

CANADA / JUDGMENT

R. v. Smith

2023 BCSC 2308

COURT

Supreme Court of British Columbia

DECIDED

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Smith,

2023 BCSC 2308

Date: 20231214

Docket: 82098; 84843

Registry: New Westminster

Rex

v.

Blaire Robert Anders Smith

Before: The Honourable Mr. Justice Riley

Oral Reasons for Sentence

Counsel for the Crown:

A.L. Russell

Counsel for the Accused:

A. Willox

Place and Date of Hearing:

New Westminster, B.C.

December 14, 2023

Place and Date of Judgment:

New Westminster, B.C.

December 14, 2023

- [1] THE COURT: The offender, Blaire Robert Anders Smith, is before the court for sentencing on two Indictments. One Indictment involves offences of possession of controlled substances for the purpose of trafficking, assaulting a police officer with a weapon, and failing to stop upon being commanded to do so by a police officer. The other Indictment involves a separate incident of possession of fentanyl, cocaine, and methamphetamine for the purpose of trafficking in connection with Mr. Smith's role as a courier in a drug trafficking operation.
- [2] I am not going to go through the circumstances of the two sets of offences. They are dealt with in an agreed statement of facts that is comprehensive. The short summary is that both offences, or sets of offences, relate to drug trafficking activity above the street level. We are talking about multiple ounces of very dangerous drugs, most notably fentanyl, but also cocaine and methamphetamine. The first set of offences is aggravated by Mr. Smith's flight from the police and his driving a vehicle at a police officer's car, albeit at low speed. The second offence is aggravated by the fact that Mr. Smith committed it following his arrest and release on the first set of offences, and also it appears to have been the product of an investigation which showed that Mr. Smith was involved in an operation that was undertaken on an ongoing basis.
- [3] Mr. Smith pled guilty to both sets of offences and I am being presented with a joint submission as to the sentence. I will say more about the joint submission in a few minutes.
- [4] With respect to Mr. Smith's background, he is now 60 years old, so this is not a youthful offender. Indeed, Mr. Smith has a lengthy criminal record going back decades, to when he was in his 20s. I will say that in terms of seriousness of criminal conduct, the offences that Mr. Smith is being sentenced for today are perhaps the most serious crimes that Mr. Smith has committed, at least judging from the sentences reflected on his criminal record. For the most part, Mr. Smith's prior record consists of driving offences and property offences. There was one prior drug offence, drug trafficking conviction, 20 years ago.
- [5] Now, with respect to Mr. Smith's personal circumstances, I have been given a fair bit of information about his family situation, his background, and what has brought him to the place where he finds himself now. I will say in a lot of ways his personal story is tragic. He has been the victim of abuse personally twice in his lifetime. Once was in a family situation, extended family, and the other was at the hands of a jail guard, so that involved abuse while Mr. Smith was institutionalized. That is tragic and no doubt part of what has contributed to Mr. Smith's going down the wrong path or continuing down the wrong path as his life progressed.

