

CANADA / JUDGMENT

R. v. Wilson

2020 BCSC 918

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 918 R. v. Wilson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Wilson,

2020 BCSC 918

Date: 20200605

Docket: 41420-2

Registry: Campbell River

Regina

v.

Matthew Wilson

Corrected Judgment: The text of the judgment was corrected at paragraph [28] on July 27, 2020.

Before: The Honourable Mr. Justice Baird

Oral Reasons for Sentence

Counsel for the Crown

appearing by teleconference:

J. Blazina

Counsel for the Accused

appearing by teleconference:

M. Lowe

(as Agent for J. Watt)

Place and Date of Hearing:

Nanaimo, B.C.

May 26-27, 2020

Place and Date of Judgment:

Nanaimo, B.C.

June 5, 2020

Introduction

- [1] The offender, Matthew Wilson, has entered a guilty plea to a single count of aggravated assault upon his mother, Sherrie Martin-Wilson, contrary to s. 268 of the Criminal Code, R.S.C. 1985, c. C-46, an offence punishable by a term of imprisonment not exceeding 14 years. He has been in custody without seeking bail since February 12, 2018.
- [2] The offender submits, effectively, that he has already served as much time in jail as the circumstances require and seeks his release on the terms and conditions of a three-year probation order. The Crown argues that the principles of denunciation and deterrence will not be served by such a disposition and seeks a further 2.5 to 4.5 years in jail after giving credit for pretrial custody.

Background

- [3] The offender was born on November 6, 1978, in Windsor, Ontario. According to pre-sentencing reports filed on this hearing, his father was an abusive alcoholic who abandoned his family when the offender was young. By all accounts, the offender had an unhappy and dislocated upbringing constantly moving from place to place and attending many different schools. Early on, he exhibited emotional and behavioural problems. He was frequently expelled from school for antisocial conduct including acts of violence.
- [4] The materials submitted include two psychiatric opinions and a 2009 pre-sentence report related to a previous offence. These give a reasonably detailed social history of the offender, which has been amplified by counsel in oral submissions. It seems that in his teenage years the offender became involved in organised crime dealing drugs and pimping. By this time, he and his mother had drifted westward as far as Vancouver. In 2001, he was violently attacked and left for dead by members of his own gang. The result was a serious traumatic brain injury causing significant and permanent cognitive deficits.
- [5] Up to that point in his life, despite intimations of persistent violent behaviour and his own avowals of underworld involvement, the offender had no criminal record. With his guilty plea in the present matter he now has a history of three significant acts of violence against the same complainant, his mother, the first resulting in a not criminally responsible verdict

and the subsequent two in criminal convictions. Defence counsel concedes that the offence at bar is utterly appalling and warrants a significant penalty, but he argues that this is a case of diminished responsibility due to the lack of impulse and anger control associated with the offender's traumatic brain injury.

- [6] I have now had the opportunity to observe the offender and hear him speak on a number of occasions, including during various pretrial conferences, and especially at the end of this sentencing hearing when he expressed apparently heartfelt remorse for his abominable treatment his mother. His cognitive impairments, I'm afraid, are plain to see. They are such, I have been told, that he is not capable of managing his own affairs. His mother has, for years, been the committee of his person and estate. I think it likely that he is wholly unemployable and will require lifelong care and support.
- [7] He is also a large and strong man, 6'2" weighing 270 lbs. His mother, meanwhile, is a 65-year-old woman of much smaller and slighter stature. In physical terms, when it comes to her son's violent inclinations towards her, the complainant is completely vulnerable and defenceless. It has come to the stage, inevitably, where the offender has comprehensively destroyed his relationship with the only person who has ever really cared about him. From now on, it seems certain, the offender will have to rely on others, mostly strangers, social workers, people from government, to look out for him and keep him in line. His mother has told me in clear and unambiguous terms, albeit to her profound and enduring regret, that she is terrified of her son and can have nothing further to do with him. His plan after release amounts to nothing at all. He can stay with a friend in Victoria for a couple of weeks, I was told, but after that he will be on his own.

