
CANADA / JUDGMENT

R. v. Steinhauer

2016 BCSC 1322

COURT

Supreme Court of British Columbia

DECIDED

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2016 BCSC 1322 R. v. Steinhauer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Steinhauer,

2016 BCSC 1322

Date: 20160505

Docket: X078514-2

Registry: New Westminster

Regina

v.

Nicholas Franklin Steinhauer

Before: The Honourable Madam Justice Devlin

Oral Reasons for Sentence

Counsel for the Crown:

R.J. Antonuk

Counsel for the Accused:

D. Schultz

Place and Date of Trial/Hearing:

New Westminster, B.C.

April 22 & May 5, 2016

Place and Date of Judgment:

New Westminster, B.C.

May 5, 2016

[1] THE COURT: The accused, Nicholas Franklin Steinhauer, has entered guilty pleas to three counts on Indictment 78514-2, pertaining to events which occurred on the early morning hours of May 25, 2014, at a residence in Surrey, British Columbia.

[2] The offences are as follows:

- Count 1, break and enter into a dwelling house located at 6711 - 191A Street, and did commit the indictable offence therein of robbery, contrary to s. 348(1)(d) of the Code;
- Count 2, did steal monies from Franco Pontaletta, while armed with an offensive weapon, that being an air pistol, contrary to s. 344(1)(b) of the Code; and
- Count 3, using an imitation firearm while committing or attempting to commit the indictable offence of robbery, contrary to s. 85(2) of the Code.

CIRCUMSTANCES OF THE OFFENCE

- [3] The circumstances of the offence are not in dispute, and counsel have provided a detailed agreed statement of facts which has been filed as an exhibit at this sentencing hearing. I will refer to some of those facts.
- [4] At 12:47 a.m. on May 25, 2014, Mr. Steinhauer and another unknown male broke into the residence located at 6711 - 191A Street in Surrey, B.C., by breaking the window of the front door and unlocking the door from the inside. At the time, there were three occupants of the house: Mr. Pontaletta and his girlfriend, Ms. McKague, were in his bedroom, and another friend, Mr. Seth, was in another bedroom watching TV. Mr. Pontaletta and the others had plans to travel to Mexico the next day.
- [5] Mr. Steinhauer was carrying a replica firearm and the unknown male had a crowbar and bear spray.
- [6] Mr. Seth locked his bedroom door and hid in the ensuite bathroom, where he called 9-1-1. However, Mr. Steinhauer and the other male broke into the bedroom where he was. Mr. Pontaletta saw the two men in his house and locked his bedroom door. However, Mr. Steinhauer knocked on the door and Mr. Pontaletta opened it and encountered Mr. Steinhauer standing in front of him pointing his firearm at Mr. Pontaletta, screaming at him, "Three seconds, show me where all your money and drugs are."

- [7] At this point, Ms. McKague was hiding under the bedroom covers, terrified. Mr. Pontaletta offered his laptop and iPad, but Mr. Steinhauer demanded money and drugs. Mr. Steinhauer demanded that Mr. Pontaletta open the safe in the closet. Mr. Pontaletta was sprayed by mace by the other male.
- [8] Mr. Steinhauer continued to threaten Mr. Pontaletta that he would kill him if he did not open the safe. The entire time, Mr. Steinhauer was holding the firearm and counting down from 30. Mr. Pontaletta gave Mr. Steinhauer the money he had in his suitcase, which was approximately \$500 Canadian.
- [9] Mr. Steinhauer directed Mr. Pontaletta at gunpoint back to the safe and, when Mr. Pontaletta could not open the safe, Mr. Steinhauer punched him in the jaw twice and started to count down again.
- [10] In an attempt to flee, Mr. Pontaletta told Mr. Steinhauer and the other male that the key to the safe was in the garage. They followed Mr. Pontaletta out to the garage. Mr. Pontaletta managed to flee the garage, with the two males chasing after him for a brief period.
- [11] At 1:00 a.m., the police arrived. When Mr. Steinhauer was discovered hiding behind a garbage bin in the area, he again threatened Mr. Pontaletta by saying, "You ratted on me. I know where you live." Located on Mr. Steinhauer was the money Mr. Pontaletta had given him, and the imitation firearm was located beneath the fence. It resembled a real firearm.
- [12] The second male was never located, and Mr. Pontaletta and the others in the house had never met Mr. Steinhauer previously.

