
CANADA / JUDGMENT

R. v. Toenders

2017 BCSC 2520

COURT

Supreme Court of British Columbia

DECIDED

15 December 2017

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2017 BCSC 2520 R. v. Toenders

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Toenders,

2017 BCSC 2520

Date: 20171215

Docket: 169496-2

Registry: Victoria

Regina

v.

Clayton William Toenders

Ban on Publication CCC 486.4

Before: The Honourable Mr. Justice Baird

Oral Reasons for Sentence

Counsel for Crown:

J. Byrne

Counsel for Accused:

T. Magder

Place and Dates of Hearing:

Victoria, B.C.

December 15, 2017

Place and Date of Judgment:

Victoria, B.C.

December 15, 2017

- [1] THE COURT: Mr. Toenders, I will start with the ancillary orders. You have a long criminal record and it is for some pretty heavy-duty stuff. This is not a trivial criminal record. This is a serious criminal record. Because of it, amongst other things, I am going to make an order under s. 109 of the Criminal Code of Canada that you are prohibited, for the rest of your life, from possessing any firearm, crossbow, restricted weapon, ammunition, and explosive substance and also any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition.
- [2] Sexual assault is a primary designated offence, and that means that you are going to have to provide a sample of your DNA. I hereby order that you are to surrender such a sample immediately by the least intrusive means possible. I suppose you have done this before, Mr. Toenders, but you are going to do it again. As you know, your DNA information will be stored in a federal databank, the better to be able to detect you if you commit further offences.
- [3] I am very concerned about you, Mr. Toenders, because of your record, the grave facts of the present case, and because of the observations I made here in court. You have a terrible temper, an ungovernable temper. I have been in courtrooms pretty well every day for many years, and I have to tell you, Mr. Toenders, that it is very rare for an accused person to explode like you did in open court. You were in a solemn setting, you had a lot at stake, and even then you could not keep yourself together. You have got to sharply correct your attitude towards women and develop insight into your anger. You have got to pull yourself together, or else I am here to tell you, Mr. Toenders, you are going to spend a lot of your life in jail.
- [4] I would very strongly urge you to consider that now is the time to take matters seriously, to reflect deeply on your life, on how you have lived it, on your behaviour towards other people, and in particular your misconceptions about women and the rules of sexual activity. Your conduct belies a very clear and comprehensive lack of appreciation for the most basic courtesy and regard with which you should treat other people, and unless you figure things out, Mr. Toenders, your life is going to be a disaster. Your children are going to grow up without a father. It sounds like their mother is not going to be able to help them. So here it is: your two little boys are going to rely on you, your mom, your sister and your brother. If you do not straighten up, you will be abandoning them. Their lives are going to be extremely difficult and there is more than a passing chance that they will follow in your footsteps to the jailhouse.

- [5] I am just going to ask you to pause to consider that for a moment: how do you like the idea of your young sons ending up in prison, like their dad? No. No, no, no. It is not too late to turn this thing around, Mr. Toenders. It is not too late for you to rehabilitate yourself. It is not too late for you to become a useful and productive member of our society, and most importantly to be a good and effective parent. You can do it, but you have to conquer your personality problems. You have to take seriously that a new approach to life and to dealing with other people, especially with women, is long overdue. You have to understand, Mr. Toenders, that the time is now. Do you understand that?
- [6] THE ACCUSED: Yeah. Yes, I do.
- [7] THE COURT: Are you prepared to take those steps? Are you prepared to struggle with and cure yourself of the problems that you have?
- [8] THE ACCUSED: Yes, sir, I am.
- [9] THE COURT: The offence before me, Mr. Toenders, is very serious. It amounts to a major sexual assault. These things exist on a continuum from reasonably minor transgressions to extremely serious ones involving forced intercourse, occasioning serious bodily harm, in which weapons are used, and so forth. No two cases are alike. Your case is a matter of individual assessment. The cases that I have been handed and referred to are useful in providing me with the parameters, but no two cases are the same.
- [10] This was a case in which matters went way out of control in very large measure because you were drinking too much. I think the combination of alcohol abuse, your very serious temperamental issues, and a deplorable contempt for the complainant, combined on this occasion to produce a serious violent crime.
- [11] The predominant principles of sentencing in a case like this are denunciation and deterrence. It is my duty to impose a sentence that is going to drive it through your head that substantial improvement is necessary here, substantial rehabilitation, substantial correction, is necessary, and to punish you, to act as an announcement to the public that cases such as this will be treated severely, and that significant penalties will be imposed on sexual offenders in the name not only of individual but of general deterrence.
- [12] It is my obligation where necessary, and I consider it here to be necessary, to separate you from society for as long as I think it might be necessary for you to engage in the sort of corrective processes that I have been talking about. To provide some measure of reparation to the victim in this case, to promote in you a sense of responsibility for what you have done. But I also have to mind the importance of your rehabilitation, which I consider to be all the more vital because I am very concerned that these two little boys, your sons, are going to have to fend for themselves in this life unless you turn things around.

