

CANADA / JUDGMENT

R. v. Vaillant

2020 BCSC 1137

COURT

Supreme Court of British Columbia

DECIDED

15 July 2020

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

2020 BCSC 1137 R. v. Vaillant

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Vaillant,

2020 BCSC 1137

Date: 20200715

Docket: 46638

Registry: Prince George

Regina

v.

Darcy Frederick Vaillant

Before: The Honourable Mr. Justice A. Mayer

Oral Reasons for Sentence

Counsel for the Crown:

T.R. Mitchell-Banks, Q.C.

Counsel for the Accused:

A.S. Sidhu

Place and Date of Trial/Hearing:

Vancouver, B.C.

July 14 and 15, 2020

Place and Date of Judgment:

Vancouver, B.C.

July 15, 2020

[1] THE COURT: Darcy Frederick Vaillant appears before me today for sentencing on a multi-charge indictment relating to events at or near Fort St. James, British Columbia, on May 7, 2016. On October 24, 2019, I found Mr. Vaillant guilty of five firearms-related offences and one offence of uttering threats. Those offences, Counts 1, 3, 4, 5, 6, and 8 of the indictment are as follows:

Count 1

... [that he] without lawful excuse [used] a firearm in a careless manner or without reasonable precautions for the safety of other persons, contrary to Section 86(1) of the Criminal Code.

Count 3

... [that he] did carry or have in his possession a firearm, for a purpose dangerous to the public peace or for the purpose of committing an offence, contrary to Section 88(1) of the Criminal Code.

Count 4

... [that he] did possess a restricted firearm, knowing that he was not the holder of a licence under which he may possess the firearm or knowing that he was not the holder of a registration certificate for the firearm, contrary to Section 92(1) of the Criminal Code.

Count 5

... [that he] did possess a prohibited device, an oversize cartridge magazine, knowing that he was not the holder of a licence under which he may possess it, contrary to Section 92(2) of the Criminal Code.

Count 6

... [that he] did possess a loaded prohibited or restricted firearm, without being the holder of an authorization or a licence under which he may possess the firearm in that place and/or a registration certificate for the firearm, contrary to Section 95(1) of the Criminal Code.

...

Count 8

... [that he] did knowingly utter a threat to Police Officers, to cause death or bodily harm to Police Officers, contrary to Section 264.1(1) of the Criminal Code.

- [2] Mr. Vaillant had also been charged under Count 2 with pointing a firearm at police officers contrary to s. 87(1) of the Criminal Code, R.S.C. 1985, c. C-46, and under Count 7 with recklessly discharging a firearm contrary to s. 244.2(1)(b) of the Criminal Code. At the end of the Crown's closing submissions, the Crown entered a stay of proceedings on Count 2. I found Mr. Vaillant not guilty of Count 7.
- [3] Before sentencing is pronounced, I must consider the question of whether any of the convictions should be set aside on the basis of the rule against multiple convictions set out in the decision of *R. v. Kienapple*, [1975] 1 S.C.R. 729 [Kienapple]. The Crown submits that Count 4 is a lesser included offence to Count 6. Both of these counts relate to the possession of a restricted firearm without being the holder of the required licence, registration, or authorization for the firearm. For this reason, the Crown says that pursuant to Kienapple, Count 4 should be conditionally stayed, and I agree.
- [4] There is an obvious factual connection between Counts 4 and 6 as they pertain to the same handgun. There is also a legal nexus as Count 4 is a lesser included offence to Count 6. As a result, I will enter a conditional stay for Count 4.
- [5] Count 5 is also a possession offence, but it relates to the oversize cartridge magazine. It is, in that respect, factually distinct from the other charges, so it will not be stayed. With respect to Counts 1 and 3, these offences are factually similar. In the circumstances of this case, both offences relate to the discharge of the pistol by Mr. Vaillant. However, I adopt the reasoning of Justice Griffin in *R. v. Powers*, 2016 BCSC 2606, and find that the offences are legally distinct. Accordingly, a stay in respect of those counts is not warranted.
- [6] Finally, with respect to application of the Kienapple principle, Counts 1, 3, 6, and 8 are also legally distinct, and in some cases factually distinct from each other. Count 6 does not require proof of a dangerous purpose that is at the heart of Count 3 or the use of a firearm that is at the heart of Count 1. These differences highlight the different aims of the provisions, as Count 6 is directed to the proper licensing of firearms, not the use or purpose for which the firearm is possessed. Count 8, uttering threats, is also factually and legally distinct as it captures the words Mr. Vaillant uttered towards the RCMP officers on the scene.
- [7] Accordingly, I will proceed with sentencing Mr. Vaillant for Counts 1, 3, 5, 6, and 8.
- [8] I will briefly summarize the circumstances of the offences for which Mr. Vaillant has been convicted, which were set out in greater detail in my reasons for judgment.
- [9] On May 7, 2016, the Fort St. James RCMP received a report that Mr. Vaillant had a gun and that he may be suicidal. This report was made by Aaron Lessing, legal counsel for Mr. Vaillant's ex-wife, Jamie Vaillant. Ms. Vaillant had called Mr. Lessing, advising that she had

received a troubling call from Mr. Vaillant. Mr. Vaillant, who was at his family's cabin, his mother's cabin in Pinchi Lake, British Columbia, had called Ms. Vaillant and told her that he was aware that the police were on their way to execute a warrant for his arrest issued in family court proceedings, that he was not going back to jail, that he was armed, and that he was going to kill himself.

- [10] Shortly after receiving the first report, Fort St. James RCMP received a report of a gunshot made by the owner of a home nearby Mr. Vaillant's mother's cabin. RCMP officers were dispatched to and attended at, ultimately surrounding Mr. Vaillant's mother's cabin. Neighbours were evacuated. At some point, the RCMP's emergency response team (ERT) was deployed. A tense standoff lasting almost eight hours ensued. During the standoff, while standing outside the front entry to the cabin, Mr. Vaillant waved a loaded .45-calibre semiautomatic pistol in the direction of RCMP officers who had arrived.
- [11] Mr. Vaillant fired a number of shots from the pistol, in addition to the shot fired earlier that day that was reported by a neighbour. These included several shots after the RCMP arrived on scene, including shots into the air, one into a TV inside the cabin, and another out the open front door of the cabin, which at the original trial I found was likely fired into the air.
- [12] On more than one occasion, Mr. Vaillant threatened to or inferred that he could, if he wanted to, kill members of the RCMP who were on scene. These threats were intended by Mr. Vaillant to be and were taken seriously by the RCMP officers and were made to intimidate them. Although I do not consider that Mr. Vaillant actually intended to kill members of the RCMP, he made the threats, intended them to be taken seriously and they were taken seriously.
- [13] Despite his threats, throughout the standoff Mr. Vaillant expressed to the police that he did not want to hurt anyone, which again supports my earlier comment that the threats were not, in effect, intended to be carried out.
- [14] He repeated on numerous occasions his intention to kill himself or to, in effect, force the police to take his life. At the trial resulting in his conviction, Mr. Vaillant's actions were referred to by his counsel at the time as attempted suicide by cop.
- [15] Mr. Vaillant's girlfriend, Tracy Marshall, had travelled with him to his mother's cabin. During the standoff, Ms. Marshall sought to prevent Mr. Vaillant from being shot by the RCMP, which included on a couple of occasions acting as a human shield by placing herself between him and members of the RCMP equipped with high-powered rifles. Shortly before the standoff ended, Ms. Marshall hid Mr. Vaillant's .45-calibre pistol under the seat cushion of an armchair inside of the cabin. She provided Mr. Vaillant with sleeping pills. Mr. Vaillant then went to sleep.
- [16] Ms. Marshall was eventually persuaded to leave the cabin by members of the RCMP and was escorted away to safety.