VICTIM IMPACT STATEMENT

- [13] None of the victims provided a formal victim impact statement, but the impact this event had on Mr. Pontaletta and Ms. McKague can be seen by reference to their comments contained in the presentence report. Mr. Pontaletta advised he suffered immediate pain and discomfort after being punched twice on the right side of his face and bear sprayed. In addition to the trauma of having the gun held on him, he was verbally threatened with bodily harm. He also advised he experienced trouble sleeping but, with time, that has dissipated but has not completely disappeared. He continues to be concerned for his safety.
- [14] Ms. McKague advised that she was terrified during the incident and, following the incident, her sense of personal safety was compromised for months, but with the passage of time her fear has dissipated.

CIRCUMSTANCES OF THE OFFENDER

- [15] With respect to Mr. Steinhauer, I have been provided with a presentence report dated August 27, 2015, which sets out his personal history, as well as submissions from counsel which provided me with an update on Mr. Steinhauer's progress while in custody.

Background

- [16] Mr. Steinhauer is presently 29 years old and he was 27 at the time of the offence. Mr. Steinhauer is Cree, holding status with the Saddle Lake Band northeast of Edmonton, Alberta. He advised that he "really does not follow his heritage".
- [17] According to the presentence report, Mr. Steinhauer is a second generation survivor of the residential school program. He is the second of four children from his parents' long-term common law relationship. He was raised on the reserve, but went back and forth from the reserve to Edmonton while growing up. Both his parents regularly consumed alcohol and his mother died of an accidental overdose in 1999, and his father died of an accidental overdose in 2009.
- [18] By the age of 13, Mr. Steinhauer was associating with older youth engaged in substance abuse and criminal activity. Throughout his teens, he cycled in and out of foster homes and states that child welfare "gave up on him" a few weeks before his 18th birthday. Mr. Steinhauer is single and does not have any children.
- [19] He completed his Grade 10 while in youth custody and completed his GED while incarcerated in Saskatchewan. He advised the presentence report author that his long-term goal is to return for post-secondary education so that he can become a social worker or a youth worker.
- [20] Mr. Steinhauer admits that he has used and trafficked in illegal drugs since his youth, but alcohol is his substance of choice. Although he had consumed some alcohol before this incident, he admits his decision to engage in this crime was financially motivated.
- [21] According to the presentence report, Mr. Steinhauer was doing okay financially at the time, but decided it was worth the risk "if he could just kick in one door and get a lot of money in one shot". He had not been to Surrey before that night and believed that they were at the right address, but they chose the wrong residence.
- [22] Mr. Steinhauer has expressed remorse for his actions. He knows the victims were traumatized and he is thankful that he did not do more harm.

Recent Developments

- [23] I have been advised by counsel that recently Mr. Steinhauer has begun to make good use of his time in custody. He has been an active participant in a drug and alcohol program and in regular contact with the John Howard Society.
- [24] Counsel also points out that Mr. Steinhauer has been trying to improve, and since July 2015, while in North Fraser Pretrial, he has been a better inmate with no infractions, no alcohol or drugs. Mr. Steinhauer admitted that his prior history of institutional supervision was abysmal.

- [25] Mr. Steinhauer has obtained a Certificate of Completion with respect to the Criminal and Addictive Thinking workbook and the Socialization workbook. He is presently engaged working on the the relapse prevention workbook.

CRIMINAL HISTORY

- [26] Mr. Steinhauer has an extensive criminal record. A copy of that has been filed as an exhibit at sentencing and it is set out at pages 4 and 5 of the presentence report.
- [27] His record begins with a youth record in 2004. January 2004, he was convicted of possession of property obtained by crime and received a 25-hour community work service sentence. In November 2004, he was convicted of robbery with a firearm, disguise with intent, and theft under. He received various sentences, six months and three months' community supervision and probation for a year.
- [28] His adult record begins in April 2005, when he was convicted of break and enter and sentenced to 40 hours of community service.
- [29] August 2006, he was convicted of a number of different offences, fail to appear where he got a one-day sentence, two counts of break and enter, he got three months on each charge consecutive, and then another break and enter, he got another three months' concurrent, another break and enter, he got two months' consecutive, and possession of a weapon, one month concurrent, and a mandatory order under s. 109.
- [30] In October 2007, he was convicted of another break and enter with intent, another break and enter and theft, and obstruct a police officer. He received time served on each charge and probation for a year.
- [31] January 2008, fail to comply with probation, he received 14 days.
- [32] February 2008, break and enter, received 12 months on each charge. Break and enter counts, there were four of them, and he received 12 months on each charge concurrent, and then a 15-month consecutive sentence for another break and enter.
- [33] In June of 2009, Mr. Steinhauer was paroled. In November of 2009, he was convicted of escape lawful custody and received 30 days' consecutive to unexpired portion of his sentence.
- [34] In February 2010, he was convicted of assault and got one month consecutive to the sentence he was serving.

