
CANADA / JUDGMENT

R. v. Summers and Warner

2014 BCSC 1195

COURT

Supreme Court of British Columbia

DECIDED

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2014 BCSC 1195 R. v. Summers and Warner

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Summers and Warner,

2014 BCSC 1195

Date: 20140604

Docket: 25446

Registry: Vancouver

Regina

v.

Glenn Joseph Young,

John Lewis Roy Summers and

Scott Shefton Warner

Before: The Honourable Mr. Justice Bowden

Oral Reasons for Sentence

(re Accused Summers and Warner)

Counsel for the Crown:

J.B. MacFarlane

Counsel for the Accused, Mr. Summers:

J.R. Ray

Counsel for the Accused, Mr. Warner:

E.J. Duncan

Place and Date of Trial/Hearing:

Vancouver, B.C.

May 20, 2014

Place and Date of Judgment:

Vancouver, B.C.

June 6, 2014

- [1] THE COURT: This Court convicted John Lewis Roy Summers of break and enter of a dwelling house and the commission of an indictable offence therein, contrary to s. 348(10)(b) of the Criminal Code of Canada; robbery, contrary to s. 343; unlawful confinement, contrary to s. 279(2); assault with a weapon and assault causing bodily harm, contrary to s. 267. Reasons for this decision may be found at R. v. Summers, 2013 BCSC 1335.
- [2] Scott Shefton Warner has pleaded guilty to break and enter of a dwelling house, committing an indictable offence therein, and unlawful confinement.
- [3] These offences all arose out of an incident at the home of John Josip Vranic and Jae Yeon Ahn located at 3760 River Road, Richmond, B.C., on July 23, 2009.
- [4] At about 11:30 p.m., when Mr. Vranic had gone to bed and Ms. Ahn was preparing to go to bed, Mr. Summers, Mr. Warner, Glenn Young, and possibly one or two other men broke into their home. All of them were wearing balaclavas or masks. When he tried to activate an alarm, Mr. Vranic was beaten and pepper-sprayed. He received injuries to his face which should not be minimized but fortunately were not serious. Ms. Ahn was not physically harmed. Various items of personal property were stolen. Ms. Ahn managed to call 9-1-1 and the intruders left the home when they became aware that the police had arrived.
- [5] Shortly after the break-in, Mr. Summers and Mr. Warner were found and arrested by the police in some bushes about 700 metres from the home on River Road.
- [6] Based on my findings in the trial of Mr. Summers, it appears that his role in the home invasion may have been lesser than that of the other offenders, including Mr. Warner. The evidence suggested that Mr. Summers remained on the main floor of the house and did not participate in the beating of Mr. Vranic on the second floor nor did he deal directly with Ms. Ahn.

- [7] Neither Mr. Vranic nor Ms. Ahn provided a victim impact statement. The Crown informed the court that discussions with the complainants indicate that they still suffer the effects of this crime and are nervous in their home. They have also experienced some marital difficulties which may be attributable, in part, to the invasion of their home.
- [8] The evidence at trial indicated that the home invasion was planned and deliberate.
- [9] I will now review Mr. Summers' circumstances.
- [10] He is 26 years old and was 21 at the time the offences were committed. When he was eight years old, Mr. Summers witnessed a fight between his father and his mother's boyfriend, who died as a result. His father was convicted of manslaughter. Thereafter he was raised by his mother. He had difficulties in school. He was picked on and involved in many fights. He experimented with drugs and alcohol but did not become addicted. About five years ago, he stopped drinking alcoholic beverages and is not a drug user.
- [11] Defence counsel informed the Court that about eight years ago, Mr. Summers was mistaken for someone else and received shotgun wounds to his head which resulted in some brain damage, including memory loss. He now receives a monthly disability payment of \$906.
- [12] For various reasons, the sentencing of Mr. Summers is now taking place almost five years after the offence was committed. After his arrest, Mr. Summers spent six months in pre-trial custody. He was released on January 19, 2010. On September 2, 2010, he was discharged by the preliminary inquiry judge. On March 14, 2011, as a result of the Crown preferring an indictment on the same charges, Mr. Summers turned himself in and was then released on bail by consent. As a result, Mr. Summers has been in the community on bail for all but six months of a five-year period.
- [13] While he has been living in the community awaiting his trial and then his sentencing, Mr. Summers has been a law-abiding citizen and appears to be doing well on the road to rehabilitation. There has been no reported breach of his bail conditions, and he reported regularly to his bail supervisor. He works occasionally in the construction field but has difficulty maintaining employment because of his disabilities. A letter of support was provided by his employer, a former police officer, who also acted as a surety for Mr. Summers while he was on bail. He speaks highly of Mr. Summers and says that he has been a diligent employee in the past and he will continue to employ him in the future. Mr. Summers' mother says that he is now a better person than when the offences were committed.
- [14] Mr. Summers has a criminal record consisting of convictions on July 16, 2008, for break and enter with intent and assault causing bodily harm, for which he received three months' jail and three years of probation. He was on probation when the offences occurred on River Road.