- [17] After Mr. Vaillant exited the cabin for the last time, the RCMP ERT blocked his access or return to the cabin. A brief struggle ensued. Mr. Vaillant was apprehended after being tasered by members of the RCMP.
- [18] I accept that there was some resistance on the part of Mr. Vaillant prior to the arrest but I am not satisfied that it was significant.
- [19] After Mr. Vaillant was placed under arrest, the cabin and the surrounding property were searched by the RCMP. The .45-calibre pistol, a restricted firearm, was located under the seat cushion of the armchair inside the cabin, where it had been placed by Ms. Marshall, along with an oversize, loaded, detachable cartridge magazine, which is a prohibited device. A number of empty shell casings were found both inside and outside of the cabin. Although Mr. Vaillant had previously held a licence for the possession of a non-restricted firearm, that licence had expired many years before in approximately May 2007.
- [20] There are various maximum terms of imprisonment set out in the Criminal Code for the offences for which Mr. Vaillant has been convicted. The firearms possession offences, Counts 3, 5, and 6, each carry a maximum term of imprisonment of ten years pursuant to ss. 88(2), 92(3), and 95(2)(a). The offence of uttering threats, Count 8, has a maximum term of imprisonment of five years under s. 264.1(2) of the Criminal Code. Finally, the offence of careless use of a firearm, Count 1, has a maximum term of imprisonment of two years under s. 86(3) of the Criminal Code.
- [21] Mr. Vaillant is not subject to any mandatory minimum sentences.
- [22] With respect to each of the counts, the Crown suggests that an appropriate sentence for each of those would result in a total sentence of 18 and one-half years. The Crown ultimately seeks a sentence of five and a half to six years in consideration of the totality principle and an evaluation of whether or not sentences should be served concurrently or consecutively.
- [23] Defence counsel, on the other hand, seeks a conditional sentence order under which Mr. Vaillant would serve his sentence in the community under strict conditions, on the basis that the appropriate sentence for all of the relevant counts would result in a term of imprisonment of less than two years.

Background:

- [24] Mr. Vaillant did not testify at trial. With respect to his background, I have the benefit of a presentence report dated January 30, 2020, and a forensic psychiatric report dated April 15, 2020. Mr. Vaillant has also provided other materials, including a certificate of completion from the Kinghaven Treatment Centre with respect to a residential drug and alcohol treatment program, and information regarding his participation in drug and alcohol treatment programs and related volunteer work, and as well has provided a number of letters of support from family and friends, and some information with respect to his work background prior to the offences. These documents and submissions from counsel have

provided me with additional information regarding Mr. Vaillant's personal history.

- [25] Mr. Vaillant is currently 59 and was born and raised in Metro Vancouver. He presently lives with his common law partner, Ms. Tracy Marshall, in a home that they share.
- [26] Mr. Vaillant has no history of family violence. The documents indicate that his childhood and teenage years, though, were not without their challenges.
- [27] Outside of the home, Mr. Vaillant reported suffering emotional and sexual abuse at the hands of a soccer coach, as well as bullying through his teenage years. He submits that these experiences triggered his use of alcohol, a coping mechanism that became persistent.
- [28] His father passed away nine years ago and he has a positive relationship with the remaining members of his family.
- [29] According to the author of the presentence report, Mr. Vaillant had a dysfunctional relationship with his ex-wife Jamie Vaillant, with whom he had three children. After their separation, he had another child with a different partner. That relationship disintegrated as a result of mutual alcohol and substance misuse. His current common law relationship with Ms. Marshall is described in the presentence report and the psychiatric report as stable and supportive.
- [30] Mr. Vaillant had been employed for some time as a high income earner in the maritime sector as a maintenance manager with one of the Lower Mainland container terminal operators until he went on disability leave in 2015. At this time, he receives approximately \$6,400 per month in either disability or pension benefits, I do not think it matters which.
- [31] Prior to and at the time of the offences, Mr. Vaillant was struggling with alcohol and substance misuse, including misuse of prescription medications, methamphetamine, and heroin. The author of the presentence report noted that Mr. Vaillant was under the influence of some of these illicit substances when the offences were committed.
- [32] This information is noted by the author of the presentence report and it can only have been that that information was provided to the writer by Mr. Vaillant. After hearing the submissions of the Crown and submissions of the defence it is unclear to me whether or not Mr. Vaillant was under the influence of alcohol or drugs at the time that the offences themselves were committed, or if he became so intoxicated after the offences were committed and before he was apprehended.
- [33] Nonetheless, according to the author of the psychiatric report, based on Mr. Vaillant's blood alcohol level when he was admitted to hospital after his arrest, Mr. Vaillant's level of intoxication may have been as high as 289 milligrams per 100 millilitres at the time of the offences. Again, it is not clear to me if he was so intoxicated when the offences were committed, or whether he was so intoxicated at the time of his arrest.

- [34] Consistent though with a significant degree of intoxication, Mr. Vaillant has a poor recollection of the events giving rise to his conviction, although to his credit he does not dispute that he committed the offences.
- [35] The details provided in the psychiatric report highlight Mr. Vaillant's history of alcohol misuse, and in particular the role that alcohol may have played in the present offences. Mr. Vaillant self-identifies as an alcoholic and feels that his misuse of alcohol is his primary mental health concern. He appears to have experienced most of the diagnostic criteria associated with severe alcohol use disorder.
- [36] In addition to his struggles with substance and alcohol misuse, Mr. Vaillant has a history of experiencing mental health challenges. According to the presentence report, he reported to have suffered from depression for approximately ten years. He attempted to take his life twice prior to the events in May 2016, once in 2010 and once again a few years later in 2012 or 2013. Mr. Vaillant was recently diagnosed by his psychologist with post-traumatic stress disorder ("PTSD") and severe depression. He has been seeing a psychologist since 2005 and received some mental health support sporadically before then.
- [37] At the time of the drafting of the psychiatric report, Mr. Vaillant did not report any significant mental health concerns and the author was unable to speak to Mr. Vaillant's mental health diagnosis. However, the author indicated that Mr. Vaillant's engagement with a psychologist likely has and will continue to benefit Mr. Vaillant in his efforts to maintain his sobriety.
- [38] Since the date of the offences, Mr. Vaillant reports having taken steps to stop his use of illicit substances or alcohol. He completed a 72-day residential addictions treatment program at the Kinghaven Treatment Centre in Abbotsford after he was released from custody in July 2016.
- [39] Since then, he has regularly attended at Alcoholic Anonymous ("AA") meetings along with Ms. Marshall. Although he provided different dates for the start of his current period of sobriety to the authors of the psychiatric report and the presentence report, I am satisfied that he has been sober for a period of between three and a half and four years.
- [40] Mr. Vaillant attributes his sobriety in part to his participation in AA programming and his involvement with Bridging The Gap. Bridging The Gap is a non-profit organization that assists people in transitioning from a detox or treatment facility into an AA program. Mr. Vaillant is currently the chairperson for a local Bridging The Gap chapter in Chilliwack. Both the Presentence report and the psychiatric report indicate that this community involvement has been a significant source of support for Mr. Vaillant. Ms. Marshall advised the author of the presentence report that she believes Mr. Vaillant has come a long way from the date of the offences and that his outlook on life is more positive.

