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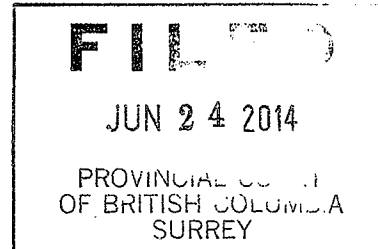
SURREY

**IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
SURREY**

REGINA

v.

R



**REASONS FOR SENTENCE
OF THE
HONOURABLE JUDGE GILLESPIE**

Counsel for the Crown:

Satinder Sidhu

Counsel for the Defendant:

Paul G. Kent-Snowsell

Counsel for :

Place of Hearing:

SURREY, B.C.

Date of Hearing:

MAY, 23, 2014

Date of Judgment:

JUNE 24, 2014

BACKGROUND

[1] Guilty Pleas were entered previously by Mr. R to: count 2, uttering threats to from October 23, 2013 until November 29, 2013 contrary to section 264.1 of the Criminal Code; count 4 assault during the same time period; and count 8, assault from June 1st, 2013 until July 5, 2013. The Crown proceeded indictably.

[2] The Accused was involved in intimate relationships with both of the victims and during that period of time was described by both of them as controlling, aggressive and abusive. They both expressed that he isolated them from their family and friends. Both of the victims have filed victim impact statements in these proceedings. Ms. read her statement into the record.

[3] Both a Pre-Sentence Report "PSR" and a Psychological Assessment were prepared in advance of this sentencing. Additionally and with the consent of the Crown, Defence counsel relies on two articles relating to Anabolic Steroids prepared by the National Institute on Drug Abuse "NIDA".

[4] Mr. R was arrested on November 20, 2013 and detained on December 6, 2013. At that time he was also serving a Conditional Sentence Order ["CSO"] imposed February 12, 2012 in Nanaimo, of 2 years less one day plus three years probation for possessing a controlled substance, cocaine for the purpose of trafficking. At the same time he was placed on this CSO he was also fined \$1000 on each of the counts relating to an assault and threatening of a woman who was living in his residence at the time. The CSO did not attach to these latter convictions, but

protective conditions were included in the terms of the CSO and Probation Order relating to .

[5] At Mr. R 's bail hearing for the present offences before me, Federal Crown alleged CSO breaches relating to the terms "keeping the peace and being of good behaviour" and "being outside of his place of residence after his curfew". No CSO breach hearing was actually ever conducted. In other words no order was ever made by the court pursuant to section 742.6(9). Pursuant to section 742.6(11) the CSO starts running again on the making of a detention order, which was made by me on December 6, 2013. As a result, the remainder of Mr. R 's CSO was served while he was in custody and it expired February 1, 2014.

[6] Mr. R acknowledges that he consumed steroids during the latter period of his CSO commencing in or around July 2013. The terms of his CSO prohibited him from consuming "Illicit Substances" defined under the Controlled Drugs and Substances Act, including anabolic steroids. He was also ordered not to be in possession of any drug paraphernalia including syringes, which I am told Mr. R used to inject the steroids. [R. v. R , File No. Registry, February 1, 2012, para 50.]

ISSUES

[7] The issues arising on this sentencing are as follows:

- What is the appropriate sentence having regard to the principles of sentence and the aggravating and mitigating factors present.

- Then I must assess how much time the accused should be credited for the time he has spent in custody. Both counsel agree that whatever that time period is, I should give him credit for the time he has spent in custody on a 1.5:1 basis. The period that I should consider to assess time served is disputed. Defence counsel submits that I should consider the whole period he has been detained in custody as time served for the purposes of calculating his sentence, whereas Crown counsel submits that I should only consider the period from when his CSO expired.
- Finally, if after applying the 1.5:1 to the period I determine is the appropriate period of time served and subtract that from the sentence impose and there is a further period of jail remaining, then I must assess whether that sentence can be served conditionally, having regard to section 742.1 of the Criminal Code and the R. v. Proulx.

FACTS

[8] There is an agreed statement of facts filed. This is a summary.

[9] and Mr. R were in an intimate relationship between April 13, 2013 and Jul 5, 2013. Ms. lived with her mother and young daughter who suffered from a severe form of cerebral palsy.