2006 Assault

- [8] In 2006 the offender assaulted his mother by striking her repeatedly with his fists. At the time they were living together in Surrey, British Columbia. The offender had recently moved back into his mother's residence after living for a while in a group home. On September 9, 2006, in the evening, the complainant was asleep at home. She was awakened by the offender asking for a cigarette. The complainant refused to give him one. The offender punched her with a closed fist and she dropped to the floor. He hit her again in the side of the head and carried on punching her 10-12 times while she was on the ground.
- [9] A charge of assault was duly laid. The offender acknowledged having committed the *actus reus* of assault in the terms described. Crown and defence counsel jointly submitted, however, that a verdict of not criminally responsible by reason of mental disorder should be entered on the basis of an opinion rendered by Dr. Brink of the Adult Forensic Psychiatric Services. The presiding judge accepted this position and disposition was deferred to the BC Review Board.
- [10] Dr. Brink's report and opinion included the following observations:

Mr. Wilson suffered a devastating head injury to his left frontal and temporal lobes [which] required emergency surgery and resulted in prolonged rehabilitation with significant disability across a wide range of functioning. These problems were superimposed upon a pre-morbid antisocial personality style [H]e was assessed and medicated during his teenage years. Available information indicates his level of aggression and assaultiveness [has] decreased since the injury as a result of medication, supervision and care.

A head injury of the nature and severity of that sustained by [the offender] typically results in severe deficits regarding behaviour and emotional control. Such individuals usually exhibit poor frustration tolerance and react impulsively to perceived threat with impulsive and ill-advised behaviour as well as angry and violent outbursts. Behaviours such as these can be difficult to predict and nearly impossible to control or interrupt once initiated. Persons with disabilities such as [the offender] are typically unable to appreciate the nature of their actions at the time and may be unable to control their behaviour.

[11] Dr. Brink concluded that, because of his head injury superimposed on existing antisocial personality traits, the offender was apt to react disproportionately to perceived slights and insults and to fly into uncontrollable rages. He said that once initiated, the offender's assault upon his mother would have been difficult if not impossible to stop. He noted that the offender's memory of the incident was vague. He concluded that the offender probably did not appreciate the nature and quality of his acts.

[12] After spending approximately a year and a half in a secure hospital setting as a result of this verdict, the offender was discharged absolutely. I gather that his mother, the complainant, was instrumental in securing this result. I conclude on all of the evidence that the complainant has done all she could over the years to help her son, including advocating ceaselessly on his behalf with mental and medical health professionals, trying to organise suitable living arrangements for him, and allowing him to live with her when nothing else was available.

[13] After his release from psychiatric hospital, as I was saying, the offender was in and out of group homes for cognitively disabled adults. I would stress that he has a lengthy history of being turned out of such homes for misbehaviour of various types. His mother always took him in when this happened and tried to help him along in his everyday life. It was during one of these periods of cohabitation, in 2009, that the offender committed the second act of violence against his mother.

2009 Assault with a Weapon

[14] On May 18, 2009, the offender and complainant were at home in Surrey, British Columbia. The complainant was having a nap on her bed. The offender came in and laid down beside her. Without warning or provocation, the offender attacked the complainant with a knife. The complainant grabbed the offender's wrists and told him to stop. They struggled and eventually the knife blade somehow broke away from the handle. The complainant was not seriously injured and was able to escape. The offender was arrested and taken into custody.

He remained in jail for 229 days, after which he plead guilty to a single count of assault with a weapon. As was customary in those days, he was credited at a 2:1 ratio for his pretrial custody, or 458 days. He received a 1-day disposition on a joint submission. He was also placed on probation for three years with various terms and conditions.

