

CANADA / JUDGMENT

R. v. Soderberg

2024 BCSC 1099

COURT

Supreme Court of British Columbia

DECIDED

14 June 2024

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2024 BCSC 1099 R. v. Soderberg

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Soderberg,

2024 BCSC 1099

Date: 20240614

Docket: 96925-2/97593-5

Registry: Kelowna

Rex

v.

Collin William Soderberg

Before: The Honourable Justice Elwood

Oral Reasons for Sentence

Counsel for the Crown:

M. Ogi-Harris

Counsel for the Defendant:

M. Patterson

Place and Date of Hearing:

Kelowna, B.C.

June 12, 2024

Place and Date of Judgment:

Kelowna, B.C.

June 14, 2024

Introduction

- [1] These reasons for judgment were delivered orally and edited for distribution.
- [2] On June 14, 2023, Collin Soderberg pled guilty to a number of charges in two multi-count indictments.
- a. 96925-2:
- i. Count 1: on or about January 21, 2022, he did occupy a motor vehicle knowing there was a restricted firearm, a 9 mm semi-automatic handgun, in the vehicle contrary to s. 94(1) of the Criminal Code;
- ii. Count 2: on or about January 21, 2022, he did possess a loaded restricted firearm, a 9 mm semi-automatic handgun, without being the holder of an authorization or licence under which he may possess the firearm in that place and a registration certificate for the firearm, contrary to s. 95(1) of the Criminal Code;
- iii. Count 5: on or about January 21, 2022, he did operate a motor vehicle while prohibited from doing so by reason of an order made under the Criminal Code, contrary to section 320.18(1)(a) of the Criminal Code; and
- iv. Count 8: on or about January 21, 2022, he did possess a firearm, a 9mm semi-automatic handgun, while he was prohibited from doing so by any order under this Act or any other Act of Parliament, contrary to s. 117.01(1) of the Criminal Code.
- b. 97593-5:
- i. Count 4: on or about July 31, 2022, he did possess a loaded prohibited firearm, an AR-15 semi-automatic rifle, without being a holder of an authorization or a licence under which he may possess the firearm in that place and a registration certificate for that firearm, contrary to section 95(1) of the Criminal Code;
- ii. Count 6: on or about July 31, 2022, he did possess a firearm, an SKS semi-automatic rifle, while he was prohibited from doing so by any order under this Act or any other Act of Parliament, contrary to section 117.01(1) of the Criminal Code; and
- iii. Count 7: on or about July 31, 2022, being at large on a release order, he did fail to comply with a condition of that release order by occupying the driver's seat of the motor vehicle, contrary to s. 145(5)(a) of the Criminal Code.

- [3] Sentencing for these offences was delayed to wait for a pre-sentence report, a psychological assessment report and a Gladue report. Those reports have now been delivered and entered into evidence.
- [4] These are reasons for Mr. Soderberg's sentence.

Circumstances of the offences

- [5] Around 11:30 pm on January 21, 2022, police responded to a report of a man passed out in a red Mercedes. Cst. Casey found Mr. Soderberg asleep in the driver's seat of the car, with the keys in the ignition and the motor running in park. The officer arrested Mr. Soderberg for operating a vehicle while impaired. During a search incidental to arrest, Cst. Casey found a firearm inside a shoulder holster under Mr. Soderberg's coat.
- [6] The firearm was a 99 mm handgun. The firearm was loaded with a round in the chamber and full magazine with 10 rounds. There was a second full magazine housed within the holster. This firearm is a restricted firearm within the meaning of s. 84(1) of the Criminal Code.
- [7] A search of a satchel that was slung over Mr. Soderberg's shoulder turned up a substantial quantity of drugs, some pre-packed for distribution, and approximately \$9,000 in cash.
- [8] A drug recognition expert determined that Mr. Soderberg was impaired by narcotics and stimulants. The police also determined that Mr. Soderberg was prohibited from driving Canada wide, and that he was banned by five prohibition orders from possessing a firearm.
- [9] On January 24, 2022, police executed a search warrant on the Mercedes. Inside the trunk, they found a 12-gauge pump action shotgun with six shotgun shells loaded. The serial numbers had been scratched off the shotgun.
- [10] Mr. Soderberg was released on January 24, 2022, on strict release conditions including a cash deposit of \$2,000 and 24-hour house arrest.
- [11] Less than six months later, while under house arrest, Mr. Soderberg was arrested for similar offences.
- [12] At about 1:00 am on July 31, 2022, police responded to a report of a possible impaired driver in an underground parking garage. Cst Phillips observed two men passed out in a red Mercedes. He positioned his police cruiser directly behind the Mercedes to prevent it from leaving. Initially, both occupants of the car were non-responsive. When they awoke, they refused to open the doors. The driver shifted the car into reverse and revved the engine. He then reversed the car into the police vehicle. The police used their vehicle to push the Mercedes into the concrete wall and pin it. The rear tires continued spinning and creating smoke.

