

CANADA / JUDGMENT

Trans Mountain Pipeline ULC v. Mivasair

2022 BCSC 791

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 791 Trans Mountain Pipeline ULC v. Mivasair

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Trans Mountain Pipeline ULC v. Mivasair,

2022 BCSC 791

Date: 20220510

Docket: S183541

Registry: Vancouver

Between:

Trans Mountain Pipeline ULC

Plaintiff

And

David Mivasair, Bina Salimath, Mia Nissen, Corey Skinner (aka Cory Skinner), Uni Urchin (aka Jean Escueta), Arthur Brociner (aka Artur Brociner), Karl Perrin, Yvon Raoul, Earle Peach, Sandra Ang, Reuben Garbanzo (aka Robert Abress), Gordon Cornwall, Thomas Chan, Laurel Dykstra, Rudi Leibik (aka Ruth Leibik), Linda Hutchings, John Doe, Jane Doe, and Persons Unknown

Defendants

And

Attorney General of British Columbia

Intervenor

Before: The Honourable Justice Fitzpatrick

Oral Reasons for Judgment

(William George - Sentencing)

Counsel for the Crown:

M.R. Ruttan

Counsel for William George:

A. Bajwa

Place and Date of Hearing:

Vancouver, B.C.

May 9, 2022

Place and Date of Judgment:

Vancouver, B.C.

May 10, 2022

INTRODUCTION

- [1] The matter before the Court is the sentencing of William George.
- [2] On October 15, 2021, this Court convicted Mr. George arising from his breach of an order granted in this proceeding on June 1, 2018 (the "Injunction"). The Injunction prohibited interference with the operations of the plaintiff Trans Mountain Pipeline ULC ("Trans Mountain") at its various work sites. My reasons are indexed at Trans Mountain Pipeline ULC v. Mivasair, 2021 BCSC 2658 [Conviction Reasons].
- [3] Mr. George's breach of the Injunction took place on January 6, 2021.

CIRCUMSTANCES OF THE OFFENCE

- [4] The circumstances of the offence are outlined in the Conviction Reasons.
- [5] To summarize, in the late afternoon of January 6, 2021, Mr. George took part in a protest or blockade at the entrance to Trans Mountain's Burnaby Terminal. The protestors, including Mr. George, had placed a vehicle in the middle of the driveway entrance and they had disabled it by removing the tires and wheels. The vehicle had been extensively spray painted with anti-pipeline messages, some facing the busy roadway in front of the entrance.
- [6] By all accounts, Mr. George was acting as a leader of sorts for the group of protestors. Mr. George engaged with Trans Mountain's security personnel in terms of purporting to control who was allowed to leave or enter the premises. Despite being advised that the RCMP had been called, Mr. George was not dissuaded from his involvement in the blockade and he continued in the blockade.

- [7] Eventually, the RCMP attended the scene. Mr. George and others in the group then put the wheels back on the vehicle and it was removed from the entrance. All told, the Trans Mountain entrance was blocked for about three to three-and-a-half hours and vehicles and people could not enter or exit the site. I accepted that these actions prevented Trans Mountain from operating its normal activities at the site: Conviction Reasons at para. 47.
- [8] At trial, Mr. George's knowledge of the Injunction was well-proven. On the day in question, Mr. George acknowledged to Trans Mountain's personnel that he had known about the Injunction for "four years". In that respect, Mr. George clearly misspoke, but seemingly he had known about the Injunction for some time following its issuance in early 2018. In addition, only two days earlier, an RCMP officer read a copy of the Injunction to Mr. George at the same location when he was participating in another protest; on that occasion, Mr. George decided to cease his activities in blocking access to the Burnaby Terminal entrance after the reading was over.
- [9] Mr. George's actions on January 6, 2021 were, with the exception of one rude hand gesture, peaceful and polite.

