
CANADA / JUDGMENT

R. v. Swain

2011 BCSC 1221

COURT

Supreme Court of British Columbia

DECIDED

23 August 2011

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Swain,

2011 BCSC 1221

Date: 20110823

Docket: 38377

Registry: Penticton

Regina

v.

Christopher Michael Swain

Before: The Honourable Mr. Justice Ehrcke

Oral Reasons for Sentence

Counsel for the Crown:

S. Firestone

Counsel for the Accused:

J. Watt

Place and Date of Hearing:

Penticton, B.C.

August 22 and 23, 2011

Place and Date of Judgment:

Penticton, B.C.

August 23, 2011

- [1] THE COURT: Mr. Swain was charged on an eight-count indictment, with a number of robbery and weapons offences. The matter was set to proceed this week and next, with a trial by jury, but Mr. Swain has now pleaded guilty to Counts 2, 3, 4, 5, and 7, and the Crown has indicated that it will be entering a stay of proceedings on the remaining counts.
- [2] Counts 2, 3, 4, and 5, are counts of robbery, contrary to s. 344(1)(b) of the Criminal Code. Each carries a maximum penalty of life imprisonment. Count 7 is a charge of possessing a firearm without a licence, contrary to s. 92(1). The offences took place over about two weeks, from March 31 to April 16, 2009. They may properly be described as a "spree" and for that reason the Crown has submitted that concurrent sentences are appropriate.

FACTS

- [3] By way of background, Mr. Swain was granted day parole in December 2008, in relation to a previous robbery. In February 2009, he was given permission to attend a Narcotics Anonymous meeting, but he failed to return to his halfway house in time for his curfew. A warrant was issued, but he did not return. Instead, he went to Vancouver Island where he entered into a romantic relationship with Ruby Christopherson [phonetic]. In late March 2009, they started travelling in her car on a road trip through the Interior and the present offences began.
- [4] Count 2 occurred when Mr. Swain entered the Vancity Credit Union, on London Avenue in Mission, at 2:45 p.m., on March 31, 2009. He wore a black, hooded sweatshirt, blue jeans, a baseball cap, and sunglasses. He put a note in front of a teller that read something to the effect of, "Give me \$5,000 in fifties. I have a gun. No dye packs. Give me the cash. Don't tell anyone or I will shoot." When the teller went to get the money, Mr. Swain retrieved the note and moved to another wicket where he robbed a teller and a customer of \$2,800.
- [5] Count 3 occurred at 11:00 a.m., on April 6, 2009, when Mr. Swain, similarly dressed, entered the Bank of Nova Scotia, 401 Main Street, Penticton. He again presented a note and demanded money out loud. He left with \$1,400.
- [6] Count 4 was a robbery at 2:07 p.m., the same day, April 6, 2009. Mr. Swain entered the Canadian Imperial Bank of Commerce on Harvey Road, Kelowna. He gave the teller a note that read, "Give me \$4,000. No dye packs. I don't want to have to kill you, but I will if I have to." The teller gave him cash with a dye pack, which he located and threw back at her. He left with \$2,800.

- [7] Count 5 was at the Bank of Nova Scotia, 1050 Main Street, Penticton, at 11:40 a.m., on April 11, 2009. This time, Mr. Swain was with a male accomplice. Mr. Swain presented a note demanding \$5,000. He took away \$3,900 in that robbery.
- [8] All this while, Mr. Swain was still travelling with Ms. Christopherson. On April 12, 2009, she traded in her white car for a red Chrysler, paying in cash. On April 15, 2009, they went to a motel in Maple Ridge.
- [9] The next day, the police located them and executed a search warrant. In the hotel room, they found hooded sweatshirts and a note. In the car, they found a Chinese handgun and a magazine under the front seat, both unloaded. The handgun was analyzed and found to be a functional firearm according to the definition in the Criminal Code. That is the foundation for Count 7. It is to be noted that Mr. Swain never produced a firearm during any of the robberies and never used any actual violence. Rather, he relied on threats.

VICTIM IMPACT

- [10] Victim impact statements were filed by two of the tellers who were robbed by Mr. Swain. They dramatically reveal the severe and negative impact these offences have had, and continue to have on them, compromising their ability to work and their general psychological wellbeing.

