

CANADA / JUDGMENT

R. v. Smith

2025 BCSC 1650

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1650 R. v. Smith IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Smith, 2025 BCSC 1650 Date: 20250610 Docket: 77987-3 Registry: Prince George Rex v. Russell William John Smith Before: The Honourable Justice Tindale Oral Reasons for Sentence Counsel for the Crown: R.D. Withall Counsel for the Accused: C.R. Carleton Place and Date of Hearing: Prince George, B.C. June 10, 2025 Place and Date of Judgment: Prince George, B.C. June 10, 2025

- [1] THE COURT: Russell Smith entered guilty pleas to the following counts on Prince George Registry File Number 77987-3: Count 1 on or about the 7th day of February, 2023, at or near Prince George, in the Province of British Columbia, using a restricted or prohibited firearm, did commit robbery of Gurpreet Singh, and did steal or intend to steal firearms, contrary to Section 98.1 of the Criminal Code. Count 3 on or about the 7th day of February, 2023, at or near Prince George, in the Province of British Columbia, did possess an unloaded prohibited firearm, with readily accessible ammunition capable of being discharged in the firearm, without being the holder of an authorization or a licence under which he may possess the prohibited or restricted firearm in that place and a registration certification for the firearm, contrary to Section 95(1) of the Criminal Code.
- [2] Both the Crown and counsel for Mr. Smith propose a joint sentence of four years in custody on Count 1 and 30 months in custody on Count 3, Count 3 being served concurrent to Count 1 less time for credit for time served.
- [3] Both parties agree that Mr. Smith has served 639 days of pretrial custody which equates to 959 days with enhanced credit. Forty-two of those days served have been credited to other files. The remaining enhanced credit available to Mr. Smith is calculated at 917 days.
- [4] In addition, there is agreement for a s. 490.1 forfeiture order of the sawed-off shotgun used in this offence as well as ammunition which was seized as part of this investigation.
- [5] There is also a mandatory s. 109 lifetime firearms prohibition and, as both of these offences are secondary designated DNA offences, orders will be made in that regard.
- [6] A number of exhibits have been filed on this sentencing hearing which are:
- a) Exhibit 1: the Crown book of photographs;

- b) Exhibit 2: a list of 10 firearms which were stolen during these offences; and
- c) Exhibit 3: which is Mr. Smith's JUSTIN Conviction List

Background

- [7] By way of brief background, on February 7, 2023, the Husky Gas Station located at 8087 Hart Highway in Prince George (the "Husky Gas Station") was robbed.
- [8] At approximately 12:40 a.m. two young people, being T.A. and C.W., entered the Husky Gas Station. C.W. had a sawed-off 12 gauge shotgun and was wearing a tactical vest. T.A. had a knife and he can be seen on surveillance video smashing the glass out of a cabinet in the Husky Gas Station. The Husky gas station also sold firearms.
- [9] C.W. at one point held the sawed-off shotgun at the head of the Husky Gas Station attendant. C.W. and T.A. stole 10 firearms from the Husky Gas Station which are itemized in Exhibit 2 as well as ammunition, including ammunition for a 12 gauge shotgun.
- [10] These firearms were cable-locked together and C.W. and T.A. can be seen dragging the firearms from the cabinet in the Husky Gas Station out the south exit. In doing so, they destroyed the glass doors at the Husky Gas Station.
- [11] The two suspects are then seen at approximately 1:05 a.m. running to get into a van which headed eastbound on Chief Lake Road towards Foothills Boulevard.
- [12] Some two hours and 40 minutes later at approximately 3:43 a.m., Constable Groundwater of the RCMP was patrolling in the area of Oak Street and Strathcona Avenue when he noticed a van travelling at a high rate of speed. He pursued that van and ultimately tried to make a traffic stop, at which time, the van accelerated at a high rate of speed and a police pursuit ensued.
- [13] Ultimately, the van became stuck in deep snow in a baseball field and the driver and two passengers fled from the vehicle. Mr. Smith, who was seated in the front passenger seat of the van, was apprehended by the police. Also in the vehicle were several long guns in plain view as well as the sawed-off shotgun and a box of shotgun ammunition. Three of the 10 guns stolen from the Husky Gas Station were found in the van.
- [14] Mr. Smith provided a warned statement to police and told the police that there is a video on his cellphone of the stolen firearms and that video was sent to him by C.W.
- [15] On March 7, 2023, the RCMP executed a search warrant on a residence and recovered an additional three firearms which had been stolen from the Husky Gas Station. Mr. Smith was at that residence when the warrant was executed.

