R. v. Vukmanich

Alberta Judgments

Alberta Provincial Court

Judicial Centre of Edmonton

Edmonton, Alberta

L.G. Anderson A.C.J. Prov. Ct.

Heard: February 28, 2014.

Oral judgment: February 28, 2014.

Action No.: 131186033P1, 140185406P1

E-File No.: ECP14VUKMANICHPAUL

[2014] A.J. No. 1541

Between Her Majesty the Queen, and Paul Joseph Vukmanich, Accused

(108 paras.)

Counsel

C.M. Lim, For the Crown.

D.J. Royer, For the Accused.

J. Levasseur, Court Clerk.

PROCEEDINGS

EXCERPT

L.G. ANDERSON A.C.J. PROV. CT. (orally)

Discussion

1 MR. LIM: Good morning, Your Honour.

2 THE COURT: Good morning.

3 MR. LIM: For the record, it's Christian Lim. Lim for the provincial Crown prosecutors' office. My friend, Mr. Royer, and I of course appear on the matter of Vukmanich.

4 THE COURT: Right.

5 MR. LIM: Mr. Vukmanich is in custody and I believe Madam Clerk has called to bring him up at this point. He's just not here as of yet.

6 THE COURT: Cannot really proceed without him.

7 MR. LIM: No.

8 MR. ROYER: I've provided a couple of cases to the -- to Madam Clerk. I don't know if the Court's been provided with them or if the Court requires further submissions on the joint submission.

My friend pointed out to me this morning that in 2008 it appears my client got a five month sentence for dangerous operation of a motor vehicle. I believe the last time the Court had outlined it was nine months. It might be unfair in that regard.

9 THE COURT: Well, Madam Clerk, actually I need to have a look at the criminal record, which is filed -- is it attached here?

10 THE COURT CLERK: (INDISCERNIBLE).

11 THE COURT: Okay. I am sorry. So the dealing with the issue of the record, on the record that I have, January of 2006, there is a global sentence which involves 11 counts, one of which is flight from police where he received a 6 month consecutive sentence. In 2008 there is a dangerous operation of a vehicle for which there was a five month sentence. There is also other offences in that time. And in 2009 there is a four month sentence for dangerous operation of a vehicle. A 15 day consecutive sentence for breaching probation and a 4 month sentence consecutive -- well, wait a minute. A four month sentence concurrent on the flight. Following 140 days of pre-sentence custody. Which I think comes pretty close to five months. I think that is the five month sentence I was referring to. Or the nine month sentence I was referring to.

12 MR. ROYER: Can I have a chance to take a look at that, Your Honour? I understand we need to await Mr. Vukmanich in any event.

13 THE COURT: All right. So I will retire, I guess, until the prisoner gets here.

(ADJOURNMENT)

14 THE COURT: Good morning again.

15 MS. THOMPSON: Good morning, Your Honour.

16 THE COURT: It is now 20 to 10. Many people have been in this courtroom since 9:00. The Court has been ready to proceed, counsel has been ready to proceed, the clerk has been ready to proceed and many members of the gallery have been prepared and ready to proceed on a matter that was scheduled for 9:00 in a matter in which many people have an interest. It appears the solicitor-general has been incapable of providing adequate resources to allow a sheriff to bring a prisoner up from the basement to the courtroom. This is not a unique problem. Unique to today. It is a recurring problem and it is completely unacceptable. We now have another matter which has been sent from another courtroom for a trial to commence. We of course have limited time in the courtrooms. Courtrooms are busy.

We have a number of options. One is that we can all be kept in limbo for a continuing period of time until somebody appears with the prisoner. Secondly, we can stand the matter down to 1:30 in the afternoon. And everybody can come back at that time and then we can get started on the trial which has been sent into the courtroom. Counsel are here on both matters. I will hear from counsel on your suggestions.