- [41] Mr. Vaillant has a criminal record, primarily comprised of a number of driving-related offences occurring between 2006 and 2010. He also has one conviction for uttering threats in 2014, for which he received a conditional discharge and probation. In this case, though, the Crown was unable to provide details with respect to the nature of the charges giving rise to that conviction.
- [42] Given the role that alcohol has played in Mr. Vaillant's offending, his risk of reoffending directly relates to his risk of relapse. That is made clear in the presentence report and the psychiatric report.
- [43] As noted in the psychiatric report, Mr. Vaillant does not otherwise appear to have any historical risk factors associated with offending, apart from some of the difficulties he experienced during childhood. Currently he has a number of protective factors that reduce his risk of reoffending, including his period of sobriety, his insight into his struggles with alcohol and the role that they played in his offending, and his support from and participation in the community.
- [44] To his credit, Mr. Vaillant is remorseful, takes responsibility for the offences, and appears to comprehend the effects of his behaviour on the witnesses at trial and the community. He articulated to the author of the presentence report that his intent was to commit suicide by police because of financial pressure. He acknowledges that his behaviour was influenced by substance misuse, poor decision making, and his mental health challenges. To the author of the psychiatric report, Mr. Vaillant described feeling ashamed, regretful, and has accepted responsibility for the harm that he caused.
- [45] As I have already mentioned, Mr. Vaillant provided a number of letters of support from family and friends and today read to the court a letter that he had drafted, as well, expressing his regret.
- [46] In many respects, the writers of those letters confirm the reports included within the presentence report and the psychiatric reports. A summary of the key elements of the letters of support provided are as follows:
- a) Mr. Vaillant's actions on May 7, 2016, were out of character.
 - b) The incident on that date appears to be the culmination of a long period of stress and other factors which contributed to Mr. Vaillant's diminished physical and mental health at that time.
 - c) Earlier stresses included the end of his first marriage after he discovered his wife of many years had been having an extramarital affair with a co-worker, and later the death of a close friend. Some stresses closer in proximity to the date of the offences include the recent loss of Mr. Vaillant's job, a high-paying job, and the related financial stresses, including debt and ongoing spousal support obligations, with which he was not in compliance, to his ex-wife.

- d) Mr. Vaillant has a history of alcohol and drug misuse. His family has a history of alcoholism going back to his great-grandfather. Mr. Vaillant's father was an alcoholic and a participant in AA for some time.
- e) Mr. Vaillant sought mental health treatment in the months prior to May 7, 2016, but according to Ms. Marshall Mr. Vaillant was not admitted into hospital to receive treatment for his mental health issues.
- f) In addition, the strictness of Mr. Vaillant's bail conditions with which he complied and his completion of a residential drug and alcohol treatment program through Kinghaven, and participation in AA have been beneficial in helping him return to sobriety for a period of over three years.
- g) Mr. Vaillant has reconnected with members of his family and friends. He is supported by members of his family, including his common law partner, Ms. Marshall, his mother, his siblings, and his adult children.
- h) He has made a meaningful and significant contribution to the community through, in particular, his role with Bridging The Gap and as a sponsor with AA. In addition, he has provided support to his elderly mother and father-in-law who live a few blocks away, and is actively involved in providing care to his eight-year-old daughter, who is currently in the custody of her mother.
- i) Mr. Vaillant was embarrassed by his actions on May 7, 2016. Ms. Marshall indicated in her letter that during the trial he apologized to each officer who testified, cried, and felt bad.
- j) There is one letter in particular I want to refer to, only because it is different than the rest, and that is a letter that was provided by Carol Martin. Carol Martin was the complainant who first reported the initial gunshot on May 7, 2016, to members of the RCMP. Ms. Martin did not provide an extensive letter, but she did say, in effect, she has known Mr. Vaillant for some time, she likes Mr. Vaillant, and she hopes to see him again. I mention that because she is the only community member from Pinchi Lake who has provided any form of communication to the court with respect to the impact of the events on May 7, 2016, and she still wishes to see Mr. Vaillant.
- k) Finally, Ms. Marshall has advised through her letter that Mr. Vaillant has recently received a preliminary diagnosis of early onset Alzheimer's disease.

[47] All right, so that concludes my review of the letters.

Purposes and Principles of Sentencing

[48] Section 718 of the Criminal Code sets out the purpose and objectives of sentencing as follows:

718 The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

[49] Section 718.1 provides the fundamental principle of sentencing is that the sentence must be proportionate both to the gravity of the offence and the degree of responsibility of the offender. Therefore, sentencing is a highly fact-specific exercise.

[50] Sentencing must take into account the aggravating and mitigating circumstances, including those set out at s. 718.2. Aggravating factors alleged by the Crown must be proven beyond a reasonable doubt. Mitigating circumstances, if disputed, must be proven by the defence on a balance of probabilities.

[51] As well, a sentencing judge must have regard to the principle of parity. Pursuant to s. 718.2(b), similar offenders should receive similar sentences for offences committed in similar circumstances. In that respect, the court is required to and does look at other cases to determine the types of sentences that have been imposed for similar offences under similar circumstances.

[52] Finally, a sentencing judge must exercise restraint. A harsher sentence should not be imposed if less-restrictive sanctions are appropriate. As well, all available sanctions other than a term of imprisonment must be considered, but those sanctions must still be reasonable in the circumstances and consistent with the harm flowing from the offence.

[53] I am going to first outline some of the law with respect to the most significant of the firearms offences; that is, the s. 95.1 offence, Count 6, and that was again a charge that Mr. Vaillant possessed a loaded or prohibited or restricted firearm without being the holder of an authorization or a licence.

[54] In *R. v. Kachuol*, 2017 BCCA 292 [Kachuol], the court stressed the need to prioritize deterrence and denunciation for firearms offences and to follow the sentencing ranges giving effect to the primacy of those principles in all but exceptional circumstances, stating as follows at para. 25:

- [25] In recent years, Canadian courts have become increasingly concerned by the proliferation of handguns, gun violence and the dire consequences for our society. Guns are inherently, often lethally, dangerous, all the more so when they are possessed for an illicit purpose. As a result, their possession and use is highly regulated and, if unlawful, criminalized to ensure public safety, express society's condemnation and punish offenders. To the extent possible, courts strive to achieve these goals when imposing sentences for firearms-related offences by prioritizing deterrence and denunciation, following customary sentencing ranges in all but exceptional cases and fully accounting for aggravating factors where they exist.
- [55] Although sentencing ranges are to be considered, they are still only guidelines and are not intended to set out a baseline minimum sentence in all cases, regardless of the circumstances. They do not set out practical minimum or maximum sentences. That was made clear in the recent decision of the B.C. Court of Appeal in *R. v. Williams*, 2019 BCCA 295.
- [56] In addition, I refer to para. 59 of the decision in *R. v. Voong*, 2015 BCCA 285, where Justice Bennett set out a non-exhaustive list of some of the considerations that might justify a sentence outside of the standard range of sentences, in that case for drug trafficking offences. These include a combination of no criminal record, significant and objectively identifiable steps towards rehabilitation, gainful employment, remorse, and acknowledgement of the harm done to society as a result of the offences. Justice Bennett stated that:

There must be something that would lead a sentencing judge to conclude that the offender had truly turned his or her life around, and that the protection of the public was subsequently better served by a non-custodial sentence.