- [15] On this occasion there was no question about the offender's criminal responsibility. A pre-sentence report was submitted in which it was noted that the offender had attended for counselling while in custody on weekly appointments. The consulting psychologist recommended strict boundaries in the offender's lifestyle, individual supervision and a highly structured living environment. He noted that the offender suffered from short term memory deficits, that he was easily offended, and that his reaction to perceived slights was prone to escalate rapidly from argument to violence. The psychologist also remarked that the offender responded well to "positive rewards" and would benefit from an increase in "positive social support".
- [16] When the offender was released from jail on January 4, 2010, he lived with his mother for a month or two until a group home was found for him. Thereafter he lived in a series of temporary residences, in a renewed and repetitive cycle of evictions for misbehaviour and non-compliance with house rules, followed by cohabitation with his mother until she found another resource willing to take him. These included tenancies, as I understand it, in Langley, Kelowna and Kamloops. Despite these persistent difficulties and setbacks, the offender committed no breaches of his probation order during the entire three years of its operation.

2018 Aggravated Assault

- [17] On February 12, 2018 the offender was in hiatus from his latest group home and was living, once again, with his mother, this time in an apartment in Campbell River. On the date referred to, the complainant got up early and was working at a computer on the desk in her bedroom. At the time she was engaged, I was told, in researching possible local sources of assistance for her son. She had her back to her bedroom door.
- [18] The offender entered and sat on her bed. They exchanged pleasantries and talked about their plans for the day. The offender said "thank you for letting me live with you mom, I love you" and left the room. In short order, without any provocation or any discernible reason, the offender returned armed with a hammer. He stole up behind the complainant and struck her on the back of the head with a good deal of force. She was taken completely unawares and was knocked onto the floor. She looked up she saw the offender standing above her with the hammer in his hand. He showered her with blows, striking her in the hands, arms and leg as she tried to cover herself.
- [19] I will pause here to say that, later on after his arrest, the accused claimed to the police that before the violence began, the complainant had insulted or disparaged him with a racial epithet, using a word that he hated and which always made him angry. The complainant has repeatedly and emphatically denied this, including under oath at a preliminary inquiry into

the matter. I do not accept that she said any such thing. To the contrary, I find that there was not the smallest hint of discord between them at the material time, and there was no external stimulus, trifling or great, that could conceivably explain the offender's violent behaviour on the occasion in question.

- [20] I return to my narrative of the aggravated assault. The complainant pleaded with the offender. She called out to him saying "Matty, it's Mom, it's Mom" and told him that he was hurting her very badly. The offender responded "I know who you are. Payback's a bitch. I'm going to put you out of your misery". He continued to hit her with the hammer. He told her that today was the day she was going to die. The complainant was wounded and bleeding heavily. She could already tell that her hands and right arm were broken. Blood was spattered on the bedroom floor and the wall. She begged the offender to stop. He refused and carried on.
- [21] Somehow the complainant managed to flee to a nearby bathroom where she locked herself in. The offender pursued her and pounded on the door from the other side, telling her to let him in so that he could "get this over with" and "take care of her". The complainant was held captive in this bathroom for hours, lapsing in and out of consciousness from pain and blood loss. There were hiatuses in the offender's vigil on the other side of the door. At one point the complainant could hear him pouring himself a bowl of cereal and watching cartoons on the living room television. She also heard him talking on the phone with various people in a friendly way, telling one person who asked after the complainant that she was "just in the bathroom, man, we just wanted to call and say hello, we love you".
- [22] Now and again the offender returned to the bathroom door hitting it with his fist or the hammer and saying things like "Why don't you just let me in", and "Why don't you just get this over with". He asked the complainant repetitively "Do you love me now, Mom?" Her entreaties for compassion fell on deaf ears. She told the offender that she thought she was dying and pleaded with him to summon medical help for her. His response was "Why would I do that?" The complainant told him that he needed psychiatric help. The offender responded "I don't care what happens to me. You know what I want to see happen to you."
- [23] I have been shown pictures of the bathroom in question taken after the fact. There is blood everywhere. The gore is shocking. The complainant's broken eyeglasses can be seen on the floor. The sink is full of things left there from the medicine cabinet after the complainant's frantic search for something, anything, that she might use as a self-defensive weapon. Here and there the drywall is damaged from the complainant kicking and thrashing against it in hopes of making enough noise to attract the attention of her neighbours.
- [24] Finally, at around 2:00 p.m., and I pause to emphasise that this ghastly campaign of violence began at 7:00 a.m., fully 7 hours before, the complainant could hear people congregating in the corridor outside her apartment. She started screaming to get their attention and raise the alarm. The offender immediately renewed his siege on the bathroom door and this time he managed to break it open. He pushed the complainant into the bathtub and struck her

repeatedly with the remote control for the television. He told her that he would stop hitting her if she shut up. When she obeyed the offender returned to the living room.