MR. GEORGE'S CIRCUMSTANCES

- [10] Information as to Mr. George's background and present circumstances is set out in a Gladue report dated March 17, 2022. In addition, Mr. George directly addressed the Court at the end of yesterday's hearing.
- [11] It is common ground that the sentencing process is an individualized process and that the Court must consider the particular circumstances of the person before the Court.
- [12] Mr. George was born in North Vancouver, BC; he is 42 years old. He is Aboriginal, being a member of the Tsleil-Waututh Nation through his mother's side and having ties to the Squamish Nation through his maternal grandmother. In 2016/2017, Mr. George received a traditional name, Swaysan.
- [13] Mr. George has one previous adult conviction. In April 2016, he was convicted of impaired care and control of a motor vehicle. He received a fine, probation and a driving prohibition. I do not find this part of Mr. George's history to be of any significance on this sentencing and it has not factored into my conclusion.
- [14] I will therefore approach Mr. George's circumstances as those of a first offender.
- [15] The history of Mr. George's life and background is, unfortunately, not dissimilar to many other Indigenous offenders who have been before the Court, including in this proceeding.

- [16] Mr. George's mother and maternal grandmother were alcoholics and he had unquestionably a very unstable childhood as a result. As the Gladue report writer states, Mr. George experienced poverty, physical and mental abuse, family and community violence, instability, criminal behavior as a juvenile, a lack of education (Grade 10 only) and finally, alcohol and/or substance abuse by family members and himself. Many of Mr. George's relatives - including his mother, grandparents and uncle - attended residential schools.
- [17] Despite the many challenges in his life, Mr. George has, with no doubt considerable effort, achieved some periods of more stability. When he was ten years old, he was well-cared for by a Squamish foster family. During this time, Mr. George connected with his Aboriginal heritage, which he fosters to this day. After living with that family, Mr. George briefly lived with his father.
- [18] Since age 21, Mr. George has lived on the Tsleil-Waututh reserve in North Vancouver, either with relatives or on his own. He has been in a few relationships, with one producing a son who is about 12 years old. Mr. George has a positive relationship with his son. Since 2017, Mr. George has been in a relationship with Roxanne Charles, who testified on his behalf at the trial.
- [19] Mr. George has a work history, mostly as a certified window washer on high rise buildings or in the fishing industry. It appears that Mr. George has been on social assistance for the last four years or so; he currently spends his time on various community programs as an activist.
- [20] Since 2018, Mr. George made further efforts to reconnect with his Aboriginal heritage when he helped build the Watch House on Burnaby Mountain. Mr. George was present at the Watch House for some six months. It is common knowledge that the Watch House was constructed near the Burnaby Terminal entrance and it is maintained by various Indigenous groups to "watch" over Trans Mountain's activities.
- [21] Like many offenders before the Court in this matter, Mr. George has strongly held views on Trans Mountain's activities in relation to concerns about the environment. I can reasonably assume that these concerns were at least in part the impetus behind his involvement at the Watch House since 2018.
- [22] The "spark" that set Mr. George off toward this particular incident was a podcast. During that podcast, a politician was speaking about how the COVID-19 pandemic might lessen the amount of protests being faced by Trans Mountain so as to allow the building of the pipelines to proceed more smoothly. He describes being angered by these comments and that he felt he had to act to protect his community.
- [23] Mr. George has provided two letters of support from acquaintances who speak of his positive personal attributes and describe his connection and commitment to his community.

CROWN / DEFENCE POSITIONS

[24] The Crown and defence counsel advance very different views as to what sentence is fit for Mr. George.

The Crown

[25] The Crown seeks a jail sentence of 28 days.

[26] The Crown has outlined the general history of criminal contempt proceedings in relation to the Injunction, which unfortunately is now well-known to the Court.

[27] Between the earlier iteration of the Injunction (March 2018) and August 2018, there were over 200 arrests. During that time, the Crown's recommendation for sentences was toward the lenient side, involving fines and community work hours.

[28] By any measure, this approach by the Crown reflected the early "exuberance" of first-time offenders, such as was described *MacMillan Bloedel Ltd. v. Brown* (1994), 88 C.C.C. (3d) 148 (B.C.C.A.) [MacMillan Bloedel] at para. 45.

[29] Unfortunately, since August 2018, arrests and convictions have continued. As a result, the sentencing recommendations by the Crown have evolved. A jail sentence was not sought by the Crown or granted by this Court until August 2018.

