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CANADIAN SENTENCING DIGEST QUANTUM SERVICE Nadin-Davis & Sproule Release No. 4, March 2023

This release brings you a wealth of new case law digests covering a wide range of offences, with an emphasis on updates to Chapter 4 (Offences Against the Criminal Code). The following are of particular interest and importance:

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Case Law Highlights

- **Offensive Weapons — Possession of Prohibited or Restricted Firearm with Ammunition** — The accused, who had also been convicted of charges relating his involvement in a dial-a-dope operation, pleaded guilty to three weapons offences. The accused received sentences to be served consecutively to those for the drugs-related convictions, of 40 months' imprisonment for possession of a prohibited firearm, twelve months concurrent for possession of an unlicensed firearm, and six months concurrent for careless storage of a rifle. The Court of Appeal rejected the three bases of the accused's appeal of sentence. First, the appellate court found the sentencing judge had not effectively punished the accused twice, since the judge had not treated the drug convictions as aggravating factors when ascertaining sentences for the weapons convictions – the judge however was entitled to recognize the drug trafficking as part of the factual matrix relevant to his culpability for the illegal firearms. Second, the Court of Appeal found the judge had been alive to the relevant circumstances regarding the possible effects of the COVID-19 pandemic, and had properly exercised his discretion to find on the evidence no particular risk to be faced by the accused. Finally, the appellate court found the judge to have properly applied the totality principle when arriving at the sentences, and the sentences themselves not to be demonstrably unfit: *R. v. Greer*, 2022 BCCA 362, 2022 CarswellBC 2961 (B.C. C.A.).
- **Offences against the Person and Reputation — Assault — Aggravated Assault** — The victim's ex-wife and children lived with the accused, and, in response to disparaging things the accused had heard the victim say about him, he engaged the victim in an altercation involving intimidation and violence – after blocking the victim's path with his truck, the accused started a fist-fight, and the victim suffered serious facial and head injuries after being beaten badly. The sentencing judge imposed a sentence of 120 days' imprisonment for aggravated assault to be followed by two months' probation, and a conditional eight-month sentence, to be followed by one year of probation, for dangerous driving. The Court of Appeal allowed the appeal on sentence on the aggravated assault charge, in light of the judge's error in delaying the commencement of that part of the sentence by two months – this was unlawful and warranted variation by the appellate court. In light of the accused's background, character, positive contributions to the community, his employment and the unique constellation of factors that had led to the confrontation, the Court of Appeal was satisfied that the incarceration of the accused was not necessary, and suspended the sentence for aggravated assault: *R. v. Cameron*, 2022 ONCA 710, 2022 CarswellOnt 14706 (Ont. C.A.).
- **Offences against the Person and Reputation — Assault — Sexual Assault** — After pleading guilty to two counts of sexual assault involving his young nieces, the accused received an eight-year global sentence that had exceeded not only the length of sentence suggested by the defence, but also that sought by the Crown. On the accused's appeal, the Supreme Court of Canada clarified that the 'public interest test' adopted in *R. v. Anthony-Cook* must be confined to judicial departures from joint sentencing submissions, and has no application in contested

sentencing hearings following a guilty plea – while the judge’s failure to provide the parties with notice or the opportunity to make further submissions may run the risk of having a harsher sentence overturned on appeal, in this instance such failures did not warrant appellate intervention: *R. v. Nahanee*, 2022 SCC 37, 2022 CarswellBC 2985 (S.C.C.).

- **Probation Offences — Breach of Probation Order** — Despite having served an 18-month sentence for failing to steer clear of his former girlfriend and her family as per conditions of his probation, the accused breached his probation anew by being found in her father’s back yard. Underlying these probation conditions were convictions for the accused’s assault and criminal harassment of his former girlfriend. The trial judge sentenced the accused to 30 months’ imprisonment, for which the accused sought leave to appeal. The Court of Appeal recognized the Crown’s concession that the trial judge should not have treated the accused’s demand for a trial as an aggravating factor, but held such an error not to have affected the sentence. The appellate court found the judge had properly considered the history of violent offences throughout the accused’s domestic relationship, and had properly characterized the breach of the contact prohibition to be serious – although substantial, the increase in sentences from 18 to 30 months was not demonstrably unfit, as the recurring nature of the accused’s disobedience warranted more in order to meet the objective of dissuasion and protection of the public: *Huard c. R.*, 2022 QCCA 1425, 2022 CarswellQue 15552 (C.A. Que.).

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