

CANADA / JUDGMENT

R. v. Tomac

2020 BCSC 168

COURT

Supreme Court of British Columbia

DECIDED

6 January 2020

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2020 BCSC 168 R. v. Tomac

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Tomac,

2020 BCSC 168

Date: 20200106

Docket: 68542-2

Registry: Chilliwack

Regina

v.

Stephen Ray Tomac

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Before: The Honourable Mr. Justice Crabtree

Oral Reasons for Sentence

Counsel for the Crown:

C.M. Lawlor

Counsel for the Accused:

P.R. Derksen

Place and Date of Hearing:

Chilliwack, B.C.

January 6, 2020

Place and Date of Judgment:

Chilliwack, B.C.

January 6, 2020

- [1] THE COURT: This matter comes before me by way of a joint submission. Let me state at the outset, Mr Tomac, I find the sentence as proposed by both counsel an appropriate disposition of the matter in the circumstances. I will now provide, for the purpose of the record, the formal reasons for the sentence.
- [2] Mr. Tomac entered guilty pleas to Counts 1 and 4 of indictment 68542-2. Count 1 that, on or about March 17, 2017, he committed aggravated assault of Mr. B.B., contrary to s. 268(2) of the Criminal Code and Count 4 that, on the same date, he used a firearm, a shotgun contrary to s. 85(1), while in the course of committing the indictable offence of aggravated assault.
- [3] Guilty pleas were entered on a previous occasion and Mr. Tomac appeared this morning, at which time sentencing submissions were provided by the Crown and defence. The matter was briefly stood down, in order to consider the submissions.
- [4] This matter came to the attention of the RCMP, as a result of their responding to shots having been fired in a residential area in Abbotsford, on March 17, 2017. The incident was the result of a confrontation that initially occurred at the residence of Mr. Tomac, on Peardonville Road. When the police arrived, Mr. Tomac was outside of the residence and observed to be severely inebriated. He was eventually taken into custody as a result of these events and charged with the offences now before the court.
- [5] There was some history to the events that occurred on March 17, 2017. To take a step back for some context, two weeks prior to March 17, 2017, Mr. Tomac had a social gathering at his residence. At that time, there were a number of uninvited people who attended the residence. During their attendance Mr. Tomac was assaulted, following which the individuals left.
- [6] Two weeks later, on March 17, 2017, Mr. Tomac organized another social event to which friends were invited to his home. At some point during the evening, several individuals of the group that had attended on the previous occasion re-attended. Upon their arriving on the property, an argument erupted.
- [7] The small group of individuals left the residence and returned with a larger group, armed with various weapons. As a result of which, a melee ensued.

- [8] There was a physical confrontation between those invited to the residence, including Mr. Tomac and Ms. Marsh, a person he is in a relationship with. During the confrontation, they were both assaulted. Also assaulted was a friend of theirs, Mr. B.B.
- [9] During this second confrontation and the melee that followed, Mr. B.B. was struck in the head with a machete by Ms. Marsh. Eventually, Mr. Tomac went to a closet, took hold of a shotgun, and went outside of his residence in an effort to force the group to leave the area. The group proceeded to leave. Mr. Tomac, perhaps motivated by the heat of the moment and/or his consumption of a significant amount of alcohol, made the regretful decision to follow after these individuals down the street. Ultimately, he fired the weapon towards a vehicle which some of the group had travelled in to get to the residence. While some of the group congregated in the vicinity of the vehicle, it was not suggested there were people in the vehicle at this point in time.
- [10] The firing of a weapon in a residential area in the vicinity of a group of individuals gives rise to the very serious concern of both individual and public safety.
- [11] The Crown concedes, had Mr. Tomac simply stopped at his property line after he had got this group of individuals to stop the confrontation and move on, it is unlikely that matters would be before the court today. However, Mr. Tomac did proceed further. He followed these individuals and fired several shots in the direction of one of the vehicles used by members of the group to travel to the scene, putting them and members of the public at risk.
- [12] The police were called and attended. As a result of their attendance, they located both the vehicle and the shotgun.
- [13] The Crown submits these are somewhat special or unique circumstances. They note that Mr. Tomac was not the initial aggressor to what gave rise to what occurred but, that said, his actions in response clearly crossed the line and put at risk persons who were in the area at the time these events unfolded.
- [14] It should be acknowledged that Mr. Tomac is pleading guilty to Count 1 as a party to that offence, not as the person who wielded the weapon that caused the damage. While he is still criminally responsible or liable for that assault, it is on a slightly different footing than the person who struck the individual in the head.
- [15] I note that it was a significant injury, in that the blow resulted in a fractured skull to the victim.
- [16] No victim impact statement was filed in this matter, however I am advised the victim has been briefed by the Crown and is aware of the outcome and the manner in which the matter is proposed to be addressed.

