

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *R. v. Tucker*,  
2019 BCSC 961

Date: 20190524  
Docket: 168840-3  
Registry: Victoria

**Regina**

v.

**Monte Edward Darcy Tucker**

Before: The Honourable Madam Justice J. A. Power

## **Oral Reasons for Sentence**

Counsel for the Crown:

D. Hartney (appearing by  
teleconference)  
M. Adams

Counsel for the Accused:

N. Brooks  
(as Agent for T. W. Morino)

Place and Date of Hearing:

Victoria, B.C.  
May 14, 2019

Place and Date of Judgment:

Victoria, B.C.  
May 24, 2019

**INTRODUCTION**

[1] **THE COURT:** Monte Edward Darcy Tucker was convicted by a jury of all eight counts on the indictment, as follows:

Count 1, unlawfully possessing a controlled substance, to wit, heroin, for the purpose of trafficking;

Count 2, unlawfully possessing a controlled substance, to wit, cocaine, for the purpose of trafficking;

Count 3, unlawfully possessing a controlled substance, to wit, heroin, fentanyl, and methamphetamine, for the purpose of trafficking;

Count 4, unlawfully possessing a controlled substance, to wit, heroin, morphine, fentanyl, and methamphetamine, for the purpose of trafficking;

Count 5, unlawfully possessing a controlled substance, to wit, heroin, morphine (methymorphinan) and fentanyl for the purpose of trafficking;

Count 6, operating a motor vehicle in a manner that was dangerous to the public having regard to all of the circumstances;

Count 7, resisting or wilfully obstructing Constable Norman, a peace officer, in the execution of his or her duty, contrary to s. 129(a) of the *Criminal Code*; and

Count 8, wounding or injuring a law enforcement animal while that animal was aiding a law enforcement officer in carrying out the officer's duties, contrary to s. 445.01(1) of the *Criminal Code*.

All of the offences on the indictment took place on the 6th of July and early morning of the 7th of July of 2016.

[2] The matter is before me for sentencing.

[3] The Crown and defence are far apart in their positions on sentence, although the defence position did change during the course of the sentencing proceeding. The Crown is seeking a total sentence of seven years, consisting of five years for the drug offences, a total of 16 months consecutive for the obstruct peace officer and dangerous driving, and eight months consecutive for injuring a law enforcement animal. The total sentence would be seven years.

[4] The Crown argues that Mr. Tucker has an entrenched criminal lifestyle and that he has never had a deterrent sentence, although he has a lengthy record which includes 10 prior convictions for possession for the purpose of trafficking. The Crown submits that the court should emphasize denunciation and deterrence in the sentence that it imposes. The Crown is also seeking ancillary orders, including a firearms prohibition and a driving prohibition.

[5] The defence position, as I have indicated, changed as the sentencing hearing progressed. Initially the defence was seeking a suspended sentence and probation, but in the alternative, the defence now seeks a sentence of two years' custody, which would be a federal term of imprisonment, plus probation with terms for a period of three years. The defence argues that Mr. Tucker's circumstances are exceptional and that a probation order of three years added to a custodial term can meet all of the principles of sentencing, including denunciation and deterrence.

### **BACKGROUND FACTS**

[6] As I stated in my instructions to the jury, Counts 1 to 5 involve the same charge, possession for the purpose of trafficking. The difference between the counts relates to the controlled substances that Mr. Tucker had in his possession. All of the substances were located in a large bag which the investigating officer found on the ground after he stopped a black Chrysler driven by Mr. Tucker.

[7] Count 1 relates to the substance, heroin, found in smaller baggies within the larger bag. The total amount of powdered heroin was 12.2 grams valued at \$1,920 to \$2,440.

[8] Count 2 involves the controlled substance cocaine and consisted of 10.6 grams of rock or crack cocaine with a street value of \$800 to \$1,000.

[9] Counts 3, 4, and 5 relate to a substance referred to in the evidence as pebble heroin or fentanyl heroin. Together, these six baggies totalled 5.1 grams valued at \$800 to \$1,200.

