
CANADA / JUDGMENT

R. v. Zinter

2018 BCSC 1837

COURT

Supreme Court of British Columbia

DECIDED

12 October 2018

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2018 BCSC 1837 R. v. Zinter

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Zinter,

2018 BCSC 1837

Date: 20181012

Docket: 81789-3

Registry: Nanaimo

Regina

v.

Dustin Dennis Zinter

Before: The Honourable Mr. Justice Baird

Oral Reasons for Sentence

Counsel for the Crown:

N. Barber

Counsel for the Accused:

W. Heflin

Place and Dates of Hearing:

Nanaimo, B.C.

October 2, 5, & 12, 2018

Place and Date of Sentencing:

Nanaimo, B.C.

October 12, 2018

[1] THE COURT: On July 23, 2018, I convicted the accused at bar, Dustin Dennis Zinter, of three counts of criminal wrongdoing:

- Count 1, dangerous operation of a motor vehicle thereby causing the death of Ms. Heidi Plato, contrary to s. 249(4) of the Criminal Code. This offence is punishable by a term of imprisonment not exceeding 14 years.
- Count 2, leaving the scene of an accident to avoid civil or criminal liability, knowing that bodily harm had been caused to another person involved in the accident, contrary to s. 252(1.2) of the Criminal Code. This offence is punishable by a term of imprisonment not exceeding 10 years.
- Count 3, refusing to provide a sample of breath for the purposes of analysis by an approved screening device in circumstances where he knew or ought to have known that his care and control of a motor vehicle caused an accident resulting in bodily harm to another person, contrary to s. 255(2.2) of the Criminal Code. This offence is punishable by a term of imprisonment not exceeding 10 years.

[2] The matter is before me today for sentencing.

BACKGROUND

- [3] The facts of the case are exhaustively set out in my reasons for judgment indexed at 2018 BCSC 1385. In brief, I found that the accused, while under the influence of alcohol, was driving on Yellow Point Road in a heavy rainstorm. He was proceeding at or slightly above the municipal speed limit in very poor conditions where it would have been far more prudent to go slower. Instead of paying attention to the road ahead of him, he voluntarily and repeatedly distracted himself with the use of his mobile phone, communicating with a girlfriend who had recently terminated their relationship.
- [4] Because of these combined factors, the accused failed to negotiate a perfectly ordinary curve in a properly maintained and clearly marked semi-rural highway. It was a curve, furthermore, that he knew was there. He was aware of the necessity of heightened caution travelling through it. Instead, compromised as he was by alcohol consumption and distracted by cellphone use, he crossed entirely into the lane of the roadway reserved for traffic proceeding in the opposite direction and thereby caused an horrendous collision with Ms. Plato, who was doing just that. Ms. Plato was killed as a result. This catastrophe was entirely avoidable and the accused bears sole responsibility for it.
- [5] I would repeat now my earlier observation that the level of the accused's disregard for other motorists on the roadway on the occasion in question was marked and utterly appalling. In my view, it constituted a dramatic departure from normative driving behaviour. His

decision, furthermore, to flee the scene of the fatal collision without performing any of the duties imposed on him by law, by giving his full name and address and offering assistance, was callous and inhumane. The serious criminal dereliction of duty involved in this failure was followed by his refusal, once he had been located and arrested, to provide a sample of his breath suitable for analysis by an approved screening device. The accused has been motivated throughout, I find, by a cowardly desire to escape detection and avoid all responsibility for the grievous wrong that he has inflicted on Ms. Plato, her family and friends, and on our entire community.