- [13] I am very glad that you have the support of your sister, who seemed as I spoke to her today to be a perfectly reputable and responsible person. It sounds as if your mother is a person of common sense and good will as well. So there is a substantial foundation of support for you to build on. You have the kind of support that frankly, Mr. Toenders, a lot of people who come before this court do not have, and I hope with their assistance you will be able to restore order and tranquility to your life.
- [14] I have to impose a sentence that is similar to others imposed on persons in similar situations who do similar things. That is the point of the case book that has been given to me. I have read and considered all of the cases submitted by counsel: *R. v. Cook*, 2016 BCSC 742; *R. v. Reddemann*, 2017 BCSC 1731; *R. v. Allard*, 2011 BCSC 915; *R. v. Aulakh*, 2010 BCSC 1194; *R. v. Hume*, 2016 BCCA 230; *R. v. G.M.*, 2015 BCCA 165; and *R. v. Nadeau*, 2017 BCPC 158. In addition I have considered *R. v. Dyck*, [1986] B.C.W.L.D. 3285 (B.C.S.C); *R. v. Gracie* [1993] B.C.W.L.D. 1926 (C.A.); *R. v. Ajimotokan*, 2013 ONSC 1961; *R. v. Z.(D.R.)* (1998), 39 W.C.B. (2d) 361 (B.C.S.C); and *R. v. M.P.*, 2011 BCPC 382.
- [15] I am satisfied on the basis of this survey of the law, Mr. Toenders, that the appropriate range of sentence in this particular case, involving as it does violence, oral penetration, and attempted vaginal penetration, is a prison term of three to five years. You have already spent the equivalent of twenty-three months, just shy of two years, in custody.
- [16] Your record as I have said is serious. It starts when you were a youth in Barrie, Ontario, and continues into adulthood with offences of violence beginning in 2004, where I see an assault causing bodily harm; an assault with a weapon in 2006; followed by an extortion offence in which you assaulted and threatened a woman if she did not give you money, and kidnapping charges from 2011 in Brampton. There is also an assault and resist arrest in 2014. These convictions for significant offences against the person are interspersed with mischiefs, thefts, and other lesser crimes. This is serious record, as I have said, Mr. Toenders, and all I can say is that from here on in you are looking at very long sentences for re-offending.
- [17] On this occasion, in my respectful view, the three-year lower end of the range that I have referred to is not appropriate, because you do have a significant background of criminal offending. The lower end would inadequately reflect not only the court's condemnation of your present criminal offending, it would fail to emphasise and take proper account of the background and context of your long and repetitive criminal record. I bear in mind, on the other hand, that it is in our collective best interests, the community's long-term best interests, all of us, that is, Mr. Toenders, that you should rehabilitate yourself, that you should get yourself sorted out, and that you should move forward in life as a peaceful non-violent member of our community. If your children do not provide you with the motivation that you need to accomplish this goal, I doubt that there is any other spur that will do the trick.

- [18] In short, I must impose a sentence that is going to be retributive, deterrent, and denunciatory, but which also attempts within the realm of what is realistic and possible to assist in your rehabilitation. It is my considered view that an appropriate sentence, net of time spent in custody already, is one of 22 months. In other words, Ms. Byrne, the total sentence, and I want the record to reflect this, is one of 45 months.
- [19] This means that you will spend an additional 22 months in custody, Mr. Toenders. During that time, I want you to continue the work that you are doing with the psychologists who are assisting you with your rehabilitation while you are in prison. When you are released I am going to bind you by the terms of a probation order which is imposed to assist you further. The probation order is not intended to be punitive, it is intended to create a structure in which you will succeed in your rehabilitation.
- [20] Before I forget, in accordance with the terms of s. 743.21 of the Criminal Code of Canada you are to have no contact, directly or indirectly, with the complainant, K.S., while you are in custody, and a no-contact order will be a term of the probation order too. I will get to that in a second. I should also say that K.S. has declined the opportunity to provide a victim impact statement and she is not present in court today.
- [21] Your 22-months additional jail time, as I say, will be followed by a probation order. You did not address me about length, Ms. Magder. It struck me that I have been mispronouncing your name the whole time. Sorry about that. It's Magder not Madger, isn't it?
- [22] MS. MAGDER: Yes, My Lord, Magder.
- [23] THE COURT: I've been calling you Madger. Please forgive me.
- [24] MS. MAGDER: That's okay. Everyone does it. I don't even notice anymore.
- [25] THE COURT: I am glad for once to be one of the majority. How long a period of probation were you suggesting?
- [26] MS. MAGDER: Well, My Lord, the last one that he received was 18 months. I think at least two years would be appropriate.
- [27] THE COURT: Ms. Byrne?
- [28] MS. BYRNE: Two sounds right.
- [29] THE COURT: Another reason why I think this is a fit sentence, and it is part of my intention in imposing it, is that you are going to be under the court's supervision for longer than if I had given you a federal sentence, in all likelihood. You have been on probation before. You do not have an appreciable history of breaches, so that is good. I am confident that you can comply with this order, and if you do, you will be well along the road to the promised land of a law-abiding life which, as I said, is what you should want and the public has the right to expect.