- [35] Then most recent offence and the one that is most significant in terms of this sentencing is the August 31, 2010 conviction in Edmonton, Alberta, for two counts of robbery and one count of break and enter. On the two counts of robbery, he was sentenced to seven years and on the break and enter, he was sentenced to one year less pre-trial custody, and a s. 109 order. I will take a moment to refer to the facts that are set out in the transcript of the proceedings provided by defence counsel with respect to the incident.
- [36] That sentence was in relation to an incident that took place on November 15, 2009, at 10:25 p.m., when Mr. Steinhauer and another male robbed a Mac's Convenience Store with their faces disguised. Mr. Steinhauer entered first and pointed an imitation firearm at the store clerk. Mr. Steinhauer and his accomplice took cash, cigarettes, and lottery tickets. At one point, one of the individuals, not Mr. Steinhauer, pushed the store clerk to the floor and Mr. Steinhauer pointed his imitation firearm at the clerk's head. After the accomplice hit the clerk in the right leg with a tire iron, Mr. Steinhauer threw him back on the floor. When a customer entered the store, Mr. Steinhauer pointed the firearm at him and threw him onto the floor.
- [37] They fled the Mac's Convenience Store and, a few moments later, Mr. Steinhauer approached a car driven by a woman who had just left the ATM drive-through. He demanded that she provide him with cash. He pointed at her what she believed to be a firearm, at her head, demanding he would kill her if she did not comply. She handed over \$100. Mr. Steinhauer's face was disguised with a bandana.
- [38] When the police arrived, Mr. Steinhauer refused to stop for the police and proceeded to enter a residence via an unlocked rear door. The residence had been evacuated by the police. Mr. Steinhauer eventually surrendered to the police. It is the entry into the house with the unlocked door which constitutes the break and enter charge.
- [39] At the sentencing, the trial judge acknowledged that these were very, very serious offences, which had significant, long-term, lasting consequences for the victim.
- [40] The sentence that was imposed was seven years' imprisonment, to be served concurrently for each of the robbery offences, and one year on the break and enter to be served concurrently, a total sentence of seven years or 84 months, less credit for pre-trial custody, which worked out to an additional 5.3-year sentence and a s. 109 prohibition for 10 years.
- [41] I pause to point out at this point that defence counsel had invited me to view this sentence as actually three and a half years on each of the two robberies. I agree with the Crown that it would be improper for me to do so. The sentencing judge imposed a sentence of seven years for the two robberies concurrent.
- [42] Mr. Steinhauer was then paroled in April of 2014. In May of 2014, his parole was breached as a result of the new charges which are now before me.

- [43] In total, Mr. Steinhauer's criminal record consists of 14 convictions for break and enter, three convictions for robbery, one was as a youth and two in the August of 2010 incidents.
- [44] Mr. Steinhauer, as I said, was released on parole in April 2014, and obviously was on parole at the time of these new offences.
- [45] At the sentencing hearing, Mr. Steinhauer spoke to the court and expressed his remorse for the offence. He acknowledged that he had caused the victims pain and trauma, and that he had been selfish, stupid and driven by greed. He sincerely apologized for his actions. He appears to be committed to make a change in his life.

