I can address that by, in this release order, providing Mr. Sekulich with permission to leave British Columbia to go to Alberta. Does that address that point sufficiently, counsel?

[32] CNSL K. SCHECTER: I believe so, thank you, yes.

[33] CNSL D. WHITE: Yes, Justice,

[34] THE COURT: Thank you.

[35] I am now going to turn to the terms of the release order with such changes as are necessary given that this is now a CSO rather than a release order.

- You must have no contact or communication directly or indirectly with Julie Sekulich, and the only exception will be through or in the immediate presence of a lawyer who has been given a copy of this order.

[36] I believe that is the only exception that we need, counsel?

[37] CNSL K. SCHECTER: Yes, Justice.

[38] THE COURT: Mr. White, do you agree?

[39] CNSL D. WHITE: Yes.

[40] THE COURT: Thank you.

- You must not go to any place where Julie Sekulich lives, works, attends school, worships, or happens to be. If you see them, you must leave their presence immediately without any words or gestures;
- You must not go to 110 Eagle Nest Road, Nakusp, B.C.

- [41] The fourth condition is a reporting condition, and I am suggesting, counsel, unless you have any concerns about it, that we require Mr. Sekulich to report by phone by 3:00 p.m. today?
- [42] CNSL K. SCHECTER: Thank you, that's reasonable.
- [43] THE COURT: Mr. White?
- [44] CNSL D. WHITE: Yes, very reasonable.
- [45] THE COURT: You must report by telephone to the CSO supervisor at 1472 Columbia Avenue, Castlegar, B.C., by 3:00 p.m. today, at 250-365-8598. After that, you must report as directed by the CSO supervisor;
- You must live at the residence of Doris Sekulich, Highway 749, Township Road 742, Sign 17117, High Prairie, Alberta;
 - You must provide your CSO supervisor with your phone number if you have one. You must not change either without prior written permission -- now, I notice that it said "the court" in this release order, but I would suggest "the court or your CSO supervisor"?
- [46] CNSL K. SCHECTER: No submissions. That seems appropriate, thank you.
- [47] THE COURT: Mr. White?
- [48] CNSL D. WHITE: Yes, I agree.
- [49] THE COURT: So written prior permission of the court or your CSO supervisor.
- You must obey a curfew by being inside the place where you live and regularly sleep between the hours of 10:00 p.m. and 6:00 a.m.
- [50] It seems to me the only exception that is required is the medical emergency one. I note that in the release order it stated "having consented." I think, given that this is a CSO order, Mr. Sekulich does not need to consent to it.
- [51] CNSL K. SCHECTER: Absolutely.
- [52] THE COURT: You must obey a curfew by being inside the place where you live and regularly sleep between the hours of 10:00 p.m. and 6:00 a.m. The exceptions are: you are going directly to or returning directly from a healthcare facility because of a medical emergency. You must provide proof of your attendance at the healthcare facility if requested by your CSO supervisor.
- [53] Before I deal with Condition 7, which is not being within 50 kilometres of the Village of Nakusp, in the release order, there was permission that was only to be given for court purposes or meeting with counsel. Given that this proceeding is now over, I do not know if we need any specific circumstances except perhaps with the prior written permission of the CSO supervisor, but I will hear from counsel?

[54] CNSL K. SCHECTER: That's the submission, Justice.

[55] THE COURT: Okay. Mr. White?

[56] CNSL D. WHITE: I agree.

[57] THE COURT: Okay.

- You must not be within 50 kilometres of the Village of Nakusp except with the prior written permission of the CSO supervisor. If you are given permission, you must carry it with you in paper or electronic format at all times while you are in the prohibited area. If a peace officer finds you in the prohibited area and requests to see the permission, you must show it to the officer. You must provide your CSO supervisor with written notice three days in advance of your attendance within the prohibited area.

- You must not possess or consume alcohol, drugs, or any other intoxicating substances, except with a medical prescription.

- You must not possess directly or indirectly any weapon as defined by the Code, including: firearms and ammunition; crossbows, prohibited or restricted weapons or devices, or explosive substances; anything used, designed to be used, or intended for use in causing death or injury to any person, or to threaten or intimidate any person; any imitation firearms or weapons, including any compressed airguns or BB or pellet guns; any related authorizations, licences, and registration certificates, and you must not apply for any of these.

[58] In addition, as proposed by counsel, there will be an additional term that you must attend, participate in, and complete any intake, assessment, counselling, or education program directed by your CSO supervisor. This may include, but is not limited to, counselling or programming for anger management, violence prevention, and spousal abuse prevention.

[59] I believe those were the specific ones that were discussed?

[60] CNSL K. SCHECTER: Thank you, Justice.

[61] THE COURT: Thank you.

[62] Those are all of the terms of the CSO as I understood it. Have I missed anything, counsel, on the CSO?