[10] When they first met, the accused was not using steroids, but within 3 weeks he began using them and Ms. reported to the probation officer who prepared the PSR that she noticed a significant change in his behaviour. Toward the end of May,

2013 and beginning of June, 2013 she wanted to end the relationship with the accused as he was becoming increasingly controlling and irrational. When she told him she did not want to see him anymore, he punched the speedometer and injured his hand, resulting in him needing surgery to repair the damage. This caused him to be off work 4-5 weeks. During this period of time he arrived at her home at 0630 hours until 2300 hours when he would go to his parents' home so he would be compliant with his CSO curfew.

[11] The accused assaulted Ms. several times in June. Once he kicked her so hard in the shin it resulted in burning pain and a faint scar still remains. Several days later he slapped her across the face with an open hand.

[12] At the end of June she again indicated she wished to break up with him: this time the accused reacted by throwing Ms. on to the stairs, and choking her. He then grabbed her by the ankle and threw her to the ground. She hit her head on the floor while trying to escape from the accused. He tried to choke her again and she screamed at him. He appeared to "snap out of it" and let her go.

[13] Her daughter had been waiting outside in the car when this latter assault occurred. She suffered injuries including bruising on her legs, fingerprint bruising on her neck, a goose egg on her head and a sore throat.

[14] Several days later the accused was again at her residence. They began to argue about a conversation the accused overheard the complainant have with her cousin. He became angry when she did not answer his question and reacted by calling her a liar and slamming her head into the cupboard. yelled at the accused to leave her

residence and he dragged her in to the kitchen and caught her neck area with his elbows. Then he slammed her head in to the floor. daughter was present and watched this assault occur. She went to the bathroom and the accused followed her in. She tried to calm him down and he punched her in the face resulting in bruising to the bridge of her nose.

[15] On July 4th, 2013 the accused kicked Ms. in the thigh area, which resulted in her left thigh swelling considerably. The following day while having a conversation on the couch, the two disagreed and the accused became upset and threw Ms. down on to the ground. He then kicked her in the ribs so hard that she reported they hurt for months.

[16] During their relationship, the accused told Ms. that he could call some people to “screw up” her finances and that he could have her mother and sister “taken care of” as they were interfering with their relationship. She believed that he meant that the accused would kill or harm her mother and sister. As a result she forced her mother to leave her residence.

[17] During the period she was with the accused, also disclosed that he broke 2 of her cell phones while throwing them at her. He was very controlling, told her how to dress, isolated her from her friends and family and did not permit her to have any privacy as he was around her from early in the morning until late at night.

[18] finally called her sister who contacted the police. This resulted in the accused breaking up with her because he told her that he could not risk being in breach of his conditional sentence.

[19] At the end of August, 2013 the accused and B recommenced contact. They knew each other previously when they had trained together at the gym. Ms. B was 19 years older than the accused.

[20] They began to date. The accused became more controlling and jealous and limited her contact with friends and acquaintances. The relationship ended on November 29, 2013, when Ms. B escaped from his car at his place of work.

[21] When they met Ms. B was employed but the accused made her quit her job because he did not want her spending time away from him with another man. He demanded that she change her cell number so that he would be the only one to call her. He also deleted her contacts in her personal cell phone and her email and Facebook account.

[22] On October 17th in advance of a business trip Ms. B was scheduled to take the accused became upset she was travelling with another male. He punched her in the upper arm area and the left eye. This resulted in bruising to her eye. Ms. B emailed a photo of this injury to her employer advising him that someone was not happy with her going on the trip. He excused her from the trip. Eventually he contacted the police in November of 2013 as he could not reach her on any of her previous contacts.

[23] On October 22, 2013 Ms. B emailed the accused advising him she wanted to end their relationship. He agreed to this. But later in the early morning hours he came into her residence using a key she gave him and told her she could not break up with him. He punched her in the right hand side of her head after she had tried to calm him down. This resulted in a deep cut above her eyebrow and it bled significantly. The

accused calmed down. Later he drove her to the store to get some medical supplies to treat the cut. He left her in his car and told her the alarm was on and if she left it would go off. At this point she had two black eyes from being assaulted by him.

[24] On October 24th the accused told her to quit her job. She complied with his direction. On that same date, the accused found another message from a male on her phone. They were driving to dinner when he confronted her with this. He then began to punch her on her back, shoulders and head leaving bruises. He did not permit her to leave the car. She then yelled out at a passer-by for assistance. The accused pulled her back in to the car and punched her on the left side of her face leaving a large cut above her left eye.