- [57] Justice Bennett was providing a non-exclusive list of considerations in the context of a drug case, but those considerations are applicable in the case before me as well.
- [58] There is a range of conduct when it comes to firearms possession offences with the lower end of the spectrum being termed "regulatory offences" and the higher end of the spectrum being referred to, what has been called "true crime offences". The authority for that is the decision in *R. v. Holt*, 2015 BCCA 302 [Holt] at para. 19 citing *R. v. Nur*, 2015 SCC 16.
- [59] In the decision of the Supreme Court of Canada in *Nur*, the Court stated at para. 82 with respect to s. 95 offences:
- [82] Section 95(1) casts its net over a wide range of potential conduct. Most cases within the range may well merit a sentence of three years or more, but conduct at the far end of the range may not. At one end of the range, as Doherty J.A. observed, "stands the outlaw who carries a loaded prohibited or restricted firearm in public places as a tool of his or her criminal trade. . . . [T]his person is engaged in truly criminal conduct and poses a real and immediate danger to the public" . . . At this end of the range -- indeed for the vast majority of offences -- a three-year sentence may be appropriate. A little further along the spectrum

stands the person whose conduct is less serious and poses less danger; for these offenders three years' imprisonment may be disproportionate, but not grossly so. At the far end of the range, stands the licensed and responsible gun owner who stores his unloaded firearm safely with ammunition nearby, but makes a mistake as to where it can be stored. For this offender, a three-year sentence is grossly disproportionate to the sentence the conduct would otherwise merit under the sentencing provisions of the Criminal Code.

- [60] In *Holt*, *Kachuol*, and more recently in *R. v. Padda*, 2019 BCCA 351 [Padda], the Court of Appeal clearly articulated that the conventional range of sentences for true crime simple possession with ammunition is between 30 months and 3 years, even for first-time offenders. In *Padda*, the Court of Appeal referred to the decision in *R. v. Sellars*, 2018 BCCA 195 [Sellars], in which a conditional sentence was ordered for a s. 95(1) offence, and also referred to *R. v. Schneider*, 2019 BCCA 310, in which a suspended sentence with strict probation, which was a sentence outside of the standard range for street-level trafficking in fentanyl, was ordered.
- [61] The Court of Appeal in *Padda* stated at para. 31 as follows with respect to the rationale in those cases for the imposition of sentences outside the applicable standard ranges:
- [31] In both of the above cases, unique circumstances directly contributed to the commission of the offences and lowered the offenders' moral culpability, and the offenders' efforts to rehabilitate by eliminating the circumstances which led to their offences were exceptional.
- [62] The Court of Appeal in *Padda* was reinforcing the court's ability to take into consideration unique circumstances which may have led to the commission of the offences, which may lower the moral culpability or the wrongfulness of the commission of the offences, and as well, the Court of Appeal stated that efforts at rehabilitation that seek to eliminate the circumstances which led to the original offences may also be considered.
- [63] In *Padda*, the Court of Appeal upheld the trial judge's sentence of 30 months for a s. 95(1) offence and considered that the trial judge had concluded that Mr. Padda's personal circumstances fell short of those of the accused Mr. Sellars, in which I referred to earlier, in respect of moral culpability and post-offence rehabilitation. The Court of Appeal in *Padda* made it clear that it is the obligation of the trial judge to make an assessment with respect to moral culpability based on the facts before him or her.
- [64] In *Padda*, the Court of Appeal referred to the trial judge's decision or emphasis, rather, on the significance of the aggravating factors which the trial judge concluded exceeded the circumstances in which a sentence of incarceration at the low end of the range would be appropriate. Those aggravating factors include, amongst others, I am not listing them all, Mr. Padda's decision to purchase a handgun with ammunition to keep at his place of business where it was stored in a backpack, in an unsecured manner; the fact that when he used the handgun, it was offensive use of it in a kitchen filled with staff; that he pointed it at staff, and that in doing so constituted an abuse of his position of trust and authority over his employees. The trial judge also found that Mr. Padda's level of intoxication was an

aggravating factor in that case.

- [65] In my view, this case does not fall at either of the extremes with respect to true crime offences that were described by the court in Nur. Mr. Vaillant, first of all, is not a licensed gun owner who made a mistake, nor did Mr. Vaillant have the pistol as the tool of a criminal trade. Certainly I have no evidence on which I can conclude that that is the case. Frankly, I simply do not have the evidence to determine how or why the firearms - when I say "firearms", I mean the pistol and the oversize cartridge magazine - came into Mr. Vaillant's possession.
- [66] Nonetheless, I do know and have found that Mr. Vaillant discharged a firearm in a residential area, albeit a remote one. Mr. Vaillant did so on a number of occasions. This posed a real and immediate danger to those in the nearby vicinity. No one was harmed, but there is no question that the risk was significant.
- [67] In summary with respect to the range of sentences that I think are appropriate, or the sentence that would be appropriate in this case, absent consideration of exceptional circumstances, an appropriate sentence for this offence would be in the range of 30 to 36 months, and I am bound by the decisions of the Court of Appeal, in any event.
- [68] With respect to the remaining firearms offences, the Crown did not take me to specific authority setting out a sentencing range for those offences. I am satisfied though, on my review of the authorities that were provided by the Crown and the defence, that a range of sentence for each of the remaining firearms offences would be less than that typically rendered for the s. 95 offence that I have just been reviewing. Again, the Crown concedes that the s. 95 offence is the most serious of the firearms offences. Given my intention, which I will describe in more detail later, to find that concurrent sentences are appropriate in this case, it is not necessary for me to review at this time and in these reasons the range of sentences rendered in respect of the other firearms offences. I will not do that.
- [69] With respect to the count for uttering threats, there is greater range or greater variation in the range of sentences imposed for the offence of uttering threats. I am going to refer to some authorities which I have had the benefit of, which were not specifically referred to by the Crown. I will premise that by saying the sentences in those cases are within the same types of ranges of the sentences in the cases referred to by the Crown, so no surprises for either the Crown or the defence in this case.
- [70] The Court of Appeal in R. v. Hiscock, 2002 BCCA 647, commented that the offence of uttering threats has generally attracted light sentences in B.C., but did not provide a particular range of sentences. Now, that is a somewhat dated decision. That case concerned two offenders who were involved in a completely unprovoked, ferocious onslaught of abuse and threats against strangers. The court upheld sentences of an additional six months' incarceration followed by 18 months of probation.

- [71] In cases involving threats uttered against police officers or against other criminal justice system employees, there are a line of cases that indicate sentences ranging from a two-year suspended sentence to 18 months' incarceration. Those include: *R. v. Manuge*, 2016 BCPC 68; *R. v. Graham*, 2009 BCSC 1588; *R. v. Valade*, 2014 ONCJ 329, which was referred to by the Crown in submissions before me; and *R. v. R.C.S.*, 2013 BCPC 0362.
- [72] As well, in *R. v. Sager*, [1991] B.C.J. No. 489 (C.A.), the court, in fact, reduced a sentence for uttering threats against a police officer, that consisted of calling the detachment and threatening to kill the officer who had conducted a search incident to arrest, from nine months' to six months' imprisonment.
- [73] In *R. v. McKinnon*, 2011 ONSC 3160, the offender was intoxicated and distraught. He threatened to shoot himself and any other officer who attempted to enter his residence to intervene. For the uttering threats conviction, he received a sentence of 90 days of intermittent incarceration followed by two years' probation to be served concurrently to the other sentences.
- [74] The Crown referred to a 2018 decision of the Northwest Territories Supreme Court, *R. v. Kakfwi*, 2018 NWTSC 30, in which the accused had been charged with reckless discharge of a firearm and uttering threats to police officers, and using a firearm to commit an offence. In that case, the accused was in a state of distress, had been suicidal, and was drinking at the time of the offence. He fired a number of shots into the air and one shot from a porch toward a community band hall where people were coming outside. He was sentenced for a period of 12 months' concurrent for uttering threats.
- [75] There is no doubt that all of the offences committed by Mr. Vaillant are serious. The sentencing ranges that I have outlined speak to the dangers created by these offences. The law is clear that I should not depart from a sentence within those ranges lightly. Whether I can depart from the ranges in this case depends on whether the circumstances of this case can be characterized as truly exceptional.
- [76] The principles of denunciation and deterrence, which the Court of Appeal of this province has made clear and the Supreme Court has made clear, are of paramount importance in determining a sentence for firearms offences.
- [77] In particular, I must take into consideration the fact that the threat of possession of a loaded firearm poses a serious threat and a growing one to communities across Canada. This threat must be taken seriously by Canadian courts.
- [78] The fact that the threats in this case were made to police officers and that Mr. Vaillant had the ability to carry out this threat, as he was wielding a pistol, on its own also warrants a stronger emphasis on the sentencing principle of denunciation and deterrence. That said, I wish to say that given the significant improvement in Mr. Vaillant's mental state and physical state since the time of the offences, in my view, specific deterrence is not as significant an issue as that of denunciation in this case.

