

CANADA / JUDGMENT

R. v. Young

2024 BCSC 1278

COURT

Supreme Court of British Columbia

DECIDED

17 June 2024

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Young,

2024 BCSC 1278

Date: 20240617

Docket: 96160-2

Registry: Kelowna

Rex

v.

George Nicholas Young

Before: The Honourable Mr. Justice Gomery

Oral Reasons for Sentence

Counsel for the Crown:

G. Holmes

Counsel for the Accused:

M.A. Patterson

Place and Date of Trial/Hearing:

Kelowna, B.C.

June 17, 2024

Place and Date of Judgment:

Kelowna, B.C.

June 17, 2024

Introduction

- [1] THE COURT: On August 14, 2021, George Young assaulted Tyler Takeda with a baseball bat in the parking lot of the Econo Lodge Inn in Kelowna. It was an aggravated assault. Mr. Young hit Mr. Takeda several times and fractured his skull. He is now before the court for sentencing.
- [2] Mr. Young has a lengthy criminal record including previous convictions as an adult for violent offences including aggravated assault, assault causing bodily harm, assault with a weapon, simple assault, criminal negligence causing death, and robbery. The Crown has filed an application to have him declared a dangerous offender pursuant to s. 753 of the Criminal Code, R.S.C. 1985, c. C-46 [Code].
- [3] The Crown and defence counsel bring forward a joint submission to resolve both the question of Mr. Young's sentence and the dangerous offender application. The submission is that:
- (a) Mr. Young would be sentenced to serve five-and-a-half years in jail less credit for time served. Mr. Young has been incarcerated for much of the past three years in connection with the charge for which I am now sentencing him. The credit amounts to 2,008 days and the remaining sentence would amount to 601 days or approximately roughly 20 months.
- (b) Mr. Young would be designated a long-term offender pursuant to s. 753.1 of the Code for a period of 10 years. The effect of the designation would be that Mr. Young would be subject to supervision following his release from prison until the end of the 10-year period.
- [4] The law is that I must accept a joint submission unless the proposed sentence would bring the administration of justice into disrepute or otherwise be contrary to the public interest; *R. v. Anthony-Cook*, 2016 SCC 43, at para. 32. In my view, this test applies to both aspects of the joint submission, the sentence and the long-term offender designation. I must apply this test having regard to the expectations of reasonable persons aware of the circumstances of the case.
- [5] I must consider the sentence and the long-term offender designation separately. The application of a long-term offender designation presupposes the imposition of a sentence of two years or more before consideration of credit for time served. A long-term offender designation serves a different purpose than sentencing. Its purpose is to "ensure that the offender does not reoffend and to protect the public during a period of supervised reintegration into society"; *R. v. L.M.*, 2008 SCC 31, at para. 46.

Sentencing**Circumstances of the Offence**

- [6] Mr. Young and his friend, Mr. Bielak, came to the parking lot for a confrontation with a group of men, including Mr. Takeda, who were pursuing collection of a drug debt from Mr. Bielak. A little earlier, Mr. Takeda had confronted Mr. Young in Mr. Young's bedroom in a house nearby. That episode ended with Mr. Young warning Mr. Takeda off and Mr. Takeda leaving the house. While the evidence does not conclusively establish how the confrontation in the parking lot began, it is clear how it ended. Mr. Young assaulted Mr. Takeda with a baseball bat striking him several times, at least, on the head and also on other parts of the body. Mr. Young's assault on Mr. Takeda was prolonged and he struck in anger. This was not self-defence.
- [7] The incident took place in broad daylight on a summer's day in a public place in the presence of bystanders who were hotel guests. It is apparent from a video recorded by one of them that they were startled and upset by what they saw and heard. At least two bystanders called the police.

Circumstances of the Offender

- [8] Mr. Young is 43 years old. He is the product of a broken home that he left at age 14 or 15.
- [9] Mr. Young understands that his ancestry is Indigenous on his father's side and that his paternal grandfather was relocated from Saskatchewan to attend a residential school outside Dawson Creek. He was told this by his father. Mr. Young describes his father as an alcoholic. He understands that his father and his father's brother were both placed in foster care when they were young.
- [10] Mr. Young's father married his mother and lived with the family until he was seven years old when the mother left, taking the children with her. Prior to the separation, Mr. Young reports that he suffered physical and sexual abuse inflicted by his father. His father returned to the household when Mr. Young was 14 years old, at which point, Mr. Young left home because he believed that if he stayed he would suffer further abuse.
- [11] Mr. Young got into trouble with the law when he was in high school and was convicted of various offences as a young offender. He dropped out in grade 11 and eventually obtained his high school equivalency when he was 20. He has spent significant portions of his life in prison. He has mostly been employed when he was not in prison, mainly as an unskilled labourer. As one would expect, his employment history has been choppy and he has never held a job for more than about two-and-one-half years.