[25] After this incident the accused did not allow the victim to be away from him. During the day he stayed with her and then at night she stayed at his parent's house because of his CSO curfew. He called in sick until her bruising subsided and then made her follow him while he was working, however at some point during that evening when he was making a delivery to Starbucks, the police spoke to her. After that evening the accused brought her to work with him and made her stay in his vehicle in a locked parking lot for his entire shift. He told her that if she left the car, the alarm would go off, thus alerting him to her departure.

[26] He made her stay in his car on 16 occasions. She had no bathroom or meal breaks. She said she lost weight and became constipated.

[27] Ms. B said she was fearful of the accused and throughout the relationship he jabbed her in the legs, hit her on the chest and stomach and grabbed her fingers and

knuckles and bent them backwards. He told her that if she left him he would financially ruin her and that he would have people intercept her and deal with her. The accused had taken her wallet, identification, computer and her keys. She said he had everything that belonged to her.

[28] On November 28th after eating dinner together at a restaurant the accused argued with Ms. B about her having a past relationship with an male. He then punched her in the arm and backhanded her across her face. At this point she decided to leave the accused.

[29] On November 29th while locked inside his car at his place of employment she located her briefcase and found her cell phone in the trunk of the car. She could not find her wallet. She opened the door and she managed to get out and flagged down a taxi. She told the taxi driver that all she had was \$ 25, which she had secretly collected from a change jar in her bedroom. Police were ultimately contacted and the accused was charged.

PSR/previous record

[30] In the PSR the probation officer detailed that the accused has a record from Nanaimo in 2012 for Possession for the purpose of trafficking and Uttering threats and assault with a weapon in Relation to . He received a CSO of 2 years less one day and 3 years probation with protective conditions relating to the victim in count 2 and 3. The CSO was not for the assault and threatening charge. For those offences he was fined \$1000. 00.

[31] In the PSR, the Probation officer reported that both victims wish no contact orders. She also contacted his employer who confirmed that Mr. R was employed during this time and he considered him to be a good employee. He also noted that he never witnessed any behaviour that was concerning to him. In fact, Mr. R's employer described him as "docile and reserved".

[32] In the PSR the accused advised that he had used steroids since he was 18 years old. He also acknowledged that he understood using the steroids was a "direct violation of his CSO". He expressed knowledge of how steroid use negatively affected his behaviour by causing him to be irritable, aggressive, depressed and impatient. He said that he believed he could handle using the steroids again because he had "established stability in the community". He had a "stable relationship with [redacted], residence, employment and support of his family". He now asserts that his thoughts were "naïve, arrogant and stupid".

[33] At the time of his offending he was using 6 different types of steroids. Defence counsel has itemized Mr. R's steroid use and notes that he was consuming most of these steroids by injection twice a day three days a week. Mr. R describes that these steroids were like "anger in a bottle" and his emotions went from "0 to 100 in seconds". The probation officer asked him if he ever experienced these emotions at other times apart from when he was with his girlfriends. He responded that "opportunities never arose and if they had he would have probably reacted negatively". Only [redacted] and [redacted] report witnessing Mr. R lose his temper.

[34] Both did not suspect he was using steroids at the time as they did not note a change in his behaviour. Mr. R says he is "motivated and willing to attend treatment for his steroid misuse". His family says they will support however they can, including providing a residence for him.

[35] During the course of his CSO the accused completed his Community Work hours, complied with his curfew but did not complete a program of counselling. He had successfully obtained employment and been promoted. Since his arrest on these charges he reports to his probation officer that he is motivated and willing to attend counselling and programs focussing on respectful relationships and substance abuse.

Psychological Assessment

[36] The Psychological Assessment was prepared by Forensic Psychiatric Services. The accused was noted by the Psychologist to be cooperative with the interview and forthright.

[37] The accused stated to the Psychologist that he might be suffering from Body Dysmorphic Disorder which is a "condition in which individuals become obsessed with certain aspects of their physical appearance". This together with his desire to get pregnant and his mistaken belief that steroids may help his fertility are the factors he identifies that led him to use steroids again in contravention of his CSO conditions.

[38] While he says that he initially intended to use the steroids in a "carefully managed way" he quickly "blew up into abusing it". He advised the psychologist there were times when he "blacked out" and did not recall what happened until he calmed

down. The psychologist notes that the accused characterized his relationship with Ms. B as being one where she was hanging on to the relationship more than he was. Although he did acknowledge that he was "jealous, possessive and controlling". Later he acknowledged that he was also abusive.