- [13] Multiple police officers arrived. Spike belts were laid behind the Mercedes. Eventually the engine stopped revving. The passengers were directed to exit the vehicle. An officer approached the driver's side window and broke it. He saw a handgun on the driver's seat, but no driver. The man in the passenger seat told him to check the trunk of the vehicle.
- [14] Police opened the trunk and found Mr. Soderberg. Under Mr. Soderberg they found a carbine style firearm with a loaded magazine. They found four more firearms inside various bags in the trunk.
- [15] The firearms seized by police included: an AR-15 style rifle with a magazine with live rounds inserted and the safety set to "fire"; a SKS style rifle; a .308 semi-automatic rifle; and a fully loaded pump action style shotgun. Police also seized a BB-style air gun and an imitation shotgun loaded with paintballs.
- [16] Inside a bag from the front passenger seat, the police found a large bag of dried marijuana, a small bag of mushrooms, and a bag of an unknown suspected drug. In a bag in the trunk, they found empty dime sized bags, ammunition, and a large number of cigarettes. Elsewhere in the vehicle, they found other drugs, drug paraphernalia and some cash.

Circumstances of the Offender

- [17] Mr. Soderberg is 30 years old. He is of mixed Indigenous and Caucasian ancestry. He self-identifies as a member of the Cree Nation. His mother is also of mixed Indigenous and Caucasian ancestry. She is from the Frog Lake First Nation. Mr. Soderberg's maternal grandmother is an Indian residential school survivor.
- [18] There is a significant history of substance abuse and violence on both sides of Mr. Soderberg's family. His father was a chronic pharmaceutical and heroin user. The father was involved in the drug trade and had an extensive criminal history. He died in 2012 from an apparent drug overdose.
- [19] Mr. Soderberg's mother suffered from alcoholism, drug addiction and a series of abusive relationships.
- [20] Mr. Soderberg was apprehended at the age of three by the Ministry of Children and Family Development. His parents separated when he was four or five years old. He attempted to maintain contact with his birth parents, but they were unable to provide him with a stable home.
- [21] Mr. Soderberg lived in approximately 24 foster homes, many of which were abusive. None of his foster parents were Indigenous. No one it seems attempted to reconnect Mr. Soderberg with his culture, or provide him with treatment or the support he required.
- [22] Mr. Soderberg struggled academically. He left school after only six years of formal education.

- [23] At age 13, he started smoking marijuana. This quickly progressed to cocaine and then heroin.
- [24] After he aged out of foster homes, Mr. Soderberg was supervised by an infamous social worker who was eventually convicted for defrauding the Province by stealing money from the Indigenous children in his care. This person deprived Mr. Soderberg of funds that were meant to provide him with housing and basic necessities. As a result, Mr. Soderberg experienced homelessness and poverty.
- [25] Mr. Soderberg has been diagnosed with attention deficit disorder, substance abuse disorder, conduct disorder, anxiety, reactive detachment disorder, major depressive disorder, neurodevelopmental disorder and septo-optic dysplasia.
- [26] Mr. Soderberg's only employment history is some manual, unskilled labour for his stepbrother's construction company, which was short lived.
- [27] Mr. Soderberg has a significant criminal record. Over the course of 15 years, he has committed 50 offences: five of those were weapons or firearm-related offences; seven were for breaching release orders; and six were for breaching probation orders.
- [28] His criminal history began in 2009 when he was a youth at 15 years old. His first adult conviction was in 2012 for trafficking, for which he received a 12-month conditional sentence order. As part of that sentence, he received the first of five mandatory lifetime firearms prohibitions.
- [29] In 2012, Mr. Soderberg received the first of three convictions for possessing a firearm while prohibited from doing so, contrary to s. 117.01(1). He received 30 days for the first offence.
- [30] In 2013, Mr. Soderberg was involved in drug and property related offences.
- [31] In 2014, he committed an offence of carrying a concealed weapon or prohibited device or ammunition, contrary to s. 90.
- [32] In 2016 Mr. Soderberg resolved several offences that included a further charge of possession of firearm contrary to order and carrying a concealed weapon or prohibited device or ammunition. He received jail sentences for those offences, of 30 days and 60 days respectively.
- [33] The last entries on Mr. Soderberg's record are drug-related offences that were dealt with on November 30, 2020. Mr. Soderberg received a global sentence for those offences. He was released from jail in September 2021.
- [34] Just four months later, on January 21, 2022, he was arrested on the first of the two current indictments. He was released on January 24, but arrested again on July 31, 2022 for the charges in the second indictment. He was ordered detained on April 21, 2023. He remains in custody.