CIRCUMSTANCES OF THE OFFENDER

- [11] Mr. Swain is 33 years old. He started using drugs at an early age and is now addicted. His craving for drugs is the major impetus for most of the offences in his lengthy criminal record, which includes three previous robberies, one as a young offender, and two as an adult. His other offences are primarily property crimes and drug offences. He has more than 25 convictions as an adult and more than 15 as a young offender. He has spent much of his life incarcerated. He has a Grade 12 education and has taken courses in plumbing and framing while in custody. When he is released, he plans to reside in Alberta, where he hopes to get work in the oilfields. He has the continuing support of his father in Victoria.
- [12] I am mindful of the principles of sentencing set out in Part XXIII of the Criminal Code, including ss. 718 to 718.2. The Crown submits that deterrence, denunciation, and protection of the public are the paramount considerations on sentence in this case. The defence submits that rehabilitation must be considered as well. I agree. Mr. Swain is still a relatively young man of 33. It is not too late for him to turn his life in a new direction. What is critical is that he come to terms with his addiction to drugs and particularly heroin. I am told that he is currently on a methadone program, and I would encourage his efforts at rehabilitation.

SUBMISSIONS OF THE PARTIES

- [13] The Crown and the defence have made a joint submission that, apart from credit for time in custody, the appropriate sentence would be six years on each of the robberies, and six months on the firearm offence, with all the sentences concurrent.
- [14] In accordance with the principles discussed in *R. v. Browning*, 2006 BCSC 1478, I find that Mr. Swain has spent 406 days in custody, from April 16, 2009, when his parole was revoked, until July 12, 2010, which would have been his statutory release date on his prior conviction had it not been for these offences.
- [15] Counsel are agreed that he should receive double credit for that time in custody, for a total of 812 days. On that basis, the joint submission is for Mr. Swain to be sentenced to an additional three years, ten months incarceration on the robberies, and six months on Count 7, all concurrent.
- [16] Counsel have referred me to a number of cases where robbery sentences have ranged from three to six years, including *R. v. Lackey*, 1999 BCCA 549; *R. v. Thompson*, 2008 BCCA 350; *R. v. Dionne*, 2004 BCCA 275; *R. v. Anderson*, 2007 BCCA 462; *R. v. Longtin*, 2001 BCCA 614; *R. v. Rosov*, 2006 BCCA 276, and *R. v. A.D.P.*, 2005 BCCA 625.
- [17] Sentencing is an individualized matter, and each sentence must be tailored to the particular circumstances of the offence and the offender. On the particular facts of this case, given the multiple robberies, Mr. Swain's long criminal record, and the trauma he has caused to his victims, I am satisfied that a substantial period of incarceration is required.
- [18] On the other hand, Mr. Swain's guilty plea is a mitigating factor, as is the fact that although he threatened violence, he never used actual violence and never produced a gun. I take account, as well, of the fact that Mr. Swain is struggling with an addiction to drugs. In all the circumstances, I am satisfied that the joint submission represents an appropriate and fit sentence.
- [19] Mr. Swain, would you please stand.
- [20] Were it not for the time you have already spent in custody in relation to these matters, I would have found a fit sentence to be six years on each of the robberies. Giving you 812 days credit for the 406 days in pre-trial custody, I sentence you to an additional three years, ten months imprisonment, on each of Counts 2, 3, 4, and 5. On Count 7, you are sentenced to six months imprisonment. All the sentences are concurrent.
- [21] Taking account of the serious nature and circumstances of the offences, Mr. Swain's lengthy criminal record and the minor impact a DNA order would have on his privacy and security of his person, I am satisfied that it is in the best interests of the administration of justice to grant the application by the prosecutor for an order pursuant to s. 487.051 for the taking of DNA samples for forensic analysis.

- [22] With respect to each of the four counts of robbery, the order will be in Form 5.03 pursuant to s. 487.051(1), as those are primary designated offences.
- [23] With respect to Count 7, the order will be in Form 5.04, pursuant to s. 487.051(3), as it is a secondary designated offence.
- [24] In addition, there will be an order, pursuant to s. 109(1) of the Criminal Code, prohibiting the possession of any firearm, cross-bow, restricted weapon, ammunition and explosive device. Pursuant to s. 109(3), the prohibition will be for life, as this is not the first conviction for the offence to which the order relates.
- [25] In light of the substantial period of imprisonment, there will be no victim fine surcharge.
- [26] MS. FIRESTONE: My Lord, the Crown directs a stay on Counts 1, 6, and 8.
- [27] THE COURT: Thank you.
- [28] MR. WATT: Thank you, My Lord.
- [29] MS. FIRESTONE: Thank you, My Lord.
- [30] THE COURT: Anything further?
- [31] MR. WATT: No.

The Honourable Mr. Justice W.F. Ehrcke

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