17 MS. THOMPSON: Your Honour, Mr. Beaton and I are here on the Pilane matter.

18 MR. BEATON: Yes.

19 MS. THOMPSON: It's a two-witness trial. It will be called in a voir dire. I don't suspect that it will take the entire day. It's --

20 THE COURT: Depends what time we start.

21 MS. THOMPSON: Yes, sir. My witnesses are here. They're also interested in the other matter that's running this morning so they are in the courtroom. I'm at your discretion --

22 THE COURT: All right.

23 MS. THOMPSON: -- as is Mr. Beaton.

24 THE COURT: I take it counsel -- defence counsel on the other matter has just stepped out?

25 MR. BEATON: Mr. Royer is outside, yes, sir.

26 MR. LIM: Yes. They're just waiting for my call (INDISCERNIBLE).

27 MR. BEATON: Sir, just so it's on the record, my client would like to get his matter determined today. I'm totally in the Court's hands and I agree with my friend it is a two-witness trial --

28 THE COURT: Yes.

29 MR. BEATON: -- in a voir dire. If we have the afternoon, that should be sufficient.

30 THE COURT: Mr. Royer, are you available at 1:00 or 1:30?

31 MR. ROYER: I am, Your Honour.

32 THE COURT: Mr. Lim?

33 MR. LIM: The difficulty I have is I have a child witness who's coming in to see me at 1:00. For a trial that's commencing next week. And is coming in with his family. We already rearranged it --

34 THE COURT: Yes. Well, can perhaps stand it to 1:30. Might work. Will that work?

35 MR. BEATON: Two-- two would be fine as well, Your Honour, if my friend needs more time.

36 THE COURT: Yes. You know, I mean, there is -- it is --

37 MR. LIM: Perhaps actually, Your Honour, we could do it at 1:30 because he want -- the young -- it's a teenager. We were going to meet with him and then I can -- he wanted to see a courtroom so he can come --

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41 MR. LIM: --difficult, obviously.

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45 MR. LIM: -- for my friend --

46 THE COURT: Well, regrettably we have got to put the Vukmanich matter over then until 1:30. I apologize to everybody who has attended this morning. We will conclude the matter this afternoon.

47 MR. LIM: Thank you, sir.

48 THE COURT: Thank you.

49 MR. BEATON: Thank you, Your Honour.

(PORTION OF PROCEEDINGS OMITTED BY REQUEST)

50 THE COURT: Good morning again.

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83 MR. LIM: Thank you, sir.

84 THE COURT: Thank you.

85 MR. BEATON: Thank you, Your Honour.

86 THE COURT: Good afternoon.

87 MR. LIM: Good afternoon, Your Honour. For the record, it's Christian Lim.

88 THE COURT: Yes.

89 MR. LIM: Lim for the provincial Crown prosecutors' office. Mr. Royer and I appear on the matter of Vukmanich for sentencing. As you can tell, we do have Mr. Vukmanich present at this time.

> Your Honour, just to correct something last and I apologize to you, sir. I have confirmed with the Edmonton Max that the accused is a serving prisoner. And in respect to the issue of the restitution application, while I have found some cases where Edmonton Police Service perhaps wrongfully was considered a legal entity, the actual legal entity that would be for the -- if the Court granted restitution pursuant to 738.1 would actually be the City of Edmonton, at which point the Edmonton Police Service is essentially a branch, a department of that. I do have an officer who can testify to that if that's necessary but I'm just giving that information to the Court to clarify actually what the legal structure is and would actually lead to the City of Edmonton, although the receipts would say the Edmonton Police Service, as that is a branch of essentially the City of Edmonton for the sake of restitution and the finances.

90 THE COURT: Thank you. Although I put the matter over for decision as opposed to further argument so -- all right.

Sentence

91 THE COURT: Well, a few days ago on February 25th the accused entered guilty pleas to six offences arising out of a continuing incident that all occurred on October 7th of last year. He is charged with driving a vehicle while impaired by drugs, more specifically methamphetamine and cocaine. He is charged with having possession of a knife for a purpose dangerous to the public peace. He is charged with having possession of a stolen licence plate which was affixed to the vehicle that he was driving while impaired. He is charged with evading police in a motor vehicle by failing to stop when signalled to do so. He is charged with resisting arrest by running away on foot after the vehicle came to a stop as a result of the tires being flattened from jumping curbs and this of course is the arrest that is what caused service dog Quanto to be sent in order to effect the arrest. And he then of course is charged with killing a police service dog sent to apprehend him by stabbing the dog to death. With the knife that was in his possession for a dangerous purpose.

> Victim impacts were read. One by the dog's handler, Constable Williamson, and second by Staff Sergeant Carriere. With the Edmonton Police Service. Agreed facts were presented and read into the record. The accused's record of prior criminal convictions was also entered as an exhibit.
>
> The Crown and defence presented a joint submission for a global sentence of 26 months, less credit of about 4 and a half months for pre-sentence custody. This, if accepted, would result in a sentence of approximately 21 and a half months on a go-forward basis. Crown made application for a number of ancillary orders, including an application to -- for an order to prohibit the accused from owning a pet for a number of years, an application for a driving prohibition and an application for restitution in an amount approximating $40,000, which would represent the cost of training a new police dog.