POSITION OF THE PARTIES

- [46] The parties agree that a penitentiary sentence is appropriate, although they differ on the range of sentence I should consider.
- [47] The Crown's position on sentence is that a global sentence of 11 to 14 year range is appropriate in this case. The Crown acknowledges that there are some mitigating factors, but with the numerous aggravating factors, including the nature and extent of Mr. Steinhauer's role in the home invasion, the use of the imitation firearm, his extensive criminal record, and including the fact he was on parole. The Crown also relies on s. 348.1 of the Code as an aggravating factor.
- [48] The Crown emphasizes that deterrence and denunciation are the paramount consideration in home invasion cases such as this. The Crown submits the appropriate range of sentence for the three counts is as follows: Count 1, break and entering a dwelling house, a sentence in the range of 10 to 13 years; Count 2, robbery, a sentence in the range of 10 to 13 years to run concurrent to Count 1; and Count 3, the use of imitation weapon, one year consecutive to Counts 1 and 2.
- [49] The Crown relies on the cases of *R. v. Moore*, 2008 BCCA 129 and *R. v. Vickers*, 2007 BCCA 554 as support for the range of sentence proposed, and *R. v. Wells*, 2000 SCC 10 with respect to the application of the Gladue factors, given Mr. Steinhauer is an aboriginal offender.
- [50] The defence position is that a global sentence in the range of five to eight years is appropriate. Counsel and Mr. Steinhauer accept that a significant period of incarceration is appropriate in these circumstances, given both the nature of the offence and Mr. Steinhauer's considerable criminal history. Counsel also refer to the need for rehabilitation of Mr. Steinhauer and the positive steps he has already taken towards that goal while in pre-trial custody.
- [51] Counsel for Mr. Steinhauer relies on a number of cases to support his submission that the appropriate range of sentence is between five and eight years. As I stated earlier, counsel also submitted that the Edmonton sentence of seven years should be viewed more appropriately as a three-and-a-half-year sentence on each count, and considering the step principle, it would be appropriate to consider the range of up to eight years for this matter.

- [52] I will review the sentencing authorities counsel have provided to me, but it is important to keep in mind that ranges of sentence are merely suggestions, not rules. Depending on the circumstances of the specific case and the offender, a fit sentence can fall outside the usual range. Indeed, as these cases demonstrate, establishing a range for home invasion crimes is difficult, due to the different combinations of offences that may be committed. The cases also demonstrate that higher sentences are appropriate when serious injuries are inflicted.
- [53] I begin with the Crown authorities. In Vickers, the Court of Appeal upheld a 10-year sentence on a case that included evidence of gunshots being fired by one of the three intruders, and an occupant of the home being struck with a pipe wrench. The court considered the 10-year sentence at mid-point of the range. The Court of Appeal said at paragraph 17:
- ... Mr. Vickers and his confederates came armed and prepared to use violence to achieve their objectives. Although the Crown did not prove that Mr. Vickers was in possession of one of the two handguns he was nonetheless an active participant in a home invasion in which they were used. It was only fortunate that neither Mrs. Schneider nor her son sustained more serious physical injuries. A home invasion, by its very nature, has a terrorizing effect on its victims. The use of a firearm only exacerbates the situation . . .
- [54] In Vickers, the court does not indicate the exact role of Mr. Vickers in the shooting, unlike the case before me; we know that Mr. Steinhauer was the one who carried the imitation firearm. Mr. Vickers was a 26-year-old aboriginal male with a substantial criminal history. On the day of the home invasion, Mr. Vickers had been released from prison on an 18-month sentence from an assault causing bodily harm, which is somewhat similar to Mr. Steinhauer's situation, who had just been released on parole.
- [55] In Vickers, while the court acknowledged that rehabilitation is a factor on sentencing, it found that in Mr. Vickers' case, "rehabilitation was far less significant when there is a need to protect the public from an offender who has demonstrated a penchant for violence". The court also found that the step principle in sentencing was not applicable, because the dominant sentencing factor is protection of the public. I find that the same can be said with respect to Mr. Steinhauer's case.
- [56] Finally, I point out that in Vickers, the court reminds us again that ranges are merely as guidelines for sentencing judges, and "establishing a range for home invasion crimes is difficult, due to the combinations of offences that may be committed".
- [57] In Moore, the Court of Appeal upheld a sentence of eight years, less pre-trial custody, for a global sentence of six years. Mr. Moore was found guilty of robbery, break and enter, uttering a threat, and suffocation. Mr. Moore and his co-accused broke into a residence where a couple were located. Mr. Moore kicked and threatened the female occupant, leaving a large bruise on the right side of her body and legs. He used a pillow to try and suffocate her to stop her from screaming. Unlike Mr. Steinhauer, Mr. Moore did not use a weapon. Mr. Moore had a criminal record with one robbery conviction, but had received sentences of

time served.