- [15] The Crown submits that a sentence of six years' imprisonment is appropriate. Mr. Summers' counsel submits that a sentence of 18 months' imprisonment followed by two years' probation would be fit in the circumstances. Mr. Summers is entitled to a credit of one year for his pre-trial custody, and the defence proposal would result in a global sentence of 30 months and 18 months to be served in jail.
- [16] I will now turn to Mr. Warner's circumstances.
- [17] As to his participation in the offence, the evidence suggested he was upstairs and may have participated in the assault of Mr. Vranic. He may also have assisted Mr. Vranic by allowing him to rinse the pepper spray from his face. It does not appear that he had any contact with Ms. Ahn.
- [18] Mr. Warner is 29 years of age and was 24 at the time of the offences. He was born in the United Kingdom. His parents are divorced. After suffering from mental health issues, his mother died last year. His father, Julian, was present in court during the sentence hearing.
- [19] Mr. Warner immigrated to Canada when he was eight years old with his father. His father married Verna, who became like a mother to Mr. Warner. She and his father separated when Mr. Warner was 16 years of age. He has spent some time in foster care.
- [20] Mr. Warner has a seven-year-old boy and has a good relationship with his mother from whom he is separated. He pays \$300 a month in child support. He is currently in a relationship with a woman who is pregnant.
- [21] It is not clear whether Mr. Warner finished a grade 12 education. He has attended the Vancouver Film School but did not complete the program. Nevertheless, he has done some acting and is a member of the guild, earning \$23 an hour when he works.
- [22] Many problems in Mr. Warner's life relate to drug abuse. He has had a 17-year battle with drug addiction, having been introduced to heroin at the young age of 13 or 14.
- [23] His counsel explains that he participated in this offence before the court hoping to get some money, I assume in relation to his need for drugs. His counsel informed me that he was under the influence of heroin at the time the offences were committed.
- [24] Mr. Warner has taken some steps to deal with his drug addiction. From January 2012 until February 2013, he was at a recovery house known as Resurrection House. A letter from that society indicates that he progressed well during his stay there. He also assisted the society as a volunteer.
- [25] Mr. Warner has worked in construction at different times and taken some construction courses. He has also learned how to operate heavy machinery. He worked for a period of time with a large construction company on the Port Mann Bridge but was laid off in the summer of 2013.

- [26] He has slipped back into drug use since that time. However, since being incarcerated on an unrelated matter, he has completed three units of a substance abuse course and one unit of a communication course.
- [27] A number of letters showing support for Mr. Warner were filed with the court. Most of them indicate surprise that he has committed the offences before the court, and he is considered by many of his supporters to be a kind and respectful person. It seems that may not be the case when he is using drugs.
- [28] Mr. Warner has a number of prior convictions primarily for theft under \$5,000 and one for assault causing bodily harm back in 2003. The offences before me were committed while he was subject to probation orders.
- [29] His history of pre-sentence custody is somewhat complicated. In my view, the 109 days he has spent in pre-sentence custody since February 1, 2014, is at most entitled to a one-and-a-half-day credit. In light of Mr. Warner's difficulties while in pre-sentence custody, including a very serious assault on him, I will give him a one-and-a-half-day credit for that dead time. In respect of the rest of his pre-sentence custody, I will credit him with double time. I calculate the resulting credit to be 44 months.
- [30] There is another factor to consider in relation to Mr. Warner. Because he has not become a Canadian citizen since coming here when he was a child of eight, as a result of his conviction, he is subject to a removal order from Canada which will result in his deportation to the United Kingdom. As a result of the sentence he will receive today, which will exceed six months, he will lose his right to remain in Canada after he completes his sentence, subject only to an appeal to the Minister of Immigration. His counsel submits that this extra judicial consequence should itself be considered to have a deterrent and denunciatory effect.
- [31] While the Crown accepts that since the date of the offences Mr. Summers has gone a long way towards his rehabilitation, they do not see Mr. Warner in the same light. Nevertheless, the Crown is not suggesting a different sentence for each offender.
- [32] Mr. Warner's counsel submits that an appropriate global sentence for Mr. Warner would be two and a half to three years less his credit for pre-sentence custody. He says that a period of probation is not appropriate because of the removal order against Mr. Warner.
- [33] It is useful to consider the sentence received by the person who committed the same offences as Mr. Summers and Mr. Warner. Mr. Glenn Young was sentenced by Punnett J. on March 20, 2013. Mr. Young received a global sentence of six years. He has a more significant criminal history than either of the offenders before the court today. His record includes convictions for robbery, assault, uttering threats, break and enter, and possession for the purpose of trafficking in a Schedule I substance. As a result of a conviction for robbery in August 2006, he received a federal sentence of incarceration.

