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Canadian Sentencing Digest

QUANTUM SERVICE

This release brings you a wealth of new case law digests covering a wide range of offences. The following are of particular interest and importance:

Case Law Highlights

- **Possession of Restricted Weapon** — The accused pleaded guilty to possession of a restricted handgun, in breach of a prohibition order, after having been caught occupying a motor vehicle with knowledge that the weapon was in the vehicle. The handgun and ammunition had been handed to him in a duffel bag by a third party, and he was aware the bag contained a firearm, despite having been subject to a lifetime weapons prohibition. The accused had a lengthy criminal though somewhat dated record, including a conviction for manslaughter with a firearm. He also operated both a roofing company and a food truck, both of which had employed indigenous persons. The court also received letters of support corroborating that the accused had emerged from negative influences to make a positive life in general. The court found the accused's offences not to fall into the "true crime" category of illegal weapons possession, and more accurately reflected an instance of bad decision-making. The

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court deemed appropriate an 18-month sentence of conditional imprisonment for possession, a concurrent 18 months' conditional imprisonment for being an occupant in a vehicle knowing of the weapon's presence, and six months' conditional imprisonment for breach of the prohibition order: *R. v. Buffalo*, 2020 ABQB 41, 2020 CarswellAlta 97 (Alta. Q.B.).

- **Obtaining a Material Benefit from Sexual Services** — The 30-year-old first offender was convicted of two counts of human trafficking and one count of receiving a material benefit thence, as well as two counts of breach of recognizance. The accused had used coercion, manipulation and deception to control and exploit two young women, the younger of whom was 18 years old, and had kept thousands of dollars they had earned. The court viewed as mitigating factors the accused's lack of a criminal record, his relative youth, his good family support, his education and work history, his positive pre-sentence report, and his remorse. Aggravating factors included his extensive use of verbal abuse, emotional manipulation and occasional physical violence, as well as the high percentage, nearly 80%, of the victims' earnings he had kept. The court viewed a proportional sentence to be four years for trafficking of the younger victim, 659 days consecutive for trafficking the older victim, and three years concurrent for receiving a material benefit, plus thirty days concurrent for each breach of recognizance. Based on the totality principle, the court then reduced the sentence to six years less credit for pre-trial custody. The accused also successfully challenged the mandatory-minimum sentence of four years with respect to trafficking in the younger victim, as the court found to have existed a reasonable hypothetical where the sentence would be grossly and unjustifiably disproportionate: *R. v. Reginald Louis Jean*, 2020 ONSC 624, 2020 CarswellOnt 82 (Ont. S.C.).
- **Armed Robbery** — The accused pleaded guilty to seven counts of armed robbery, three counts of use of an imitation firearm, two counts of theft not exceeding \$5,000, and assault. After a mid-life divorce, the accused had become a crack addict, lost his employment, spent all his savings and turned to crime to satisfy his addiction — over the span of four years, he used the imitation firearm to hold up pedestrians, though three of those years involved a lengthy period of rehabilitation between two sprees of armed robberies. The accused demonstrated remorse and had no criminal record, and he made attempts to address his addiction. The trial judge imposed an eight-year total sentence, which the accused appealed. The Court of Appeal found the sentence to be unduly harsh and excessive — the appellate court substituted two years' imprisonment for the earlier spree plus one year, concurrent for the imitation firearm use; and, consecutive to those, two years for the later spree, and six months

concurrent imprisonment for the assault and the theft, less time credited for pre-trial custody: *Conti c. R.*, 2019 QCCA 2108, 2019 CarswellQue 11108 (Que. C.A.).

- **Arson: Damage to Property** — The 50-year-old first offender was convicted of causing damage by fire, following months in a heated dispute with his tenant. The tenant had refused to vacate pursuant to an eviction notice, and, when the tenant was out, the accused used gasoline as an accelerant, set the rented premises ablaze and fled to Eastern Canada. The fire destroyed the tenant's personal property in the garage, as well as the duplex structure next door to it, exposing the duplex's owner to danger. The judge noted the seriousness of the offence, but viewed the accused's evidence of good character, his long employment history, his responsibilities as a parent of two, including an autistic child, had warranted a sentence at the lower end of the applicable range. Consequently, the court imposed a sentence of two years' imprisonment: *R. v. Li*, 2020 BCSC 113, 2020 CarswellBC 207 (B.C. S.C.).