
CANADA / JUDGMENT

R.v. Shank

2005 BCSC 1827

COURT

Supreme Court of British Columbia

DECIDED

22 March 2005

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Citation:

R.v. Shank

Date: 20050322

2005 BCSC 1827

Docket: 76569-2

Registry: Kamloops

IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Sentence

The Honourable Mr. Justice Blair

March 22, 2005

REGINA

v

JOHN GARRY SHANK

Counsel for the Crown:

I.A. Currie

Counsel for the Accused:

W.J. Mastop

Place and Date of Hearing:

Kamloops, B.C.

March 22, 2005

[1] THE COURT: The accused John Garry Shank pleads guilty to four charges arising from a situation which developed January 3, 2005, when he was an inmate at the Kamloops Regional Correctional Centre. The charges to which Mr. Shank pleads guilty are as follows:

Count 1: That he, without lawful authority, confined Richard Salituro, Kevin Batter and Gilles Morin, contrary to Section 279(2) of the Criminal Code.

Count 2: That he, with others, did intentionally or recklessly cause damage by fire or explosion to property, Kamloops Regional Correctional Centre, knowing or being reckless of the fact that the property was inhabited or occupied, contrary to Section 433(a) of the Criminal Code.

Count 3: That he, with others, did commit mischief in relation to property, the value of which does exceed \$5,000, by wilfully damaging the property of the Kamloops Regional Correctional Centre, contrary to Section 430(3) of the Criminal Code; and

Count 6 on the Indictment: That he, with intent to commit an indictable offence, did have his face masked, contrary to Section 351(2) of the Criminal Code.

[2] The situation at KRCC, which is how I will refer to the Kamloops Regional Correctional Centre, apparently developed from the inmates' dissatisfaction over the timing of their meals and the amount of food which was served during the morning of January 3, 2005. The situation was restricted to a single unit housing twenty-three inmates in the correctional centre and involved the confinement of three corrections officers, named in Count 1, who escaped the wrath of the inmates by barricading themselves in a bathroom, the ignition of a fire in the unit, as well as considerable damage to the unit's equipment and furniture.

[3] In preparing these reasons, I have considered the decision of the Honourable Judge Rohrmoser, of the Provincial Court of British Columbia, in the case of R. v. Stephens, February 11, 2005, Kamloops registry number 76569-1, in which the learned Provincial Court judge dealt with another inmate involved in the January 3 situation. He sentenced Mr. Stephens to four years incarceration.

[4] In the course of his reasons, Judge Rohrmoser succinctly set out the background of how the situation developed at KRCC and I will, in many ways, adopt his descriptive language where it applies, recognizing that of course there are differences in the cases involving Mr. Stephens and Mr. Shank. Judge Rohrmoser found Mr. Stephens to have been a ringleader and instigator of the situation, and I make a similar finding against Mr. Shank.

[5] As the friction developed between the corrections officers and the inmates in the unit, it was Mr. Shank who commented words to the effect, and I quote loosely, "Are we going to do this or what?" He then threw a kettle towards Corrections Officer Salituro. I conclude from Mr. Shank's comment, followed by his throwing of the kettle, that there had been some discussion before the incident arose as to the actions which the inmates anticipated taking as a result of their dissatisfaction. From the timing of his utterances and his subsequent

actions, as seen in the video tapes, which I viewed, I conclude that Mr. Shank took a significant role in the events as they arose and as they subsequently transpired.

- [6] The situation, which arose ostensibly over food, was a relatively minor concern, a conclusion reached by Provincial Court Judge Rohrmoser. However, as the Crown has pointed out before me, the inmates' immediate complaints with regard to the food had been met with a response. It might not have been as fully appropriate as the inmates might have wished, but it was a response from the corrections officers who were on duty at the time. They arranged for the delivery of more food, and, when the discontent among the inmates remained, they called upon a senior KRCC official, somebody with more authority, to attend at the correctional centre to try to respond to the inmates' concerns and hopefully diffuse the situation. Such, unfortunately, did not occur.
- [7] Further to the food situation. On this particular date, it was a Monday, it was a statutory holiday following the New Year's break and the KRCC was short staffed, and the correctional centre, instead of providing the regular meals, a breakfast meal and a lunch meal, decided instead to provide a brunch at eleven o'clock. That upset the inmates, who were presumably used to having their breakfast at a regular breakfast time, followed by a lunch at a regular lunchtime. I take into account the fact, and I think I have to note, that at that point, eleven o'clock in the morning, the inmates would have been fed the previous night, presumably around five to 6:30 in the evening, and that by eleven o'clock in the morning they would have gone a considerable number of hours without food.
- [8] The inmates met in sort of a common area of the unit, expressed their displeasure and seized the food cart and refused to let it go. Things worsened after that. Mr. Shank made the comment. Others became involved. He threw the kettle towards Mr. Salituro, and matters unravelled after that.
- [9] The three corrections officers, that is officers Salituro, Kevin Batter and Gilles Morin, who were then remaining in the unit, retired first to a guard secure area and then to a bathroom in that office, taking with them a fire extinguisher and a chair. They were apparently taking those items to protect themselves and defend themselves if the inmates broke through the door.
- [10] For the next thirty to forty-five minutes the inmates rioted, and I can think of no better word for it, and damaged equipment, furniture, and the various parts of the structure of the unit.
- [11] Although there were twenty-three inmates in the facility, from the video that I have seen not all of those twenty-three became involved in this situation, but I do note that Mr. Shank played, what appeared to me in watching the video, a leading role in what transpired within the unit. That included the development or the growth of the fire, which the inmates started in the unit beside the door leading to where the corrections officers were located. It was a significant fire. Mr. Shank is seen at one point apparently, and I say apparently because the video is reasonably good, but none of these things are perfect, but it appeared to me that he threw a piece of material that was lit into the fire from his position in the unit.

