

CANADA / JUDGMENT

R. v. Smith

2024 BCSC 430

COURT

Supreme Court of British Columbia

DECIDED

29 February 2024

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2024 BCSC 430 R. v. Smith IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Smith, 2024 BCSC 430 Date: 20240229 Docket: 55751-5, 55751-7, 55751-9, 55751-10 55751-11, 55751-13, 55751-14 Registry: Vernon Rex v. Jevon Daniel Smith Restriction on Publication: Pursuant to 486.5(1) CCC Corrected Judgment: The text of the Oral Reasons for Sentence was corrected at paragraph [15] on March 14, 2024 Before: The Honourable Mr. Justice G.P. Weatherill Oral Reasons for Sentence Counsel for the Crown: A. Ross T.A. Livingston Counsel for the Defence: T.D. Anderson A.J. Lagemaat Place and Date of Trial/Hearing: Kelowna, B.C. February 29, 2024 Place and Date of Judgment: Kelowna, B.C. February 29, 2024

- [1] THE COURT: So the issue for me is whether the joint submission made by Crown and defence is appropriate.
- [2] I am aware of the Supreme Court of Canada's decision in R. v. Anthony-Cook, 2016 SCC 43, that provides that the test for departing from a joint submission on sentence is whether the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper administration or functioning of the justice system. In Anthony-Cook, Justice Moldaver in writing for the Supreme Court stated, at paragraph 35:
- [35] Guilty pleas in exchange for joint submissions on sentence are a "proper and necessary part of the administration of criminal justice". When plea resolutions are "properly conducted [they] benefit not only the accused, but also victims, witnesses, counsel, and the administration of justice generally".
- [3] He went on, at paragraph 36 in part, to say for accused who are fully "remorseful, a guilty plea offers an opportunity to begin making amends." And further at paragraph 39, in part: . . .the guarantee of a conviction that comes with a guilty plea makes resolution desirable. The Crown's case may suffer from flaws, such as an unwilling witness, a witness of dubious worth, or evidence that is potentially inadmissible -- problems that can lead to an acquittal. By agreeing to a joint submission in exchange for a guilty plea, the Crown avoids this risk. . . . When an accused pleads guilty in exchange for a joint submission on sentence, victims and witnesses are spared the "the emotional cost of a trial" [citation omitted]. Moreover, victims may obtain some comfort from a guilty plea, given that it "indicates an accused's acknowledgement of responsibility and may amount to an expression of remorse".

- [4] So here, given counsel's submissions, including background facts as set out in the agreed statement of facts that has been filed as an exhibit, and based on the submissions that a conviction at trial for second degree murder was far from certain, and considering the guilty plea as a significant mitigating factor given the circumstances of this case to which I am aware, and I do accept that the proposed sentence of eight-and-a-half years is in the range and more towards the near accident end of the spectrum rather than the near murder end of the spectrum, I consider that the joint submission is appropriate for sentencing you, Mr. Smith.
- [5] In the exercise of my duty to the public and based on the background that I have been advised of, based on what led up to the negotiated plea to manslaughter and a joint submission on sentence, and the fact that Crown is suggesting that this proposed sentence is fit and proper, I am satisfied on balance that it is not unfit or contrary to the public interest and will not bring the administration of justice into disrepute.
- [6] So, Mr. Smith, I am prepared to accept the joint submission on sentence.
- [7] I sentence you to a period of eight-and-one-half years, or 3,102 days, in custody. You will be given credit for time served of 1.5 days for each actual day of time served. I understand that you have been in custody since your arrest on September 20, 2021, for 892 days as of today. With one-and-a-half times credit for time served, that translates into 1,338 days of credit. The net effect is that you will serve a sentence of an additional four years, 10 months and four days in custody, or in days that is 1,765 new days in custody.
- [8] Now -- yes?
- [9] UNIDENTIFIED SPEAKER: I thought it was 64 days, 1,764 days.
- [10] THE COURT: 1,700 -- what did I say?
- [11] UNIDENTIFIED SPEAKER: Sixty-five.
- [12] THE COURT: Sixty-five. Yes, sorry. 1,764 days total, new days.
- [13] Now, Crown is seeking ancillary orders. I did not hear any submissions on that from you, Mr. Anderson?
- [14] CNSL T. ANDERSON: No. Thank you.
- [15] THE COURT: So there will be some ancillary orders as set out on page two of the Crown's submissions, which have been marked as Exhibit 5, namely, first, a mandatory DNA order pursuant to s. 487.051(1) of the Criminal Code; (2) a lifetime firearms prohibition pursuant to s. 109(1)(a.1)(i) and (3) of the Criminal Code; (3) no communication with [A.C.], Gordon Dodds, Michael Lannon, Dominique Di Venere, Natasha [sic, Natalie] Melissa Cutler, Neil Medhurst, Tony Meggait, Brandon Mazur, and Scott McDonald, pursuant to s. 743.21(1) and (3) of the Criminal Code; and there will be an order for forfeiture and a return of exhibits.