- [34] The Crown said that it would be inequitable to sentence either Mr. Summers or Mr. Warner to a sentence longer than six years. Defence counsel submitted that it would be unfair to sentence either individual before me to a sentence as long as that of Mr. Young in light of the different circumstances of the offenders.
- [35] I will turn to my analysis.
- [36] The purpose of sentencing and the principles of sentencing are set out in ss. 718 and 718.1 of the Criminal Code. In my view, in this case, the focus of my sentence should be on denunciation of the unlawful conduct of the offenders, deterring them and others from committing the offences, and the rehabilitation of the offenders. Section 718.1 of the Code provides that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offenders.
- [37] I have also considered the principles in s. 718.2 of the Code, in particular, the aggravating and mitigating circumstances relating to the offences; also, that these sentences should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances, and the court should consider less restrictive sanctions that might be available than jail or, in sentencing an offender to jail, the principle of restraint.
- [38] A mitigating factor for Mr. Summers is that he appears to have had a minor role in the offences committed. In addition, over the period of almost five years since the offences were committed, he has demonstrated the ability to live a law-abiding life and appears to be well on his way to rehabilitation. An aggravating factor is that he was subject to a probation order when the offences were committed.
- [39] In Mr. Warner's case, his guilty plea is a mitigating factor. An aggravating factor is that he was subject to more than one probation order at the time he committed the offences.
- [40] With regard to both offenders, I am directed by s. 348(1) of the Code to consider the break and enter of a dwelling house which is occupied at the time and where violence results to a person or property as an aggravating factor in sentencing.
- [41] Crown counsel referred the court to *R. v. Clark*, 2013 BCPC 143, as a case that sets out the range of sentence for the offence of home invasion based on decisions of the B.C. Court of Appeal, including *R. v. Vickers*, 2007 BCCA 554, and *R. v. Moore*, 2008 BCCA 129. In *R. v. Moore*, Low J.A. at para. 14 says the following:
- The various home invasion cases to which we have been referred seem to establish a range of six to 13 years. The total sentence for a particular individual will depend on the degree of violence involved, the offences committed in the invaded premises and the extent of the offender's involvement.
- [42] The global sentence upheld by the Court of Appeal in that case was six years. The nature of the home invasion in *Moore* was more serious than the one before me.

- [43] In *R. v. Vickers*, Frankel J.A. said, at paras. 12 and 13:
- [12] This Court has repeatedly stated that deterrence and denunciation are the primary factors in sentencing for violent crimes, particularly when these crimes violate the safety and security of a person's home. As Madam Justice Saunders recently stated in *R. v. Meigs*, 2007 BCCA 394 at para. 25, "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."
- [13] While rehabilitation cannot be overlooked, it is of secondary importance in dealing with a case of this kind. This is particularly so when there is no indication that the offender is a good candidate for rehabilitation. Indeed, the indicators with respect to Mr. Vickers point in the opposite direction, given his criminal record and the fact that he engaged in serious criminal activity within hours of being released from jail.
- [44] A global sentence of 10 years was upheld by the Court of Appeal in *Vickers*. In my view, the violence was more significant in *Vickers* and it involved the use of firearms. While there was some evidence that one or two of the persons entering the house in this case carried firearms, there was no evidence that they were carried by either Mr. Summers or Mr. Warner.
- [45] As I have mentioned, the Crown also says that the sentence in this case should not exceed that of Mr. Young, which was six years. That, of course, is at the lower end of the range suggested in *R. v. Moore*. Mr. Young's criminal record was more significant than either Mr. Summers or Mr. Warner. He has a prior conviction for robbery and had served a federal sentence. Also, Mr. Young pleaded guilty to these offences and another break and enter which was committed while he was on bail on this offence.
- [46] Defence counsel have referred to a number of authorities in relation to sentences for similar offences where the sentences imposed have been below the range suggested by the Court of Appeal in *Moore*. Of the cases referred to by defence counsel, the ones that have similarities to the case at bar are *R. v. Sproule*, 2008 BCSC 1804, and *R. v. Menard*, 2008 BCSC 1798.
- [47] In *Sproule*, a home invasion in Victoria led to the beating death of an occupant. He was believed to have a large sum of money in his home as a result of drug trafficking activity. Cullen A.C.J. concluded that the jury had a reasonable doubt that a risk of harm would have been probable in *Sproule's* mind as they found him not guilty of manslaughter and attempt robbery. It was also noted that he had an unblemished history and support in the community. As to the target of the home invasion being money from drug trafficking, Cullen A.C.J. noted, at para. 37:
- [I] accept that breaking into a house to steal from those innocent of any offence would inspire greater repugnance from the community . . .