- [35] During his incarceration, Mr. Soderberg has achieved 20 months of sobriety. He states this has encouraged him to participate in treatment programs.
- [36] Mr. Soderberg met Jessica Le Hegarate about three years ago. Ms. Le Hegarate has been a positive influence in his life. She is Indigenous, and she too has also struggled with substance abuse. She has recently completed a six-month substance abuse treatment program, which Mr. Soderberg cites as an inspiration for his own recovery.
- [37] Mr. Soderberg has a child with Ms. Le Hegarate. His son Damien is now approximately a year and a half old, and a bright light in Mr. Soderberg's life. Ms. Le Hegarate is now living in a second stage housing facility with Damien.
- [38] Mr. Soderberg speaks with Ms. Le Hegarate on a daily basis. He records stories on audiotape for his son to listen to. He is quoted in the Gladue report as saying "I never had a reason to do better until my son was born. I have a purpose and a reason to live and do better."

Crown and Defence Positions

- [39] The Crown seeks a global sentence for Mr. Soderberg of six years of imprisonment, with individual sentences for each count as follows:
- a) 96925-2:
 - i. Count 1 (s. 94; occupying a motor vehicle with a restricted firearm in the vehicle): 12 months imprisonment;
 - ii. Count 2 (s. 95; possession of a loaded, restricted firearm): 4 years imprisonment, consecutive;
 - iii. Count 5 (s. 320.18; operating a vehicle while prohibited): mandatory minimum sentence of a fine \$1000 (s. 320.19(1)(a)(i));and
 - iv. Count 8 (s. 117.01; possessing a firearm while prohibited): 12 months imprisonment, consecutive.
 - b) 97593-5
 - i. Count 4 (s. 95): 5 years imprisonment, concurrent;
 - ii. Count 6 (s. 117.01): 6 months imprisonment, concurrent; and
 - iii. Count 7 (s. 145(5); breach of a condition of release): 6 months imprisonment, concurrent.
- [40] The defence seeks a global sentence of five years, with the following differences:
- a) 96925-2:
 - i. Count 1: 6 months imprisonment;
 - ii. Count 8: 6 months imprisonment, consecutive.
 - b) 97593-5

- i. Count 4: 4 years imprisonment, concurrent.

[41] In addition, the Crown seeks a number of ancillary orders with which the defence agrees.

The Governing Principles of Sentencing

[42] Two codified objectives of sentencing which are important to consider in a case like this are denunciation and deterrence. They are set out in the Criminal Code at ss. 718(a) and (b).

[43] Proportionality is also a fundamental principle of sentencing. Section 718.1A provides that a sentence must be proportionate to the gravity of the offence and the responsibility of the offender. Both aggravating and mitigating factors must be taken into account. The sentence must be rationally related to sentences imposed for similar offences committed by similar offenders.

[44] Assisting in rehabilitation and promoting a sense of responsibility in offenders are also important purposes of sentencing.

[45] Section 718.2(e) requires the court to pay particular attention to the circumstances of Aboriginal offenders. As the Supreme Court of Canada explained in *R. v. Gladue*, [1999] 1 S.C.R. 688, and reiterated in *R v. Ipeelee*, 2012 SCC 13, s. 718.2(e) is remedial and intended to address the crisis of overrepresentation of Indigenous offenders in the Canadian criminal justice system.