- [12] It was a significant fire. It created sufficient smoke that the four cameras no longer functioned properly and it was impossible to see just exactly what was happening within the unit after the smoke reached a certain point. The intention, as I see it, of the fire was to smoke the corrections officers out of their office. The corrections officers indicated in their statement, particularly that of Mr. Salituro, that that was their fear: they were being smoked out. The officers tried to prevent the smoke from getting into the bathroom where they were located, and were very, very concerned about what might happen were they to fall into the hands of the inmates.
- [13] Mr. Shank, in addition to throwing material onto the fire, is seen throwing objects, not just a kettle, but other items, around the unit. And, as I say, my perspective after viewing the video was that he took a crucial role in the development of that situation.
- [14] Harking back to the corrections officers' situation, I can well understand, from the fashion in which this situation arose, that they had a very real apprehension for their lives, for their bodies, given how things were developing outside the bathroom in which they were locked.
- [15] As for the damage, the Crown says there was about \$77,900 worth of damage to the facility, and that does not seem to be much different from the \$80,000 that was discussed when Mr. Stephens was being sentenced. The Crown is seeking a sentence for Mr. Shank similar to that imposed upon Mr. Stephens.
- [16] Now, Mr. Shank is, I believe, twenty-seven years of age. He has a terrible record that goes back to 1992 and continues up to 2004. Although I note that on Exhibit 2 on sentencing, two of the subsequent offences, or two convictions that occurred in 2004, are not included, but they are in the transcript.
- [17] Mr. Mastop, counsel for Mr. Shank, noted that a number of the offences are property offences, and I accept that submission and that is a factor that I take into account, although I note that the 1999 conviction for assault with a weapon and the 2002 conviction for obstructing a peace officer. I do not know the facts, but the nature of the offences indicates a certain physical aspect to those two charges.
- [18] As I have noted, Mr. Shank, as did Mr. Stephens before Judge Rohrmoser, pleaded guilty at an early date, and that has to be taken into mitigation. The plea has led to a speedy resolution of this matter.
- [19] I am also alive to Mr. Mastop's submissions that Mr. Shank is a paranoid schizophrenic, that the medication that he takes generally controls the symptoms of that affliction, but that there are times when Mr. Shank goes off the medication and his judgment might well become impaired as a result of failing to take his medication. He was also suffering a lack of food, but I do note that at the time this disturbance broke out the meal itself had been finished, that is the brunch that the correctional centre provided.

- [20] I also note for the record, but I am not putting weight on this part of Mr. Mastop's submission, but I do recognize that Mr. Shank was treated in a fashion that reflected the intensity of this disturbance. He was shackled. He was handcuffed. He was bound. He was placed in city cells, that presumably meant the RCMP cells in the city detachment, and he was left naked for some considerable time. He was also, and remains as I understand it, segregated from the remainder of the prison community whilst he awaits disposition of other matters presently before the courts. As I say, I note those matters merely for the record. I am not taking them into account in imposing sentence.
- [21] The offences are all serious. None of them can be minimized. But, without a doubt, Count number 1, the confinement of the three corrections officers, is a very serious offence and must be treated by the court as a serious offence.
- [22] The Crown has provided seven cases in which, as Mr. Mastop has pointed out, there is a clear range of sentences. They go from provincial time to federal time, and usually the provincial time goes with property damage and persons whom I do not see as being ringleaders or instigators. But I also conclude that the range of sentence for those situations in which corrections officers or other officers are threatened or confined, as in this case, must attract a sentence from the higher range. There is also, of course, the damage to the facility, which, as I have stated, is somewhere just less than \$80,000.
- [23] In this sentence I must address issues of specific and, perhaps more importantly, general deterrence. It has to be made clear to the inmates of our various institutions that if they riot, or if they threaten the safety of corrections officers, that such activity will be met with a very serious response by the courts. I believe that it is only proper as well that I take into account the decision and sentence reached by Provincial Court Judge Rohrmoser.
- [24] Mr. Justice Rideout, in the case referred to me by Crown, that is *R. v. MacWilliams* [1998] N.B.J. No. 400, a decision of the New Brunswick Court of Queens Bench, commented in a very brief decision involving a prison disturbance, that the court should consider sentences imposed on similar offenders for similar offences committed in similar circumstances, and I think that that is the situation in which I find myself. Although, as Mr. Mastop has pointed out, I am not bound by Judge Rohrmoser's decision and his sentence of four years on Mr. Stephens.
- [25] Taking all of the above into account, including the mitigation factor, the guilty plea, I will sentence Mr. Shank to four years on Count 1, three years on Count 2, two years on Count 3 and two years on Count 6, to be served concurrently. There will be no victim fine surcharge. There will be an order on Count 1 that Mr. Shank provide a DNA sample pursuant to s. 487.051(a) of the Criminal Code. There will be a further order on Count 1, under s. 109, prohibiting Mr. Shank from possessing any firearms or weapons. And I think, according to that provision of the Code, I must impose an order that he deliver up any weapons or firearms in his possession within twenty-four hours. I think that is a moot order at this point, but the Code requires it.

"R.M.L. Blair, J."

The Honourable Mr. Justice R.M.L. Blair

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