- [12] Mr. Young started consuming alcohol at age 13 or 14 and quickly progressed to overconsumption. Starting with cannabis at age 12 or 13, he consumed many different drugs and eventually became addicted to heroin while imprisoned at Matsqui Institution in the 2000s. He struggled with opiate addiction and says that he has been clean for 10 years. He has not had the same success controlling his consumption of alcohol.
- [13] A forensic psychiatric report prepared by Dr. Kimberly Kreklewetz for the sentencing opines that Mr. Young suffers from alcohol use disorder, opioid use disorder, cluster B personality disorder traits, including antisocial traits, and possibly posttraumatic stress disorder. His substance use disorders are in remission while he is in a controlled environment. Mr. Young understands that he must not drink or use drugs if he is to avoid getting into trouble.
- [14] After he left home, Mr. Young never established a close relationship with his father who died in 2018. While he has half-siblings, he has never had a relationship with them.
- [15] Mr. Young's mother died of cancer of 2020. Mr. Young supported her through chemotherapy, was with her when she died, and was deeply affected by her death.
- [16] Mr. Young is married and has had two common law partners. Despite long periods of separation, the marriage has endured since 2013. He has two biological children and three stepchildren with his wife. He reports that he speaks with the youngest, now 19 years old, every other week. His wife has had her own issues with substance abuse, but has gotten clean and now works in a recovery house. Mr. Young views her as showing him a path forward.

Impact on the Victim

- [17] Mr. Takeda did not cooperate in the investigation of the offence, was not called as a witness at trial, and has not provided a victim impact statement. He suffered serious injuries during the assault, including three distinct skull fractures as well as bruising and lacerations requiring stitches.

Legal Parameters

- [18] Pursuant to s. 266 of the Code, the offence of aggravated assault is punishable on indictment by imprisonment for a term not exceeding 14 years.
- [19] I must bear in mind the purposes and principles of sentencing set out in ss. 718 to 718.2 of the Code. As stated in s. 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." Just sanctions are those that are intended:
- (1) to denounce unlawful conduct and the harm done to victims or the community caused by unlawful conduct;

- (2) to deter the offender and other persons from committing offences and, where necessary, to separate offenders from society;
- (3) to assist in rehabilitating offenders;
- (4) to provide reparations for harm done to victims or to the community; and
- (5) to promote a sense of responsibility in offenders and acknowledgment of the harm done to victims or to the community.

[20] Section 718.1 of the Code states that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Further to s. 718.2 of the Code, a sentence should account for any relevant aggravating or mitigating circumstances relating to the offence or the offender. A sentence should also be similar to sentencing given to similar offenders for similar offences committed in similar circumstances. This is described in the cases as the principle of parity.

[21] Section 718.2(d) requires that an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances.

[22] Sentencing requires close attention to the particular circumstances of the case and characteristics of the offender. Section 718.2(e) requires that:

all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

[23] When dealing with offenders of Indigenous heritage such as Mr. Young, this section obliges judges to "use a different method of analysis in determining a fit sentence"; *R. v. Gladue*, 1999 CanLII 679; *R. v. Ipeelee*, 2012 SCC 13.

[24] As the court explained in *Ipeelee* at para. 59, the judge must:

consider: (a) the unique systemic or background factors which may have played a part in bringing the particular Aboriginal offender before the courts; and (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage or connection

[25] In *Gladue*, at para. 93, the court urged sentencing judges to "have recourse to a restorative approach to sentencing," considering both the systemic or background factors that may have played a part bringing this particular Aboriginal offender before the court and the types of sentencing procedures and sanctions that may be appropriate in the circumstances for the offender because of his particular Aboriginal heritage or connection. If there is an alternative to incarceration, the length of the term must be carefully considered.

[26] However, in cases of serious or violent crimes, the cases emphasize that the sentencing objectives of separation, denunciation, and deterrence carry particular weight. Use of the different method of analysis required in the case of an Indigenous offender often leads to the same result. In *R. v. Elliott*, 2015 BCCA 295, at para.34, Justice Donald explained that:

no observer should be particularly surprised to find that, in cases of violent and serious crimes, lengthy incarceration may be appropriate and warranted for Aboriginal and non-Aboriginal offenders alike.

The Range of Sentences Established by the Authorities

[27] In British Columbia, the established range of sentences for an aggravated assault is between 16 or 18 months and six years or more. Cases involving an unprovoked attack with a weapon tend to result in the imposition of a sentence at the higher end of the range; *R. v. Craig*, 2005 BCCA 484, at para. 10; *R. v. Barrett*, 2021 BCSC 288; *R. v. Drummond*, 2022 BCSC 2022 at para. 26.