- [6] Mr. Smith reports that he has struggled with substance abuse throughout his life. He has had periods of sobriety during adulthood, one lasting as long as eight years, during which he was productive and seemed to be on the right path. But Mr. Smith has also at times in his life associated with negative peer groups and, as I say, struggled with substance abuse that has led him into criminal activity.
- [7] Mr. Smith is an indigenous person, his indigenous heritage coming through his father, who is from the Siksika First Nation in Alberta. I have read the very thorough Gladue report marked in evidence in this case. That report concludes that Mr. Smith's particular case, he has experienced many of the impacts of Canada's colonial heritage and history of marginalization of indigenous persons. These include displacement and disconnection from his indigenous heritage, sexual abuse, institutional mistreatment, family estrangement, substance abuse, struggles with loneliness and abandonment, and economic challenges. I am not going to go into the details. All of these features are, to one extent or another, in Mr. Smith's life, as is evident from the facts set out in the Gladue report, and some of these things have contributed, no doubt, to Mr. Smith's repeated involvement with the criminal justice system.
- [8] It is also quite sad, a personal tragedy for Mr. Smith, that since he has been in custody on the present matters he has suffered a number of losses in his family. While he has been in custody his mother, father, sister have passed away, and most recently and most tragically his son passed away in a motor vehicle accident. Because Mr. Smith was in custody while these things happened, he has not been able to grieve these losses with his remaining family. All of this factors into the current situation.
- [9] Mr. Smith is before the Court to be sentenced for two very serious sets of criminal offences. These offences involve the kind of conduct that has profound negative effects on the social fabric of our communities. Involvement in the distribution of dangerous and addictive drugs like fentanyl is a particularly serious concern. There is an ongoing public health crisis attributable to these drugs and Mr. Smith, through his conduct, has contributed to that sad state of affairs.
- [10] The offences Mr. Smith is being sentenced for are very serious. The sentencing range for trafficking in fentanyl above the street level is between three and 10 years in jail, and that is for a single offence. Denunciation and deterrence are the key sentencing objectives in such circumstances. Lengthy jail sentences are generally warranted and required. Here, Mr. Smith is being sentenced on two sets of offences separated by an intervening arrest. If he had not pled guilty and had been convicted of both, he might have received sentences totalling five or six years in jail.
- [11] The other side of this matter has to do with Mr. Smith's personal circumstances and the challenges that have brought him to this point in his life. Stepping back a bit, I would say it is fair that Mr. Smith has been caught up in effectively two crises that are operating simultaneously in our society. One is the public health crisis relating to drug overdose

deaths, the other is the crisis of overincarceration of indigenous people, the overrepresentation of the indigenous population in our justice system. Now, there are many forces and many things in Mr. Smith's life that have brought him to the point where he is now. Some of them are the product of challenges he has been forced to deal with from his heritage and his family and his indigenous background, others are the product of his own bad choices or negative choices, peer associations, and things of that nature.

- [12] There are two comments made by Mr. Smith to the author of the Gladue report that are particularly poignant and speak to his current situation. One is Mr. Smith's statement that, "I have had my struggles with addictions, involved with negative peers, made bad choices, and involved in the criminal justice system. However, I have had periods of sobriety." So that reflects the fact that, as I say, Mr. Smith has had choices to make and sometimes has made the wrong choice, and that is part of what has brought him into conflict with the criminal justice system.
- [13] Another quotation, speaking about where Mr. Smith is now and what his future holds, this is what he said, "How many more signs from the creator before I get my head straight and learn to live a good, respectful way to honour my family? I lost so many years in my addiction, criminal lifestyle, homelessness and incarceration, that I was not there for my family when they need me most." He added, "On my release, I will travel to Alberta with my brother-in-law and lay the ashes of my parents and sister to rest." He explained that he does not talk to his son's mother and will only be able to visit his son's grave.
- [14] The report also discusses some of the things Mr. Smith plans to do upon his release: reconnecting with his brother-in-law, looking at taking advantage of opportunities to work with his brother-in-law regarding family businesses, working in the indigenous community, working in his occupation, which is asbestos removal, which there is a dire need for in the local community around the Merritt area because of the floods that occurred last year.
- [15] Basically, Mr. Smith has said in the Gladue report that there is a lot of work to be done. And if he takes that attitude going forward and looks at the opportunities that he has going forward, and looks at how the choices that he has made in the past have cost him, I trust that he will take the right message from this experience, which is, based upon the joint submission, going to involve an effective sentence of three years and three months in jail.
- [16] Taking all of that into account, I have reached the conclusion that I should endorse the joint submission. I see no basis for rejecting it. So, Mr. Smith, I am going to ask you to stand for a moment while I impose the sentence.
- [17] Sir, the sentence that I am imposing on you today is a sentence of one day in jail with credit for time served, and the time served reflects that you have spent effectively three years, three months, and 18 days in custody. So that is the sentence. It is going to be broken down by counts, and that is going to take some time, so you can have a seat for a moment, please, sir.

