

CANADA / JUDGMENT

R. v. Yu

2017 BCSC 823

COURT

Supreme Court of British Columbia

DECIDED

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2017 BCSC 823 R. v. Yu IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Yu, 2017 BCSC 823 Date: 20170410 Docket: 26924-2 Registry: Vancouver Regina v. Zhong Ming Yu Before: The Honourable Mr. Justice Greyell Oral Reasons for Sentence Counsel for the Crown: J.M. Whiting Counsel for the Accused: M.B. Thompson Place and Date of Trial/Hearing: New Westminster, B.C. March 15 and 17, 2017 Place and Date of Judgment: New Westminster, B.C. April 10, 2017

- [1] THE COURT: On October 19, 2016, I found Mr. Yu guilty of two charges, that he unlawfully possessed cannabis, a controlled substance under the Controlled Drugs and Substances Act, S.C. 1996, c. 19 (the "CDSA"), in an amount exceeding three kilograms, for the purpose of trafficking, contrary to s. 5(2) of the CDSA, and that he unlawfully produced cannabis, contrary to s. 7(2) of the CDSA. These proceedings concern the sentence to be imposed on Mr. Yu for his commission of the offences.
- [2] The circumstances leading to the laying of the charges and Mr. Yu's ultimate conviction are set out in my conviction reasons indexed as R. v. Yu, 2016 BCSC 2523.
- [3] I will briefly set out the background to the charges. Mr. Yu was charged following police surveillance of him and a subsequent search of premises at 190 - 12855 Clarke Road, Richmond, British Columbia, in which a cannabis grow operation was discovered. The police seized 150 marihuana clones, 80 four-inch-high marihuana plants, and 111 marihuana plants that were 18 to 24 inches tall. In addition, the police seized a significant amount of marihuana grow operation equipment: fans, filters, HID light bulbs, shades, and pots.
- [4] Section 7(2)(b)(iii) of the CDSA requires the court impose a mandatory minimum sentence of one-year imprisonment on Mr. Yu on Count 1. Section 7(2)(b)(i) has been held not to infringe s. 12 of the Charter of Rights and Freedoms, and hence constitutional. See R. v. Picard, 2016 BCSC 2052, and R. v. Serov, 2017 BCSC 120. I am advised Picard and Serov are under appeal. Until they are overturned, I consider them to be binding upon me.
- [5] On Count 2, defence counsel seeks a sentence of six months. The Crown seeks a sentence of a concurrent one-year imprisonment.

- [6] Mr. Yu is 43 years of age and has no criminal record. He has two daughters, age 13 and 15. I know little else about his personal circumstances except that Mr. Thompson says, and the evidence before me on sentencing supports, that he has a heart problem. Mr. Thompson says that heart problem arises from a motor vehicle accident which led him to obtain a medical marihuana licence to produce marihuana, which had expired.
- [7] The defence notes that in Picard, Ms. Sevard, who was sentenced to a mandatory minimum of one-year for production of 500 plants, was also sentenced to a one-year concurrent sentence for possession of marihuana. The defence says Mr. Yu had in his possession substantially less than the plants Ms. Sevard had in Picard, and hence his sentence should reflect that fact.
- [8] The Crown relies on R. v. Budd, 2010 BCCA 214, where the Court of Appeal upheld a one-year jail sentence for possession of 316 marihuana plants for a 26-year-old with no criminal record. In Budd, the court reviewed the sentencing principles applied by the trial judge at paragraph 11, and in particular his focus on the principle of general deterrence as an appropriate basis upon which to impose the sentence he did.
- [9] At paragraph 18 of Budd, Madam Justice Kirkpatrick, after completing that review, stated: I am not persuaded that the judge erred in imposing a one year jail sentence rather than a conditional sentence. He was alive to the problem of marihuana grow operations in the local community and the need to deter others from embarking on similar enterprises.
- [10] I earlier made reference to defence counsel's submission on behalf of Mr. Yu that he had been in the possession of an expired marihuana licence. I found in the present case, at paragraphs 45 to 46 of my conviction reasons, I said:
- [45] While one of the grow licences is in the name of a Mr. Yu, it is not in the name of Zhong Ming Yu.
- [46] I accept the evidence of Constable Strikwerda that the grow operation being conducted at the unit is beyond a production which would support personal use, but rather is in the area of a small to medium grow operation being conducted for commercial purposes.
- [11] Counsel will recall that Exhibit 5 was filed at the trial which was the affidavit of one Andrea Abou-Eid, an employee of Health Canada. That affidavit annexed to it Exhibit 1, an affidavit of Christina MacInnis. The thrust of Ms. MacInnis' affidavit was that she had searched for information relating to Health Canada records for marihuana production licences. Information had been sought whether such a licence had been issued to a Zhong Ming Yu, the name of the accused, and her response in her affidavit was, "My search of the record-keeping system resulted in no matches for Mr. Yu."
- [12] Mr. Yu, would you stand, sir.

- [13] I sentence you to one-year imprisonment on Count 1, unlawful production of marihuana, contrary to s. 7(1) of the CDSA. I also impose a sentence of one-year for Count 2, possession for the purposes of trafficking, contrary to s. 5(2) of the CDSA. The sentences will be served concurrently.
- [14] You may be seated, sir.
- [15] I also impose the following mandatory ancillary orders. An order under s. 109(2) of the Criminal Code, R.S.C. 1985, c. C-46 banning you from the possession of firearms for ten-years. I impose a lifetime restriction on the possession of restricted weapons, pursuant to section -- counsel, what section of the Criminal Code is that?
- [16] MR. WHITING: I'm sorry, are we still -- are we still dealing with the s. 109 prohibition order?
- [17] THE COURT: I thought I had done 109.
- [18] MR. WHITING: I thought so. So now -- I'm sorry, My Lord, the last thing I heard was reference to restricted weapons.
- [19] THE COURT: Yes.
- [20] MR. WHITING: I think that's all encompassed within --
- [21] THE COURT: Within 109?
- [22] MR. WHITING: -- within s. 109. It has the ten-year mandatory, but then there's a lifetime prohibition against restricted.
- [23] THE COURT: Very well.
- [24] MR. WHITING: Thank you, My Lord.
- [25] THE COURT: Madam Clerk, do you have that?
- [26] THE CLERK: Yes. Thank you, My Lord.
- [27] THE COURT: Thank you.
- [28] I order that all items seized from the marihuana grow operation at Unit 190 - 12855 Clarke Road in Richmond be forfeited to the Crown as offence-related property, pursuant to s. 16 of the CDSA.
- [29] I understand the victim surcharge is mandatory and accordingly I impose a victim surcharge in the amount of \$200, which shall be paid within 60 days of this decision.
- [30] Counsel, are there any other matters?
- [31] MR. WHITING: I believe, My Lord, there was the recommendation from the Crown for the court to consider the DNA order. These are secondary designated offences so it's a discretionary order.

- [32] THE COURT: I do not consider it necessary that a DNA order be issued, and accordingly do not make that order.
- [33] MR. WHITING: Thank you, My Lord. With regard to the s. 16 forfeiture order, I will draft up a draft of that order, send it to my friend. We can both consent to the form and then forward it to Your Lordship shortly, if that's agreeable.
- [34] THE COURT: That is agreeable to me, yes. Thank you. Mr. Thompson?
- [35] MR. THOMPSON: Yes, that is. Thank you.
- [36] THE COURT: Thank you. "Greyell J."
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