

Regina (respondent) v. Ryan Randolph Holden (appellant)
(CA039371; 2012 BCCA 317)

Indexed As: R. v. Holden (R.R.)

British Columbia Court of Appeal
Frankel, Neilson and Bennett, JJ.A.
July 19, 2012.

Summary:

Holden was charged with first degree murder of a rival in the drug trade. A jury convicted him of manslaughter. He was detained for four years in pre-trial custody, spent almost entirely in protective custody. On entering the general population at his request, he was severely beaten by other prisoners. Holden was 31 years old and single at the time of sentencing.

The British Columbia Supreme Court concluded that a sentence of 10 years was a fit sentence, but reduced the sentence to two years after giving eight years' credit for the four years spent in pre-trial custody. The court also imposed a two-year probation order and ancillary orders. Holden appealed the sentence of two years and submitted that an appropriate sentence was time served with probation.

The British Columbia Court of Appeal granted leave but dismissed the appeal.

Criminal Law - Topic 5763

Punishments (sentence) - Particular offences - Manslaughter - The accused was charged with first degree murder of his rival in the drug trade (waited outside a pub and shot him through the heart with a scope-equipped hunting rifle) - He testified he intended to shoot him in the leg - A jury convicted him of manslaughter - He was 31 years old and single at the time of sentencing - Prior conviction for assault - Good family background - College educated - Employed; earned \$150,000 a year - Earned \$40,000 a month selling cocaine - Spent four years in pre-trial custody, mostly in protective custody - On entering the general population, he was severely beaten - Mental health issues - No remorse - The trial judge imposed a sentence of 10 years, but reduced the sentence to two years (a federal sentence) after giving 2:1 credit for pre-trial custody - The accused appealed, submitting that an appropriate sentence was time served - The British Columbia Court of Appeal dismissed the appeal - "This was a case of near murder" - Nor did the judge err in concluding that enhanced credit was not appropriate - The judge's observations regarding the resources in the federal penitentiary system were correct - "Enhanced credit for pre-trial custody is rare, and more importantly, it is a matter of discretion for the sentencing judge." - See paragraphs 19 to 23.

Criminal Law - Topic 5848.2

Sentencing - Considerations on imposing sentence - Time already served - [See **Criminal Law - Topic 5763**].

Criminal Law - Topic 5882

Sentence - Manslaughter - [See **Criminal Law - Topic 5763**].

Cases Noticed:

R. v. L.M. (2008), 374 N.R. 351; 2008 SCC 31, refd to. [para. 14].

R. v. Weir-Jones (A.J.) (1994), 48 B.C.A.C. 295; 78 W.A.C. 295 (C.A.), refd to. [para. 28].

Counsel:

P. Murray, for the (accused) appellant;

A. Budlovsky, Q.C., for the (Crown) respondent.

This sentence appeal was heard and decided at Vancouver, British Columbia, on July 19, 2012, by Frankel, Neilson and Bennett, J.J.A., of the British Columbia Court of Appeal. Bennett, J.A., delivered the following oral reasons for judgment.

Appeal dismissed.

Editor: E. Joanne Oley

Criminal Law - Topic 5848.2

Sentencing - Considerations on imposing sentence - Time already served - The accused was charged with first degree murder of his rival in the drug trade (waited outside a pub and shot him through the heart with a scope-equipped hunting rifle) - He testified he intended to shoot him in the leg - A jury convicted him of manslaughter - He was 31 years old and single at the time of sentencing - Prior conviction for assault - Good family background - College educated - Employed; earned \$150,000 a year - Earned \$40,000 a month selling cocaine - Spent four years in pre-trial custody, mostly in protective custody - On entering the general population, he was severely beaten - Mental health issues - No remorse - The trial judge imposed a sentence of 10 years, but reduced the sentence to two years (a federal sentence) after giving 2:1 credit for pre-trial custody - The accused appealed, submitting that an appropriate sentence was time served - The British Columbia Court of Appeal dismissed the appeal - "This was a case of near murder" - Nor did the judge err in concluding that enhanced credit was not appropriate - The judge's observations regarding the resources in the federal penitentiary system were correct - "Enhanced credit for pre-trial custody is rare, and more importantly, it is a matter of discretion for the sentencing judge." - See paragraphs 19 to 23.

Criminal Law - Topic 5882

Sentence - Manslaughter - The accused was charged with first degree murder of his rival in the drug trade (waited outside a pub and shot him through the heart with a scope-equipped hunting rifle) - He testified he intended to shoot him in the leg - A jury convicted him of manslaughter - He was 31 years old and single at the time of sentencing - Prior conviction for assault - Good family background - College educated - Employed; earned \$150,000 a year - Earned \$40,000 a month selling cocaine - Spent four years in

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