The global sentence imposed was two and a half years' jail.

- [48] Menard pleaded guilty to both the offence of aggravated assault and break and enter with intent which involved a home invasion. Menard and another entered the home with weapons and zip ties. An occupant was beaten. Like the case at bar, it is not clear how many persons were involved in the home invasion, and it may have been five or six. Menard kicked in the door and carried a weapon to intimidate the occupant. Cullen A.C.J. concluded that Menard and Blair both played a significant role in the break and enter and had a significant degree of moral culpability. Blair was not involved in the aggravated assault. It was not apparent from the reasons whether either offender had a criminal record.
- [49] Referring to a range of sentence for home invasions of four to six years, Cullen A.C.J. recognized Menard's guilty plea and the fact that he testified for the Crown and sentenced him to two years and eight months plus credit for five weeks in pre-sentence custody.
- [50] It is not clear from the authorities provided why different ranges of sentence are referred to for offences arising from a home invasion. It perhaps is explained by the different degrees of seriousness in those cases. It also appears that where there are significant mitigating factors, this court has imposed a sentence below the lower end of the range.
- [51] There are some similarities between the circumstances of Mr. Summers and Mr. Blair. They were both young men at the time they committed the offences. It is apparent that Mr. Summers' life is on track and has been since this offence was committed almost five years ago. He is well on his way down the path of rehabilitation. He has the support of family and friends in the community and his employer. I accept Mr. Ray's submission that to disrupt his progress with a federal sentence might well change the direction of Mr. Summers' life for the worse.
- [52] In light of those mitigating factors, I am satisfied that in addition to his time served, a provincial period of incarceration is sufficient to denounce the conduct of Mr. Summers to deter him and others from committing offences while addressing but at the same time not impairing the rehabilitative steps that he has taken.
- [53] Mr. Summers, I will ask you to stand, sir.
- [54] I sentence you to 18 months' imprisonment which takes account of a 12-month credit for your pre-sentence custody. I will also impose a two-year period of probation with conditions to be determined at the conclusion of this sentence.
- [55] I also impose a s. 109 firearms prohibition for your lifetime.
- [56] Mr. Summers, you must submit to a DNA analysis under s. 487.051 of the Criminal Code.
- [57] Turning now to Mr. Warner, there are some notable differences between his circumstances and those of Mr. Summers. Mr. Warner has a lengthier criminal record, although it largely consists of thefts under \$5,000. Mr. Warner was subject to three probation orders at the time he committed the offence, in contrast to Mr. Summers. It appears that after they entered the house, Mr. Warner was a more active participant in the offences than Mr. Summers.

However, at the same time, Mr. Warner pleaded guilty to the offences, and that is a mitigating factor.

- [58] Another difference is that whatever sentence Mr. Warner serves, in all likelihood, when he is released, he will be deported to the United Kingdom. Importantly, except during the time of his most recent incarceration when he completed some rehabilitative courses, Mr. Warner has not yet travelled very far along the road of rehabilitation.
- [59] Mr. Warner, I will ask you now to stand, sir.
- [60] Considering the principles of sentencing in the Criminal Code, your circumstances, and being mindful of your guilty plea, I have concluded that a sentence of six months in addition to your pre-sentence custody for which I have credited you with 44 months' jail for a global sentence of 50 months, or four years and two months, addresses the principles of sentencing.
- [61] In addition, a s. 109 firearms prohibition for your lifetime is ordered, and you will also have to submit to a DNA analysis under s. 487.051.
- [62] In light of the removal order against Mr. Warner, no probation order will be made.
- [63] With respect to the terms of probation for Mr. Summers, he shall not possess any weapons as defined by the Criminal Code; he shall not have any contact, directly or indirectly, with either of the two named complainants; he shall seek and maintain employment at the request and to the satisfaction of the probation officer and he shall report as and when and how directed by his probation officer.
- [64] These sentences will be the same on each count and concurrent on each count for both Mr. Summers and Mr. Warner.

"Bowden J."

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