- [58] In Moore, the court comments that the various cases to which they had been referred seem to establish a range of six to 13 years, and it reminds us, yet again, that the total sentence will depend on the degree of violence involved, the offences committed in the invaded premises, and the extent of the offender's involvement.
- [59] With respect to the defence authorities, the first authority is the case of *R. v. Brossault, Lagimodiere and Tait*, 2009 BCSC 464, which was a decision by Mr. Justice Joyce in 2009. All three in that case had committed a home invasion in Maple Ridge, and one accused, Mr. Tait, was also involved in a further similar offence in Vancouver. All three individuals pled guilty to the break and enter with intent, and Mr. Brossault and Mr. Lagimodiere pled guilty to robbery using a firearm. Mr. Tait pled guilty to robbery using a machete. All of the offenders were aboriginal.
- [60] Mr. Brossault was sentenced to six years less pre-trial custody, for additional time of three and a half years. Mr. Brossault was 28 years old with a criminal record consisting primarily of property, drug, and breach offences. It was an extensive criminal record, but less serious than in Vickers, and he was on bail at the time of the offence.
- [61] His co-accused Mr. Lagimodiere was sentenced to two years less a day. He had pre-trial custody of 47 months. He was 18 at the time of the offence. This was his first adult offence, but had a youth record for drug and property offences.
- [62] Mr. Tait was obviously in a different situation due to the number of counts. He received a sentence of four and a half years. He was at a young age, he expressed remorse, and he was viewed as high potential for rehabilitation. He had youth convictions for robbery and assault.
- [63] With respect to the Maple Ridge incident, the three individuals broke into a residence, all wearing masks, and tied up the occupant with an electrical cord. There were two handguns possessed, one real, one replica, as well as a machete. The victim was struck in the head, which split his head open, when they saw him looking at them, and they loaded up his car and drove off with many of his goods in it.
- [64] In his decision, Mr. Justice Joyce provides a helpful review of the sentences in other home invasion cases, starting with the case of *R. v. Bernier*, 2003 BCCA 134. Bernier was a case in which the Court of Appeal sat in a panel of five judges to try to determine whether its previous decisions had altered the usual range for home invasion. There are separate concurring judgments, but they establish some key principles. First, that absent unusual factors, a range between five to eight years for offences of this nature is appropriate to consider; and secondly that a range is simply one consideration in arriving at a fit sentence which, as I said earlier, has to be based upon the circumstances of the offence, the circumstances of the offender, and the applicable principles of sentencing.

- [65] I just pause to note that the Crown takes the position that the decision of Mr. Justice Joyce is less persuasive, because it does not appear the more recent decision of Moore, which referred to the range of sentence as six to thirteen years, was brought to his attention.
- [66] In *R. v. Drydgen*, 2013 BCSC 1876, Madam Justice Watchuk was dealing with a case where it was a guilty plea to a break and enter of a dwelling house and robbery, after there had been an appeal. Mr. Drydgen was sentenced to four years less pre-trial custody. Crown sought five and a half years and defence sought three years.
- [67] It is important to note that in that case, the role of Mr. Drydgen was that of the driver of the minivan which transported the others to the scene. There was no evidence that he possessed or used any weapon or committed an assault. He was 25 years old. He had a serious criminal record, most of it as a youth. His adult record consisted of breaching court orders, drug offences, and theft, some while on bail for the current charge. In all of the circumstances, his role was considered to be at the extreme low end, so a sentence below the range, plus he had considerable pre-trial custody. Clearly Mr. Steinhauer's role is far different from that of the case of Drydgen.
- [68] The case of *R. v. Deadder*, 2011 BCSC 306, is of limited assistance because it was a guilty plea with a joint submission for six and a half years, less pre-trial custody credit, for a three-year sentence. It was also a home invasion case in which the accused were masked, victims were held at gunpoint, and one was hit in the head. Mr. Deadder had an extensive criminal record, including robbery and weapons offences. Another aggravating factor was that Mr. Deadder had committed the home invasion just two months after being released from custody, after serving what, in effect, was a four-and-a-half-year sentence for robbery. I note that that is somewhat similar to Mr. Steinhauer, who had just been paroled. The co-accused in the Deadder case was sentenced to five years less pre-trial custody.
- [69] The final defence case was *R. v. Nava-Rivas*, 2013 BCSC 2176 which was a sentencing by Mr. Justice Smith post-trial on a home invasion case. Mr. Navas-Rivas was sentenced to six years: five years global for the break and enter and robbery, and one year consecutive for the firearm.
- [70] The accused and another male broke a window and gained entry in the early morning. It was a house occupied by a family with two children, who had limited English. Mr. Navas-Rivas was found to be the man who entered the bedroom, pointed a gun at the female, and demanded money. Mr. Navas-Rivas was 23 years old, he had a troubled youth, and he had a criminal record including assault causing bodily harm and unlawful confinement, where he was sentenced to 16 months' jail and probation for two years. He was on sentence at the time of the offence.
- [71] Mr. Justice Smith canvassed all of the pertinent cases, including Vickers, Bernier, and Deadder, referring to the common themes of denunciation and deterrence are the primary factors, while rehabilitation is the secondary factor in sentencing in these types of cases.