- [79] The question, in my view, is more how general deterrence can be satisfied in this case, that is deterrence to others not to commit the same offences, without losing sight of the individualized nature of the sentencing process.
- [80] Although rehabilitation may play less of a role in sentencing for firearms offences, it remains an objective that must be considered, and this was made clear at paras. 36 through 38 of the decision of the B.C. Court of Appeal in Sellars.
- [81] The decision in *R. v. Baptiste*, 2019 BCSC 2339 was not referred to by the Crown but I think it is very relevant and I am going to rely upon it. That case also involved firearms offences and uttering threats. In it, Justice Matthews helpfully summarized the importance of rehabilitation in cases where addiction is involved. She said:
- [45] The Court of Appeal has provided guidance on how to take into account addiction and rehabilitation in sentencing in a trio of cases: *R. v. Kukelka* . . . *R. v. Hansen* . . . and *R. v. Datt* . . . [all decisions of the B.C. Court of Appeal]. These cases stand for the proposition that where there is evidence of a reasonable chance of rehabilitation, the principle of deterrence should yield to that prospect, especially in cases where it can be shown that incarceration will detract from the prospects of rehabilitation such that public safety is better served by rehabilitation.
- [82] The offences in *Baptiste* were much more serious than those that Mr. Vaillant committed. In particular, the offences included assault and recklessly discharging a firearm, and they occurred in the context of an intimate partner relationship. Justice Matthews imposed a global sentence in that case of four years and six months.
- [83] This case involves a combination of alcohol addiction and mental health concerns. The B.C. Court of Appeal in *R. v. Badhesa*, 2019 BCCA 70 [Badhesa], explained the approach to be adopted in such cases as follows at para. 42:
- [42] When mental illness causes or contributes to the commission of an offence, it is a mitigating factor and a sentence may be reduced because the offender's moral culpability is attenuated. In these circumstances, general deterrence is a less weighty consideration because a mentally ill offender is not an appropriate medium for making an example to others . . . Nor does specific deterrence or severe punishment play a significant role in the determination of a fit sentence. The former is meaningless when an offender is out of touch with reality and the latter may be disproportionate to the offender's degree of responsibility . . .
- [84] Although *Badhesa* was not cited by the Crown or defence, in my view Mr. Vaillant's mental health and his state of his emotional condition has been a live issue. It was a live issue in the trial, through the testimony of witnesses. It remained to be a live issue in terms of the materials that have been provided in advance of sentencing including the presentence report and the forensic psychiatric report.
- [85] At para. 43 the Court of Appeal stated:

- [43] Cases involving mental illness and intoxication in combination are, of course, intensely fact-driven. Detailed and specific medical evidence is essential to a proper understanding of their relationship in a particular case, if any, as well as their impact on the offender's moral culpability. Generalizations are insufficient . . . In our view, insofar as possible, taking into account all of the relevant evidence, a sentencing judge should strive to determine the extent to which an offender's mental illness contributed to the offending conduct, including any contribution to his or her self-induced intoxication . . .
- [44] When assessing a fit sentence, the judge should attribute a degree of moral culpability to the offender commensurate with the magnitude of the mental illness and its overall role in the commission of the offence . . . Where mental illness played a central role, the importance of deterrence and punishment should be given less weight and treatment and public protection concerns should be increased . . . This decreased emphasis on deterrence and punishment is consistent with the proportionality principle, which is the sine qua non of a just sanction . . .
- [86] Even where the evidentiary record may be less extensive than is ideal, it is possible to establish the required nexus between an offender's mental health and addiction and the offences in question.
- [87] In *R. v. Forner*, 2020 BCCA 103, the court found that a psychiatric report, the offender's previous diagnosis, hospitalizations for depression and suicide attempts together provided enough evidence to diminish the offender's culpability.

Aggravating and Mitigating Factors

- [88] As I mentioned earlier, it is not known how or why Mr. Vaillant obtained the .45-calibre pistol and the oversize cartridge or the ammunition. In this respect, the facts of this case are, in my view, distinguishable from those in *Padda* where the court determined that Mr. Padda had illegally purchased a handgun, albeit for a defensive purpose, and had stored it haphazardly in his restaurant.
- [89] Although in this case Mr. Vaillant discharged the firearm multiple times, each time increasing the risk to himself and others, which is in my view an aggravating circumstance, there is no evidence, as there was in *Padda*, that he pointed a loaded firearm at any person. He was waving the firearm, that is accepted, but the circumstances in *Padda* involving a number of employees in close proximity to him. Mr. Padda proceeded to load the gun in their presence, assault one of his employees, and point a loaded gun at one of his employees. This is in my view dramatically more serious than the circumstances of this case.
- [90] What is clear to me on the materials before me and the evidence at trial is that for many months prior to May 7, 2016, Mr. Vaillant's condition, both physical and psychological, was spiralling downwards. The apparent causes likely included a combination of his financial and other emotional stresses, and his misuse of drugs and alcohol. It is noteworthy, as I

mentioned earlier, that with the assistance of Tracy Marshall, Mr. Vaillant did seek treatment for his mental health prior to the events of that day, but was not admitted to hospital.

- [91] I am satisfied on the evidence at trial, the information contained within the presentence report and the psychiatric report, and the letters of support provided on Mr. Vaillant's behalf, that Mr. Vaillant was suffering from a mental illness, including potentially PTSD and severe depression at the time of the commission of the offences. In my view, his mental illness reduces his moral culpability.
- [92] Mental illness is a mitigating factor in sentencing where there is a causal link between the mental illness and the criminal conduct: *R. v. McConnell*, 2014 BCSC 1743.
- [93] In this case, I find that such a causal link existed. Mr. Vaillant's mental illness resulted in him becoming suicidal on May 7, 2016, and precipitated both the firearms and uttering threats offences. The Crown in submissions suggested that there may have been other motivations for Mr. Vaillant's suicide attempt and his possession and use of the firearms on that day, and by way of example the Crown referred to Mr. Vaillant's ongoing dispute with his ex-wife, Jamie Vaillant, with respect to the payment of spousal support.
- [94] In addition, the Crown suggested that Mr. Vaillant was at various times enraged, angry, and that this in effect takes his motives outside of those that would make sense in the context of a mental illness. That is, that he was acting purposefully, albeit in anger and rage on occasion. As I indicated during the Crown's submissions, I do not find that the evidence supports a finding of fact in that respect.
- [95] As I have said earlier, Mr. Vaillant is remorseful. He takes full responsibility for the offences and appears to comprehend the effects of his behaviour on those who attended at his mother's cabin on May 7, 2016, and on the general community. He acknowledges that his behaviour was influenced by substance misuse, poor decision making, and his mental health challenges. To the author of the psychiatric report, Mr. Vaillant described feeling ashamed, regretful, and accepted responsibility for the harm that he has caused.
- [96] In my view, Mr. Vaillant has turned himself around and through his participation in the residential treatment program at Kinghaven, and participation at AA, both through the participation of those two things. Further, even beyond Mr. Vaillant taking steps to improve his own situation, he has begun to contribute in a positive way to the community through his participation as a sponsor with AA and as chair of the local Bridging The Gap chapter. Those are not typical steps. Those are unique steps, in my view.
- [97] Despite his poor recollection of the offences, Mr. Vaillant is willing to accept that he committed the offences and takes full responsibility. Again, this is somewhat repetitive. He is remorseful and has shown insight into the role that alcohol, his mental health challenges, and poor decision making played in the offences.