[46] In *R. v. Kehoe*, 2023 BCCA 2, the Court of Appeal confirmed that sentencing judges are to take judicial notice of how Canada's colonial history and postcolonial assimilationist policies have translated into a disadvantaged position for Indigenous offenders. This regrettable history does not justify criminal conduct; rather it provides necessary context for understanding and evaluating case specific information during the sentencing exercise: *Kehoe* at para. 37.

[47] Because the circumstances of Indigenous offenders may be significantly different from those of non-Indigenous offenders, a sentencing judge must pay particular attention to two factors:

- a) the unique systemic or background factors that may have played a part in bringing the particular Indigenous offender before the courts; and
- b) the types of sentencing procedures and sanctions that may be appropriate for the offender in the circumstances given their particular Indigenous heritage and connection.

Sentencing Principles and Firearms-Related Offences

- [48] In *R. v. Guha*, 2012 BCCA 423, the Court of Appeal instructed that sentences for firearm-related offences must reflect their very serious and dangerous nature. The Court observed that firearms, and in particular handguns, are extremely dangerous when possessed for an illicit purpose. That purpose can only be to threaten or inflict serious bodily harm or death. Sentences for these types of offences must reflect society's absolute rejection of such unacceptable conduct.
- [49] In *Guha*, the offender was convicted after trial of offences under s. 95(1), 92(2) and 90(1) and pled guilty to offences under s. 117.01(1). He was found in possession of a loaded handgun with a magazine in his waistband during a traffic stop. He had prior convictions related to marijuana trafficking, resulting in a lifetime firearms prohibition, and he was on bail for a drug possession offence at the time of the firearms offences. He was relatively young and had some community support from a previous employer. The trial judge imposed the then mandatory minimum sentence of three years imprisonment for the s. 95(1) offence and six months consecutive for the s. 117.01(1) offences. The Court of Appeal allowed an appeal by the Crown and increased the sentence for the s. 95(1) offence to four years imprisonment.

Possession of a loaded prohibited/restricted firearm

- [50] Possession of a loaded prohibited/restricted firearm contrary to s. 95(1) is the most serious of the offences to which Mr. Soderberg has pleaded guilty.
- [51] In *R. v. Nur*, 2015 SCC 15, the Supreme Court struck down the mandatory minimum sentence of three years on the basis that it would be disproportionate in reasonable hypothetical cases. The Court observed that s. 95(1) captures a wide range of potential conduct. At the "true crime" end of the spectrum is an outlaw who carries a loaded prohibited or restricted firearm in public places as a tool of their criminal trade. This type of offender poses a real and immediate danger to the public. At the "regulatory offence" end of the spectrum is an otherwise law-abiding, responsible gun owner who has a license and registration certificate for the firearm, but knowingly possesses the firearm at a place that falls outside the terms of their license.
- [52] While it struck down the three-year mandatory minimum sentence, the Court held that it would be appropriate for sentencing judges to impose significant sentences of imprisonment for truly criminal conduct.
- [53] In *Nur*, the police were called to a community centre in a troubled neighbourhood to investigate a report that someone was being threatened. When the police arrived, there were four men standing outside the community centre. Mr. Nur was among them. Mr. Nur ran from the police and threw away a loaded handgun with an oversized magazine. It was not shown that he was involved in the threatening behaviour. It was not known how he had come into possession of the firearm or for how long he had it.

- [54] Mr. Nur pleaded guilty. His personal circumstances were compelling: he was only 19 years old at the time of the offence, had no criminal record, was a person of otherwise exemplary character, and had considerable academic and leadership potential. Nevertheless, the sentencing judge imposed a sentence of 40 months or 3 years and four months after striking down the mandatory minimum sentence. The sentence of 40 months was not disturbed on appeal.
- [55] In *R. v. Holt*, 2015 BCCA 302, the Court of Appeal suggested that trial judges were imposing sentences that were too lenient after the mandatory minimum was struck down.
- [56] Mr. Holt was the subject of a traffic stop for a driving infraction in Burnaby. He was initially arrested for possession of drugs. The police then located a backpack in his vehicle which contained a loaded handgun and a box of ammunition.
- [57] Mr. Holt was 66 years of age and lived on the margins of society. He had a serious and longstanding drug addiction, but virtually no criminal record. The trial judge imposed a sentence of 18 months imprisonment owing to Mr. Holt's personal circumstances.
- [58] The Court of Appeal allowed the Crown's appeal and increased the sentence to 30 months. In doing so, the Court expressly recognized the serious and growing risk posed by loaded firearms.