[72] In my view, there is no need to parse away the different numbers or ranges referred to in these cases, as ranges serve merely as a guideline for any sentencing. As can be seen from my review of the cases, there is a broad range in the sentences imposed in home invasion type cases. The range is due to a number of factors, including the nature and extent of involvement, use of a firearm, the degree of violence involved, and the criminal record. The cases consistently state, though, that in these types of offences, the paramount consideration in sentencing is deterrence and denunciation, given that these crimes violate the safety and security of a person's home.

PRINCIPLES OF SENTENCING

[73] The fundamental principles to be considered by the court in sentencing are established by Parliament in the Criminal Code. Section 718 provides for the fundamental purposes to be served, is 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. A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[74] Section 718 of the Criminal Code also sets out a number of objectives that a sentencing judge must consider. These are: to denounce unlawful conduct to deter the offender and other persons from committing offences; to separate offenders from society where necessary; to assist in rehabilitating offenders; to provide reparations for harm done to victims or the community; and to promote a sense of responsibility in offenders and acknowledgement of the harm done to victims and the community.

[75] As a sentencing judge, I am also guided by the principles set out in 718.2. An important one is that a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender. Another important principle is that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[76] Section 718.2(e) of the Code requires a sentencing judge to pay particular attention to circumstances of aboriginal offenders. As explained by the Supreme Court of Canada in *R. v. Gladue*, [1999] 1 S.C.R. 688 and then subsequently in *R. v. Ipeelee*, 2012 SCC 13, the purpose of this provision is to attempt to address the over-representation of aboriginal people in jails. Our Court of Appeal has recently reiterated that a sentencing judge must take note of the systemic factors affecting aboriginal persons and, if available, specific information with respect to a particular offence: see *R. v. Florence*, 2015 BCCA 414; *R. v. Gilliland*, 2014 BCCA 399.

- [77] Gladue, nor the cases following, including the case of *R. v. Wells*, [2000] 1 S.C.R. 207, 2000 SCC 10 impose a particular result; rather, they impose a particular process. Aboriginal offenders are not expected to receive a diminished sentence in every case. It is recognized that once a judge has considered all of the appropriate factors, a fit sentence is still in the sentencing judge's discretion: see also *R. v. Elliott*, 2015 BCCA 295.