- [98] With respect to other factors which I will describe as mitigating, I note that Mr. Vaillant does not have a criminal history with respect to firearms offences. In that respect, it is a mitigating factor or, at worst, a neutral factor. I do not consider that the historical driving offences, which are now ten years old, are an aggravating factor. The 2014 conviction for uttering threats is, in my view, a neutral factor, given that I have no information with respect to the nature of the charge or circumstances leading to it. In any event, that conviction is now six years old.
- [99] In summary, with respect to Mr. Vaillant's criminal history, I do not consider that it constitutes an aggravating factor in general, and with respect to the lack of firearms offences, I consider that to be a mitigating factor with respect to the appropriate range of sentences for those offences.
- [100] In addition, I note that Mr. Vaillant has been subject or was subject for a significant period of time to strict bail conditions and more relaxed bail conditions afterwards. There have been no breaches in respect of those conditions. That can be taken into consideration as a mitigating factor in determining sentence.
- [101] With respect to Mr. Vaillant's rehabilitative potential, I consider that, given Mr. Vaillant's record to date, his participation in AA and his role with Bridging The Gap, that the potential for rehabilitation remains high and that is, in my view, not inconsistent with the comments that were made in the presentence report and psychiatric report.
- [102] As an additional mitigating factor, Mr. Vaillant enjoys strong family and community support, including in particular the support of his mother who was at trial and has been present during the sentencing hearing before me over the last two days.
- [103] In summary, in consideration of the aggravating and mitigating factors, and really evaluating both of those two lists, the level of Mr. Vaillant's moral culpability concerning the circumstances giving rise to the offences and Mr. Vaillant's actions after his arrest constitute exceptional circumstances justifying a sentence for each of the offences outside of the typical range.
- [104] I find that Mr. Vaillant has truly turned his life around and, given his role with AA and Bridging The Gap and the care he provides to his family, the protection of the public is subsequently better served by a non-custodial sentence.
- [105] Now, as Mr. Vaillant has been convicted of multiple offences, I must consider the appropriate sentence for each and whether those sentences should be consecutive or concurrent to one another. If I impose consecutive sentences, I must assess whether the total sentence imposed is unduly harsh or disproportionate and, if it is, adjust the sentence accordingly. The process for determining whether a sentence should be served concurrently or consecutively was summarized relatively recently by Justice Frankel in *R. v. Robertson*, 2020 BCCA 65:

- [90] The test for determining whether concurrent or consecutive sentences are appropriate is "whether the acts constituting the offences were part of a linked series of acts within a single endeavour" . . . Some of the factors to consider are: "the nature and quality of the criminal acts; the temporal and special dimensions of the offences; the nature of the harm caused to the community or to the victims; the manner in which the criminal acts were perpetrated; and the offenders' role in the crimes" . . .
- [106] In my view, the events which occurred on May 7, 2016, were part of a linked series of acts which arose from Mr. Vaillant's mental illness and the resulting intention, which I consider was formed on the same day, to commit suicide. That is all of the relevant criminal acts related to Mr. Vaillant's fortunately unsuccessful attempt to have the RCMP shoot him. For this reason, I consider that each of the sentences should go concurrently. In summary, though, I will set out the sentences that I will describe, each of the counts.
- [107] On Count 6, I would render a sentence of two years less one day. Count 6 is the s. 95 offence. On the remaining firearms charges, that is Counts 1, 3, and 5, I would render a sentence of one year on each count, each to be served concurrent to Count 6.
- [108] On Count 8, the conviction for uttering threats, in my view, despite the Crown's submissions, an appropriate sentence, given that the threats were repeated and were serious, but also in consideration of the circumstances under which the threats were made, an appropriate sentence of six months should be rendered, to be served concurrently with Count 6.
- [109] As I have sentenced Mr. Vaillant to a term of imprisonment of less than two years, I must now consider whether he is eligible to serve his sentence in the community.
- [110] Section 742.1 of the Criminal Code sets out the conditions that must be met for him to be eligible. The relevant portions of that section provide as follows:
- 742.1 If a person is convicted of an offence and the court imposes a sentence of imprisonment of less than two years, the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the conditions imposed under section 742.3, if
- (a) the court is satisfied that the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2;
 - (b) the offence is not an offence punishable by a minimum term of imprisonment;
 - . . .
 - (e) the offence is not an offence, prosecuted by way of indictment, for which the maximum term of imprisonment is 10 years, that
 - . . .

(iii) involved the use of a weapon . . .

- [111] The Crown did not submit that there was a statutory impediment to the imposition of a conditional sentence. I am satisfied that a conditional sentence is appropriate in this case and that there is no statutory restriction on the imposition of such a sentence. I am satisfied that imposition of a conditional sentence will not endanger the safety of the community or be inconsistent with the fundamental purposes of sentencing set out in ss. 718 and 718.2.
- [112] As set out in the decision of the Supreme Court of Canada in *R. v. Proulx*, 2000 SCC 5, the Court found that a conditional sentence can fulfil the sentencing objectives of denunciation and deterrence. Of particular importance to the present case, the Supreme Court found that a conditional sentence will generally be better at achieving the restorative principles in sentencing, including the rehabilitation of the offender.
- [113] Mr. Vaillant has made remarkable progress towards rehabilitation over the last four years, both in terms of his dealing with his alcohol and drug misuse and improving his physical and mental health. Again, he has participated in the Kinghaven Rehabilitation Program, AA, and has worked with Bridging The Gap and continues to do so. In my view, a sentence of incarceration would diminish his continuing progress in that respect.
- [114] In conclusion, in the circumstances of this case, I find that a conditional sentence order of two years less one day is an available and fit sentence in this case.
- [115] In this case, the defence has calculated that Mr. Vaillant spent a total of 70 days in custody in advance of trial, which multiplied by 1.5 would result in a credit for pretrial custody of 105 days. The Crown does not dispute that calculation with respect to pretrial custody.
- [116] Yes, Ms. Mitchell-Banks?
- [117] MS. MITCHELL-BANKS: Yeah, not the calculation of days, but it's calculated in the context of reducing the jail sentence. Just while Your Honour is on the consecutive/concurrent, doing the calculation, just looking at the annotations, and I just raise this because it's something you may want to consider, there is an annotation under 742.1, [indiscernible] it says a CSO may be imposed to run consecutively to another sentence, provided that the aggregate sentence does not exceed two years. Now, on the threatening, I just am asking for clarity as to whether it was your intention that it would then be in excess of two years, in which case you may wish to deal with that in whatever way you see fit.
- [118] THE COURT: No, my intention is that Mr. Vaillant will serve his sentence in the community.
- [119] MS. MITCHELL-BANKS: Yes, no, I know, but according to this, if it's two years -- two years less a day, plus then you make a sentence consecutive to it, that makes the sentence longer than two years less a day and that's why you can't. So that's why I'm wondering, when you speak to how much credit you want to give, that may be something you want to address. I know your intention, I'm not -- I'm not arguing with you.