[10] At the time of his arrest, Mr. Tucker had \$625 on his person. The total of the drugs was 38.7 grams, with a street value of between \$4,820 and \$5,620. The drugs took various forms, as I have indicated, and some of the heroin, as outlined in Counts 3, 4, and 5, was mixed with the substance fentanyl.

[11] The obstruct peace officer and dangerous driving count happened after the investigating officer, Constable Norman, stopped a Chrysler vehicle driven by Mr. Tucker and attempted to arrest him. Mr. Tucker pushed Constable Norman in the chest and then jumped in the vehicle and the vehicle screeched off going toward a parked bus. The tire of Mr. Tucker's vehicle, in Constable Norman's words, "grazed his foot". Fortunately Constable Norman did not suffer any injury. The vehicle travelled a short distance in the downtown Victoria area and, according to another police officer who was involved in the investigation, was estimated to be travelling at 100 kilometres per hour. The obstruct peace officer count was conceded by Mr. Tucker during the trial and, in fact, he invited the court and the jury to convict him on it.

[12] The final count of wounding a law enforcement animal occurred when Mr. Tucker was involved in an altercation with Constable Susan McLeod's service dog, Uno. In this case, Constable McLeod had deployed Uno to "make contact", which she explained as meaning bite and hold onto Mr. Tucker, in order to assist with his arrest. It was while Mr. Tucker was bitten and being held by Uno in this manner that he repeatedly struck Uno in the head. Uno was sleepy and less energetic for two days following the incident and was not eating his food in the same manner.

[13] In summary, after a traffic stop where Constable Norman found a large baggie containing smaller bags of different substances, Mr. Tucker fled the traffic stop and then resisted arrest and punched Police Service Dog Uno in the face. It is for these circumstances that I am sentencing Mr. Tucker.

**PERSONAL CIRCUMSTANCES OF MR. TUCKER**

[14] Turning to Mr. Tucker's personal circumstances, they are helpfully set out in a presentence report dated January 4, 2019. Mr. Tucker is 43 years old. He was born in Campbell River. In the presentence report, his childhood is described as a rough one which included sexual abuse by a female babysitter and being a victim of bullying at school. That bullying occurred because he had failed some grades and was older than some of the other children.

[15] He left school in Grade 9 and has various tickets which allowed him to work gainfully in the oil industry in various capacities.

[16] Mr. Tucker is a substance abuser himself. He has a long history of addiction. He was introduced to heroin at the age of 16, and by his twenties was entrenched in his addiction. He has a lengthy criminal record which is an exhibit on the proceedings, and it includes, as I have indicated, 10 prior counts for possession for the purpose of trafficking. The last offences that are similar occurred in 2007 and 2008, and although there are a number of prior similar counts, the maximum sentence he has received for the similar offences is six months in custody.

**ANALYSIS**

[17] In *R. v. Smith*, 2017 BCCA 112, Madam Justice Newbury stated at para. 45:

[45] I agree with the many judges who have stated that denunciation and deterrence must generally be given primacy in sentencing in cases involving Fentanyl. To this end, I would suggest a normal range beginning at 18 months' imprisonment, as the Crown suggests. I would place Mr. Smith's offences at the bottom of this range, in light of the mitigating factors discussed by the court below. I do not believe it is necessary for us to specify the top of the range, although I would suggest it might well exceed 36 months, especially where the offender has a substantial record involving the sale of Fentanyl or otherwise demonstrates an indifference to the human lives

he or she is putting at risk. This is a matter that can be worked out in future cases. Obviously, the 'range' may also increase beyond 36 months, or a different range will apply, where the offender is higher up the chain of sale or distribution.

[18] In the *Smith* case, the offender had no record.

[19] The authorities are replete with statements about the untold misery and pain to individuals, their families, and society caused by illicit substances. The public health crisis caused by fentanyl was declared in this province in 2016, and the extreme danger that the substance presents is an aggravating factor that I must consider. Our Court of Appeal recently commented on this in *R. v. Lloyd*, 2019 BCCA 128.

