
CANADA / JUDGMENT

R. v. Snelgrove

2005 BCCA 51

COURT

British Columbia Court of Appeal

DECIDED

21 January 2005

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2005 BCCA 051 R. v. Snelgrove

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Snelgrove,

2005 BCCA 51

Date: 20050121

Docket: CA032274

Between:

Regina

Respondent

And

Christian Charles Snelgrove

Appellant

Before:

The Honourable Mr. Justice Hall

The Honourable Madam Justice Saunders

The Honourable Mr. Justice Lowry

Oral Reasons for Judgment

D.F.O. Henderson

Counsel for the Appellant

W.J.S. Bell

Counsel for the Respondent

Place and Date:

Vancouver, British Columbia

21 January 2005

[1] HALL J.A.: On 26 January 2004, the appellant was convicted of forcible confinement contrary to s. 279(2) of the Criminal Code and assault using a weapon contrary to s. 267(a) of the Criminal Code. Both offences carry a maximum penalty of 10 years in prison. The trial judge, observing that a fit sentence for confinement would be four years and for the assault two and a half years and taking into account pre-sentence custody thereby giving the appellant 18 months credit, sentenced the appellant to a sentence of two and a half years on the confinement count and one year concurrent on the assault count. The appellant appeals to this Court arguing that the learned sentencing judge failed to give him appropriate credit for time served and as well argues that the sentence of two and a half years imposed on the confinement count is excessive and unfit.

[2] The incident for which the appellant was sentenced arose out of a confrontation that occurred at the home of his common-law spouse around 3:30 a.m. on 21 April 2003. The appellant, who was high on cocaine at the time, broke into the house where the victim resided. Hearing a noise, she came downstairs from her bedroom whereupon the appellant who was holding a stick swore at her and then ran upstairs to her bedroom carrying the stick. The victim, fearing possible harm to their four month old daughter, followed him up to the bedroom. What occurred in the bedroom was described by the trial judge in his reasons for sentence:

The Offender was then pacing back and forth at the foot of the bed, holding the stick over them and continuing to threaten her that she was an "evil bitch" and that he was going to "smash her head in" and so on. Ms. McDonald testified that at the time she was terrified. He wanted her to confess but she did not know what he wanted her to say. She was too frightened to try and leave the bed.

[6] During the ordeal in the bedroom, the Offender tore her engagement ring off her finger. He also videotaped her and the child on the bed. It was never clear exactly how long they were in the bedroom. Ms. McDonald, whose evidence I accepted over that of the Offender, thought that it was about a half hour. I was satisfied that it was for an appreciable period of time, ample time for the Offender to have committed the acts complained of.

- [7] In any event, the bedroom ordeal ended when she agreed to go with him to his parents' residence in North Vancouver so that he could question her in their presence. She drove her car with the baby in her car seat and he followed her in his truck with his companion. She was eventually able to phone the police on her cell phone and a high speed vehicle chase then ensued before the police were able to pull both cars over.
- [3] The appellant had a previous record going back to 1991 when he was initially convicted under the Narcotic Control Act and was put on probation for 12 months. Soon after in March 1992, he was convicted of a serious incident of kidnapping, extortion and forcible confinement for which he received 13 years at trial subsequently reduced to 10 years by this Court. He was paroled in 1995. Although he has at times been able to work satisfactorily in jobs and has attained certain trade qualifications, it appears that he continues to suffer from problems of substance abuse including the use of heroin and cocaine. He has a supportive family but they can only do so much and they recognize that unless he deals with his addiction, his problems will continue. The appellant is presently 33 years of age. The victim and the appellant had a relationship for about six years and lived together for about five years. In late 2002, the victim requested that the appellant leave home because of his continuing abuse of drugs. She apparently keeps contact with the appellant because of the fact that they have a child together but she has some doubts as to whether they can reconcile given his continuing problems with drugs. Prior to the offence, the appellant had entered a residential treatment program at the Miracle Valley Centre in January of 2003 where he stayed until March 2003 when he was discharged for continuing to use drugs.
- [4] He was released on bail after this offence and was to return to a drug treatment program but was not accepted as he continued to show positive for drugs. At that point, his surety withdrew and thereupon in June of 2003 the appellant surrendered into custody and remained in custody until he was sentenced. It was asserted that as a result of his continuing pre-sentence custody, he ought to have been credited with something in the range of 20 to 21 months as opposed to 18 months, the amount of credit given to him on this account by the trial judge. The appellant expresses a desire to turn his life around and asserts that he will try to deal in a positive way with his addiction problems but he has had considerable difficulty in the past in successfully doing so.
- [5] Counsel for the appellant asserts that the sentence imposed was imposed on a wrong principle when the judge referred to this as being a "home invasion" and further submits that the sentence is out of step with sentences imposed in similar cases for similar incidents. The Crown respondent suggests the sentence ought not to be interfered with. I note that at the sentencing hearing the Crown suggested the appellant should receive an additional four months to the time he had already served and counsel for the appellant submitted that he had already done sufficient time in custody and should receive no further custodial sentence.