Application of the Principles of Sentencing to the present case

- [78] Firstly, there is the consideration of both the mitigating and aggravating factors. In terms of the mitigating factors, there is the guilty plea. Mr. Steinhauer is genuinely remorseful for his actions and accepts responsibility for them. He spoke in court and sincerely apologized for his selfish acts, and I found him to be sincere.
- [79] Secondly, there are his efforts at rehabilitation. While in custody, Mr. Steinhauer has made some progress, including completing the criminal and addictive thinking workbook and the socialization workbook, and he is presently working on his relapse prevention workbook. As well, he has once again engaged with the John Howard Society to provide him with some support moving forward.
- [80] However, there are a number of aggravating factors in this case. Firstly, there is the nature of the offence. This type of offence is commonly referred to as a home invasion. The Criminal Code contains no specific offence known as home invasion, but the term is frequently used to describe incidents that involve breaking and entering in combination with other violent crimes. The specific offences involved in this case are robbery and breaking and entering, each of which carries a maximum life sentence, and use of an imitation firearm while committing an indictable offence, which carries a maximum sentence of 14 years and a mandatory minimum sentence of one year, to be served consecutively to sentence imposed for other offences arising from the same incident. Given the nature of the offence, s. 348.1 of the Code applies as an aggravating factor.
- [81] Secondly, there is the role of Mr. Steinhauer. I characterize him as the leader. He carried the imitation firearm. He pointed the firearm at Mr. Pontaletta and screamed at him, "Three seconds, show me where all your money and drugs are." He demanded that Mr. Pontaletta open the safe in the closet, saying he would kill him if he did not open the safe. He took the cash from Mr. Pontaletta's suitcase. When Mr. Pontaletta could not open the safe, Mr. Steinhauer punched him in the jaw twice. He chased after Mr. Pontaletta when Mr. Pontaletta tried to flee, and after he was arrested, he said to Mr. Pontaletta, "You ratted on me. I know where you live."
- [82] Secondly, this was not a spontaneous crime, but a planned attack. In the presentence report, Mr. Steinhauer admitted that he had the correct address, but he entered the wrong house. This was a targeted invasion, albeit it was the wrong house.

- [83] Thirdly, there is the fact that there was the use of the weapon. Mr. Steinhauer used his imitation firearm to rob, threaten, and intimidate the victims at the residence.
- [84] Then there was the duration of the attack. This incident lasted approximately 13 minutes from the time Mr. Steinhauer and the other male entered the residence until the police arrived.
- [85] In addition to that is the fact that Mr. Steinhauer chased one of his victims on foot as he tried to flee for safety.
- [86] Then there is the trauma for the multiple victims. As indicated earlier, two of the victims explained that they suffered for months after this invasion into their private space. They feared for their safety and could not even be comfortable in their own residence. No doubt they were all terrified and suffered from the trauma of having strangers break into the sanctity of their home in the early morning hours and threaten and rob them.
- [87] The motivation for the crime was pure greed. Mr. Steinhauer admits that the crime was financially motivated. As he stated to the author of the presentence report, he thought it was worth the risk if he could just kick in one door and get a lot of money in one shot. No doubt Mr. Steinhauer now realizes that that was a very bad decision and it demonstrated an utter lack of concern for the victims.
- [88] The criminal record is also an aggravating factor. In addition to the litany of serious criminal offences, there is the most aggravating fact that Mr. Steinhauer had just been released on parole for two robbery convictions when he committed this offence. It is difficult to imagine a more aggravating factor than the combination of Mr. Steinhauer recently paroled for robbery and break and enter charges, together with his extensive criminal record, including 14 prior break and enter convictions and three prior robbery convictions. In my view, the cumulative impact of the extensive criminal history and the fact he was on parole at the time of this offence can be viewed as an exceptional factor that would justify a sentence outside the normal range.
- [89] Because Mr. Steinhauer is an aboriginal, we must also consider the Gladue factors. As stated earlier, aboriginal offenders are not expected to receive a diminished sentence in every case. It is recognized, as I said, that once a judge has considered all the appropriate factors, a fit sentence is still the sentencing judge's decision.

Range of Sentence

- [90] It is a principle of sentencing that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. As I said numerous times already, I appreciate that sentence ranges are merely suggestions or guidelines, and my task as a sentencing judge is to craft an appropriate sentence for this particular offender with regard to the circumstances both of the offender and the offence, together with the principles of sentencing as I have referred to earlier.

- [91] As discussed, I have been provided with several cases that set out the range of sentence for this type of offence, from the low range between five to eight years, and at the higher range between six and thirteen years. It is axiomatic that each case be determined on its own facts, and while previous cases are useful in establishing a range of sentence, sentencing is a highly individualized process.
- [92] The circumstances giving rise to these offences are disturbing and the prospect of future violent offences is not encouraging, despite Mr. Steinhauer's expression of a desire to leave his criminal activity behind.