- [16] On January 23, 2024, the Crown received a disclosure package from the RCMP which summarized the data download from Mr. Smith's cellphone and that from C.W.'s cellphone. Mr. Smith's cellphone contained a video of all 10 stolen firearms lined up in a location which was not the Husky Gas Station or the van.
- [17] There was also a video on Mr. Smith's cellphone which was taken before the robbery where Mr. Smith was wearing a camouflage vest and holding a sawed-off shotgun which appeared to be the same items that C.W. had at the Husky Gas Station.
- [18] There was also video data extracted from C.W.'s phone showing Mr. Smith driving a minivan which looks similar to the one used in the robbery. C.W. and T.A. were also in that van and it is noted that C.W. had a sawed-off shotgun tucked in his pants.
- [19] A Cellebrite report indicated that the GPS coordinates for Mr. Smith's phone matched that of C.W.'s phone leading up to the robbery and are located outside the Husky Gas Station. Mr. Smith also sent a Snapchat video stating, "We robbed the gun store". Offender
- [20] Mr. Smith is 21 years of age and was born in Squamish, British Columbia, though he was raised in Prince George. Both of Mr. Smith's parents had substance abuse problems and Mr. Smith was born addicted to narcotics as a result of his mother's substance abuse during her pregnancy.
- [21] Mr. Smith has a grade 10 education and he started using alcohol and marihuana at age 13 and then progressed to cocaine. After his father died in 2020, he began using crack cocaine and methamphetamine.
- [22] Mr. Smith has been diagnosed with Fetal Alcohol Spectrum Disorder as well as severe ADHD.
- [23] Mr. Smith has a previous criminal record which has being marked as Exhibit 3 on this sentence hearing which includes convictions for assault with a weapon, carrying a weapon or a prohibited device, as well as uttering threats.
- [24] Mr. Smith is the father to a three-year-old child who he is trying to re-establish contact with.
- [25] Mr. Smith, while in custody at PGRCC, has had a difficult time. However, after he was transferred to KRCC, his log reports show a greatly improved behaviour from him. While in custody, Mr. Smith has been working to achieve his Dogwood diploma.
- [26] I have had the benefit of reading a pre-sentence report prepared by Probation Officer Bailey Leatherdale. Of note in that pre-sentence report, Mr. Smith denies participating in the robbery, though he agrees he assisted in the planning of the robbery and having shared possession of the firearms after the robbery. That was the basis for his guilty pleas.
- [27] Also in the pre-sentence report is a recommendation that an intensive residential program such as the Guthrie Therapeutic Community at the Nanaimo Regional Correctional Centre may be a positive program for Mr. Smith. Decison

- [28] In coming to a decision on a fit sentence for Mr. Smith, I must consider the principles found in s. 718 of the Criminal Code which reads as follows: 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.
- [29] Section 718.1 of the Criminal Code reads: A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.
- [30] Other sentencing principles are found in s. 718.2 of the Criminal Code which requires a court to take into consideration any relevant aggravating or mitigating circumstances. Of importance in this case are the principals found in ss. 718.2(b)(c)(d) and (e) which read as follows:
- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
 - (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
 - (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
 - (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.
- [31] The primary consideration on this sentencing hearing is deterrence and denunciation.
- [32] There are aggravating factors to consider which are:
- (1) Mr. Smith participated in planning the robbery of the Husky gas station of firearms and he had two youths execute this offence;

- (2) the robbery was violent and it is clear on the circumstances that Mr. Smith knew that a sawed-off shotgun and tactical vest would be used;
- (3) Mr. Smith was in possession of the stolen firearms shortly after the robbery; and
- (4) a number of firearms still remain in the community.
- [33] There is a mitigating factor, as well, as Mr. Smith has entered a guilty plea.
- [34] Count 1, the offence pursuant to s. 98.1 of the Criminal Code, is a very serious offence which carries a maximum penalty of life imprisonment.
- [35] Count 3, the offence pursuant to s. 95(1), carries a maximum penalty of 10 years with the bottom of the range for a fit sentence being 30 months: *R. v. Holt* 2015 BCCA 302.
- [36] The use of firearms has long been recognized as a serious and growing societal danger.
- [37] In British Columbia, the range for a fit sentence for robbery is between two and nine years: *R. v. Brogan* 1999 BCCA 278 at para. 10.
- [38] The parties have referred me to a number of decisions to establish a fit sentence which include the following cases:
- 1) *R. v. Guha*, 2012 BCCA 423;
 - 2) *R. v. Nur*, 2013 ONCA 677;
 - 3) *R. v. Kachuol*, 2017 BCCA 292;
 - 4) *R. v. Radjenovic*, 2011 BCSC 1225;
 - 5) *R. v. Desmond*, 2011 BCSC 698;
 - 6) *R. v. Huard*, 2009 BCSC 999;
 - 7) *R. v. Slemin*, 1999 BCCA 284; and
 - 8) *R. v. Lackey*, 1999 BCCA 549.
- [39] This is a joint submission and the Supreme Court of Canada in *R. v. Anthony-Cook* 2016 SCC 43 held that "a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest": at para. 32.
- [40] I am satisfied, upon a review of the case authorities and the submissions made by counsel who are both very experienced in these matters, that the joint submission proposed is a fit sentence and imposing such a sentence would not bring the administration of justice into disrepute or is otherwise contrary to the public interest.
- [41] So, Mr. Smith, if you could just stand up for a minute, please?