Although as a general rule the law requires a judge to seriously consider a joint submission when imposing sentence and a judge should not deviate from a joint submission unless the Court finds it is unreasonable or outside of an acceptable range, I expressed concern relating to the joint submission presented and I put the matter over to today for the purpose of considering the matter. The Crown submits that the reasoning underlying the joint submission is that a fit sentence for stabbing the police dog would be 18 months in gaol. A fit sentence for evading police would be 8 months in gaol. It is submitted that a fit sentence for all of the remaining charges would be no additional gaol time but rather the sentence should be concurrent rather than consecutive.

The position of the defence is that whichever way the sentence is broken down, a global sentence of 26 months is appropriate and the Court should respect and defer to the joint submission. It is the product of consideration by both counsel of the strengths and weaknesses of the case. The accused gave up his right to a trial in order to plead guilty and he therefore gave up his entitlement to challenge evidentiary issues that might arise in the Crown's case. And it is further submitted that the accused is entitled to be based (sic) upon a sentence based on principle and not emotion.

The specific concerns -- and I want to take a minute just to amplify the reason for the concerns, but specific concerns that were raised in relation to the Crown's reasoning were that firstly the net effect of the Crown's sentence is that no additional sentence would be imposed for the driving while impaired. For effectively arming himself with a knife. For possessing a stolen plate, which is what initially attracted police attention. Or for resisting the arrest with which police service dog Quanto was engaging -- engaged to assist. And while resisting arrest might be seen as an extension of the flight from police and therefore part and parcel of it, that cannot be the case for the remaining charges. The remaining charges of impaired driving, possession of stolen property, possession of a weapon are separate. And the law in Alberta is that a charge of evading police should generally be consecutive to, not concurrent with any sentence that is tied to the conduct precipitating the flight. And in other words, apart from whatever consequences should properly attach to the conduct from which the accused is fleeing, there has to be separate and additional consequences for the fact of fleeing and this is necessary because the Court has to send a consistent message that there is going to be no upside in attempting to flee from a lawful detention or a stop.

The second concern relates to the fact that the accused has a nasty criminal record and included in that record are convictions for evading police on two prior occasions resulting in significant gaol sentences. In one case a sentence of six months ascribed to the evasion charge itself as part of a much longer sentence, there being many other convictions imposed at the same time. And in the other a sentence of what is effectively nine months but globally for offences that include both evading police and dangerous driving, which presumably is the form of driving during the escape as well as a failure to appear -- or a failure to comply with probation. So the Court questions how an eight month sentence in this case encapsulating all of the offences here apart from killing the dog is consistent with the basic idea that sentences for repeated similar conduct should generally increase and not decrease in severity, which is often referred to as the jump principle.

The third concern relates to the application for restitution. One of the objectives of sentence is to promote reparation to victims. Where appropriate. This is not a historical objective of criminal sentencing but it has become so in recent times. It is now specifically one of the stated objectives in the Criminal Code. But for a Court to make a compensation order, the Court requires some clarity through a properly prepared application outlining who is entitled to make such an application, who has sustained the loss, how, for how much and there has to be evidence to support the application. In this case there was no such clarity and effectively the application changed on the fly.

The fourth concern relates to the submission that the accused should be given credit for the four and a half months that he has been in gaol since the charge arose. Normally credit would be given. For the loss of liberty as a result of the offences upon which the sentence is based. However, the criminal record of the accused which was tendered as an exhibit shows he was sentenced to a sentence of just under four years in late 2010, which means that he must have been on parole or mandatory supervision at the time of these offences. He has not suggested otherwise, despite being given an opportunity to say so and it was

confirmed today that in fact he was on parole or is serving his sentence. So four and a half months credit for pre-sentence custody would therefore result in effectively a double credit. And while there may be circumstances where some overlap is justified or appropriate, I am not convinced that this is one of them. So those are the reasons why I have had concern.