- [6] I consider that the three counts in the indictment constitute a gravely serious pattern of offending for which a heavy penalty must be paid. There are precious few mitigating factors to mention. The accused, in my view, is a totally unrepentant and unremorseful offender. He expressed a degree of regret in court today, but I consider his comments to be insincere, inadequate, and far too late in coming. They do not affect me in the least. The better measure of the accused's attitude towards his offending is revealed in the court-ordered forensic psychiatric and presentence reports, both of which I have read repeatedly with interest, wherein he has continued trafficking in the same absurd lies and fantasies that comprised substantially all of his evidence given at trial. I have rarely encountered a person so comprehensively dishonest or equipped with such sustained powers of self-deception.
- [7] I can put matters no more succinctly than the accused's younger brother who was contacted by the author of the forensic psychological report. This person advised that he does not have a close relationship with the accused and keeps their contact to a minimum. He explained why in the following terms:

I keep him [the accused] at arm's length . . . I maintain strong boundaries because he'll tear you apart. He has a terrible record of putting his own needs ahead of others' needs and he will destroy your life . . . he's irresponsible and has a history of breach of trust . . . you can't give him keys to your car or house because you can't trust him . . . don't expect anything to come out of his mouth to be true . . . he does a lot of lying to keep you in the dark . . . he also deceives himself . . . he starts to believe his own lies.

. . . he dodges reality . . . he lives in a fantasy . . .

- [8] Another source of collateral information, this one consulted by the authors of both court-ordered reports, was Mr. Zinter's former employer, Mr. Tam. Mr. Tam made it clear that Mr. Zinter's evidence at trial concerning his business activities was just more fiction. Far from being the industrious and hardworking construction contractor that he portrayed himself to be in evidence, and far from working in a partnership with Mr. Tam, as he claimed to both report writers, Mr. Tam described the accused as a drunken, volatile, and unreliable former employee whom he would never hire again.
- [9] The psychologist who evaluated the accused could not determine if he is suffering from mental illness. She said that it was unclear if his behaviour in court was the result of mental illness, substance abuse, dysfunctional personality characteristics, stress, sleep deprivation,

or a combination of these factors. She said that additional investigation would be required to confirm the presence or absence of mental illness. There was no clear indication of mood or psychotic related symptoms. She referred to the accused's history of drug abuse, including methamphetamine, and concluded that he met the criteria for alcohol use disorder.

DANGEROUS DRIVING CAUSING DEATH

- [10] There is no set range of sentencing for dangerous driving because of the broad range of circumstances under which the offence can be found to occur: *R. v. Delellis*, 2017 BCSC 2253 at para. 55. Generally, as defence counsel has candidly conceded, sentences for dangerous driving causing death are trending up: *R. v. Sater*, 2014 BCSC 1036 at para. 77. The primary sentencing goals for this offence are deterrence and denunciation, not rehabilitation: *Delellis* at para. 55; *R. v. Bosco*, 2016 BCCA 55 at para. 38; *R. v. Fedan*, 2014 BCSC 2586 at para. 18; *R. v. Roby*, 2015 BCSC 1929 at para. 35. The sentence should also advance the principle of retribution: *Roby* at para. 34.
- [11] The accused will be 42 years old tomorrow. His driving record shows a 2010 conviction for driving without due care and attention, along with a number of 24-hour prohibitions. He has a criminal record that includes, in the midst of unrelated offences such as assault and breach of probation, a 1998 conviction for driving over .08 in Cochrane, Alberta. Less than a year after the catastrophic collision that killed Ms. Plato, the accused was convicted and sentenced on a charge of failing to provide a breath sample.
- [12] The accused has submitted that a sentence of less than two years would be fit, just, and proportionate in his case. I do not agree. Such a sentence would not reflect the gravity of the offence and the accused's very high degree of moral responsibility for having committed it. It would not adequately serve the principles of deterrence and denunciation, and it would fail to achieve the preeminent purpose of sentencing, which is to protect the public and to contribute to respect for the law.
- [13] I have considered the many cases handed up by defence counsel. I do not intend to refer to them individually. I would observe, however, that many of them predate the upward trend in sentencing for dangerous driving death offences. Others refer to conditional sentences, which of course are no longer available for this offence. Some concern incidents of dangerous driving in which no fatality resulted, while others emphasise mitigating factors not present here, such as guilty pleas, the absence of alcohol involvement, less aggravated driving and behavioural patterns, the presence of diagnosed mental illness and accompanying diminished responsibility, expressions of genuine remorse, the absence of a criminal or driving record, and solid evidence of previous good character.
- [14] Sentencing is, of course, an individualized process and to that extent precedent cases are somewhat limited in their utility. As a guide to the appropriate range of sentence in this case, however, I have considered *R. v. Roby*, 2015 BCSC 1929, a comparatively recent case that bears at least some resemblance to the present one.