Aggravating and Mitigating Factors

[28] Aggravating factors are considerations that speak to increased moral culpability while mitigating factors point in the other direction.

[29] In this case, Mr. Young's lengthy criminal record for crimes of violence constitutes a powerful aggravating factor. His record dates back to 1997 when he was convicted of assault with a weapon as a young offender. It includes offences resulting in penitentiary sentences in 2000, 2003, and 2011; a 2018 conviction for robbing a stranger at a bank machine; and a 2019 conviction for an assault causing bodily harm to a girlfriend.

[30] An aggravating factor specific to the offence committed by Mr. Young in this case is that the assault on Mr. Takeda was brazen. It took place in broad daylight in the presence of members of the public in circumstances likely to shock their comfort and sense of security in the community.

[31] A mitigating factor is that Mr. Young has made good use of his most recent period of incarceration at the Okanagan Correctional Centre while awaiting trial and sentencing for this offence. He has mostly stayed out of trouble, functioned as a peer mentor, and obtained certificates of achievement reflecting his completion of courses addressing employability skills, healthy relationships, victim awareness, anger management, living with pain and loss, relapse prevention, substance abuse, and living without violence.

Gladue Considerations

- [32] Mr. Young's moral blameworthiness is mitigated to some degree by the difficult circumstances of his upbringing as I have described. He is, in part, a product of the conditions in which he was raised which included poverty, physical abuse, and substance abuse. As Justice Greckol stated in *R. v. Skani*, 2002 ABQB 1097, at page 478, in a passage quoted in *Ipeelee* at para. 73, "few mortals could withstand such a childhood and youth without becoming seriously troubled."
- [33] Mr. Young has participated in Indigenous cultural practices since he was 18 years old. He goes to powwows and sweat lodges.
- [34] It is fair to say that Mr. Young's family background and family history echo those of many Indigenous accused persons and offenders who find themselves in court. Abuse, a broken home, and ineffective social supports, together with his experience in the criminal justice system have contributed to making him an alcoholic, an addict, and a prolific offender. To make this observation is not to deny Mr. Young's responsibility for his crimes, but to put them in context.

Assessment

- [35] In my view, the sentence jointly proposed by counsel is justified and entirely appropriate. It falls within the range established by the authorities. A sentence at the upper end of the range is warranted because considerations of denunciation and deterrence are particularly important in this case. This was a crime of violence, Mr. Takeda was seriously injured, and Mr. Young is a repeat offender. Society must express its condemnation of Mr. Young's conduct in strong terms. The mitigating factors I have described are not insignificant, but there is no alternative to a lengthy period of incarceration in this case.
- [36] Accordingly, I will sentence Mr. Young to a prison term of 5.5 years before credit is given for time served. Before I pronounce sentence, I must consider the proposed long-term offender designation.

Long-Term Offender Designation:

Legal Parameters

- [37] Section 753.1(1) provides that the court may find an offender who is to be sentenced for a term of more than two years to be a long-term offender if two additional conditions are satisfied: first, there is a substantial risk that the offender will reoffend; and second, there is a reasonable possibility of eventual control of the risk in the community. The first requirement is directed to the risk of violent reoffending and not simply to the possibility that the offender may commit some kind of criminal offence.

Is there a substantial risk that Mr. Young will commit further violent offences?

[38] In preparation for this hearing as contemplated by the Code, Mr. Young was remanded for assessment by the Forensic Psychiatric Services Commission. The assessment was carried out by a forensic psychologist, Dr. Nicholas Druhn, who prepared a thorough and even-handed report. He reviewed Mr. Young's history, interviewed him, and conducted psychological testing.

[39] Dr. Druhn offers the following opinion:

In my opinion, without further intervention or supervision, Mr. Young is at high risk for future violence, largely based upon static factors. His exposure to regular physical abuse in his youth likely both altered his worldview as an unsafe place and also contributed to coping via substance use. In my opinion, being subject to abuse increased his proclivity for reactive aggression in the face of real or perceived threats to him as well as to others when he was younger. Alcohol, in particular, functions as having a further disinhibitory effect and complicates non-violent cognitive processing and outcomes. He manifests antisocial personality features that present less with violent attitudes or ideation at present, but more so rather with irresponsibility, impulsivity, and behaviours such as fleeing or going unlawfully at large that go against his otherwise clearly present verbal remorse and acceptance of responsibility which impress as sincere. His history of problems with supervision response have significantly affected management of aggression. There are other aspects of anger contributing to his aggressive responses noted in the section below outside of substance use and reactive aggression to real or perceived threats. He has gained partial insight and has not manifested instability or notable problems with treatment or management in recent history. The most likely risk scenario would be substance use and/or perceived threat that would spike risk of reactive aggression comingled with angry response that could result in imminent violent assault, disproportionate to perceived risk, of a quality that could involve high risk of lethal use of force, e.g., stabbing to body cavity or head or pummeling to the head with a blunt object.