- [6] The learned trial judge did not agree with either submission. He found that this was an aggravated offence occurring with regard to a person who was in a matrimonial type relationship with the appellant, that it involved violence, that the appellant had a previous serious record for a similar offence and that he had had continuing problems with drugs which he had not successfully dealt with. He noted that in this case the appellant had not only confined and assaulted his partner and done so in the presence of the young child, but that he did so in her own dwelling house. He found that there were a number of serious aggravating circumstances which ought to be reflected in any sentence to be imposed. He said this at a point near the conclusion of his reasons:
- [57] In these circumstances, I have carefully considered Mr. Henderson's submissions, although I have been unable to agree with what he considers to be the appropriate sentence. I need not refer further to the aggravating circumstances.
- [58] I have also considered the circumstances which favour the Offender, including that he now may have some insight into the nature and extent of his conduct and is remorseful; that he has the support of his parents who will not accept his substance abuse or cover for him; the fact that his friend and former employer supports him and will have work for him in his trade when he is released from prison; his achievements when he was on parole earlier when he earned his carpentry apprenticeship; the fact that he has taken some steps in the North Fraser Pre-Trial Service Centre towards recovery; and that arrangements have been made for him to enter a recovery institution upon his release from prison.
- [59] In my opinion, without regard to the pre-sentencing custody, for the moment, a fit and proper sentence for forcible confinement in the case at Bar would be four years; and for the assault using a weapon, two and a half years concurrent. Taking into account the period of pre-sentencing custody and giving the Offender 18 months credit, the sentence for confinement is two and a half years and the sentence for assault using a weapon is one year concurrent.
- [60] In my view, the sentence meets the sentencing principles contained in s.718, having particular regard to denunciation, the deterrence of the Offender and others, rehabilitation and the promotion of a sense of responsibility in the Offender and an acknowledgement of the harm done to Ms. McDonald and to his daughter.
- [7] The victim of the offence has filed an affidavit in these proceedings narrating that she takes the young child to visit the appellant in the institution where he is incarcerated every two to four weeks and she states that she is not afraid of the appellant since he has stopped using drugs and is not seeking a no contact order. She avers that he is a hard worker and could be a good father provided he is drug free. So she maintains some contact with him but she asserts in her affidavit that she is not interested at this time in renewing a personal relationship with him but would like the daughter to develop some relationship with the appellant who is the father of the infant.

- [8] It appears that when the learned trial judge sentenced the appellant, he did so in the hope and expectation that the appellant would be able to get a fairly high intensity drug treatment program in the institution. We have been advised today by counsel that they have been advised it has not been possible to date to have that done and it is probably not going to be possible to have that done prior to the statutory release date which would be the summer of 2005. It is possible that he may be put on a different lower intensity drug treatment program if he remains in the institution.
- [9] The learned sentencing judge, in my opinion, was correct to treat this as a serious matter and he was correct to take a serious view of it with particular regard to the background of the appellant who, as I have noted, was sentenced in the early 1990s to a very substantial term of imprisonment and notwithstanding that, has relapsed back into behaviour that is criminal and he has relapsed back into the use of drugs for some years. He is not what I would term a young offender being now 33 years of age and it seems that he is a person who himself must come to the realization that he is going to have to abstain from the use of drugs or else he will find himself again in trouble with the law.
- [10] The sentence imposed at the time it was imposed was one that had a valid purpose and recognized the aggravating circumstances relating to the offence and the offender. But the hopes and expectations of the learned trial judge who sentenced the appellant have not been realized and apparently are not going to be fully realized having regard to the resources of the institution.
- [11] It seems to me that this appellant is an individual who requires some assistance to inspire him to do better. For a substantial period of time while he was on the lengthy parole that he was on after being released on the offence for which he had been sentenced in 1992, he seems to have been able to do well in the sense that he got employment and was able to lead a more orderly life. Then he began to use heroin and cocaine and that led to the present incident. The use of cocaine, as is well known, often causes people to act in aggressive and irresponsible ways. Of course heroin has its own perils because it tends to be a highly addictive substance. This appellant has had addiction problems with two substances that have the capacity to cause him and those around him great difficulty which eventuated in the activities that led to his incarceration on the present offences.
- [12] Crown counsel has suggested that the sentence imposed was a fit one and that we ought not to interfere with it.
- [13] With perhaps some hesitation, I have been persuaded that in the rather unusual circumstances here where the course of treatment that the trial judge had in mind has proved to be an impossible achievement, it may be that another approach would be more efficacious in ensuring that this individual gets some treatment which according to his counsel he is firmly committed to doing and at the same time will provide a measure of control over him for a fairly lengthy period into the future.

[14] So what I propose to do is to in part allow the appeal. In place of the sentence of two and a half years imposed by the learned sentencing judge on the confinement count, I would substitute a sentence of 18 months and to that I would add a period of probation of 18 months which would take effect from the date of his release from custody. I would direct that the probation order include specific terms that he abstain from the use of all narcotics, that he seek and maintain employment, that he should be under the direction of his probation officer, that he should keep his probation officer advised of his residence and his employment, and that he should under the direction of his probation officer seek treatment for his drug addiction problem. He will be under the direction of the probation officer for a period of 18 months from the date of his release from his sentence of incarceration. It seems to me that this is in accord with the disposition made by the learned sentencing judge who in my respectful view was correct in his general approach to this matter. However, as I said, in light of the circumstance that his expectations with respect to the implementation of programs during the sentence have not been possible of achievement, it seems to me that the approach I have suggested may be an efficacious one in the particular circumstances of this case. Therefore, I would alter the sentence in the way that I have set forth above.

[15] SAUNDERS J.A.: I agree.

[16] LOWRY J.A.: I agree.

[17] HALL J.A.: So, in the result, leave is granted, the appeal is allowed to the extent I have indicated, and the appellant will in due course enter into a probation order in the terms that we have ordered here today.

"The Honourable Mr. Justice Hall"

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