- [120] THE COURT: No, but I am sorry, I do not understand why you are confused, Ms. Mitchell-Banks.
- [121] MS. MITCHELL-BANKS: Because according -
- [122] THE COURT: Because all of the sentences are to be completed concurrently. I made that clear.
- [123] MS. MITCHELL-BANKS: I am sorry, then I misunderstood you. I thought you said the threats to the police were six months consecutive to Count 6.
- [124] THE COURT: Concurrent.
- [125] MS. MITCHELL-BANKS: Oh, then I am sorry, then it's not an issue.
- [126] THE COURT: Concurrent.
- [127] MS. MITCHELL-BANKS: I misheard.
- [128] THE COURT: All right. To be clear --
- [129] MS. MITCHELL-BANKS: Yes.
- [130] THE COURT: If I misspoke, my intention was to say concurrent.
- [131] MS. MITCHELL-BANKS: Well, that is just why I raised it, because I didn't want --
- [132] THE COURT: Very good, thank you. Thank you for that. Let me continue.
- [133] MS. MITCHELL-BANKS: So it's six months.
- [134] THE COURT: Six months.
- [135] MS. MITCHELL-BANKS: To run concurrent to everything else?
- [136] THE COURT: Yes.
- [137] MS. MITCHELL-BANKS: Thank you.
- [138] THE COURT: Now, going back to what I said. The conditional sentence of two years less a day is to be reduced by - I will not do the calculation, by an additional 105 days to reflect the 70-day period of pretrial custody times 1.5.
- [139] THE CLERK: My Lord, on which count would you like me to do that.
- [140] THE COURT: I am sorry?
- [141] THE CLERK: Which count would you to like to apply that to?
- [142] THE COURT: Apply that to Count 6.
- [143] THE CLERK: To Count 6.

[144] THE COURT: Mr. Vaillant, please stand. I sentence you to a conditional sentence of two years less one day, less 105 days for time served, subject to the following conditions:

- a) You will keep the peace and be of good behaviour.
- b) You shall appear before the court when required to do so by the court.
- c) You shall report in person to a conditional sentence supervisor within two working days after the making of this order, unless as the result of the current COVID-19 health crisis you are unable to do so, and thereafter when required to do so by the supervisor, in the manner directed by him or her.
- d) Within the first six months of your sentence, you shall attend, participate in, and successfully complete any assessment, counselling, treatment or programs as directed by your supervisor, which I recommend include the Living Without Violence Program.
- e) You shall remain in the jurisdiction of the court, unless written permission to go outside of the jurisdiction is obtained from the court or supervisor. That means you shall remain within the Province of British Columbia.
- f) You shall notify the court or the supervisor in advance of any change of name or address, and promptly notify the court or the supervisor of any change of employment or occupation. I appreciate that you are not currently employed.
- g) You shall abstain from the consumption of drugs, except in accordance with a medical certificate, and abstain from the consumption of alcohol or any other intoxicating substance.
- h) You shall not own, possess, or carry any weapon as defined in s. 2 of the Criminal Code.
- i) You shall perform 100 hours of community service as approved by your supervisor, which is recommended to include continuing to volunteer as sponsor with AA and with Bridging the Gap.
- j) For the first six months of your sentence, you shall not be within the limits of the City of Fort St. James or within ten kilometres of the Pinchi Lake area without the prior written consent of your supervisor.
- k) For the first six months of your sentence, you are to remain within your approved residence at all times. There will be more to follow on that, all right.
- l) For the remaining term of your sentence, you must remain inside your residence between the hours of 10:00 p.m. and 6:00 a.m. daily.
- m) Both the house arrest and curfew imposed under ss. (k) and (l) are subject to the following exceptions:
 - i) at any time with the express written consent of your supervisor;

- ii) when travelling directly to or from your place of employment, or when you are working outside the community where you reside, or with the written permission of your supervisor;
- iii) when travelling to and from any counselling, treatment, educational programs, or community service;
- iv) at any time for medical appointments for yourself or your family;
- v) three times a week for a maximum of three hours on each occasion to attending at shopping or any other personal business, and with the prior written consent of your supervisor.
- n) Finally, during the period set out in (k) and (l), that is the period of house arrest and the period when you are under curfew, you shall present yourself at the door of your residence when any peace officer or supervisor or their designate attends for the purposes of determining your compliance with curfew or house arrest.

[145] Now, Mr. Vaillant, having reviewed the conditions of your sentence order, I must also advise you about how you can apply to vary your conditions and about the procedure if you breach the order. Either you, your supervisor, or the prosecutor may propose changes to your conditions:

- a) If your supervisor wants to change your conditions, he or she needs to tell you that in writing. If you receive this type of written notice from your supervisor, you have seven days to ask the court to schedule a hearing which, if requested, must be held within 30 days. If you do not want to ask the court to schedule a hearing, the changes proposed by the supervisor will take effect 14 days after the supervisor has filed written notice with the court.
- b) You or the prosecutor are also able to apply for a change in your conditions. To do this, you must file a notice to that effect with the court registry and serve a copy of that notice on the Crown. In your written notice, you should state the proposed changes and explain why you are seeking the changes, then a hearing before the court will be held within 30 days in relation to your request.

[146] Now, with respect to the procedure upon a breach, and I am going to tell you the procedure in a moment. I want to be very clear to you, this is just a general comment, Mr. Vaillant, you have not been excused from these charges. You have been found guilty and you have been sentenced to incarceration in your home and a curfew has been imposed. This is a conditional sentence. If you breach the conditions, the repercussions may well be very significant and may end up with you in jail, all right.

[147] If there is a breach, if you are charged with a breach of your conditional sentence order, you will be brought to the court to answer that allegation. You may be held in custody, but you will be given an opportunity to have a bail hearing which will take place within 30 days or as soon thereafter as practicable. If the court finds, on a balance of probabilities, that you have breached a condition of the order, the court can do a number of things, including doing nothing, changing your conditions, or committing you to custody for the remainder

of your sentence. Do you understand, Mr. Vaillant?

[148] THE ACCUSED: I do.

[149] THE COURT: All right, thank you. Now --

[150] MS. MITCHELL-BANKS: My Lord, may I ask one question about the conditions?

[151] THE COURT: Yes.

[152] MS. MITCHELL-BANKS: Mr. Vaillant is -- and I may not have got all your conditions down, but I understand that within the first six months of his sentence, he is to remain in the residence, but you have also stressed the importance of AA and Bridging The Gap.

[153] THE COURT: Yes, so there is an exception to that.

[154] MS. MITCHELL-BANKS: Yes.

[155] THE COURT: And that is that in respect of house arrest and the curfew, the exceptions include obtaining written consent of the supervisor, when travelling to and from work.

[156] MS. MITCHELL-BANKS: Yes.

[157] THE COURT: When travelling to and from counselling treatment, education programs, or community service.

[158] MS. MITCHELL-BANKS: Yes.

[159] THE COURT: Okay. Any time for medical appointments for himself or for his family, and three times a week for shopping and personal business, with the prior written consent of his supervisor.

[160] MS. MITCHELL-BANKS: At the present time, he goes to AA meetings every day, I think.

[161] THE COURT: Yes.

[162] MS. MITCHELL-BANKS: So that's why -- just for his sake, I'm wondering whether that is actually permissible activity under those conditions with the house arrest. Because I don't think -- the term "counselling" usually refers him seeing a counsellor rather than he counselling and group meetings and so on. So I don't want a breach to occur, My Lord.

[163] THE COURT: No, that is fine. I mean, I would consider that treatment and counselling would include AA, but in an abundance of caution.

[164] MS. MITCHELL-BANKS: Yeah.

[165] THE COURT: I will amend that to confirm that the exceptions to the conditions regarding house arrest and curfew, which are set out at paragraph (m), subparagraph (iii), include attending at AA sessions and attending at any business involving Bridging The Gap.