- [25] The complainant saw her chance and fled for her life. She got out of the apartment and took refuge in a neighbour's place. Someone called the police. By the time the constables arrived the offender was nowhere to be seen. He was found a short time later sitting in a nearby restaurant covered from head to foot in his mother's blood.
- [26] The complainant was taken to hospital in Campbell River where she was treated for numerous and serious injuries. On presentation it was determined that she had lost a great deal of blood. Her blood pressure was low and unstable. She was having difficulty breathing. Both her arms were broken in multiple places. Orthopedic surgery involving screws and pins was required to repair them. Bones were broken in both hands. She has serious and permanent nerve and tendon damage in these vital extremities with significantly impaired functioning. Any task involving strength or manual dexterity is now difficult or impossible for her. She also suffered soft tissue injuries to her biceps, triceps and forearm, approximately 20 contusions and lacerations to her scalp, many of which required stitches, and a scar and persistent pain from a cut to her left leg below the knee.
- [27] The complainant was hospitalised for five weeks. She was completely incapacitated at first and utterly dependent on hospital staff for every aspect of her personal care. It was only after two weeks that she was able to get out of bed. For months after the assault she experienced confusion, memory loss, vertigo, headaches, double vision and depth perception problems. To this day she continues to experience fear, paranoia, flashbacks and night terrors. She has been diagnosed with post-traumatic stress disorder. She lives in mortal fear of the offender. She is worried that he will track her down and kill her.

REMARKS

- [28] In cases of aggravated assault the pre-eminent sentencing principles are denunciation and deterrence. This is a serious personal injury offence with a maximum punishment, as I have said, of 14 years in jail. In practice, the penalties typically fall within a range of 16 months to six years in jail: see, for example, *R. v. Nguyen*, 2016 BCCA 408 at para. 47; but sentences of six to eight years are not uncommon in cases involving the infliction of particularly debilitating or life-changing injuries: see, for example *R. v. Sesay*, 2020 BCCA 41; and even higher sentences are not unknown in especially heinous cases: see, for example, *R. v. Wallin*, 2003 BCSC 809, *R. v. Payne*, 2007 BCCA 541.
- [29] Sentencing is an individualised process. There is no fixed grid or tariff. I must take into account both the peculiar circumstances of the offence and the specific circumstances of the offender. The sentence that I impose must be proportionate to the gravity of the offence and the degree of responsibility of the offender. It must be increased or reduced to account for any relevant aggravating or mitigating circumstances. It must, as far as possible, and in the name of parity and consistency, be similar to sentences imposed for similar offences

committed by similar offenders in similar circumstances.

[30] The offence under consideration is very serious. There are numerous aggravating circumstances including:

- The victim was vulnerable, a much smaller and weaker person than the offender.
- She was in her own bedroom, in her own residence, a place where she had every right to expect she would be perfectly safe.
- She was attacked from behind in a cowardly, unprovoked, surprise attack.
- The offender used a weapon, a hammer, to carry out the assault.
- It was a prolonged attack, the first blow being delivered around 7:00 a.m. and the victim finally escaping the apartment broken and bloodied at 2:00 p.m.
- There was confinement, with the complainant effectively held captive for hours in the bathroom, pleading, protesting and screaming for help.
- The offender broke down the bathroom door and renewed his assault upon the complainant even after an hiatus during which he had time to calm down, eat cereal, watch TV, and talk with friends on the phone.
- The offender did nothing to help the victim, callously refusing to call her an ambulance even after she told him that she was badly injured and thought she was dying.
- The injuries inflicted upon the complainant are grave, debilitating and permanent.
- The offender has a history of violent misconduct toward the complainant.