Possession of a Firearm while Prohibited

- [59] The maximum sentence for possessing a firearm while prohibited under s. 117.01(1) of the Criminal Code is 10 years imprisonment. There is no mandatory minimum sentence.
- [60] In *R. v. Melnick*, 2019 BCCA 390, the Court of Appeal stated that the usual range of sentence for s. 117.01(1) offences in this province is six to 12 months imprisonment, generally imposed consecutively to substantive offences arising from the same facts.

Comparable Cases

- [61] In *R. v. Racette*, 2016 BCCA 275, the Court of Appeal allowed a Crown appeal and imposed a total sentence of six years' imprisonment for offences under s. 95(1) and 117.01(1) of the Criminal Code as well as a drug-trafficking offence.
- [62] Police officers observed Mr. Racette in the parking lot of a busy Tim Hortons near a high school. They detained him when he started to cover his face with a bandana. They found a loaded sawed-off shotgun in a backpack, a quantity of methamphetamine, and a cellphone containing evidence of a dial-a-dope operation. He was prohibited from possessing firearms at the time.
- [63] Mr. Racette was 36 years old. He was Indigenous, with a background described in a Gladue report as "profoundly tragic". He also had a significant criminal record which included convictions for serious violent offences and breaches of court orders.

[64] The Court held that a five-year sentence for the s. 95(1) offence appropriately balanced the aggravating and mitigating circumstances and properly accounted for Mr. Racette's background and aboriginal heritage.

[23] Mr. Racette engaged in profoundly dangerous misconduct when, as a tool of his criminal trade, he carried a loaded sawed-off shotgun into a public place. The case law is clear. Weighty exemplary sentences should be imposed for crimes of this sort for purposes of public protection and as a reflection of our shared social values. While mitigating factors, including an offender's aboriginal heritage, are important and must also be considered, deterrence and denunciation remain at the fore.

[emphasis added]

[65] The Court of Appeal held that the Gladue factors could only go so far to mitigate the seriousness of Mr. Racette's offences. Without them, the sentence could have been even higher.

[66] In *R. v. Homeniuk*, 2019 BCSC 2068, Justice Devlin imposed a sentence of five years' imprisonment for possession of a loaded, prohibited firearm, and 6 months consecutive for possessing a firearm and ammunition while prohibited. In that case, the police entered Mr. Homeniuk's residence in response to a 911 call. While inside, the police observed stolen property in plain view. They returned with a search warrant and found a loaded, prohibited rifle under the offender's mattress.

[67] Mr. Homeniuk had a significant criminal record including for serious violent offences. He had served three penitentiary sentences. At the time of the offence, he was prohibited from possessing firearms and was on a conditional sentence order. He was an Indigenous person whose upbringing was marked by exposure to drug and alcohol use. He had been removed from his mother by child protective services. While in custody awaiting sentencing, he completed several rehabilitative courses. Justice Devlin said:

[43] Crafting the appropriate sentence in this particular case was a difficult exercise. It involved a careful examination of the circumstances of the offence, the nature and severity of the conduct of the offender balanced together with his personal circumstances including his Aboriginal heritage. Given the number of aggravating factors present in this case I have concluded that a significant period of imprisonment is appropriate.

[68] In *R. v. Hiscock*, 2020 BCCA 355, the Court of Appeal held that a fit sentence in that case was a global sentence of five years. Mr. Hiscock was convicted after trial of offences under ss. 92(1), 95(1), 86(1) and 117.01(1). He discharged a prohibited semi-automatic rifle inside his downtown Kelowna residence while in a methamphetamine-induced psychosis. Three bullets hit an unoccupied car parked in front of his residence.