[63] CNSL K. SCHECTER: Not in the Crown's submission.

[64] THE COURT: Thank you.

[65] I will turn, then, to the probation order. I will let Mr. White --

[66] CNSL D. WHITE: Thank you.

[67] THE COURT: Thank you.

[68] I will turn to the probation order. You must comply with a probation order for a term of 18 months following the completion of your conditional sentence order. The conditions are:

- You must keep the peace and be of good behaviour.
- You must appear before the court when required to do so.
- You must notify the court or the probation officer in advance of any change of name or address and promptly notify the court or the officer of any change of employment or occupation.

[69] As I understood counsel, they were also seeking to have the first three terms from the release order repeated in the probation order; is that right, Mr. Schechter?

[70] CNSL K. SCHECTER: That's correct.

[71] THE COURT: Okay.

- You must have no contact or communication directly or indirectly with Julie Chantel Sekulich with the exception I noted earlier which was through or in the immediate presence of a lawyer who has been given a copy of this order.
- You must not go to any place where Julie Sekulich lives, works, attends school, worships, or happens to be. If you see them, you must leave their presence immediately without any words or gestures.
- You must not go to 110 Eagle Nest Road, Nakusp, B.C.

[72] Counsel had not requested a reporting order, but it seems to me there needs to be a reporting term, at least initially at the beginning of the probation and thereafter as directed by the probation officer.

[73] CNSL K. SCHECTER: No objection to that, Justice.

[74] THE COURT: Mr. White?

[75] CNSL D. WHITE: I'm not sure why it would be necessary in those circumstances because he's just being cut off from contact, really, with those three conditions. I'm not sure what it -- what purpose it would serve?

[76] THE COURT: Well, the compulsory terms include notifying the court or the probation officer in advance of any change of name or address which suggests that there is some, at least initial, contact with a probation officer.

[77] CNSL D. WHITE: I think that just means that if it became a situation where he was moving, he could go on -- I'm not going to press the point, but I just think there's a compulsion to report to them in a certain circumstance in those mandatory conditions if certain -- something happens previous to that being necessary, but I will leave it with the court.

[78] THE COURT: I think there ought to be an initial reporting requirement and thereafter as required by the probation officer. I will leave it to the probation officer's discretion whether any further reporting is required.

· You must report by telephone to a probation officer at 1472 Columbia Avenue, Castlegar, B.C., at 250-365-8598, on the first day of your probation order and, after that, you must report as directed by your probation officer.

[79] I think that is sufficient for the purposes of the probation order. Is there anything further on the probation order, counsel?

[80] CNSL K. SCHECTER: Not in the Crown's submission.

[81] THE COURT: Mr. White?

[82] CNSL D. WHITE: Nothing further, thank you.

[83] THE COURT: Okay, thank you.

[84] Now, in addition, there will be a mandatory lifetime firearms prohibition.

[85] On that, I wanted to ask you, Mr. Schecter, is it pursuant to s. 109(2) or sub (3)?

[86] CNSL K. SCHECTER: It's -- I have it here. It would be sub (3), in the Crown's submission, because it is a second or subsequent offence.

[87] THE COURT: That is what I thought, but I was not sure I had heard from you on it.

[88] CNSL K. SCHECTER: I should have specified that. I said life, but I should have specified the section. It would be sub (3).

[89] THE COURT: Okay, thank you. Do you agree with that -- correct, Mr. White?

[90] CNSL D. WHITE: Yes, Justice.

[91] THE COURT: Pursuant to s. 109(3) of the Code, you are prohibited from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, and explosive substance for life.

[92] I think that was the only ancillary order that was being sought; am I right? I know I have to deal with forfeiture, but is there a victim surcharge fine applicable on this offence?

[93] CNSL K. SCHECTER: There would be. There's \$200 per count.

[94] THE COURT: \$200 per count, okay. Mr. White?

[95] CNSL D. WHITE: It can be paid forthwith.

[96] THE COURT: Okay, all right.

[97] So there will be -- the victim fine surcharge, \$200 payable on each count, so \$400 in total, and I am advised by Mr. Sekulich's counsel that that can be paid forthwith.

[98] I will, however, sign the forfeiture order which will provide that Mr. Sekulich will be forfeiting the black Weatherby shotgun and the Maverick by Mossberg shotgun, and the ammunition found with them.

[99] So if you can change that and provide it to me through the registry --

[100] CNSL K. SCHECTER: Absolutely, will do.

[101] THE COURT: -- I will sign it immediately. Thank you.

[102] Is there anything further, counsel, that I need to address today?

[103] CNSL D. WHITE: I don't believe so.

[104] CNSL K. SCHECTER: Crown enters a stay of proceeding on the remaining counts.

[105] THE COURT: Thank you.

[106] CNSL D. WHITE: Nothing further, Justice.

"L.M. Lyster J."

LYSTER J.

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