- [16] CNSL T. LIVINGSTON: Justice, just on that last part, I wonder if we might take the afternoon break briefly and come back. We will have an exhibit list. We can then itemize which exhibits get returned to Mr. Smith and which are forfeited.
- [17] THE COURT: Very good.
- [18] CNSL T. LIVINGSTON: And the other aspect, and I am sure Mr. Clerk has this, but it is Natalie Melissa Cutler, not Natasha Melissa Cutler.
- [19] THE COURT: Natalie, pardon me.
- [20] CNSL T. LIVINGSTON: Thank you. But if we could just have 15 minutes so we can get that exhibit list back, I can provide it to my friends, and we can make sure --
- [21] THE COURT: Yes, we will take the afternoon break now.
- [22] CNSL T. LIVINGSTON: -- Mr. Smith is returned the appropriate exhibits that he should get. [PROCEEDINGS ADJOURNED] [PROCEEDINGS RECONVENED]
- [23] CNSL T. LIVINGSTON: I have discussed with my friends and I will hand this to Mr. Clerk. Because there are a number of exhibit reports because of the different agencies that were involved in the file, so I have put a sign-here flag on every page that has something to be returned to Mr. Smith.
- [24] But for the record, the first is report number 216329-B, and it is item one, which is a hoodie; item two, a black long-sleeved shirt; and item three, a white tank top shirt. Same exhibit report, item four, a pair of Nike Air Jordans; item five, a pair of blue jeans; item six, a baseball hat with the white D on it. Same report, item seven, which is a black leather belt; and item eight, which is a cellphone belt holder. And same report still, item 10, which is a wristwatch; item 11, which is a gold ring; and item 12, which is a gold chain necklace.
- [25] And then lastly, Justice, it will be Exhibit report number 216329-A, there is a bag. It is just described as item number one, bag, black; two, a black cellular phone; and three, a Blackberry telephone. And all of those can be returned to Mr. Smith.
- [26] THE COURT: Very good.
- [27] CNSL T. LIVINGSTON: Mr. Clerk, the items have the flags on them for each page they are located, and then the remainder of the exhibits, Justice, can be forfeited for destruction, subject to the appeal period.
- [28] THE COURT: That is fine, Mr. Anderson, with you?
- [29] CNSL T. ANDERSON: Thank you.
- [30] THE COURT: All right. We will mark this major exhibit flowchart as the next exhibit, Mr. Registrar.
- [31] CNSL T. LIVINGSTON: That will be --

- [32] THE COURT: And the items that Mr. Livingston mentioned will be returned to Mr. Smith. The balance will be forfeited for destruction.
- [33] THE ACCUSED: Will that be returned to me at the institution?
- [34] THE COURT: I am not sure of the process. Does anyone know?
- [35] CNSL T. ANDERSON: It is my understanding it goes into his property and then he gets it when he is released.
- [36] THE COURT: Did you hear that, Mr. Smith?
- [37] THE ACCUSED: Okay. Just because I am going to the federal system and they -- and I know you can have those -- some of those items there and I am just wondering if that --
- [38] THE COURT: That is something you can discuss with Mr. Lagemaat or Mr. Anderson.
- [39] THE ACCUSED: Okay, thank you.
- [40] THE COURT: All right. Anything else?
- [41] CNSL T. LIVINGSTON: The only other matter, Justice, is the victim of crime surcharge, which in the circumstances, given that Mr. Smith has not been working for the last several years, the Crown has no issue with it being waived.
- [42] THE COURT: All right. I will waive that.
- [43] CNSL T. ANDERSON: That is what I would ask, thank you.
- [44] CNSL T. LIVINGSTON: And then -- and then lastly, Justice, that the jury can then be discharged.
- [45] THE COURT: Yes. I was going to do that at the end of today, but yes, the jury is discharged. He has elected to be tried by judge alone. So, Mr. Sheriff, you will pass that along?
- [46] THE SHERIFF: Very well, Justice.
- [47] THE COURT: Thank you. And with my thanks.
- [48] I infer that there was a lengthy and hard behind the scenes series of negotiations and work by counsel for both the Crown and Mr. Smith, all of whom are senior counsel, that resulted in the negotiated manslaughter guilty plea and joint submission on sentence. I wish to extend my thanks on behalf of the court for -- to you all for your thoroughness, the hard work and the effort you put into this case, and particularly the civility that you displayed throughout the case. I have no doubt that this was a very difficult case for everyone. So, thank you.
- [49] Now, Mr. Smith, the reports that you read out and the letters that you referred to this afternoon seem to be very positive. I am happy to hear that you are doing well in custody, and I am happy to hear that you are taking your prescription medications to help you with any difficulties you are having with your mental health. My hope is that you will continue to

do well. You are 38, I think it is, and you have the rest of your life to consider and look forward to. So please continue your positive work towards becoming a law-abiding, contributing and functioning member of society so your daughter and your other family members can look up to you.

[50] You will be eligible to be released from custody soon enough. I encourage you to take the time that you are going to have in custody to heart. Do not fall back into the life of drug use and poor choices that got you this far. It is -- it is not something, based on what you have told me, that you want to do. So I wish you the best of luck in the future.

[51] So thank you all.

[52] THE ACCUSED: Thank you, Mr. Weatherill.

[53] THE CLERK: Just for the record, all of the applications have now been abandoned in --

[54] THE COURT: Yes. Yes, everything is abandoned. "G.P. Weatherill J."

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