- [69] Mr. Hiscock was bound by three firearms prohibitions and a probation order at the time of his offences. He had a moderate criminal record consisting of breach offences, drug offences, property offences and some violent offences. He had never previously served a lengthy sentence of imprisonment.
- [70] A Gladue report and pre-sentence report outlined Mr. Hiscock's tragic family and personal history: intergenerational trauma, a broken and dysfunctional family, exposure to emotional and physical violence and criminal activity, loss of connection with his Indigenous heritage and culture, and deaths of loved ones due to homicide and drug overdose.
- [71] The trial judge imposed a global sentence of six years' imprisonment: five years' imprisonment for the s. 95(1) offence, one year consecutive for the s. 117.01 offence, and concurrent sentences for the other offences. The Court of Appeal found that the trial judge had failed to give meaningful effect to the Gladue factors and reduced the global sentence to five years' imprisonment.

Application in this Case

Aggravating Factors

- [72] A prominent aggravating factor in this case is the nature of the offences. Possession of multiple loaded firearms together with magazines and ammunition is the type of "truly criminal" conduct that the courts have held must attract a significant period of imprisonment.
- [73] Mr. Soderberg possessed these firearms in motor vehicles in public places. There were drugs found in his possession, as well as the paraphernalia of drug trafficking. It may be inferred that he possessed the firearms as tools of criminal activity, whether to protect himself or to threaten or harm other people. There is no other explanation for possessing weapons of this kind.
- [74] Mr. Soderberg was under the influence of drugs at the time he was found in possession of the firearms. His state of intoxication on both occasions made the situation even more dangerous to the public.
- [75] His behaviour at the time of the July offences was particularly troubling and dangerous. He refused to follow instructions from the police and attempted to escape. He attempted to drive his car in reverse in a parking garage and collided with another vehicle. He put members of the public and law enforcement at risk of serious injury. He then attempted to hide from police.
- [76] In addition, Mr. Soderberg was on bail at the time of the July offences.
- [77] Another aggravating factor is the fact that Mr. Soderberg was prohibited from possessing firearms on both occasions due to previous criminal activity.

[78] Mr. Soderberg's lengthy criminal record is also an aggravating factor. Although the current indictments contain the first charges under s. 95 of the Code, Mr. Soderberg's general criminal misconduct has been persistent and serious. He has not been deterred effectively by the criminal sanctions to date.

Mitigating Factors

[79] Mr. Soderberg's guilty plea is a mitigating factor. When he addressed the Court, he apologized for his actions and said he never wanted to harm anyone. I accept his apology and expression of remorse as sincere and genuine.

[80] Mr. Soderberg has recently shown insight into his criminal history. He told the Court he wants to put these matters behind him and remain out of custody so that he can look after his son.

[81] Mr. Soderberg has also made efforts at rehabilitation. He has been sober now for 20 months, albeit in custody. He draws motivation for his recovery from his partner and his new son.

Gladue Factors

[82] The most significant mitigating factors in this case relate to Mr. Soderberg's experience growing up in Canada as an Indigenous youth from a broken family. This is a young man who has suffered his entire life from the ravages of drug addiction, physical and psychological abuse, institutional racism and neglect. He is not an offender who has been motivated by profit or the desire to own luxury goods. Rather, his motivation appears to have been survival and feeding his own addictions. It appears from his criminal record that his chronic possession of firearms has related to personal safety in the drug trade, rather than using the weapons to commit violent crimes.

[83] I find that systemic and background factors relating to Mr. Soderberg's circumstances as an Indigenous person have played a significant role in bringing him before the court. Those factors include:

- a) instability, family dysfunction and abandonment;
- b) normalization of drug use and addiction;
- c) lack of stable housing and personal safety; and
- d) intergenerational trauma.

[84] I find that Mr. Soderberg's moral blameworthiness is diminished by these factors and that the prospects for his rehabilitation must be given meaningful consideration in light of past failures by people in authority in his life and the continuing crisis of overrepresentation of Indigenous offenders in custody.

Deterrence and Denunciation

[85] Deterrence and denunciation are of paramount concern when dealing with firearms offences. General deterrence is important so that members of the public understand that this type of behaviour is extremely serious and will not be tolerated.

[86] However, it is apparent to me that Mr. Soderberg wants to turn his life around and remain out of custody, which goes a long way toward addressing the need for specific deterrence in this case.

Rehabilitation

[87] While deterrence and denunciation are of paramount importance, I must also consider the principle of rehabilitation.