[30] The history of the Crown's sentencing recommendations from April 2018 are set out and discussed in *Trans Mountain Pipeline ULC v. Mivasair*, 2019 BCCA 156 [Trans Mountain BCCA] beginning at para. 3. I need not refer to those in detail, as they set out various "Categories - One to Four" of sentencing recommendations, depending on the date of a guilty plea or conviction.

[31] In August 2018, the Crown filed a Third Amended Notice of Motion adding "Category Five" to its sentencing positions for defendants arrested after August 2, 2018. This Category was described as:

Early Category Five: 14 days' imprisonment for persons pleading guilty within one month after their first appearance in court;

Late Category Five: 20 days' imprisonment for persons pleading guilty no later than the first day of trial. If convictions result for Category Five defendants at the end of a trial, the Crown would consider a general sentencing position of 28 days' imprisonment.

[Underline in original.]

The Crown also stated it may seek longer jail sentences for Category Five defendants in respect of arrests occurring after August 2, 2018 at any time without further notice.

[32] Here, the Crown is seeking a jail term of 28-days, consistent with Late Category Five.

- [33] Other contemnors who have been convicted and sentenced are of some relevance to this matter. Arising from their protest activities in August 2018, Stacy Gallagher, James Leyden and Justin Bige were sentenced to 28-days in jail: *Trans Mountain Pipeline ULC v. Mivasair*, 2020 BCSC 1512. All three men are Indigenous persons.
- [34] Despite this proceeding and the history of convictions and sentencings, protests have continued. Mr. Gallagher and Mr. Leyden were repeat offenders in late 2019. Shortly after Mr. George breached the Injunction in January 2021, further protest actions followed in March and September 2021. Many of those offenders entered guilty pleas and were sentenced to 14-day jail terms, consistent with Early Category Five.
- [35] The Crown advises that, but for an offender arrested in late August 2018, all first-time contemnors convicted after trial in this proceeding have received a 28-day jail sentence.

Mr. George

- [36] Mr. George seeks a three-month probation order, together with 100 hours of community work service to be served in his community under the supervision of his elders. Mr. George's counsel argues that probation will allow Mr. George to continue his healing in the community and allow him to learn to abide by the law and court orders.
- [37] Alternatively, if jail time is imposed, Mr. George seeks to serve his sentence on an intermittent (weekend) basis.

PRINCIPLES OF SENTENCING

- [38] Although contempt of court is a common law offence, and therefore prosecuted under the common law, courts have frequently stated that guidance in respect of sentencing for criminal contempt may be sought from the Criminal Code, R.S.C., 1985, c. C-46 [Code]: *International Forest Products Ltd. v. Kern*, 2001 BCCA 48 at para. 20. See also *R. v. Dhillon*, 2015 BCSC 1298 at para. 10; *Trans Mountain BCCA* at para. 55.
- [39] I am aware of the purpose and principles of sentencing set out in the Code, particularly at ss. 718, 718.1 and 718.2.
- [40] Substantial authority exists that the primary sentencing objectives in relation to criminal contempt are denunciation and deterrence, both general and specific.
- [41] In *Dhillon*, Justice Holmes (as she then was) stated:
- [11] The fundamental purpose of sentencing, as both the Criminal Code and the common law recognize, is to contribute to respect for the law and the maintenance of a just, peaceful, and safe society. From that fundamental purpose flow six main objectives of sentencing, namely: (1) denunciation of the offending conduct; (2) deterrence of the offender and all other people from criminal conduct; (3) separation of the offender from society when necessary; (4) rehabilitation of offenders; (5) reparation to victims or the community; and (6) the fostering of the offender's acknowledgement of responsibility and of the harm done to

victims and the community. The relative emphasis to be given to the various objectives will vary according to the particular offence and the particular offender.

