
CANADA / JUDGMENT

R. v. Zaporoski

2020 BCSC 887

COURT

Supreme Court of British Columbia

DECIDED

19 May 2020

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2020 BCSC 887 R. v. Zaporoski

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Zaporoski,

2020 BCSC 887

Date: 20200519

Docket: 41396-8

Registry: Prince George

Regina

v.

Kevin Zaporoski

Before: The Honourable Mr. Justice Williams

Oral Reasons for Sentencing

Counsel for the Crown appearing via videoconference:

R. Smith

Counsel for the Crown appearing via teleconference:

H.N. Purewal

Counsel for the Defence:

A.J. Lagemaat

J.S. Stowe

Place and Date of Trial/Hearing:

Prince George, B.C.

May 15, 2020

Place and Date of Judgment:

Prince George, B.C.

May 19, 2020

- [1] THE COURT: I am going to pronounce oral reasons for sentencing. I expect there will be a transcript prepared and I will reserve the right to make minor editorial corrections. I will not change the substance of these reasons in any way.
- [2] Kevin Zaporoski is before this Court today to be sentenced.
- [3] On May 15, he entered a plea of guilty to the offence of manslaughter. Pronouncement of sentence was reserved to today's date.
- [4] The indictment before the Court charges Mr. Zaporoski with second-degree murder. When he was arraigned, he entered a plea of not guilty to that charge but entered a plea of guilty to the lesser included offence of manslaughter. The Crown agreed to accept that plea and, accordingly, that conviction will be entered.
- [5] By way of background, I should note that Mr. Zaporoski and two other individuals, Lyle Baker and Dustin Lindgren, were all charged with having committed the murder of Jordan Reno. At trial those two defendants, that is Baker and Lindgren, were convicted of first-degree murder; Mr. Zaporoski was convicted of second-degree murder.
- [6] The convictions were successfully appealed. The Court of Appeal vacated the convictions and ordered that there should be a new trial.
- [7] Mr. Baker and Mr. Lindgren have since pleaded guilty in proceedings separate from this. Mr. Zaporoski was scheduled to proceed to trial, but the matter has now been dealt with by way of the present plea.

The Circumstances

- [8] The circumstances are stipulated in an agreed statement of facts, which has been filed in this proceeding and is marked as Exhibit 1.
- [9] Briefly stated, the matter arises from activity in the drug trade in Prince George.
- [10] In 2012, an individual named Barr enlisted the assistance of Mr. Lindgren and Mr. Baker to assist him in dealing with a conflict he had with the deceased Jordan Reno. Evidently, Mr. Baker and Mr. Lindgren devised a plan which entailed murdering Mr. Reno.

- [11] The agreed statement of facts makes reference to a number of communications between Baker and Lindgren. At some point it was determined that it would be necessary to involve someone else for the purpose of bringing Mr. Reno to the Baker residence, where the plan would be executed. It was in that capacity that Mr. Zaporoski came to be involved.
- [12] In the early morning hours of June 19, 2012, Mr. Zaporoski, together with Mr. Baker, went to pick up Mr. Reno. Apparently Mr. Reno went with them voluntarily. He was then transported to Mr. Baker's trailer and all three men entered the trailer.
- [13] Once inside, Mr. Reno was assaulted. That assault, which carried on for the next several hours, resulted in his death. During that period, Mr. Zaporoski entered and left the trailer a number of times.
- [14] Police subsequently made observations that caused them to investigate. They found a box located on Baker's property. Inside the box was found the remains of Mr. Reno. His body was wrapped in plastic and his face was tightly covered with fabric, tape, and plastic.
- [15] An autopsy determined that Mr. Reno died from cerebral trauma caused by blunt force. The injuries were consistent with Mr. Reno having received forceful blows to the head. As well, there were cuts noted on his face and lips. Those were consistent with having been punched or kicked. There was also evidence noted in the autopsy suggesting that Mr. Reno may have been restrained prior to his death.
- [16] The basis of the guilty plea is that Mr. Zaporoski admits that he drove Mr. Baker to pick up Mr. Reno and brought him back to the Baker residence, with the knowledge that once they arrived at the trailer Mr. Baker and/or others would assault Mr. Reno and cause him bodily harm. Mr. Zaporoski admits that he was a party to the assault causing bodily harm and he is, therefore, guilty of manslaughter.
- [17] I have had an opportunity to review victim impact statements provided by Pearl Reno and Jennifer Reno, the deceased's mother and sister respectively. On the basis of those materials, it is evident that Mr. Reno was loved and was of special importance to his family. His death has been enormously distressing for them.