[31] The complainant's thoughtful, articulate and heartfelt victim impact statements have been filed on this hearing. The impact of this crime on her has been marked and deleterious. Her suffering will continue for the rest of her life. The injuries wilfully inflicted upon her by her own son have materially diminished her physical functionality and quality of life. Her sense of personal security is irreparably damaged. She is unable to work. She suffers from psychological trauma. She lives in a state of constant fear and anxiety. At the same time, she is profoundly conflicted by the loss of her connection with the offender, saddened by what his life has come to despite her constant efforts to love and support him, and apprehensive about how he will get by in life without her help.

[32] As for mitigating factors, the offender has entered a guilty plea and taken responsibility for his conduct. Even if his acknowledgement of guilt has been late in coming, and in my view a conviction was inevitable given the impregnable strength of the case against him, he is entitled to some consideration for this. It is also to be said in his favour that he spared the complainant from testifying at trial, even if he put her to the stress and anxiety of doing so on a preliminary inquiry, and he saved the public expense of conducting a trial.

- [33] I repeat, as well, that the offender's criminal history is limited to the two previous incidents involving the same complainant. Despite the acknowledged antisocial and psychopathic personality traits and prior criminal lifestyle that I have read about in the pre-sentencing reports, he has no other record. The complainant is the sole target of the offender's anger and violence. Since his brain injury, at least, it seems that he has victimised nobody else. The sentence I impose must protect the complainant, of course, but it may be that protection of the public at large is a lesser concern.
- [34] The main issue here is the extent to which the offender's brain injury should be held to limit his moral responsibility for committing this brutal crime and thereby lessen the severity of his sentence. Both of the current psychiatric assessments before me, one written by Dr. Widajewicz, the other by Dr. Miller, indicate that the offender's brain injury has resulted in neurocognitive deficits, heightened impulsivity, emotional disinhibition, and anger dyscontrol. On the other hand, neither clinician identified any mental disorder exempting the offender from criminal responsibility. Dr. Widajewicz indicated, to the contrary, that the offender knew what he was doing and was aware that it was wrong, and Dr. Miller observed that aspects of the evidence indicated not only active criminal intention but a degree of planning.
- [35] The important divergence of opinion in these reports is this: according to Dr. Widajewicz, the offender's criminal behaviour "stems from his psychopathic, antisocial personality disorder and enmeshed relationship with his mother"; whereas Dr. Miller thought it probable that "once the attack had started [the offender's] cognitive disorder could have substantially impaired his ability to inhibit his actions, and it is possible that [his] awareness of the consequences and seriousness of his actions were at times impaired in the course of his attack."
- [36] In *R. v. Badhesa*, 2019 BCCA 70, the Court held that where mental illness or cognitive limitation contribute 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. At para. 40 of the judgment, the Court observed

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: *R. v. Belcourt*, 2010 ABCA 319 at para. 8. 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: *R. v. Batisse*, 2009 ONCA 114 at para. 38.

- [37] In *R. v. Scofield*, 2019 BCCA 3 the Court noted that it must be demonstrated, not just assumed, that the cognitive deficits have attenuated or diminished the moral blameworthiness of the offender. The Court referred with approval to the following passages from *R. v. Okemow*, 2017 MBCA 59 at para. 73:

- [73] Ascertaining the moral blameworthiness of an offender with a mental illness or some other form of cognitive limitation is a tactful and considerate exercise. Sentencing judges must avoid committing one of two obvious errors in principle. The first is being indifferent to the question of whether an offender's mental circumstances affected his or her degree of responsibility. The other error in principle is the reverse situation, namely, assuming an offender's moral blameworthiness for an offence is reduced automatically because he or she has a mental illness or other cognitive limitation. It is suggested that, when sentencing offenders with a mental illness or some other form of cognitive limitation, such as a form of FASD, sentencing judges keep separate and properly assess the following questions:
1. Is there cogent evidence that the offender suffers from a recognized mental illness or some other cognitive limitation?
 2. Is there evidence as to the nature and severity of the offender's mental circumstances such that an informed decision can be made as to the relationship, if any, between those circumstances and the criminal conduct?
 3. Assuming the record is adequate, the sentencing judge must decide the offender's degree of responsibility for the offence taking into account whether and, if so, to what degree his or her mental illness or cognitive limitation played a role in the criminal conduct.
- [38] In *R. v. Forner*, 2020 BCCA 103 at para. 28, the Court clarified that there need not be a direct causal link between the mental illness and the offence; rather, the link may be indirect as long as it is real and contributed to the commission of the offence.
- [39] Applying these principles to the present case, I accept that the offender suffers from cognitive and behavioural deficits associated with his brain injury. I have no reason to doubt that these include increased impulsivity and an inability to control his anger once aroused. I accept that this was a contributing factor to the violence under consideration which to a degree attenuates the offender's moral responsibility for it. I note, particularly, the absence of evidence of a violent animus toward the complainant before the brain injury was sustained, suggesting a causal connection between the two. I bear in mind, as well, that in 2006 the offender's neurocognitive limitations were thought to be so profound as to exempt him from criminal responsibility for a previous assault. While current opinion is not the same, and no attempt has been made to rebut the presumption that the offender must be taken to have appreciated the nature and quality of his acts, this anterior verdict is at least a clear indication of the seriousness of the offender's disability.
- [40] On the totality of the evidence, however, I am drawn to the conclusion that the offender's criminal behaviour is also directly and predominantly linked to his pre-existing antisocial and psychopathic personality traits. In my view this brutal attack had more to do with a calculated, sustained and gratuitous cruelty than with cognitive limitations, impulsivity, and the absence of inhibitions.

- [41] It is clear to me that the offender knew precisely what he was doing. He had ample time to stop and consider. There were hiatuses of calm during which he snacked, watched TV and chatted affably with friends. It was not the sort of impulsive, spontaneous, and uncontrolled behaviour that Drs. Brinks, Widajewicz and Miller have suggested are the typical result of a brain injury such as that sustained by the offender.
- [42] To the contrary I conclude, for the reasons stated, that his course of criminal conduct was wilful, rehearsed, calculated and deliberate. His moral culpability must be rated as correspondingly high notwithstanding his pre-existing brain injury, which I conclude on the whole was a contributing but lesser factor in the violence against the complainant.

SENTENCE

- [43] As previously stated, the offender has been incarcerated without seeking bail since February 12, 2018, a total of 846 days. Counsel have agreed that I should apply the 1.5 multiplier set out in s. 719 (3.1) of the Criminal Code for the calculation of pretrial custody. This amounts to the equivalent of 1,269 days in custody, or approximately 3.5 years. The Crown seeks a total sentence in the range of six to eight years before credit for pre-sentence custody, or approximately 2.5 to 4.5 years of additional jail time from today. The offender seeks a sentence of time served plus the maximum three-year probation order.
- [44] In support of its position the Crown has referred me to the following cases of aggravated assault ranging from five to 13 years: *R. v. Sesay*, 2020 BCCA 41; *R. v. Heiney*, 2018 BCCA 313; *R. v. Larose*, 2013 BCCA 450; *R. v. Hurtado*, 2012 BCCA 47; *R. v. Kim*, 2010 BCCA 590; *R. v. Quintana*, 2009 BCCA 119; *R. v. Payne*, 2007 BCCA 541; *R. v. Tschritter*, 2006 BCCA 202; *R. v. Smith*, [1996] B.C.J. No. 373 (C.A.); *R. v. Armstrong*, 2003 BCSC 1057; *R. v. Wallin*, 2003 BCSC 809. The offender has relied on: *R. v. Badhesa*, 2019 BCCA 70; *R. v. Shevchenko*, 2018 ABCA 31; *R. v. McConnell*, 2014 BCSC 1743; *R. v. Haly*, 2012 ONSC 2302; *R. v. MacKenzie*, 2004 BCPC 100.
- [45] These cases have been a valuable guide. I have considered them carefully but will not review them individually. In the unique circumstances of the case and the offender before me, including the partial attenuation of the offender's moral culpability related to his pre-existing brain injury, I have concluded that the upper range of sentence proposed by the Crown would be disproportionate. A sentence of 7 or 8 years might be fit if the offender were unburdened by cognitive limitations, but it would be excessive in the present case because of this one important mitigating factor. In my view, however, a penalty at the lower end of the Crown range of 6 years would be acceptable.
- [46] A time served disposition, meanwhile, would not satisfy the principles of denunciation and deterrence. These principles continue to predominate because of the gravity of the offence and the offender's abundant residual moral responsibility for committing it, even after considering the mitigating factor of his brain injury and related neurocognitive deficits. An effective 3.5-year sentence would fail to properly express this Court's strong condemnation