[88] The Crown relies on a psychological assessment report. The author of the report assessed Mr. Soderberg as a high risk of recidivism without the necessary supports and external controls in place. The author recognized that the risk may be mitigated somewhat by limiting the effects of drug intoxication. However, the author also states:

It is highly likely that Mr. Soderberg does not require intoxicants to act as a disinhibitor; emotional arousal and antisocial attitudes likely reduce barriers to offending and provide enough impetus to reoffend" (para 54).

[89] It is not clear to me how the author of the report arrived at this conclusion. In my view, the author failed to give adequate weight to the evidence of family dysfunction, drug addiction and trauma as contributing causes of Mr. Soderberg's anti-social behaviour. The author also failed to give adequate weight to recent positive influences in Mr. Soderberg's life such as his relationship with his partner and his commitment to being a father to his child.

[90] In my view, Mr. Soderberg is capable of rehabilitation and pro-social behaviour. I accept that he has a sincere and genuine desire to engage in rehabilitative programs and address his underlying issues.

Parity of Sentence

[91] Based on the cases provided to me, the proposals by both Crown and the defence are within the range of similar sentences imposed on similar offenders for similar offences committed in similar circumstances.

Conclusion

[92] In my view, the Crown's proposal does not give adequate effect to the Gladue factors in this case.

- [93] The Crown says it has considered the Gladue factors as part of the principle of totality and that, recognizing Mr. Soderberg's personal circumstances, it has sought concurrent sentences on offences that relate to Indictment 97593-5.
- [94] In my view, the Crown would have been driven to a similar recommendation based on the principle of totality alone. That principle requires the court to impose a global sentence for all offences that is not excessive. Consecutive sentences on Indictment 97593-5 would have resulted in an excessive sentence.
- [95] Considering all of the relevant factors above, I find that a fit global sentence for Mr. Soderberg is five years of imprisonment:
- a) Indictment 96925-2: four years for possession of a loaded, restricted firearm; six months for occupying a motor vehicle with a restricted firearm in the vehicle; and six months for possessing a firearm while prohibited, to be served consecutively; and
 - b) Indictment 97593-5: four years for possession of a loaded, restricted firearm; six months for possessing a firearm while prohibited; and six months for breach of a condition of release, to be served concurrently.

Sentence

- [96] Mr. Soderberg, please stand.
- [97] I sentence you to a global sentence of five years and a fine of \$1,000. The sentence will be as follows:
- a) 96925-2:
 - i. Count 1: six months' imprisonment;
 - ii. Count 2: four years' imprisonment, consecutive;
 - iii. Count 5: a fine of \$1000, payable over 24 months;
 - iv. Count 8: six months' imprisonment, consecutive.
 - b) 97593-5
 - i. Count 4: four years' imprisonment, concurrent
 - ii. Count 6: six months' imprisonment, concurrent; and
 - iii. Count 7: six months, concurrent.
- [98] You are entitled to credit for your time served at a rate of 1.5 days for each day spent in pre-trial custody. Crown and defence agree that this means you are entitled to a credit of 1,028 days, or 34 months. The credit will be applied as follows to Indictment 96925-2:
- i. Count 1: six months credit, resulting in time served;

- ii. Count 2: 28 months credit, leaving 20 months to be served;
- iii. Count 8: no credit remaining, full six months to be served consecutively.

Ancillary Orders

[99] I am also making the following ancillary orders:

- a) Pursuant s. 487.051(3) of the Code, an order authorizing the taking of a sample of bodily substance from you, for the purpose of forensic DNA analysis and inclusion in the national DNA databank.
- b) Pursuant to s. 109(2) on 96925-2, a lifetime firearms prohibition.
- c) Pursuant to s.320.24(4), a 12-month driving prohibition.
- d) Pursuant to s. 743.2, an order that a copy of the Court's reasons for sentence, the pre-sentence report, the psychological pre-sentence assessment report and the Gladue Report be forwarded to the Correctional Services of Canada.

[100] On June 12, 2024, I signed an order on the bench ordering forfeiture of the firearms and ammunition seized as exhibits on Indictments 96925-2 and 97593-5, pursuant to s.491 of the Criminal Code.

[101] I am grateful to both counsel for their helpful submissions.

"Elwood J."

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