Determining a fit sentence for conduct is never an easy -- is never an easy matter because there are always a lot of factors, many of which often pull in opposing directions. And it can be particularly difficult in circumstances which evoke an exceptional emotional or visceral response, which is the case here. This case appears to have struck a public nerve. In the victim impact statement of the staff sergeant, reference is made to the fact that following the incident hundreds of emails or other communications came in from across Canada expressing condolences or other sentiments. This is a matter which is obviously of significant interest among members of the public and about which many undoubtedly hold very strong feelings. Also, while it has not specifically been referred to in the submissions, I am aware from earlier media coverage that the circumstances have led the current government to react by proposing a potential new law to deal with this kind of circumstance, should it arise again. This reaction, however, is in spite of the fact that the existing law under which the accused is charged is punishable by exactly the same kind of maximum sentence that the new law that is being proposed would have. And therefore there is no gap in the existing legislation that needs to be filled. What needs to be fulfilled, however, is the need for public confidence that appropriate consequences within the law will be attached to this troubling event.

When an incident like this occurs which inflame -- tends to inflame emotion, it is particularly important to take a step back and ensure that society's response through the sentencing process is a principled one. The purpose of sentencing is defined in the Criminal Code itself. It is two-fold. Its purpose is to promote and maintain respect for the rule of law and to contribute to the maintenance of a just, peaceful and safe society and it is important not to lose sight of these key concepts, even if it is easy to do so in a case that is emotionally charged.

Mr. Vukmanich, you know, your actions on October 7th and your history of criminality over many years shows a complete disrespect for the rule of law. And you have yet again undermined the societal objectives of a peaceful, just and safe society. Your actions have been harmful and hurtful. To many people. There is nothing you have done in your actions which deserves a restrained response and I suspect that if I were to send you to gaol and throw away the key there would be a large segment of the population who would be quite content with that outcome. At least on an emotional level. But to do so would also fail to respect the rule of law. And it would not represent a principled response to your criminal behaviour. It would mean that the response through the justice system failed to follow the principles that keep our society what it is, which is just, peaceful and safe, so this sentencing is not just about you. The process is about the preservation of the rule of law. Which is the most fundamental organizing principle in our society. And in fact, it was this principle that was being protected when the police service dog's handler sent the dog into danger.

The law requires that I impose a sentence that is first and foremost proportionate to the seriousness of the offence and to the degree of responsibility to the offender. In this case there are numerous offences that were committed and collectively at least they can only be categorized as serious. With regard to the degree of the accused's responsibility, I have not been presented with any evidence of anything that would detract from moral culpability. While I have little background information regarding the accused, there is nothing to suggest that he is the project of a disadvantaged childhood, he suffers some kind of brain deficit or mental disorder or for that matter that he has said or done anything to suggest a sense of regret or empathy other than pleading guilty, which itself always suggests some element of remorse.

Second principle that has to guide the Court is the concept of parity. And that is essentially equality before the law. Fairness dictates that similar persons in similar circumstances who have done similar things should be treated in a similar fashion to the extent possible. A response that singles out individuals for special treatment cannot be fair.

The third governing principle is that sentences cannot be gratuitously harsh. And that is no gaol sentence should be longer than that which is necessary to accomplish the objectives intended by the sentence and gaol should only be imposed as a last resort. That said, there is no question that gaol is the only option in

this case and the only real question is how long the sentence should be. The law says that the Court has to look at the aggravating and the mitigating factors and then consider the appropriate objectives and one of those objectives is denunciation and that is an important objective in this case. A fit sentence has to adequately reflect society's denunciation for what was done. The message sent through the sentence has to also serve to deter, either in this case the accused or others of like mind from engaging in that kind of conduct in the future. Again, both individual and general deterrents are -- are significant factors or objectives in this case. Rehabilitation is an objective that cannot ever be ignored, although there is no evidence that has been presented here which points towards any particular desire or motivation to change or take advantage of any rehabilitative opportunities. In any event, any rehabilitative opportunities will have to take place in a gaol setting.

I also must attempt at least to instill a sense of responsibility. Simply separating the accused from society for a period of time is also a consideration. Where necessary. And I actually find that that is a relevant factor in this case, although not a dominant one. And finally, as earlier referred to, the sentence has to provide reparations where appropriate, although this must be based on evidence.