of the offender's cowardly, wanton, cruel, and sustained attack upon the complainant. Such a penalty would not appropriately punish the accused or serve as a deterrent to others. It would not bring the offender sufficiently to account for his crime or provide an adequate remedy to the complainant or the community for the harm that he has done.

[47] In the end, carefully weighing and measuring all of the factors cited above, I have decided that a just and proportionate sentence in this case is an additional period of incarceration with the added protection of a lengthy probation order. I repeat that the offender has performed well under past probation orders and the role of community corrections will be vital in monitoring the offender's behaviour and supervising his reintegration into civilian life. This, in my view, is the surest way to protect the complainant and the public, and to assist the offender in functioning satisfactorily on his release.

[48] Stand up, Mr. Wilson.

[49] In all of the circumstances of this case, in my view a fit sentence is in the range of 5.5 years. After giving the offender credit as aforesaid for the time that he has already served in custody, I hereby impose a further jail sentence of two years less one day. Upon your release from custody you will be bound to comply with a probation order of three years' duration with the following terms and conditions:

- (1) You must keep the peace and be of good behaviour;
- (2) You must appear before the court when required to do so by the court;
- (3) You must notify the court or the 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;
- (4) Within 48 hours of your release from custody you must report in person to a probation officer at the community corrections office 836 Courtenay Street, Victoria, BC and thereafter as and when directed by the probation officer;
- (5) When first reporting to the probation officer you must inform him or her of your residential address and phone number. You must not change your residence or phone number without written permission from your probation officer;
- (6) You must have no contact or communication, directly or indirectly, with Sherrie Martin-Wilson;
- (7) You must not be found within 100 metres of any residence or any other place that you know to be occupied by Sherrie Martin-Wilson;
- (8) You must attend, participate in and successfully complete any intake, assessment, counselling or program as directed by the probation officer;

- (9) You must not possess, either personally or through another person, any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition or explosive substance, anything that resembles a weapon or firearm, or any weapon as defined in s. 2 of the Criminal Code;
- (10) You must not possess any knife, except for the immediate preparation or eating of food, or for purposes directly and immediately related to your employment;
- (11) You must not possess or consume any substance proscribed by the Controlled Drugs and Substances Act except those prescribed by a medical physician licenced to practice in British Columbia;
- (12) Having consented to do so, you must do the following:
 - (a) At the direction of your probation officer, report to the forensic psychiatric services or elsewhere for any intake assessment counselling or treatment.
 - (b) Attend all scheduled appointments with your doctor, psychiatrist and counsellor.
 - (c) Take all medications prescribed to you.
 - (d) Give your doctor, psychiatrist and counsellor a copy of this order.
 - (e) You must provide your probation officer with the names, addresses, and phone numbers of your doctor, psychiatrist, and counsellor.
 - (f) Tell your doctor, psychiatrist, and counsellor that if you don't follow any terms of this order, they must inform your probation officer.
 - (g) If you decide not to follow these directions, you must immediately report to your probation officer when his or her office is open and tell your probation officer.
- [50] I hereby order that the offender will provide a sample of his DNA forthwith by the least intrusive means available.
- [51] In accordance with s. 109 of the Criminal Code, furthermore, I order that the offender is prohibited for the rest of his life from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition and explosive substance.
- [52] Finally, in accordance with s. 743.21(1) of the Criminal Code, I prohibit the offender from communicating directly or indirectly with Sherrie Martin-Wilson during the remaining custodial period of this sentence.

"Baird J."

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