- [12] For offences of criminal contempt, deterrence is usually the primary sentencing objective. This is because the purpose of contempt proceedings is to protect the rule of law, the organizing principle which distinguishes civilized society from anarchy. In its struggle to preserve the rule of law and to ensure its own continued effectiveness, the court's only device is its power to punish for contempt: *R. v. Bridges* (No. 2) (1989), 48 C.C.C. (3d) 545 at 548-549 (B.C.S.C.), *aff'd* (1990), 62 C.C.C. (3d) 455 (B.C.C.A.).
- [13] A sentence for criminal contempt will therefore aim to deter other people from similar conduct undermining the rule of law (through what is termed general deterrence): *MacMillan Bloedel v. Simpson* (1993), 84 C.C.C. (3d) 559 at 571-572 (B.C.S.C.). Where the contemnor continues in an attitude of defiance, the sentence may also aim to deter that particular offender from repeating his or her contempt (through what is termed specific deterrence): *Texada Land Corp. v. Shebib et al.*, 2002 BCCA 114 at para. 13.
- [14] The application of these general principles, as well as of the more specific principles that apply to your case, must take account of your personal circumstances as well as the circumstances of your offence.

[Emphasis added.]

- [42] In *Trans Mountain BCCA*, the court expressed this same sentiment:
- [56] The objectives of separating offenders from society and providing reparation to victims are generally not applicable to sentencing in contempt cases. Rehabilitation is often important in civil contempt cases, where the Court is primarily concerned with securing compliance with its orders: *Larkin v. Glase*, 2009 BCCA 321 at para. 49. However in *Larkin*, Justice Chiasson comments that even in cases of civil contempt deterrence is more important than rehabilitation (at para. 51).
- [57] Denunciation and deterrence are the principal sentencing objectives in criminal contempt cases. Chief Justice Farris described the underlying rationale in *Canadian Transport (U.K.) Ltd. v. Alsbury* (1952), 6 W.W.R. (N.S.) 473 at 478 (B.C.S.C.), *aff'd* [1953] 1 D.L.R. 385 (C.A.), *aff'd* [1953] 1 S.C.R. 516:

One law broken and the breach thereof ignored is but an invitation to ignore further laws and this, if continued, can only result in the breakdown of the freedom under the law which we so greatly prize.

- [58] General deterrence was the primary objective of sentencing in *MacMillan Bloedel*, where the focus was likewise on securing respect for the rule of law. A summary of sentencing principles for contempt was set out in *Transportation Lease Systems Inc. v. Viridi*, 2009 BCSC 695 at para. 17, citing *Health Care Corp. of St. John's v. Newfoundland and Labrador Assn. of Public and Private Employees*, [2001] N.J. No. 17 (S.C.T.D.) at para. 2:

1. The inherent jurisdiction of the court, as a superior court, allows for the imposition of a wide range of penalties for civil and criminal contempt;
 2. Deterrence, both general and specific, but especially general deterrence, as well as denunciation, are the most important factors to be considered in the imposition of penalties for civil, as well as criminal, contempt;
 - ...
 9. In setting the overall level of penalty, the court may take account of the level of penalty imposed in similar cases in the past and may adjust the penalty upwards or downwards, depending on the court's assessment as to whether previous levels of penalty have had an effective general deterrent effect; . . .
- [43] The Crown has referred to other well-known BC authorities addressing protest activity: Everywoman's Health Centre Society (1988) Victoria Drive Medical Clinic Ltd. v. Bridges, [1989] B.C.J. No. 456 (S.C.) and Peter Kiewit Sons Co. v. Perry, 2007 BCSC 305 [Perry]. As this Court noted in Perry at para. 16, the moral culpability of a contemnor is not reduced by the strength of his or her beliefs in or convictions for the cause that motivated the illegal activities in question.
- [44] All of the above authorities emphasize the need for the Court to restore, maintain and preserve the rule of law and the administration of justice by this Court by punishing those people who would choose to threaten its existence by taking matters into their own hands and in doing so, encourage others to do the same.
- [45] Accordingly, the Court's main focus in this sentencing process is to send a clear signal to Mr. George, and others who may be influenced by him and his actions, that such behavior will not be tolerated. Deterrence and denunciation are the main sentencing objectives here, although I acknowledge that rehabilitation remains a possibly relevant consideration.
- [46] I also accept the Crown's submissions on the issue of proportionality. There is substantial authority to the effect that increasing severity of sentences may be appropriate toward meeting the objective of sending increasingly stronger message to protestors if they choose to continue openly flaunting and disobeying the Injunction after months, if not years, it has been in effect. This support is found in the comments in MacMillan Bloedel at paras. 21, 45 and 52. At para. 45, Chief Justice McEachern stated:
- [45] ... They were persons who, after knowingly and deliberately committing an offence, were nevertheless asked by a peace officer to walk away. They chose instead to stay and be arrested and charged. Notwithstanding their personal beliefs, they do not qualify for the usual leniency that judges generally offer to first offenders.
- [47] In Trans Mountain BCCA at para. 46, the court applied this principle from MacMillan Bloedel as above. Further, the court confirmed that escalating sentences can be appropriate:

- [60] It was also not unprecedented for the judge to use escalating sentences in a criminal contempt sentencing hearing. In *MacMillan Bloedel*, six out of 44 protestors arrested for violating an injunction order in contempt appealed their custodial sentences. *McEachern C.J.B.C.* held that escalating sentences were sometimes reasonably necessary to preserve the rule of law in contempt proceedings:
- [48] . . . [J]udges may have no alternative but to impose increasingly severe sentences for subsequent offences should the sentences imposed in these cases prove insufficient to convey the message that Canada, as its Constitution states, is a country founded upon the rule of law.
- [48] It bears emphasizing at this time that when Mr. George purposefully breached the Injunction in January 2021, the Injunction had been outstanding for about two-and-a-half years (33 months from the first injunction in March 2018).

ABORIGINAL BACKGROUND

- [49] The defence places great emphasis on Mr. George's Aboriginal heritage, which I accept is a relevant consideration at this sentencing. The defence and Crown both agree that this sentencing should be imposed in the context of s. 718.2(e) of the Code:

. . . 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 with particular attention to the circumstances of Aboriginal offenders.

- [50] Accordingly, I have considered Mr. George's Aboriginal heritage in considering and determining a fit sentence in the circumstances. I am aware of the principles outlined in *R. v. Gladue*, [1999] 1 S.C.R. 688 and *R. v. Ipeelee*, 2012 SCC 13. In summarizing the principles from *Gladue*, the Court in *Ipeelee* stated:
- [59] The Court held, therefore, that s. 718.2(e) of the Code is a remedial provision designed to ameliorate the serious problem of overrepresentation of Aboriginal people in Canadian prisons, and to encourage sentencing judges to have recourse to a restorative approach to sentencing (*Gladue*, at para. 93). It does more than affirm existing principles of sentencing; it calls upon judges to use a different method of analysis in determining a fit sentence for Aboriginal offenders. Section 718.2 (e) directs sentencing judges to pay particular attention to the circumstances of Aboriginal offenders because those circumstances are unique and different from those of non-Aboriginal offenders (*Gladue*, at para. 37). When sentencing an Aboriginal offender, a 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 (*Gladue*, at para. 66). Judges may take judicial notice of the broad systemic and background factors affecting Aboriginal people generally, but additional case-specific information will have to come from counsel and from the pre-sentence report (*Gladue*, at

paras. 83-84).

- [51] However, such considerations do not mandate that the principle of restorative justice will have primacy in any given case.
- [52] The Crown also refers to *R. v. Wells*, 2000 SCC 10. At paras. 36-42, the Court emphasized that within the scope of s. 718.2(e), the court must still consider the matter on a case-by-case basis, considering the offence, the offender, the victim and the community. The fact that an offender is Aboriginal does not dictate that a restorative approach is appropriate toward rehabilitation.
- [53] In *Wells*, the Court stated:
- [44] Let me emphasize that s. 718.2(e) requires a different methodology for assessing a fit sentence for an aboriginal offender; it does not mandate, necessarily, a different result. Section 718.2(e) does not alter the fundamental duty of the sentencing judge to impose a sentence that is fit for the offence and the offender. Furthermore, in *Gladue*, as mentioned the Court stressed that the application of s. 718.2(e) does not mean that aboriginal offenders must always be sentenced in a manner which gives greatest weight to the principles of restorative justice and less weight to goals such as deterrence, denunciation, and separation (at para. 78). As a result, it will generally be the case, as a practical matter, that particularly violent and serious offences will result in imprisonment for aboriginal offenders as often as for non-aboriginal offenders (*Gladue*, at para. 33). Accordingly, I conclude that it was open to the trial judge to give primacy to the principles of denunciation and deterrence in this case on the basis that the crime involved was a serious one

[Emphasis in original.]