There are several factors that are aggravating in this case. Firstly, there are multiple offences involved. Second, the accused has a significant record. And many of the offences on that record are related to the offences that are before the Court today. The fact that the accused was on parole at the time of the offence is deemed a further aggravating factor and it was also referred in the statement of facts to the fact that other outstanding warrants were in existence at the time which may well have contributed to the accused's attempts to flee with such reckless determination. I will say with respect to the prior record that it is important that a court not resentence a person for past offences. However, the record certainly deprives the accused in this case of any leniency that might be expected by someone coming before the court for the first time. The only mitigating factor in this case is that the accused has pled guilty to some of the charges with which he was charged.

Turning then to what a fit sentence would be when applying these principles and objectives, I will begin by saying that I have no difficulty with the suggested sentence of 18 months for the offence of killing a police dog. There are not many precedents in this area of law to help guide the Court towards a sentence that reflects parity and I have not been provided at least with any such cases that are very close factually. The (INDISCERNIBLE) summary of various cruelty cases that was provided is not of great assistance in this regard, the summaries being neither supported by transcripts nor citations. But I agree that a sentence of 18 months is consistent with the overall principle of proportionality and that is the seriousness of the conduct and the degree of the accused's responsibility.

With respect to the degree of responsibility, as I have alluded to earlier there is really nothing that I see as particularly mitigating. There is no brain injury, no mental illness, no impairments to suggest that the ability to make choices and foresee consequences was compromised in any way other than by self-induced mind alteration through chemicals. And the offence is serious for what I see as a number of reasons and on a number of different levels. First the offence involves an act of unbridled violence. While it may be reactive to the dog's apprehension (sic), the fact that the accused armed himself with a knife at the point where he chose to get out of the vehicle and run on foot, knowing that he was going to be pursued, whether it is by a human enforcement officer or a dog, shows a level of willingness and readiness to engage in violence with indifference towards the harmful consequences that can follow in that circumstance. This killing of the dog was also during the course of a lawful arrest. With the animal being sent as it was trained to do in order to carry out what is required by the dog's handler as part of his public duty. This is always a highly aggravating factor. Not only was the dog being sent in order to effect a lawful arrest, the dog was being sent as a restrained measure, an alternative to other more forceful means available to the officer, who was well-armed.

The killing of any animal senselessly and without any acceptably valid or beneficial purpose is an affront to our society's basic respect for life. We do not place the same value on the life of a dog or other animals as we do human life. But if there was ever a time when non-human life forms were seen as chattels devoid of any capacity for pain or entitlement to respect as living beings, that is not the case in modern Canadian

society. The greatest harm, however, and what really is the essence of the wrong that makes this most serious is not the harm or loss to the life of the dog per se, it is the harm to the human members of our society connected not just to this dog but connected to the values in our society that matter. In this regard whether the dog was a police service dog, another kind of service dog or a pet, these animals often embody and represent values that humans cherish.

During the sentencing and particularly through the understated victim impact statements the Court heard of the impact on the -- on this dog's loss -- or of this dog's loss on the family of the dog's handler. Of course on the dog's handler himself. Humans form bonds with animals. Often very strong bonds. And these bonds can be just as strong as they are sometimes with humans and are an integral part of the fabric of our society. The fact is in our society we value life. And we value love. And companionship. We value loyalty. We value the capacity to accept and forgive. We value the ability to protect and to be protected and we value the capacity and the willingness to serve, to value many other things. Which to many members of a society are embodied in pets or service animals which so many of the members of our modern Canadian society are connected.

So Mr. Vukmanich, your attack and killing of this dog was not just an attack on the dog. Just on the -- just as an attack on a fellow human being is not just an attack on that individual. It is an attack on your society. And it is an attack on what is meaningful in society and the values that the members of our society care about and sometimes care about deeply. The hurt from your actions is widespread and that is evident from the reaction on many levels and it explains why there are so many courtrooms -- or people in the courtroom today. That is why this offence is serious. And that is why it calls for serious consequences. At the time that I set the matter over, I did not at that time express concern over the adequacy of an 18 month sentence but I expressed the inadequacy of or the concern about were all of the other charges.

At the beginning of my decision this afternoon, I outlined some of the concerns and I am not going to rehash what was said there. But the -- the global -- the suggestion of a global eight month sentence for all of the offences other than the killing of the police service dog does not sit well with me and I can tell you that leaving aside for the time being the question of the joint submission I would impose a sentence considerably more than 8 months consecutive to the 18.