- [18] So just in terms of how the sentence should be recorded, on Indictment number 82098, Count 1, trafficking in fentanyl, the sentence is one day jail (time served) accounting for 578 days of actual custody, which, at a credit rate of 1.5 to one, works out to credit for 867 days in custody.
- [19] Count 4, assaulting a police officer with a weapon, the sentence again is one day in jail (time served) accounting for 165 days of actual time spent in custody, which, at 1.5 to one, works out to credit for 248 days in custody.
- [20] Count 5, fail to stop a motor vehicle, the sentence again is one day in custody (time served) accounting for 60 days of actual custody, which, at 1.5 to one, works out to credit for 90 days in custody on that matter.
- [21] THE CLERK: I don't have a Count 5.
- [22] THE COURT: Oh, excuse me. Should it be --
- [23] THE CLERK: I think it's Count 6.
- [24] THE COURT: There is -- oh, okay.
- [25] THE CLERK: Yes, Count 6.
- [26] THE COURT: Yes, Count 6. Thank you, Madam Clerk.
- [27] Then on Indictment 84843, there is a single count on that Indictment, possession of fentanyl, cocaine, and methamphetamine for the purpose of trafficking. The sentence again is one day jail (time served) accounting for 804 days of actual custody, which, at 1.5 to one, works out to credit for 1,206 days in custody. And that sentence is concurrent to the sentences imposed on Indictment 82098.
- [28] So that concludes the jail sentences. There are then some ancillary orders that I need to address, and those are as follows.
- [29] There will be a mandatory lifetime prohibition against possession of firearms pursuant to s. 109 of the Criminal Code. So that is firearms and all other devices and items that are listed in s. 109, for life.
- [30] I am also ordering that Mr. Smith is to provide a DNA sample for the DNA databank, pursuant to s. 487.05(1) of the Criminal Code. That is a discretionary order, but the court would only depart from making the order where it is shown that some exceptional circumstance is present, and I have had no submission about that, and it is a joint submission. So, Mr. Smith will have to attend for the taking of a DNA sample and a date will have to be given for that to happen, and that will be set out in the DNA collection order, and I delegate to the clerk of the court responsibility for telling Mr. Smith what that date is.
- [31] And then finally, I believe there is an order of forfeiture of certain property, which the Crown will provide.

- [32] So subject to that forfeiture order discussion, I think that concludes the matter. Crown counsel, have you got the forfeiture order for me?
- [33] CNSL A. RUSSELL: Yes, I do. Thank you, Justice. And just one small point of clarification, because I believe Corrections will ask, that Count 4 on Indictment 82098 does need to be consecutive to Counts 1 and 6 on that Indictment.
- [34] THE COURT: Yes. So the sentence on the first Indictment, 82098, to be clear, Count 4, assault police officer with a weapon, the sentence is one day jail (time served) with all the other language that I have included. And then at the end of that it should say "This sentence is consecutive to Counts 1 and 6." So it will be reflected in the warrant of committal that way, but the sentence is still time served because of the amount of time that Mr. Smith has spent in custody. Does that work, Crown counsel?
- [35] CNSL A. RUSSELL: Yes.
- [36] THE COURT: All right.
- [37] CNSL A. RUSSELL: Thank you very much, Justice.
- [38] THE COURT: Yes.
- [39] CNSL A. RUSSELL: Now, my apologies. I am just looking at the draft forfeiture order and I notice one error that I would like to correct before providing a copy to the court. I can advise that the forfeiture orders are by consent. There is no dispute. With the court's leave, I would ask to provide a copy to you, Justice, through the registry, if that is permissible. My apologies for that. The intention certainly was to have those ready for you today.
- [40] THE COURT: Yes. Ms. Willox, is there any objection to that, the forfeiture order being by consent?
- [41] CNSL A. WILLOX: No, Justice.
- [42] THE COURT: All right. So I will just indicate there are predicate drug offences committed here, certain property is said to be related to those offences and is forfeitable under the relevant provision of the CDSA, which is s. 16?
- [43] CNSL A. RUSSELL: Yes, the Crown is seeking forfeiture under s. 16 of the Controlled Drugs and Substances Act.
- [44] THE COURT: Right. So I will sign the order when it is presented to me.

"Riley J."

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