The Offender

- [18] Mr. Zaporoski is 52 years of age. He is originally from Prince George. He has one brother in that community. His father died in 2005 and his mother died in 2014.
- [19] Mr. Zaporoski has a high school equivalency and has apparently taken an accounting course as well. He is a house painter by vocation. In that capacity, he has worked in a number of locations, including Prince George and the Whistler and Squamish area. It was at the time that his mother was dying of cancer in 2014 that he returned to the Prince George area.
- [20] In addition to his skills as a house painter, he has some mechanical interest and aptitude for automobile repair and he is, as well, a tattoo artist.

- [21] My understanding is that he has no family, although he recently became aware of a daughter, now 19 years of age, who is the product of a brief relationship in his past. Mr. Zaporoski evidently was not previously aware of this young woman but, now that he is, he would like, once he is able to return to the community, to establish a relationship with her.
- [22] With respect to his work aspirations, he believes that there is an abundance of work available in the painting field and he intends to occupy himself in that way. As well, he has made arrangements to have a place to stay upon his release.
- [23] Mr. Zaporoski declined to make any statement to the Court. Through his counsel, he indicated that he had no problem with Mr. Reno and that it was not his intention that Mr. Reno should die.
- [24] The Crown has filed a record of Mr. Zaporoski's criminal convictions. That is an exhibit in this proceeding. It is extensive and lengthy.

Positions of the Parties

- [25] In this case, the Court is presented with a joint submission. Both the Crown and counsel for Mr. Zaporoski urge the imposition of a sentence of two years less one day in jail, to be followed by two years' probation. In the submission of counsel, taking into account the time that Mr. Zaporoski has served to date in respect of this matter, both on remand and following his sentencing after the first trial, that would result in an actual effective sentence of approximately seven years, 11 months incarceration. Both Crown and defence submit that sentence is squarely in the appropriate range for manslaughter, as supported by a substantial weight of authority.
- [26] There are also terms of a probation order proposed, again jointly, as appropriate.
- [27] Finally, the parties agree that the Court should impose two ancillary orders, one dealing with DNA and the other a firearms prohibition.

Relevant Authorities

- [28] The Criminal Code, R.S.C. 1985, c. C-46, provides for a maximum sentence of life imprisonment upon conviction for manslaughter. There is no minimum sentence.
- [29] As a practical matter, the accepted range of sentence for manslaughter is broad. That is because the conduct which can result in such a conviction can range from near accident to near murder. As a general proposition, the commonly recognized range is between four and 15 years' incarceration, subject, of course, to the specific circumstances. Many cases demonstrate that sentences in the six to eight-year range are commonplace.
- [30] As well, the Criminal Code, at s. 718, sets out the purposes and principles of sentence.
- [31] The enumerated purposes of sentence are:

- (a) to denounce unlawful conduct and the harm done to victims or to the community caused by [the] 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.
- [32] In addition, there are a number of other considerations set out in the Criminal Code provisions, including that a sentence should reflect the moral blameworthiness of the offender, that the quantum of sentence should take into account both aggravating and mitigating factors, and that similar sentences should generally be applied where the circumstances of the offender and the offence are similar.
- [33] Counsel referred this Court to a number of authorities dealing with quantum of sentence. I have reviewed each of those cases and a list of them will be appended to the transcript of these reasons ("Appendix A"), which I expect will be prepared.
- [34] With regard to the effect to be given to a joint submission, the Court has been referred to the decision of the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43. In its ruling, the court sets out the essential principles underlying the manner in which a trial court should deal with a joint submission. Generally stated, the court held that judges should not depart from a joint submission unless it would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.
- [35] Beyond that, the authorities with which I have been provided deal with the notion of the underlying criminal liability for manslaughter. Most notably, that it is materially different from that of murder.

Discussion

- [36] Counsel agree that, with respect to aggravating and mitigating factors, the only factor in mitigation is that Mr. Zaporoski is entering a guilty plea.
- [37] As in regards aggravating factors, the Crown submits that it is an aggravating factor that the offence was committed in the context of the drug trade; that significant injury was inflicted upon the victim, leading to his death; that Mr. Zaporoski has a not insignificant prior criminal record, including for offences of violence; finally, the Crown makes reference to the impact of the offence on Mr. Reno's family.
- [38] I do not understand Mr. Zaporoski to challenge those submissions.