[166] MS. MITCHELL-BANKS: And is there any time limit on how many hours of the day he can do that?

[167] THE COURT: No.

[168] MS. MITCHELL-BANKS: No.

[169] THE COURT: No.

[170] MS. MITCHELL-BANKS: Okay, thank you. I just didn't want him picked up because the officer said, well, you're not going to counselling. That's -- I'm not querying, I'm just --

[171] THE COURT: No, no, that is fine.

[172] MS. MITCHELL-BANKS: -- seeking clarity.

[173] THE COURT: No, no, thank you.

[174] MS. MITCHELL-BANKS: Thank you.

[175] THE COURT: Yes. All right, now I have to stand down for a moment because I have some additional reasons which did not make it into my hand, so I will have to stand down for just two minutes while I am going to obtain them. I will be right back.

[176] MS. MITCHELL-BANKS: And just, My Lord, while you're having a think about that, did you -- I'm not seeking the DNA, but did you want to consider a firearms prohibition?

[177] THE COURT: Yes.

[178] MS. MITCHELL-BANKS: Thank you.

[179] THE COURT: All right, thank you.

[180] THE CLERK: Order in court.

(PROCEEDINGS ADJOURNED)

(PROCEEDINGS RECONVENED)

[181] THE COURT: All right, before I turn to the ancillary orders, I have been told that I need to be more specific, formulaic with respect to the firearms offences, being Counts 1, 3, and 5.

[182] So in that respect, with respect to Count 1, I would sentence Mr. Vaillant to a sentence of one year to be served concurrent to Count 6. In respect of Count 3, a sentence of one year should be entered, to be served concurrent to Count 6. In respect of Count 5, I impose a sentence of one year to be served concurrent to Count 6.

[183] Madam Registrar, does that tick all the boxes? All right.

- [184] Now, going back to the ancillary orders. First of all, my intention, and I will speak to both counsel about this, is not to order a lifetime firearms ban, other than with respect to prohibited, restricted - or restricted - prohibited or restricted firearms or prohibited devices, but rather to order a ten year ban in respect of firearms and weapons generally, and a lifetime ban in respect to, as I have said, the others.
- [185] So Ms. Mitchell-Banks, do you wish to make submissions on that?
- [186] MS. MITCHELL-BANKS: My Lord, I think ten years is fair.
- [187] THE COURT: All right, Mr. Sidhu?
- [188] MR. SIDHU: No position, thank you.
- [189] THE COURT: All right. Accordingly, given the evidence at trial and during submissions, and in particular the lack of prior history of firearms offences or a history of violence, I do not consider the lifetime ban on the possession of weapons and/or ammunition is necessary. I consider that a ten year firearms ban is more appropriate.
- [190] Accordingly, pursuant to s. 109(2), Mr. Vaillant will be prohibited from possessing any firearms, other than a prohibited firearm or restricted firearm, and any cross-bow, restricted weapon, ammunition, and explosive substance until ten years after the conclusion of his conditional sentence, and any prohibited firearm, restricted firearm, prohibited device, and prohibited ammunition for life.
- [191] Now, the Crown is not seeking the provision of a DNA sample pursuant to s. 487.051, correct?
- [192] MS. MITCHELL-BANKS: No, My Lord.
- [193] THE COURT: All right, so none will be ordered in that case.
- [194] Pursuant to s. 491, there will be an order that the .45-calibre semiautomatic pistol and the oversize cartridge magazine and any remaining ammunition shall be forfeited and destroyed. Any other forfeitures required in this case, Ms. Mitchell-Banks?
- [195] MS. MITCHELL-BANKS: No, thank you, that was the one I was seeking.
- [196] THE COURT: All right, thank you. And finally, pursuant to s. 737(2)(b)(i), there will be a victim surcharge of \$200 applied in this case, subject to any comments that the Crown wishes to make in that respect.
- [197] MR. SIDHU: Sixty days, My Lord?
- [198] THE COURT: Sixty days, payable in 60 days.
- [199] MR. SIDHU: [Inaudible] that?
- [200] THE COURT: Yes.

- [201] MS. MITCHELL-BANKS: So I just want to check if that's -- if that kind of is in the aggregate? I just took leave to check the section on the victim impact surcharge. So you said s. 732(2.8)?
- [202] THE COURT: 737(2)(b)(i). Two (b) -- sorry, I referenced the wrong sub, it is (ii) -- (2)(b)(ii), \$200 in the case of an offence. Are you suggesting that it may be per offence?
- [203] MS. MITCHELL-BANKS: Well, that's what I'm worried about. I'm just trying to work my way through it, because that considerably changes it and in some cases it is per offence, so you see, it says subject to subsection (3), the amount of the victim surcharge in respect of an offence, \$200 in the case of an offence punishable by indictment, which means the victim impact surcharge, and I'm not an expert on this, could be \$1,000.
- [204] MR. SIDHU: My understanding is if there's a subsequent count, like a (2)(b) or a (3)(b) --
- [205] MS. MITCHELL-BANKS: Let's just have a look at that. This is what I'm just worried about and wanted to check, My Lord.
- [206] THE COURT: That is fine. Let's make sure we do it correctly.
- [207] MR. SIDHU: Yes, it's [inaudible]. That would be my understanding, My Lord.
- [208] MS. MITCHELL-BANKS: I'm just wondering if the -- if the annotations provide any help, because even in the synopsis it says "an offence". The Criminal Code has so many subsections now, it's worse than the Income Tax Act. I'm trying to trail things down, but it speaks to the singular.
- [209] THE COURT: I do not consider that it is duplicative.
- [210] MS. MITCHELL-BANKS: Well then that's fine, My Lord, I just wanted to check because the registry will ask. If we get it wrong, they always come back with a request to rewrite the order, so it's by far the least significant part of the sentence.
- [211] THE COURT: All right, thank you. Thank you for your help, Ms. Mitchell-Banks, I appreciate that. Any other questions from the Crown then?
- [212] MS. MITCHELL-BANKS: No, thank you, My Lord.
- [213] THE COURT: All right. Mr. Sidhu, any questions from you?
- [214] MR. SIDHU: Just the reporting condition, which is within two days, is that directed to the Vancouver, the Cordova Street, or Chilliwack where he's currently reporting to, and just now to a CSO supervisor?
- [215] THE COURT: Well, that is a very good point, thank you for raising it, because of course we are out of the Prince George Registry, so --
- [216] MS. MITCHELL-BANKS: My Lord, my understanding is he would sign the CSO here, and it would then be referred, and so the CSO, because he's been actually sentenced here, the file has been transferred here.

[217] THE COURT: The supervisor would be appointed.

[218] MS. MITCHELL-BANKS: The supervisor would refer him, is my understanding.

[219] THE COURT: Yes.

[220] MS. MITCHELL-BANKS: But if that turns out to be a problem, the Crown would certainly consent to a variation in whatever terms are required.

[221] THE COURT: All right. Well, I will not make an order unless one is necessary from the court.

[222] MS. MITCHELL-BANKS: I don't believe it is.

[223] THE COURT: I don't believe so either.

[224] MS. MITCHELL-BANKS: Because I've seen this happen in many other courthouses where people live in different places, and I say this because also the community service supervisor needs to collect the file and send materials on to the service supervisor in the area where Mr. Vaillant is, so that she knows all that needs to be known to be able to adequately supervise him. So I think it can all be arranged by him going downstairs. Madam Registrar has explained the procedure that he has to follow.

[225] THE COURT: All right.

"Mayer 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/20/11/2020BCSC1137.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-vaillant-2020>

Prepared on 28 October 2026 · Esheria