With respect to the charge of impaired driving, the accused does not have a conviction specifically for impaired driving and it is not uncommon; in fact, it is usual that a person without a prior directly related conviction would receive a fine in relation to an impaired driving. But in this case where the accused has multiple prior driving offences of a criminal nature and has -- and is driving with a cocktail of drugs in his system that contribute in part undoubtedly to the unfortunate events that follow, I would, without reference to any joint submission, impose at least a sentence of a month in gaol for the impaired driving alone.

There are property offences on the record. The possession of stolen -- of a stolen licence plate is not the crime of the century but it is also for a person who has a history of criminality a -- an offence for which additional gaol time has to be imposed and I would impose at least an extra month based on that charge alone.

The charge of possession of a weapon for a purpose dangerous to the public peace, sentences can range anywhere from fines to very stiff sentences in that -- for that offence generically. But in -- in my view, I see this offence as being particularly serious in this case. I do not have evidence as to how or why or when the accused came into possession of the knife or why he came into possession of the knife or what his original purpose was but there came a point where he clearly made a decision to possess this knife, take it with him for a purpose that he knew to be dangerous. And that clearly occurred before he left the vehicle. If he had not put himself in possession of this knife with that dangerous purpose, none of this would have happened. That is, the killing of the dog. It is by arming himself with this knife as a result of him simply having it in his possession that the dog became no match for you with the knife. So I see that offence as separate and distinct and I see that offence as significant and so in my view a consecutive sentence of three months would be generous.

The resist arrest, as I said earlier, could be taken as an extension of the evasion charge and I could justify imposing a concurrent sentence in relation to that. So the question then is well, what is an appropriate

sentence for evading police. The actual length of driving duration, that is, the duration of the driving, the driving pattern per se is certainly not the most egregious of police chase. It lasted, it appears, at least the vehicle ended up in a spot not much more than a block away from where it started. It had jumped a number of curbs, flattened the tires. That is undoubtedly why the vehicle stopped. But the offence of evasion, as I referred to earlier, is not so much the dangerousness associated with the driving per se; the dangerous driving if it had been charged would be separate. It is the fact of the flight. Inherently dangerous circumstances and the fact that there are prior convictions for which significant gaol sentences have been imposed would to me lead me on that charge alone to a sentence of at least six to nine months. And again, that is after taking into account such things as the principle of totality, which is the concept that when you add a bunch of individual sentences together you have to make sure that the net effect is not backbreaking or disproportionate. So if I were to sentence you without a joint submission, the sentence would exceed 30 months.

So then it becomes a question of whether or not the joint submission of 26 months is unreasonable or so far from an acceptable range that I should overrule it. And I acknowledge, Mr. Royer, that you have provided me some additional cases shortly -- this morning when you appeared. Those case law -- those cases are quite familiar to me. They -- in fact, they were taken into account at the time I was formulating my thoughts. But the fact that you provided them to me gives me the opportunity to actually read from our Court of Appeal in relation to the principle that joint submissions should as a general rule be followed. And what the Court says in the -- in the GMC case is this:

> The obligation of the trial judge to give consideration to a joint sentencing submission stems from an attempt to maintain a proper balance between respect for the plea bargain and the sentencing court's role in the administration of justice. The certainty that is required to induce accused persons to waive their rights to a trial can only be achieved in an atmosphere where the courts do not lightly interfere with negotiated dispositions that fall within or very close to the appropriate range for a given sentence -- a given offence. The bargaining process is undermined if the resulting compromised recommendation is too readily rejected by the sentencing judge. The joint submissions should be accepted by the trial judge unless they are unfit.

And that is the state of the law.

I have taken some time to explain why I would not have imposed the sentence that is being suggested in the joint submission nor structured it in the way that the Crown submits it should be structured. But neither can I say that the net sentence being proposed is so far from an acceptable range that I should overrule it. And therefore in the final analysis this is the sentence I am going to impose.

On the charge of driving while impaired I am imposing a sentence of one month. On the charge of possessing the stolen licence plate I am imposing a sentence of one month consecutive. On the charge of possessing a weapon for a purpose dangerous I am imposing a sentence of three months consecutive. On the charge of resisting arrest I am imposing a sentence of two months concurrent. On the charge of evading police, I am imposing a sentence of three months consecutive. That is a total of eight months to this point. On the charge of killing police service dog Quanto I am imposing a sentence of 18 months consecutive. All of those sentences will be consecutive to any sentence that you are now serving. In addition, I am not going to give you credit for pre-sentence custody. I realize that both counsel suggested that I should. At least until it was raised. And one might loosely then describe it as part of a joint submission, although I do not interpret a joining of -- there to be a joining of the minds by the Crown and the defence that it would be appropriate where a person is previously serving a sentence and therefore I am not accepting the submissions of counsel in that regard. And you will therefore not get credit for any of the time that you have served since the offence.

