

CANADA / JUDGMENT

R. v. Stinson

2015 BCSC 1806

COURT

Supreme Court of British Columbia

DECIDED

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2015 BCSC 1806 R. v. Stinson IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Stinson, 2015 BCSC 1806 Date: 20150922 Docket: 26360 Registry: Vancouver Regina v. Robert Frederick Stinson Before: The Honourable Madam Justice Duncan Oral Reasons for Sentence In Chambers Counsel for the Crown: J.R. Patterson Counsel for the Accused: T.J. Russell Place and Date of Hearing: Vancouver, B.C. September 22, 2015 Place and Date of Judgment: Vancouver, B.C. September 22, 2015

- [1] THE COURT: On February 21, 2014, I imposed a conditional sentence of imprisonment on the offender, Robert Stinson, upon his guilty plea to two charges under the Controlled Drugs and Substances Act, S.C. 1996, c. 19: possession of cocaine for the purpose of trafficking contrary to s. 5(2) of the Act and possession of methamphetamine for the purpose of trafficking also contrary to s. 5(2) of the Act. Both offences occurred on June 19, 2012. My reasons for sentence are indexed as 2014 BCSC 441.
- [2] Mr. Stinson is before me today having acknowledged a breach of that conditional sentence order by failing to comply with his curfew condition on June 5th of this year. He was stopped for speeding on Lougheed Highway at 2:15 a.m. by police. Mr. Stinson was travelling about 100 kilometres per hour, but I was not advised of the posted speed limit at the place he was stopped. He had no driver's licence and was, in fact, prohibited from driving at the time. He was arrested for both driving while prohibited and for breach of his conditional sentence order.
- [3] Mr. Stinson is also charged with driving while prohibited arising from an offence in April 2015. That did not generate a breach allegation. Finally, he was charged with driving while prohibited in July 2015 after he was released from custody on the breach allegation that is before me. That charge has not, and I understand will not, lead to another breach allegation.
- [4] The Crown seeks revocation of the balance of the conditional sentence. The amount remaining to be served is approximately six months in light of the fact the sentence was effectively stayed when Mr. Stinson was released on bail in June. The Crown submits revocation is the rule and Mr. Stinson must demonstrate why a lesser sentence might be appropriate in the circumstances. Ms. Patterson points out that Mr. Stinson was afforded the benefit of a non-custodial sentence in February 2014 and is no longer entitled to that benefit

in light of his pattern of offending and, in particular, his breach of the curfew conditions.

- [5] Mr. Russell advises that Mr. Stinson has nearly completed his Level B welding course at BCIT. His education is the most critical part of his life circumstances right now as successful completion of the course will enable him to earn a living. It was also a key feature of his original plan in February 2014, at which time Mr. Stinson was hoping to receive his Level C Welding Ticket. I am advised he did, in fact, complete that level of training while serving the conditional sentence. Mr. Stinson is apparently doing well in school. His instructor is aware of his legal difficulties and is committed to working with him within reason to catch up with coursework he might miss as a result of a jail sentence. Mr. Helman, the instructor, roughly estimates the most classwork Mr. Stinson can miss is 20 days.
- [6] Mr. Russell acknowledges the presumption is that a conditional sentence breach will generally meet with incarceration for the balance of the sentence, but submits there are less aggravating features in this case. Mr. Stinson has not reoffended by selling or being in possession of drugs. He managed well on the conditional sentence order until the breach. Mr. Russell said since the first driving while prohibited charge did not meet with immediate consequences, it perhaps lulled Mr. Stinson into a false sense of security. While that might make sense in a vacuum, I cannot ignore the fact that Mr. Stinson was charged with driving while prohibited after the June breach.
- [7] The explanation for the breach itself is that Mr. Stinson had night classes in June, he had to be home by 10:00 o'clock, but did not think to clear this with his sentence supervisor until it was too late. Mr. Stinson eventually received permission from a supervisor to stay at a residence in Coquitlam closer to the campus to deal with the night curfew problem. As for the July driving charge, Mr. Russell advises that Mr. Stinson was returning work gear to another classmate in Merritt when he was stopped.
- [8] Mr. Russell submits that one of the biggest factors in Mr. Stinson's favour is that he had not committed Criminal Code offences or drug offences and has not relapsed into his crime cycle. He has the continued support of his spouse. A sentence of 30 days' custody would not impair his education and rehabilitation efforts.
- [9] Mr. Stinson chose to address me. He is keenly aware he makes bad choices and, in his own words, he takes two or three tries to do things the right way. He advises his life was "pretty good" up until the first driving charge in April and since then he has felt a great deal of stress as a result of the outstanding charges. He understands the hardship of living on low wages and wants to finish his welding course and make a real living. He has looked at what opportunities are out there for him in the welding job market.
- [10] I acknowledge the Supreme Court of Canada in *R. v. Proulx*, 2000 SCC 5 observed that where an offender breaches a conditional sentence without reasonable excuse, there should be a presumption that the offender serve the remainder of his sentence in jail. It is, however, a rebuttable presumption. Section 742.6(9) states:

- (9) Where the court is satisfied, on a balance of probabilities, that the offender has without reasonable excuse, the proof of which lies on the offender, breached a condition of the conditional sentence order, the court may
- (a) take no action;
 - (b) change the optional conditions;
 - (c) suspend the conditional sentence order and direct
 - (i) that the offender serve in custody a portion of the unexpired sentence, and (ii) that the conditional sentence order resume on the offender's release from custody, either with or without changes to the optional conditions; or
 - (d) terminate the conditional sentence order and direct that the offender be committed to custody until the expiration of the sentence.
- [11] The section itself requires an exercise in discretion to ensure the punishment fits the breach. Post-sentence criminal conduct will often justify termination.
- [12] In *R. v. Langley*, 2005 BCCA 478, at para.13, the Court of Appeal reviewed Proulx, and other appellate authority, and suggested a number of factors to be considered at a breach disposition hearing in determining whether the presumption of termination is to be applied. First, "the nature, circumstances, and timing of the breach; second; any subsequent criminal conduct and sentences for that conduct"; third, "changes in the plan for community supervision"; fourth, "the effect of termination on the appropriateness of the sentence for the original offence"; and, lastly, "the offender's previous criminal record." I will briefly consider each factor in turn.
- [13] First, Mr. Stinson's breach occurred nearly 16 months after I imposed sentence. There has been no repetition of his previous offence and no indication that drugs or alcohol were involved at the time of the breach.
- [14] Second, both before and after the breach, Mr. Stinson was charged with driving while prohibited under the Motor Vehicle Act, R.S.B.C. 1996, c. 318. While his conduct is hardly exemplary, it is not at the high end of the scale of criminal conduct.
- [15] Third, Mr. Stinson has not proposed any changes to his community plans. He finished one level of welding training while bound by the conditional sentence order and wants to complete a second one. The plan appears to be a realistic one and he has both support at home and at BCIT to carry it out.
- [16] Fourth, termination of the sentence at this stage would be proportionate to the original sentence. Mr. Stinson would serve some six months. The Crown sought a custodial sentence of 15 months at first instance.

- [17] Finally, Mr. Stinson has a serious criminal record and has spent much of his late teens and 20s in custody.
- [18] When I examine these factors as a whole, I cannot conclude that terminating the conditional sentence for this breach would result in a fit sentence. Mr. Stinson, in many ways, defied the odds by complying with the sentence for 16 months, completing training as he said he would, and staying away from substance abuse. The breach he did commit was not insignificant and it was coupled with the motor vehicle offence, but the nature, circumstances, and timing of the breach militate in favour of a disposition other than termination.
- [19] I find a sentence in the range suggested by Mr. Russell would be a fit sentence in this case, taking into account the nature of the breach and its timing in the context of the sentence as a whole. I also take into account that Mr. Stinson spent several days in custody after his arrest. He was released from custody on June 9th.
- [20] Mr. Stinson, would you please stand up?
- [21] Mr. Stinson, pursuant to the Criminal Code, R.S.C. 1985, c. C-46, I suspend the conditional sentence order for a period of 21 days.
- [22] You can have a seat and I am going to hear from the Crown now concerning possible changes to your community supervision conditions. [SUBMISSIONS RE COMMUNITY SUPERVISION CONDITIONS]
- [23] THE COURT: So condition number 16 will be amended to state that, "You may possess only one cellular telephone and it must be registered in your name," and the rest of that we will leave because it may pertain to work cellphones or --
- [24] MS. PATTERSON: I do not know the likelihood that he would need one for work. I was not here -- present for any of the discussions that give rise to that part of it.
- [25] THE COURT: Yes.
- [26] MS. PATTERSON: I wonder if -- and he can always seek an amendment if he is going to --
- [27] THE COURT: Yes.
- [28] MS. PATTERSON: -- be provided one.
- [29] THE COURT: I am going to insert a condition that you may seek the permission of your conditional sentence supervisor to possess other cellular phones or similar devices for work purposes. That cleans it up a bit.
- [30] MS. PATTERSON: Thank you, My Lady.
- [31] THE COURT: Thank you.
- [32] THE CLERK: To replace the last term, My Lady, or to add to the last?

[33] THE COURT: To replace it.

[34] THE CLERK: Thank you.

[35] THE COURT: So we are completely rewording condition number 16, "You may possess only one cellular telephone and it must be registered in your name and, with the permission of your conditional sentence supervisor, you may possess other cellular phones or like devices."

[36] Okay, any other changes you are seeking, Ms. Patterson?

[37] MS. PATTERSON: I do not believe so, My Lady, but if I may be permitted a brief moment to confirm that?

[38] THE COURT: Certainly.

[39] MS. PATTERSON: No, My Lady, thank you.

[40] THE COURT: Thank you. Mr. Russell, anything else that needs to be --

[41] MR. RUSSELL: Nothing further.

[42] THE COURT: -- attended to?

[43] MR. RUSSELL: Thank you.

[44] THE COURT: All right. Mr. Stinson, you will be serving 21 days. Your conditional sentence starts up again on your release from custody. There is one change to it. You are going to be asked to, I think, initial the change. It just has to do with tidying up the cellphone condition. "Duncan J."

The Honourable Madam Justice Duncan

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