- [54] I agree with the Crown that, in this case, where denunciation and deterrence are the primary sentencing objectives, an appropriate sentence for an Aboriginal offender may not necessarily differ from what may be imposed on a non-Aboriginal offender.
- [55] The Court in *Ipeelee* discussed how systemic factors and an Aboriginal offender's heritage, background and circumstances relate to an offence, providing context to determine an appropriate sentence:
- [83] As the Ontario Court of Appeal goes on to note in *Collins*, it would be extremely difficult for an Aboriginal offender to ever establish a direct causal link between his circumstances and his offending. The interconnections are simply too complex. ... Furthermore, the operation of s. 718.2(e) does not logically require such a connection. Systemic and background factors do not operate as an excuse or justification for the criminal conduct. Rather, they provide the necessary context to enable a judge to determine an appropriate sentence. This is not to say that those factors need not be tied in some way to the particular offender and offence. Unless the unique circumstances of the particular offender bear on his or her culpability for the offence or indicate which sentencing objectives can and should be actualized, they will not influence the ultimate sentence.

[Emphasis added.]

[56] Unlike the facts in Wells, I accept that the convictions here did not arise from a violent offence. This offence was, however, serious, consistent with the need for this Court to denounce and deter such behavior, both generally and specifically. Only in this way can this Court uphold the rule of law that serves all of us, including Mr. George.

WHAT IS A FIT SENTENCE?

[57] I acknowledge that Mr. George's actions were peaceful and that, but for one aspect of the incident, he was polite to Trans Mountain's security personnel and the RCMP. I also acknowledge that he participated in the efforts to remove the vehicle from the entrance once the RCMP arrived.

[58] Neither Crown nor defence refer to any mitigating factors here. Mr. George was convicted after trial after he plead not guilty. In addition, Mr. George has not indicated any remorse for his actions, either to the Gladue report writer or directly to this Court, that might have stood as a mitigating factor.

[59] Although Mr. George's Aboriginal heritage, background and circumstances are relevant, I find that these factors do not shift the primary objectives from denunciation and deterrence in this case.

[60] I conclude that Mr. George's conduct in this matter did not arise from the systemic factors or background that inform his past circumstances, although not strictly necessary in applying Gladue principles and s. 718.2(e) of the Code. Mr. George has clearly faced difficult circumstances in his past. Like other Indigenous offenders in this proceeding, he has seemingly risen above them toward being a law-abiding citizen. This has been happening now by all accounts for some years, if not decades. Mr. George has a significant employment history. In addition, like other contemnors addressed in this proceeding, Mr. George has embraced a new way of life, particularly in terms of reconnecting further with his Aboriginal heritage and becoming a valued member of his community. His future plans indicate that he is continuing on this path.

[61] I do not suggest for a moment that Mr. George has entirely left his extremely unfortunate childhood behind him, particularly given his heartfelt comments to the Court yesterday. However, by and large, Mr. George is addressing those issues without breaching the law or court orders.

[62] In these circumstances, I have great difficulty applying any aspect of rehabilitation as a primary sentencing objective here, as Mr. George's counsel asserts.

[63] It is extremely unfortunate that Mr. George chose to act as he did. By all accounts, he was well aware of the legalities of the Injunction and what was prohibited by it. Mr. George was well-aware of the court order and he respected its terms until this one time, leaving aside his protesting activities two days earlier. He was arrested years after the Injunction was granted

and the well-publicized arrests began. Unlike his response to the RCMP on January 4, 2021, Mr. George did not comply when Trans Mountain's personnel advised him of the breach on January 6, 2021. Mr. George chose to disregard the Injunction and then purported to control access to Trans Mountain's property as if he had that right. He knew he did not. Mr. George also had specific involvement with his community at the Watch House, whose very role is to "watch" Trans Mountain in its pipeline expansion activities nearby.