- [15] In that case, the accused, who was 21 years old, pled guilty to dangerous driving causing death, dangerous driving causing bodily harm, and failing to remain at the scene of an accident causing bodily harm. The accused and four friends were drinking at a rural campsite near Williams Lake. Though he did not have a driver's licence, Mr. Roby volunteered to drive back to town. He crashed the vehicle down a 20-foot embankment, killing one passenger and leaving another paraplegic.
- [16] After the accident, the accused and a non-injured passenger fled the scene, stealing a pickup truck to aid in their escape. They were eventually located by the RCMP. The accused lied about his identity, which only came to light through independent police investigation. Though it was not clear how much alcohol the accused had consumed, the court found that alcohol was a contributing factor to the events leading up to the accident.
- [17] I would emphasise here that Mr. Roby entered a guilty plea, showing an acceptance of responsibility for his criminal conduct which is entirely and conspicuously absent from the present case. He was also half the age of the accused before me and had only a minor and unrelated criminal record. Nevertheless, the Crown sought three to four years for the dangerous driving charges to be served concurrently, and one to two years for the failure to remain charge, to be served consecutively. The court noted in its decision that this range was supported by the case law in British Columbia, citing *R. v. Prasad*, 2006 BCCA 470, and *R. v. Woloshyn*, 2006 BCCA 228.
- [18] The court sentenced Mr. Roby to concurrent sentences of 3.5 years and three years respectively for dangerous driving causing death and dangerous driving causing bodily harm, plus one year consecutive for the failure to remain charge. The court also imposed a five-year driving prohibition.
- [19] In *R. v. Ostrowski*, 2015 BCPC 96, the accused was a drug and alcohol addict with a record for robbery, assault, and impaired driving. He was 29 years old. He was convicted of dangerous driving causing death and failing to remain after an accident causing bodily harm. While he was driving without a licence or insurance, the accused in that case pulled into the left-turn lane of an intersection to bypass traffic waiting at a red light. He ran the red light and his car was struck by a crossing vehicle, killing his passenger. He left the scene almost immediately and was located 20 minutes later. The court sentenced Mr. Ostrowski to 4.5 years for dangerous driving causing death and 18 months consecutive for failing to remain. He also received an eight-year driving prohibition.
- [20] In *R. v. Fedan*, 2014 BCSC 2586, the accused was 53 years old at the time of sentencing, 49 years old at the time of the offence. He was convicted of dangerous driving causing death. He was spotted driving erratically before crashing his car, killing his two passengers. He had been drinking before the accident and a bottle of alcohol was found in his car. The accused in that case was described as a hardworking, productive individual and a solid, contributing member of society. He had enjoyed a happy upbringing and maintained a loving relationship with his parents, son, and daughter. He had just been through an emotional

divorce. He had only a minor record for petty theft in the early 1980s. He had no driving history. He presented many letters to the court saying that he was a respectable, dedicated, and reliable employee and friend.

- [21] The court sentenced Mr. Fedan to three years for dangerous driving causing death with a three-year driving prohibition. Although he was acquitted of impaired driving charges arising out of the same incident, the court, relying on *R. v. Wilson*, 2001 BCCA 405, took his alcohol consumption into account as an aggravating factor on sentencing for the dangerous driving charge.
- [22] Due regard had to these authorities, and taking into account the present offender's age, the circumstances of the accident, the nature and duration of the dangerous driving, his criminal and driving record, the pronounced degree of his deviation from driving norms, the particulars of the road and its use, and the driving conditions present at the time of the offence, in my view a fit sentence on Count 1 is one of four years in a federal penitentiary.
- [23] In addition, on this count, pursuant to s. 259 of the Criminal Code, and bearing in mind the Supreme Court of Canada's interpretation of that section in *R. v. Lacasse*, 2015 SCC 64, recently amplified by our Court of Appeal in *R. v. Bansal*, 2017 BCCA 93, I hereby impose a driving prohibition of five years' duration. For clarity, referring to *Bansal* at para. 40, the accused will be prohibited from driving for the aggregate period of (1) his term of imprisonment on this count, and (2) the driving prohibition that I have just specified, namely five years. The court-ordered driving prohibition will begin at the end of the four-year period of imprisonment and run for an additional five years thereafter.
- [24] The practical result is that the accused is prohibited from operating a motor vehicle anywhere in Canada from today until October 12, 2027.