[20] Additional aggravating factors that I must consider here include the very nature of the substances and the fact that Mr. Tucker was motivated by profit. It is clear from his history, however, that although Mr. Tucker was motivated by profit, his offending was also fuelled by his addiction; he was seeking funds to support his habit. As indicated by the history outlined in the presentence report, Mr. Tucker was sober for a number of years after 2007/2008, but suffered a serious workplace accident in 2014 and began using illicit substances again after being prescribed narcotics for the pain. That set him on a downward spiral which is what led to the offences before the court.

[21] As I have indicated, the offences took place when Mr. Tucker was in the throes of that longstanding addiction.

[22] In sentencing Mr. Tucker, I must keep in mind the principles in s. 718 of the *Criminal Code* and the fundamental principle in s. 718.1 that a sentence must be proportionate to the gravity of the offence and degree of responsibility of the offender.

[23] It is also aggravating in this case that Mr. Tucker was motivated by profit. However, as I have indicated, that fact is tempered somewhat by the fact that he

was seeking money to fuel his own addiction. Mr. Tucker's record is also of significant concern.

[24] I agree with the Crown that denunciation and deterrence must be given primacy here, and that up to now Mr. Tucker has not received a truly deterrent sentence. I must send a strong message to him and to like-minded offenders.

[25] However, I am also of the view that I must keep in mind all of the sentencing principles, including the step-up principle and the significance of this sentence relative to the previous sentences that Mr. Tucker has received. I must also keep in mind the support that Mr. Tucker has from his family, some of whom were present in court, and the letters of support that were filed on the proceedings, as well as the fact that the material before me supports that he does have support from those in authority that he has dealt with and who know him. Dr. Greenspoon is quoted in the presentence report as confirming that Mr. Tucker has been a star patient on the methadone program and that he now has his addiction under control.

[26] Mr. Tucker has also been compliant with probation services and, in fact, in the presentence report there is no indication or recommendation with respect to federal time.

[27] Having considered the totality of the circumstances and all of the principles of sentencing, I am of the view that acceding to the defence submission and structuring a two-year sentence followed by three years' probation can meet all of the principles of sentencing, including denunciation and deterrence, protection of society, and continuing Mr. Tucker's rehabilitation, which is also in society's interest.

[28] Mr. Tucker, please stand. With respect to Counts 1 to 5 on the indictment, I am sentencing you to a term of imprisonment of 21 months. I will be following this with a probation order as well. With respect to Counts 6 and 7, dangerous driving and obstruct a peace officer, I am sentencing you to a period of two months consecutive to Counts 1 to 5, but concurrent to each other. On Count 8, I am

sentencing you to a term of imprisonment of one month consecutive to Counts 1 to 7.

[29] The totality of that sentence from a custodial perspective is 24 months or two years, which does amount to a federal sentence.

[30] That will be followed by a term of probation for a period of three years. During the period of probation, you will be bound by the mandatory conditions. You shall keep the peace and be of good behaviour. You shall appear before the court when required to do so by the court. You shall notify the court or your probation officer in advance of any change of name or address, and promptly notify the court or the probation officer of any change of employment or occupation.

[31] Within 48 hours of your release from custody, you shall report in person to the probation office located at -- if I specify the Courtney Street address, would that be appropriate here?

[32] MR. BROOKS: My Lady, I've been advised that his -- wherever he is being released from, he will be coming back to Victoria, so if you do 836 Courtney Street within 48 hours of his release, Mr. Tucker is agreeable to that.

[33] THE COURT: All right, and that address again, I cannot recall it, is it 640?

[34] MR. BROOKS: 836 Courtney Street.

[35] THE COURT: 836 Courtney Street, so within 48 hours of his release from custody, he should report to that probation office at 836 Courtney Street.

[36] MR. BROOKS: My Lady, sometimes the term "or otherwise been arranged in advance" is --

[37] THE COURT: All right, I will include that then.