- [64] As Mr. George acknowledges, his actions were borne from anger. I accept that this emotion, which can be powerful, was the driver for Mr. George's actions. However, this was not a spontaneous incident where Mr. George gave in to that emotion in a reactionary way. This operation was well thought out. As the Crown notes, the actions of the group were planned and deliberate. This was not a group of people chanting, singing and drumming in front of the gate after walking up to it, although I acknowledge that this type of protest can also be deliberate and planned. This group of people made significant efforts to acquire this vehicle and arrange for the U-Haul trailer to haul this vehicle to the site, and arrange for the necessary tools to disable the vehicle and paint the messages on the vehicle. This was all done so as to ensure the maximum disruption to Trans Mountain in as public a manner as possible: Conviction Reasons at para. 58.
- [65] Mr. George made a deliberate and pre-planned choice to participate in this protest activity. Even when confronted by Trans Mountain's security personnel, Mr. George persisted in his actions in order to, as he said, "send a strong message" to Trans Mountain. Only after the RCMP arrived, hours later, did Mr. George relent and then make efforts to remove the obstruction and leave.
- [66] In my view, Mr. George stands in no better position than any other contemnor in having passionate views on the environment, as was stated in Perry. Mr. George acted so as to protest Trans Mountain's pipeline activities in violation of the Injunction, to register his objection to that activity.
- [67] In these circumstances, I have no hesitation addressing this matter in a way that addresses the need for both general deterrence and denunciation. The Injunction has remained in place for a reason. For all the efforts made by the RCMP and this Court to deter illegal protests, they continue, as I have described above. The Court has been required to respond. The need for general deterrence remains at this time.
- [68] I also consider that specific deterrence is a relevant objective here. Mr. George must receive, process and understand the message that he cannot just ignore orders of this Court and expect that little or no consequences will ensue. I accept that rehabilitation for Mr. George remains relevant, but it does not overwhelm the other sentencing objectives.

- [69] I have previously stated in these proceedings that allowing a lesser sentence here because of Mr. George's belief in his cause and that he is Aboriginal would be to draw a distinction from the hundreds of other protestors who were arrested and faced charges and from those who were convicted.
- [70] In my view, such a distinction does not exist generally and does not arise in the context of Mr. George's specific background and circumstances, including in relation to Gladue considerations. I find that Mr. George's Aboriginal heritage, background and circumstances, while relevant, do not move the needle in terms of the Court's need to give primacy to the sentencing principles of denunciation and deterrence in this case.
- [71] I conclude that a period of probation and community work hours is not an appropriate or sufficient response to Mr. George's involvement in this offence. Mr. George's suggestion that he perform community work service is hardly meaningful in the sense of meeting the sentencing objectives. Mr. George is already very engaged in the community with this type of work and has been for years. For that, he is to be commended. It is difficult to see how Mr. George would be meaningfully rehabilitated - in the sense of achieving a greater respect for the Court's authority - by simply doing more of the same.
- [72] I have no difficulty concluding that a period of incarceration is an appropriate and fit sentence.
- [73] I have also considered Mr. George's request to complete his sentence on an intermittent basis. However, the evidence at this hearing does not suggest any compelling reason to do so. For example, Mr. George is not employed and he does not point to any reason why he must be physically present in the community on weekdays.
- [74] I also have some concerns that the COVID-19 induction protocols at the jail may in fact result in Mr. George's sentence becoming more onerous, which should not occur. Accordingly, I do not consider that an intermittent sentence is appropriate or even practical in the circumstances, particularly given COVID-19 concerns.
- [75] Mr. George, please stand. You are sentenced to 28 days incarceration.
- [76] I stated to you at the end of the trial that it gave me no pleasure to convict you. I would repeat that again in terms of passing sentence on you. I wish you well in your future endeavors and I sincerely hope that these circumstances do not arise again in relation to you.

"Fitzpatrick J."

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