FAILURE TO REMAIN AFTER AN ACCIDENT CAUSING BODILY HARM

- [25] As noted in *Ostrowski* at para. 18, our courts have consistently held that in most circumstances, the sentence for failing to remain at the scene of an accident should be made consecutive to the sentences imposed on the underlying driving offence. This was confirmed by the Court of Appeal in *R. v. Gill*, 2010 BCCA 388 at para. 15.
- [26] Leaving the scene of an accident is an extremely serious offence: *R. v. Lisi*, 2001 BCCA 559 at paras. 7-8. This is because, amongst other things, it may remove any survival chance that an accident victim might have. Conduct of this sort has been characterized quite rightly as morally reprehensible and contrary to any standard of human decency: see for example *R. v. McAndrew*, 2004 BCCA 368 at para. 11.
- [27] In my view, in all of the circumstances, taking account of the maximum sentence for this offence, given the Crown's overall position on sentence, and bearing in mind the principle of totality, a sentence of two years would be fit on this count, to be served consecutively with the sentence that I have imposed on Count 1.

FAILURE TO GIVE A BREATH SAMPLE AFTER AN ACCIDENT CAUSING BODILY HARM

- [28] In the present case, the accused has been found guilty of the offence articulated in s. 255(2.2) of the Criminal Code, failing to provide a breath sample knowing that he caused an accident occasioning bodily harm. The Supreme Court of Canada's recent decision in *R. v. Suter*, [2018] S.C.J. 34, deals with the range of sentence for the more serious charge under s. 255(3.2). However, I found as a fact that the accused was aware at the time of his refusal that Ms. Plato had been killed, and this is a significant aggravating factor. In any event, the underlying principles of sentencing at work are similar under either offence.
- [29] As the court observed at paragraph 93 of *Suter*, unlawfully refusing to provide the police with a breath sample after causing a serious motor vehicle accident is a major criminal offence. "When a person refuses to provide a breath sample in response to a lawful request, this deprives the police, the court, the public at large, and the family of the deceased of the best evidence as to the driver's blood alcohol level and state of impairment. Moreover, it places a barrier in the way of the ongoing efforts and pressing objective of deterring, denouncing, and putting an end to the scourge of impaired driving."
- [30] In my view, a fit sentence on this count is a penitentiary sentence of two years to be served concurrently with the sentence that I imposed on Count 2.
- [31] The equivalent of 161 days that the accused has already spent in custody on these charges, being 107 days multiplied by 1.5, will be credited to the concurrent sentences on Counts 2 and 3.
- [32] Stand up, please, Mr. Zinter. My sentence on Count 1 is four years in a federal penitentiary and a five year driving prohibition. My sentence on Count 2 is two years in a federal penitentiary, to be served consecutively to the sentence on Count 1. My sentence on Count 3 is two years in a federal penitentiary, to be served concurrently with the sentence on Count 2. The aggregate sentence, therefore, is one of six years less time served. You may sit down.
- [33] I hereby order, pursuant to s. 487.051(3) of the Criminal Code, that a DNA sample is to be taken from the accused in the least intrusive manner available on all counts. I also order, pursuant to s. 743.2 of the Criminal Code, that my reasons for sentence, the presentence report, the psychiatric report, and the victim impact statements are to be forwarded to the Correctional Service of Canada.

"Baird J."

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