[39] The accused advised the psychologist that he began taking steroids when he was 18. He used them until he was placed on a CSO and relapsed when he began dating . The accused states that he notices a significant change in his behaviour when he is on steroids. He says he no longer needs steroids. He reported he took 1000-1200 mg of testosterone a week. As noted, Defence Counsel has provided information relating to the amounts and types and steroids he used. The Psychologist has provided information obtained from Wikipedia about Steroid use. It purports to confirm that there is a link between testosterone use and adult criminality; specifically alcoholism and antisocial behaviour traits are also noted to increase with the use of the substance. The studies correlating a relationship between general aggressive behaviour and steroid use are equivocal. Anecdotally, the accused and Ms. F report a significant change in the accused when he began using steroids: most notably in the area of aggression. Throughout the period Mr. R and Ms. B were together, Mr. R used steroids.

[40] Wikipedia was referenced in the Psychological Report. It stated that the other steroids that the accused reported using also have side effects including paranoia, increased aggression and mood swings.

[41] The accused acknowledged in the Psychological assessment that he had been in a sexually intimate relationship with [redacted] the victim from the previous offence in [redacted] he maintains that he was not really interested in her. He acknowledges that "he was not really good to her". This seems to be an acknowledgement he was unwilling to make in the earlier sentencing in 2012, when at para 19 of Judge Cowling's Reasons for Sentence the PSR is quoted as follows:

[redacted] is adamant there was no intimate relationship" between himself and [redacted]. In any case, this relationship is characterized by Judge Cowling as being controlling, abusive and threats were made to shoot her up with heroin in her sleep and he held a knife to her throat. [redacted] surreptitiously slipped a letter to the building manager advising of her concerns and alerted them to the presence of a substantial quantity of drugs in the residence they shared. The police obtained a search warrant and the accused was arrested.

[42] The accused acknowledged his behaviour was inappropriate with the two present complainants in the matter before me. Although he could not provide a "rational explanation for his behaviour with Ms. B [redacted]". He indicated he was willing to take programs including respectful relationships programming. This is a positive step for the accused who historically has been resistant to taking this type of counselling.

[43] The psychological testing that was conducted by the Psychologist included the PAI test [Personality Assessment Inventory], PCL-R and HCR-20 [risk assessment instruments for criminality and violence], and the Spousal Assault Risk Guideline Assessment.

[44] The Psychologist noted that the results of the PAI test indicate that the accused's "self concept appeared generally stable and positive". As for anger management "he described himself as being potentially prone to more extreme outbursts of anger, including damage to property and threats to assault others". "His interests and motivations for treatment are generally low", however "he did report a number of strengths that would be positive indicators for treatment".

[45] The results of the PCL-R and HCR-20 indicated that the accused scored in the low range in psychopathy and in the moderate range in the factor that measures personality traits that have been found to be related to a criminal lifestyle but low in the area that measures factors relating to an unstable and antisocial life style.

[46] The Spousal Assault Risk Assessment "summarizes a variety of risk factors that have been found to be associated with spousal assault recidivism. The psychologist concluded that:

"Using the Spousal Assault Risk Assessment Guide guidelines, it is my opinion that [redacted] can be considered a moderate risk for assaultive behaviour towards an intimate partner if he is not using steroids. If one concludes that steroids contribute to his aggressive behaviour, it would be reasonable to assume that any use of steroids would place him at a high risk for violence towards an intimate partner. Clearly, control of his steroid abuse would be a critical factor in minimizing risk. It would also be beneficial for him to be involved in programming related to relationship violence."

[47] Ultimately the Psychological Assessment concludes that: "clearly, control of his steroid abuse would be a critical factor in minimizing risk. It would also be beneficial for him to be involved in programming related to relationship violence".

Victim Impact

[48] Both Victims filed Victim Impact Statements.
record.

also read hers in to the

Letters of Reference

[51] Defence Counsel has filed many letters of reference in support of the accused. They are from family members, people in the community and his employer. It is clear

that Mr. R has significant support in the community. He is also noted to be a valued employee and one who was promoted during this period of time.

[52] K knows him from training and body building. He describes him as a "great friend" and "Influence".