- [39] Indeed, the fact that this occurred in the course of the drug trade in Prince George is troubling and striking. It is a notorious fact that the drug dealing activity in that region has given rise to many instances of violence which have led to prosecutions for serious criminal offences. The fact that the victims are most often engaged in the same criminal activity is no answer, is of no mitigation. The actions of those involved in the drug trade, taking violent action against others in that subculture, is an affront to the community and its values. These actions pose real dangers to members of the public, persons who have a right to feel safe in their community. This tendency to carry on in a manner seemingly taken from the plot of a Tarantino movie is outrageous.
- [40] For that reason, in addition to the principles of deterrence, both general and specific, this Court's sentence must roundly denounce this type of reckless and unacceptable violence as it is used to redress grievances in the drug world. Such conduct deserves to be punished because it violates our society's code of values.
- [41] I also agree that Mr. Zaporoski's criminal record is noteworthy. It is long and serious and includes convictions for offences of violence.
- [42] That said, in the face of the circumstances upon which Mr. Zaporoski's liability is made out, that is for manslaughter, not murder, I must be guided by the authorities that deal with sentencing for that offence, not for murder.
- [43] Based upon the cases which counsel have referenced, I am satisfied that the sentence quantum urged upon this Court by counsel, essentially eight years, is proper and appropriate in the circumstances of this offender and these facts. Accordingly, I will accept the joint submission advanced by counsel and find it as such that the Court should act upon it accordingly.
- [44] In the result, there will be a sentence of two years less one day imposed, to be served in a provincial correctional facility. That sentence is, quite obviously, well less than the range I spoke of earlier. However, the actual sentence to be imposed today must reflect the time served to date, the so-called dead time, adjusted as per the applicable authority. Allowing for that adjustment, the effective sentence I am imposing today is seven years, 11 months.
- [45] In addition to the incarcerative sentence, there will be a term of probation to follow. That will be for two years. The terms are as follows:
- Mr. Zaporoski shall keep the peace and be of good behaviour.
 - He shall report forthwith upon his release from custody to the community corrections office nearest to the institution from which he is released and thereafter as and when directed by his probation officer.
 - Upon first reporting to the probation officer, he shall advise the probation officer of his residential address and telephone number and will not change the address or telephone number without first advising his probation officer of any change in writing.

- Mr. Zaporoski is not to have any contact, directly or indirectly, with Bradley Barr, Lyle Baker, Dustin Lindgren, or Jessica Landry.
- He is not to attend at any place he knows to be the residence, place of work or school of Bradley Barr, Lyle Baker, Dustin Lindgren, or Jessica Landry.
- For the first nine months of the probation order, Mr. Zaporoski is not to attend within 50 kilometres of the city limits of Prince George, British Columbia, except with the written permission of his probation officer or except while travelling on a highway in a moving motor vehicle on his way to some other place.
- Mr. Lindgren is not to possess any weapons as described in s. 2 of the Criminal Code.
- Finally, Mr. Zaporoski is to attend, participate in, and successfully complete any assessment and/or program of counselling as may be directed by his probation officer.

[46] There are, as well, two other orders to be made. The first is a DNA order, made as per s. 487.051 of the Criminal Code. Manslaughter is a primary designated offence and the order is mandatory.

[47] Additionally, there will be a mandatory lifetime firearms prohibition order made pursuant to s. 109 of the Criminal Code.

[48] Is there anything else to be dealt with, counsel?

[49] UNIDENTIFIED COUNSEL: No.

[50] THE COURT: Crown?

[51] MR. SMITH: No, My Lord.

[52] THE COURT: Very well, we will stand adjourned. Thank you.

"Williams J."

Appendix A

1. R. v. Anthony-Cook, 2016 BCCA 43;
2. R. v. Green, 2001 BCCA 672;
3. R. v. Helm, 2006 BCCA 240;
4. R. v. MacDonald, 2007 BCCA 606;
5. R. v. Plowman and Swallow, 2015 BCCA 423;
6. R. v. Richer and Henderson, 2005 BCCA 3;
7. R. v. Dhak, [2003] B.C.J. No. 1155;
8. R. v. Sipes, [2013] B.C.J. No. 443;

9. R. v. Carr, [2018] Q.J. No. 3281;
 10. R. v. Gillies, [1998] B.C.J. No. 1153
 11. R. v. Engebresten, [2016] B.C.J. No. 1079; and
 12. R. v. Vikilani, [2017] B.C.J. No. 2295.
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