- [42] On Count Number 1, I will sentence you to 1,460 days in custody. On Count 2, I will sentence you to 900 days in custody to be served concurrent to Count 1. The total sentence before credit for pretrial custody is 1,460 days in jail. I will credit you with 917 days for pretrial custody. The remaining sentence that you have to serve is 443 days in custody.
- [43] You can have a seat for a minute, sir.
- [44] Further, I will make the following ancillary orders.
- [45] Pursuant to s. 109(3) of the Criminal Code, you are prohibited from possessing any firearm, crossbow, restricted or prohibited weapon, prohibited device, ammunition, and explosive substance for life.
- [46] Second, as both of these counts are secondary designated offences and after considering the factors set out in s. 487.051(3) of the Criminal Code, I am satisfied that it is in the best interests of the administration of justice to authorize the taking of samples of bodily substances from you. The samples will be taken from you while you are in custody and you must submit to the taking of the samples.
- [47] Finally, pursuant to s. 490.1 of the Criminal Code, I am satisfied on a balance of probabilities that the following offence-related property, being a sawed-off shotgun and ammunition, is related to the commission of the indictable offences which you have been convicted of and I order that it be forfeited to His Majesty the King in Right of the Province of British Columbia to be disposed of or otherwise dealt with by the Attorney General.
- [48] Finally, given Mr. Smith's background and his attempts to rehabilitate himself, I will make a recommendation that he serve his remaining sentence either at the Guthrie Therapeutic Community at the Nanaimo Regional Correctional Centre or at KRCC.
- [49] Is there anything else that needs to be dealt with?
- [50] CNSL R. WITHALL: Mr. Justice, I may have misheard a number. When you took 1,460 and subtracted 917 --
- [51] THE COURT: Right.
- [52] CNSL R. WITHALL: -- the number you got was?
- [53] THE COURT: 543.
- [54] CNSL R. WITHALL: Sorry, I heard 453.
- [55] THE COURT: Okay.
- [56] CNSL R. WITHALL: My apologies.
- [57] THE COURT: Well, if I said it, it is 543.
- [58] CNSL R. WITHALL: 543?

- [59] THE COURT: Yes.
- [60] THE CLERK: And, Mr. Justice, the firearms prohibition is that all counts?
- [61] THE COURT: I do not know if it is related to both or not.
- [62] CNSL R. WITHALL: It would be on both counts --
- [63] THE COURT: Oh, okay.
- [64] CNSL R. WITHALL: -- or would be appropriately applied to both counts.
- [65] THE COURT: Okay, both counts. So I think the numbers are correct in terms of that. So four years or 1,460 days, Count 1; 30 months or 900 days, Count 2, concurrent. That is the 1,460 days, credit 917, so 543 days.
- [66] CNSL R. WITHALL: You did 30 months on Count 2 -- or, sorry, Count 3?
- [67] THE COURT: Sorry, on Count 3.
- [68] CNSL C. CARLETON: And that would be time.
- [69] CNSL R. WITHALL: Thirty months on Count 3?
- [70] THE COURT: Right --
- [71] CNSL R. WITHALL: Okay.
- [72] THE COURT: -- which is 900 days.
- [73] CNSL R. WITHALL: Okay, would be time served.
- [74] THE COURT: And it is concurrent, so.
- [75] THE CLERK: Yes.
- [76] CNSL C. CARLETON: Stays?
- [77] CNSL R. WITHALL: Crown directs a stay of proceedings with respect to the remaining counts.
- [78] THE COURT: All right, thank you "The Honourable Mr. Justice Tindale"

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