With respect to the ancillary orders that were asked for, I am not going to make a compensation order. That does not mean that a person or agency or entity that has sustained losses as a result of your actions cannot take action against you and obtain a judgment. But I am not possessed with sufficient information or sufficiently clear information to make such a determination and that is not a -- a simple determination. I am

not prepared to do so in the context of a criminal sentencing. If an action is brought in civil court, of course that is still an option.

It has been jointly submitted that I impose a 25 year order prohibiting the accused from owning or having care or control of any pet. I -- as it is part of the joint submission, I am going to make that order. I have to say I question the utility of such an order. I do not think that there are -- firstly, there is no indication that Mr. Vukmanich has any desire to have pets and, frankly, it is not the pets of Mr. Vukmanich that we need to have concern about, I suspect. It is the pets of others. Nonetheless, I do make that order. For a period of (sic) years and that is under Section 445.1. Also I will make an order under Section 109 of the Criminal Code for a weapons prohibition. There was a weapons prohibition already imposed. It would have been in place, frankly, at the time that this offence was -- these offences were committed.

Mr. Lim, when you initially made the application you asked for a ten year prohibition under Section 110. I then raised the question of whether or not it should be under 109, given we are dealing with an indictable offence in which a weapon was used. I do, however, as I look at the provision of 109 right now note that it is an indictable offence in which violence was used for which the person may be sentenced to imprisonment for ten years or more and this is, of course, a five year maximum and therefore I question whether or not that section would justify it. There is also (d) of 109 which says an offence that involves a firearm, crossbow, prohibited weapon, restricted weapon, prohibited device or ammunition at a time when the person was prohibited from possessing such things. The problem is knives are not weapons until they are intended to be used as a weapon. I do not think it is caught by that definition. So I am leaning towards interpreting a Section 110 order to be the appropriate order.

So either counsel have any comment on that?

92 MR. LIM: Your Honour, if it assist the Court earlier on in the animal pet prohibition you said Section 445 (INDISCERNIBLE) Section 447.1. Just wanted to inform the Court -- assist the Court. I have a document which I provided Madam Clerk earlier which actually is using (INDISCERNIBLE) wording in the section that may assist the Court. I believe they actually have that in the clerk's office as well. A document that's similarly worded to that.

93 THE COURT: Yes. Okay. Well, the order can be in that form.

And so in any event, sir, there will then be an order for a period of ten years prohibiting you from possessing any kind of a firearm, crossbow, prohibited weapon, restricted weapon, any kind of prohibited -- or any kind of ammunition or any kind of explosive device.

Finally, I do agree that a five year prohibition should be imposed in relation to driving and therefore you are prohibited for driving -- from driving for a period of five years anywhere in Canada. Commencing upon your release from custody.

Now, with respect to victim fine surcharges, given the length of the sentence that has been imposed I am waiving victim fine surcharges.

Is there anything I have not covered?

94 MR. LIM: Your Honour -- sorry. May I just ask for clarification, sir. There was an impaired by drug charge as well of course the evading the police charges. The five year prohibition on both or are you doing the one year (INDISCERNIBLE) --

95 THE COURT: No. The 253 will be a one year prohibition concurrent.

96 MR. LIM: Thank you, sir.

97 THE COURT CLERK: Sorry. One year?

98 THE COURT: For the 253?

99 THE COURT CLERK: Thank you.

100 THE COURT: The five year is on the evading police.

101 MR. LIM: And the Crown applied to have forfeiture of all exhibits to Her Majesty the Queen after the 30 day appeal process.

102 THE COURT: All right. Okay. Thank you, Mr. Vukmanich. I hope you turn things around. Certainly been well-served by your counsel in this matter, as you will have already figured out.

103 MR. LIM: Crown applies to withdraw the other charges if they haven't done so, Your Honour.

104 THE COURT CLERK: They're withdrawn.

105 THE COURT: Done. Thank you.

106 MR. ROYER: Thank you, Your Honour.

107 MR. LIM: And I believe, Your Honour, the pro -- prohibition pursuant to 447.1 has to be signed by the accused at some point.

108 THE COURT: All right. Thank you.

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