[38] MR. BROOKS: Thank you.

[39] THE COURT: Or otherwise arranged in advance, as may be assisted by the authorities.

[40] When you first report to your probation officer, you must advise him or her of your residential address and phone number. You must not change your address and phone number without the written permission of your probation officer. During that period of probation, which is, as I have indicated, for three years, you must not possess or consume alcohol, drugs, or any other intoxicating substance, except in accordance with a medical prescription.

[41] You must not possess any drug paraphernalia, including but not limited to pipes, rolling papers, and syringes.

[42] You must attend, participate in, and complete any counselling or assessment program as directed by your probation supervisor. Without limiting the general nature of the condition, the counselling or programs that you are directed to attend may relate to alcohol or drug abuse.

[43] For the first 18 months of this probation order, you will abide by a curfew and so you must remain inside your residence or on the lot of your residence between the hours of 7:00 p.m. and 7:00 a.m. each day. You must present yourself immediately at the door to your residence or answer the phone when a peace officer or probation officer attends at your residence or calls to check your compliance with this condition.

[44] You may be away from your residence during the curfew hours with the written permission of your probation supervisor. Such permission is to be given only for compelling reasons and you must carry the written permission when you are outside your residence during those hours. You may also be away from your residence during those hours while in the course of employment or when travelling directly to or returning directly from employment. You must provide, if requested, your probation officer with details of your employment, including your location and hours of work. In the event of a medical emergency and only when travelling to a

healthcare facility or returning from such facility, you may also be outside of your residence outside of those hours for that purpose.

[45] Those conclude the probation terms, unless the counsel have any further submissions in that regard.

[46] With respect to the ancillary orders, may I be reminded the length of the driving prohibition that the Crown is seeking, Mr. Hartney?

[47] MR. HARTNEY: Yes, Your Honour, Crown is seeking a one-year driving prohibition to start after he is released from custody.

[48] THE COURT: Only one year?

[49] MR. HARTNEY: I don't -- I don't recall if I gave -- I think I left it in the court's hands. I might have said one to three years. I don't recall what I said. I don't have a -- I don't have a -- I'm actually just looking -- I don't have a note of -- of what I said. I think I just referred you to a case.

[50] THE COURT: All right. Having considered the circumstances here and all of the principles of sentencing, I am going to prohibit you from driving a motor vehicle for a term of three years.

[51] I am going to, as well, with respect to the firearms prohibition, was that 10 years that the Crown was seeking?

[52] MR. HARTNEY: It's a fixed order -- order for a period of life now that this is a -- a -- I'm sure he's already had a lifetime prohibition, but it's beyond a second -- secondary designated offence; it is mandatory that it be for a period of life.

[53] THE COURT: All right. So you are prohibited from possessing any firearms, other than a prohibited firearm or restricted firearm, and any crossbow, restricted weapon, ammunition, and explosive substance for a period of life.

[54] I make an order pursuant to s. 487.051(3)(b) authorizing the taking of a sample of your DNA by way of the least intrusive means possible. Those conclude then the ancillary orders that I am making in this case.

[55] Mr. Tucker, you have a lifetime of addiction. This is a significant sentence that you are going to be undertaking. You will have resources available to you in the federal custody setting that I urge you to avail yourself of and I urge you to continue to be worthy of the support that you have from the probation officers and Dr. Greenspoon, and that you continue on your path of rehabilitation. You can be assured, you will continue to have significant periods in custody if you do not. So I do wish you success with your rehabilitation.

[56] THE ACCUSED: Thank you, Your Honour.

[57] THE COURT: Is there anything further, Crown?

[58] MR. HARTNEY: My Lady, just that my friend Mr. Morino and I will send you any order of forfeiture for signature.

[59] THE COURT: All right, thank you very much. Nothing else? All right, thank you very much.

[60] MR. HARTNEY: Thank you.

“J. A. Power, J.”

The Honourable Madam Justice J. A. Power