- [30] I will impose a probationary term of 24 months on your release from custody. You are, within 72 hours of your release from custody, to report to the probation officer in -- he is going to be serving his time at Wilkinson Road, is he?
- [31] MS. BYRNE: Could we just say nearest his place of release.
- [32] THE COURT: Nearest your place of your release, yes. Within 72 hours of your release you are to report to the probation office nearest to the place of your release and thereafter as directed.
- [33] You are to appear before this court when required to do so by this court.
- [34] You will keep the peace and be of good behaviour.
- [35] You are to have no contact, directly or indirectly, with K.S.
- [36] You are to notify the court or your probation officer in advance of any change of name or address and promptly notify the court or the probation officer of any change of employment or occupation.
- [37] You are to seek and maintain suitable employment. I want you to get back in the swing of civilian life immediately, Mr. Toenders, and continue on the road to recovery. I want you to start earning and providing for your sons as soon as you get out.
- [38] At the direction of your probation officer you are to accept, to attend for, and to successfully complete any course of counselling including for anger management and for sexual offenders and if your probation officer considers it necessary such a course of counselling may include residential treatment.
- [39] You are not to have any weapons in your possession within the meaning of that term defined in s. 2 of the Criminal Code of Canada.
- [40] You are not to possess or to consume any alcohol. And I will pause there to say, Mr. Toenders, that what happened here should make it very clear to you that you and alcohol are a dangerous mix. It is time for you to get used to the idea that you are going to have to get through life without booze. I think that is clear as day.
- [41] Any other terms or conditions that you might care to see included, Ms. Byrne?
- [42] MS. BYRNE: When he is to report he is to report within the 72 hours and then thereafter as directed, and can there be a term that he is to reside in a residence approved of by the probation officer?
- [43] THE COURT: I will add that term. You are to reside where directed by your probation officer and not to change that place of residence without the advance written approval of the probation officer.
- [44] Anything else, Ms. Byrne?

- [45] MS. BYRNE: I just ask Your Lordship to consider whether it might be wise to have a curfew that he is not to be out between certain hours unless it is for employment purposes or with the permission of his probation officer. I am just thinking about going downtown late at night and the attraction of bars and things as well. He might also need a prohibition from entering bars and licensed establishments.
- [46] THE COURT: I will take that into consideration.
- [47] Ms. Magder?
- [48] MS. MAGDER: Yes, My Lord. Given that Mr. Toenders doesn't seem to have a compulsion to consume alcohol, it's more that he's made these conscious decisions to do so and it's ended badly for him. My submission is that he does not need to be controlled to that extent. I think the no alcohol condition will be enough to have him not consume any alcohol. Even if he were not on that condition I don't think he'd be consuming any more alcohol. I think he's realised that that's it for him on that. With regards to the curfew, I don't see any real reason it should be imposed other than a punitive measure, My Lord.
- [49] THE COURT: Well, the punitive aspect of this sentence as I said is from the custodial portion of it. I am not going to impose a curfew because the restrictions on his liberty are serious enough by dint of the sentence that he will have served, which as I said is going to amount cumulatively to 45 months.
- [50] I am not going to impose a curfew as a term of your probation, Mr. Toenders. I am going to rely on you to show the initiative to do the right thing. I will, however, make an order that during the term of probation you are not to be found in any bar, pub or nightclub. I do not want you hanging out in booze cans. You can go to restaurants, of course.
- [51] MS. BYRNE: The only thing I think that was outstanding was a Sexual Offender Identification Registry Act order for 20 years.
- [52] THE COURT: Oh, yes. Do you have anything to say about that? It is often mentioned almost as an afterthought. Why 20 years? Is that mandatory?
- [53] MS. BYRNE: It's mandatory.
- [54] THE COURT: Is it?
- [55] MS. BYRNE: It's a sexual assault proceeded by way of indictment so it's 20 years.
- [56] MS. MAGDER: In that case I don't think I have any submissions on that.
- [57] THE COURT: All right. There will be an order under the Sexual Offender Identification Registry Act for 20 years. Your lawyer will explain that to you, Mr. Toenders, but this is one of the incidents of being convicted of an offence of this nature. You will be placed on the national registry of sex offenders, and you will stay there subject to the terms and conditions in the form mandated by parliament for the period of 20 years. Anything else?

[58] All right, Mr. Toenders, stand up, please. The only thing left for me to do is to express my hope that you will be successful in your rehabilitation, and that from this point forward your life will be a happy and productive one. Good luck.

"Baird J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/17/25/2017BCSC2520.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-toenders-2017>

Prepared on 26 October 2026 · Esheria