Deterrence and Denunciation

- [93] As reflected in the cases I have canvassed, the sentencing principles of deterrence and denunciation are of paramount importance in cases involving violent entry into a residence which, as Mr. Justice Frankel stated in *Vickers*, "violate the safety and security of a person's home." Mr. Justice Frankel referenced the case of *R. v. Meigs*, 2007 BCCA 394 at para. 25, where Madam Justice Saunders stated:

... it is a grave offence to enter another person's home without permission, and graver to enter the home and violate the occupant. The courts must and do impose stern sanctions for such crimes.

- [94] With respect to specific deterrence, it is apparent to me that Mr. Steinhauer has taken some steps to deal with his issues and has expressed his intention to leave his criminal lifestyle behind. However, general deterrence and denunciation are the two components that are paramount, so that members of the public understand that this type of unauthorized invasion into the safety and security of a person's home is extremely serious and will not be tolerated. As our courts have repeatedly said, those who engage in this type of behaviour will face stern sanctions for such crimes.

Rehabilitation

- [95] I must also consider rehabilitation. Mr. Steinhauer has expressed a sincere and genuine desire to engage in various rehabilitative programs to assist him in becoming a contributing member of society. Although he had already been engaged with the John Howard Society at the time he committed these offences, he has expressed a desire to continue to deal with them.
- [96] The prospects for rehabilitation cannot be overlooked when crafting an appropriate sentence, but it is of secondary importance when dealing with the type of case before me. Indeed, it has been recognized by our Court of Appeal in cases such as *Vickers*, which refers to the decision of *R. v. Muller*, (1993), [1993] B.C.J. No. 223, 22 B.C.A.C. 194 (C.A.), rehabilitation is far less significant when there is a need to protect the public from an offender who has demonstrated a penchant for violence.

ANALYSIS

- [97] Crafting the appropriate sentence in this particular case is a difficult exercise. It involves a careful examination of the circumstances of the offence, the nature and severity of the conduct of the offender, together with the personal circumstances of the offender. I am required to pay particular attention to the circumstances of aboriginal offenders in order to endeavour to achieve a truly fit and proper sentence in the particular case.
- [98] In determining an appropriate sentence in this case, I have considered the guilty plea and expression of remorse by Mr. Steinhauer, the principles of sentencing, including the Gladue factors, the circumstances of both the offence and the offender, and the case law.
- [99] Offences such as this were premeditated and aggravated. Mr. Steinhauer and his accomplice came armed and prepared to use violence to achieve their objectives. A fair and appropriate sentence in this case must emphasize the goals of deterrence and denunciation.
- [100] Sentence ranges are not immovable. They are guidelines to be used when one is examining the individual circumstances of the case.
- [101] Mr. Steinhauer, if you could please stand, I am going to impose your sentence.
- [102] I am imposing a global sentence of 10 years. The sentence will be as follows,
- with respect to Count 1, the break and entering and robbery, I sentence you to nine years;
 - with respect to Count 2, the robbery count, I sentence you to nine years concurrent;
 - with respect to Count 3, use of a firearm while committing a robbery, I sentence you to one year consecutive;
- for a total sentence of 10 years or 120 months.
- [103] I must also factor into that sentence the credit for your pre-trial custody. At the time of the sentencing hearing on April 22nd, I was advised by your counsel and Crown that pre-trial credit in the amount of 14 months was due. I must also factor in the 13 days that have passed since that which, by my calculation, provides you with an additional 20 days' credit for pre-trial custody.
- [104] So taking into account the 14 months and 20 days' pre-trial custody from the global sentence of 10 years, your additional sentence will be eight years, seven months, global.
- [105] In addition, there will be a firearms prohibition pursuant to s. 109(2) of the Code for life; and a DNA order pursuant to s. 487.051 of the Code.
- [106] I must also impose a victim fine surcharge in the amount of \$200. Now, I have not heard anything from counsel with respect to that, so in my view it would be appropriate to impose the victim fine surcharge of \$200 payable forthwith.
- [107] MR. SCHULTZ: Thank you, My Lady.

[108] THE COURT: You can sit down, Mr. Steinhauer. With respect to the other counts?

[109] MR. ANTONUK: Thank you, My Lady, Crown enters a stay of proceedings on Counts 4, 5, and 6.

[110] THE COURT: All right, so I believe that concludes our matter.

[111] MR. ANTONUK: It does, My Lady.

[112] THE COURT: I wish you good luck, Mr. Steinhauer.

"Devlin J."

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