[40] Dr. Kreklewetz came to essentially the same conclusion based on psychological testing and an interview conducted for the preparation of the presentence report. She states:

Mr. Young is rated as posing a High risk for future violence. His risk is thought to increase when he is under the influence of substances that would impair judgment, reduce behavioural controls, and increase impulsivity. Mr. Young's risk would also likely increase when he is experiencing sensations of overwhelm and distress when aggression may be his primary or most accessible coping mechanism. In particular, he may associate feelings of anger and fear, to which he readily utilizes violence as his primary coping mechanism. His risk is also thought to increase when he perceives others' statements or actions as threats towards either himself or loved ones, to which he maintains attitudes that support the use of violence to resolve these conflicts when he perceives interactions as threatening. Future violence is likely to be impulsive and reactive in nature.

[41] These expert opinions are supported by consideration of Mr. Young's criminal history. For the most part, his offences were not planned. Many of them involved impulsive episodes of unrestrained violence. Mr. Young blew up and lashed out and someone got hurt.

[42] Dr. Druhn's and Dr. Kreklewetz's reports and Mr. Young's record satisfy me that there is a substantial risk that he will commit further violent offences.

Is there a reasonable possibility of eventual control of the risk in the community?

[43] In speaking with Dr. Druhn, Mr. Young displayed what Dr. Druhn characterizes as fairly good, but incomplete, insight into his pattern of violent offending. It is clear that he has made real efforts to engage in and benefit from programming during this most recent period of incarceration. He spoke to these efforts when he addressed the court this morning.

[44] A Gladue report prepared for this hearing outlines a healing plan, including therapy, mental health support, cultural inclusion, and education to be implemented in the community following Mr. Young's release from prison. It is detailed and includes contact information for various organizations offering support and assistance to Indigenous former inmates such as Mr. Young.

[45] Dr. Druhn is of the opinion that, while steps must be taken to mitigate the risk that Mr. Young will relapse into violence, it is realistic to think that the risk can be managed in the community. He states:

That is, while his commitment to programming in recent years has been positive, his institutional adjustment much improved, and that he does not advocate violent attitudes, it is the opinion of the undersigned that long-term mitigation of risk necessitates further treatment. This could occur in CSC if sentenced to prison or in the community, in which case, supervision would belay or help ensure treatment. What impresses the undersigned as different from the past is his apparently profiting from programming, increased engagement with Indigenous supports, and seeming buy-in with his healing plan.

[46] Dr. Druhn states that he is guardedly optimistic so long as appropriate external controls are put in place.

[47] Crown and defence counsel concur in submitting that Dr. Druhn's report establishes that there is a reasonable prospect of eventual control in the community of the risk that Mr. Young will commit further violent offences. Having paid close attention to counsel's submissions and heard Mr. Young express his own heartfelt desire to put himself on a better path, I agree.

Assessment

[48] The statutory prerequisites to a long-term offender designation are satisfied and I am persuaded that such an order is appropriate. Supervision of Mr. Young in the community for 10 years following the conclusion of his sentence is warranted, and it is the best option to secure community safety and a future for Mr. Young. It is not at all certain that he will stay clean and conquer his demons, but he must be given that chance. If he fails, it is likely that the consequences for all concerned will be severe. I am satisfied that Mr. Young understands what is at stake.

Judgment

[49] Mr. Young, would you please stand.

[50] I sentence you to a term of imprisonment for aggravated assault of 601 days. But for the time you have already spent in prison, the term of imprisonment I would have imposed is five-and-a-half years or 2,008 days. The actual presentence time spent in custody is 938 days. I am granting you credit for time served at a rate of 1.5 to one. The total credit I am granting you is 1,407 days.

[51] Pursuant to s. 737.21 of the Code, I am satisfied that the victim impact surcharge should be waived because of your precarious financial circumstances resulting from the lengthy period of incarceration you have already experienced and your lack of financial resources.

[52] Pursuant to s. 109(3) of the Code, you are prohibited from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, and explosive device for life.

[53] Your conviction is for a primary designated offence. Pursuant to s. 487.051(1) of the Code, I make an order in Form 5.03 authorizing the taking of samples of bodily substances from you for the purpose of registration in the DNA National Databank.

[54] Pursuant to s. 753.1 of the Code, I designate you a long-term offender for a period of 10 years commencing from the conclusion of your sentence.

[55] Mr. Young, I wish you luck. Do your best. People are depending on you. Be the better person you have the potential to be.

"Gomery J."

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Prepared on 26 October 2026 · Esheria