- [17] Mr. Tomac is a young man. He is 28 years of age, and has a grade 10 education. He has been employed by BCI for the past eight years and currently earns \$32 per hour. There is a letter filed by Mr. Derksen on behalf of Mr. Tomac, dated March 13, 2019, which speaks very highly of Mr. Tomac. It confirms that he has been working full time with that company.
- [18] In his letter, the company president set out that Mr. Tomac "is a very hardworking employee, and part of our company family". He goes on to talk about Mr. Tomac's improved attendance more recently at work. This speaks to Mr. Tomac treating his position seriously. The president says, "he is a valuable asset to the company", and goes on to note that "we would hate to lose him". He added that if there is any way in which job monitoring or the system could see to it that Mr. Tomac could continue in his employment while he is serving a sentence, the court could and should explore that opportunity because of his value to the company.
- [19] There is no opportunity to do so, but the letter and the way in which the president has crafted his reference, speaks highly of Mr. Tomac's contribution and value to the company.
- [20] Of course, there is a concern as to whether Mr. Tomac will have work when he returns. One hopes that he does but, as Mr. Derksen notes, it is not a sure thing and this will be a significant impact, not just to Mr. Tomac, as a result of the sentence to be imposed today but also to those that he has a relationship with and to those he supports.
- [21] In that regard, he is in a relationship with Ms. Marsh, and they have a child together. Clearly, the child is an important part of Mr. Tomac's life. He expressed that earlier, when addressing the court.
- [22] Mr. Tomac has no criminal record until today. This is a significant factor in considering this matter.
- [23] I will also say that Mr. Tomac has expressed remorse for his actions and has taken responsibility for them. He did so not just by way of entering a guilty plea, but also through his counsel and his own comments to the court in which he talked about how disappointed he was that the matter got to this stage. How in taking matters into his own hands he went outside the bounds of appropriate behaviour that should be exhibited or displayed when confronted with such a situation. He stated that he accepts the responsibility of his poor choice.
- [24] Mr. Tomac, when discussing the appropriate sentence, there is a framework set out in the Criminal Code, in s. 718, which talks about the principles that this Court must take into account. These include denunciation, general and specific deterrence, protection of the public, your rehabilitation, providing reparation for the harms done to victims and the community, and promoting a sense of responsibility in those that come before the court to be sentenced.

- [25] I will note that the fundamental principles central to the sentencing process are proportionality and parity.
- [26] In considering the appropriate sentence, the court also needs to take into account any mitigating and aggravating factors.
- [27] First of all, factors in your favour in considering the appropriate penalty are that you entered a guilty plea, albeit prior to the matter coming to trial in this Court and following a preliminary inquiry. As Mr. Derksen notes, there were obvious reasons why the matter needed to proceed to the preliminary inquiry. In my view, entering a guilty plea at this stage is still a relevant mitigating factor.
- [28] You have no criminal record. That, too, is an important consideration.
- [29] That you were not the primary instigator is another mitigating factor, rather you responded in an inappropriate and illegal way to a group of individuals who had assaulted you and the person you are in a relationship with.
- [30] I take into account that you have acknowledged your responsibility.
- [31] The aggravating factors are, of course, that a firearm was involved and was used as a way in which to scare off individuals. It is indeed fortunate that no member of that group or some unsuspecting member of the community was injured as a result of your effort.
- [32] As previously noted, this matter comes before me by way of a joint submission, and by that I mean both the Crown and defence have urged upon this Court the imposition of a period of incarceration as is required, with respect to Count 4. This count has a minimum mandatory sentence of one year. With respect to Count 1, I note that Ms. Marsh was charged with her involvement in this matter and was sentenced to a period of incarceration. She was permitted to serve that period of incarceration in the community. I am told and accept that she entered that plea on the basis that she was the main proponent of the assault towards the victim in Count 1. Your involvement was as a party to the offence.
- [33] It is submitted that the sentence on Count 1 not add any additional time to this sentence, such that there should be a period of incarceration imposed with respect to Count 1, but that it should be served at the same time, or concurrent, with the one-year minimum sentence that must be imposed.
- [34] In considering the joint submission, I take into account the direction this Court receives from the Supreme Court of Canada in the case called *R. v. Anthony-Cook*, 2016 SCC 43 [Anthony-Cook] at para. 2, which speaks about the joint submissions on sentence, as they are an accepted and acceptable means of a plea resolution and that they occur every day in courtrooms across the country, and they are vital to the efficient operation of the criminal justice system:

- [2] Joint submissions on sentence - that is, when Crown and defence counsel agree to recommend a particular sentence to the judge, in exchange for the accused entering a plea of guilty - are a subset of resolution discussions. They are both an accepted and acceptable means of plea resolution. They occur every day in courtrooms across this country and they are vital to the efficient operation of the criminal justice system. As this Court said in *R. v. Nixon*, 2011 SCC 34, [2011] 2 S.C.R. 566, not only do joint submissions "help to resolve the vast majority of criminal cases in Canada", but "in doing so, [they] contribute to a fair and efficient criminal justice system" (para. 47).
- [35] Joint submissions need to be assessed by the court. The Court held the view that joint submissions should not be lightly interfered with. In assessing the submission, the court must be satisfied that the proposed sentence would not bring the administration of justice into disrepute or otherwise contrary to public interest.
- [36] The Court of Appeal of our province has said that the normal range of sentence is between 16 months and six years for a person entering a plea to aggravated assault. This should demonstrate to you the gravity with which our appellate court view the offence. That said, a sentence range is just that, a range which can be deviated from in certain circumstances.
- [37] In my view, the circumstances warrant the consideration of the sentence proposed by your counsel and the Crown. I come to this conclusion for the various reasons expressed at the outset, the mitigating factors including your guilty pleas, and the somewhat unique circumstance or factual matrix within which the offences occurred.
- [38] It is for these reasons that I am of the view that the appropriate disposition is a sentence which results in the one-year minimum period of incarceration that must be imposed as a result of ss. 85(1) and (2) of the Criminal Code. Accordingly, I impose a sentence of one year with respect to Count 4.
- [39] With respect to Count 1, I impose a sentence of nine months. Those two sentences, as I said at the outset, are to be served at the same time or concurrently, so the total sentence is one year or 12 months' incarceration.
- [40] There are several orders where no issue was taken with respect to them, and as I am required under the provisions of s. 487.051, having considered the matter, I do impose a DNA order. That order will require you to provide a sample taken from the interior of your mouth, or a swab. That sample will then be registered in the DNA databank, in Ottawa. That will be obtained while you are in custody.
- [41] I believe that the weapons prohibition is for a period of 10 years -
- [42] MS. LAWLOR: And it is pursuant to 109, My Lord.

- [43] THE COURT: - section 109 of the Criminal Code; there will be a mandatory weapons prohibition imposed. You will be provided with the wording of that order. It will be reviewed with you before you sign the document, and you will have a copy of it to take with you which prohibits your possession of weapons as defined by that section, for a period of 10 years.
- [44] And finally, there is the matter of the victim surcharge which, subject to any submissions, will be ordered payable forthwith, and one day, but I will wait for submissions and hear from Mr. Derksen.
- [45] MR. DERKSEN: Well, I am content to take that approach and make it payable forthwith, in default, a certain number of days in custody concurrent with what he is serving.
- [46] THE COURT: All right. I am going to make it one day, concurrent with the time he is currently serving, unless the Crown has any submissions they wish to make.
- [47] MS. LAWLOR: No.
- [48] THE COURT: Finally, Mr. Tomac, there was the matter of things that were seized as a result of this by the police. The Crown has made an application that they are seeking that those items be forfeited, and that ultimately they will be destroyed. Those items were the subject of the flow chart which was prepared and, having heard no objection, I am going to endorse that order and hand it back to Madam Registrar.
- [49] Now, it strikes me that Mr. Tomac may wish to keep that letter of reference; and if he does, then I will simply ask Madam Registrar to take a photocopy and file that in the file. But if Mr. Tomac does not wish it, then that can be filed.
- [50] MR. DERKSEN: Do you want to keep that letter, or do you have a copy?
- [51] THE ACCUSED: No, that's not a copy.
- [52] MR. DERKSEN: Okay.
- [53] THE ACCUSED: I would like to keep it, yeah.
- [54] THE COURT: Yes. So Madam Registrar, if you would take a copy of that, file that, and then provide it to Mr. Derksen.
- [55] Now, are there any other matters that we need to address?
- [56] MS. LAWLOR: Yes, My Lord. The Crown will enter a stay of proceedings on Counts 2, 3, 5 and 6 as they relate to Mr. Tomac, and that should then effectively take care of all accused on this indictment.
- [57] THE COURT: Finally, thank you for your helpful submissions this morning.
- [58] Mr. Tomac, sir, good luck. Thank you.

"T.J. Crabtree J."

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