[53] His family members have all filed letters detailing their support of him in the community. Many state they do not recall him ever showing aggression to anyone at family events. His sister notes that he did not get the counselling he needed when he was bound by the first CSO Order. She feels that the "system failed him at the time". She observes that her family was in denial and did not realize the accused was "struggling and making poor choices in his life".

[54] His mother supports him and says that she did not know the degree to which he continued to struggle with steroid dependence. He is otherwise a kind and caring young man who has made mistakes.

[55] also writes to support him. She was in a brief relationship with him in the time period of August 2013, between when he had broken up with and before he began dating . He was using steroids by his own admission during this period. describes him as loving and caring. They also continued to talk when he was in a relationship, with . From November 18-30, 2013, they texted back and forth talking about getting back together, even though during this time period Mr. R was controlling the movements of and she was spending the time waiting in his car at his direction.

[56] In Judge Cowling's Reasons for Sentence in February 2012 , at para 23 there is a reference to letters of support for the accused that were filed in that proceeding.

Judge Cowling observed that there was ongoing support for the accused and that he had turned his life around from the 19 month period where he lost his way down a very dark road.

[57] The letters of support filed in this proceeding detail that support again, but many of the writers candidly state that they were unaware the accused was using steroids again and offending again against women he was in relationships with in a manner for which he had been sentenced previously.

Steroid use and effect

[58] The National Institute on Drug Abuse [NIDA] has written two articles which are filed in these proceedings. At page 2 of the article entitled Research Report the commonly abused steroids are listed. The accused was using all of these steroids during the period of time he was offending. Under the heading "Why do People use steroids" there is a description of people who use steroids to improve their athletic performance. The article also reports that Steroids also are used to increase muscle size and reduce body fat. People using steroids in this category sometimes suffer from body dysmorphia which causes them to have a distorted body image. They think they look weak even if they are large and muscular. At page 5 of the article it notes that case reports and small studies indicate that anabolic steroids when used in high doses increase irritability and aggression. Some steroid abusers indicate they have committed aggressive acts. The article relates that the studies show that there seems to be some

correlation between steroid use and aggression but that effects are variable across individuals. In summary, it notes that the "extent to which steroid abuse contributes to violence is unknown". The article also says that some research would support that steroids are addictive. Although that is not fully supported in the literature. In this case Defence Counsel submits that the accused suffered from Body dysmorphic disorder and needed the steroids to deal with that. The accused called no expert evidence to substantiate this. I accept that there are few if any experts available to call in Canada. Crown counsel takes no issue with the contents of these reports being filed in these proceedings.

Counsel Submissions-Re: Range of Sentence

[59] Crown counsel submits that the appropriate sentence is 18 months jail, comprised of a 12 month sentence on each of the offences relating to [counts 2 and 4] concurrent to each other but consecutive to a 6 month jail sentence on count 8, the offence relating to [redacted]. This jail sentence should be followed by a 3 year probation order, a 10 years Firearms prohibition, DNA, and s 743.21 no contact order while the accused is in custody, in the event I impose a further custodial sentence.

[60] The Crown submits that Mr. R [redacted] should get credit for time served, but I should not credit him for the time he served when his CSO was running which resulted when I made a Detention Order at the bail hearing I heard on December 6, 2013. The Accused has been in custody since November 30, 2013. The Crown does not dispute that the accused should get credit on a 1.5:1 ratio, but they say the period commences February 1, 2014 until June 24, 2014 the date of sentencing. Accordingly, the Crown's

position is that the accused has served 5 months in custody which is equivalent to 7.5 time served. The Crown's submission is that I should impose a further 10.5 months globally in jail. The Crown submits the principles of sentence most applicable are protection of the public, deterrence and denunciation having regard to the fact that the accused deliberately took steroids during his CSO knowing that he was not permitted to do so. These offences are very similar to the offence he was sentenced on in relation to

Further, while steroids may have contributed to his behaviour, the letters of reference do not speak of any violent or aggressive behaviour on the part of the accused when he is in the company of women he is not in a relationship with. From this fact I should infer that he is cognizant of the effect steroids have on him and he does control that when he is in public. Accordingly, the Crown submits while steroids may contribute to his offending behaviour, I should be cautious about accepting this as a significant mitigating factor in assessing the likelihood that the accused will commit further offences.

[61] The Crown opposes the accused serving any further jail sentence that I may impose in the community and submits that the principles of sentence are not adequately addressed by the imposition of a CSO and accordingly the statutory preconditions are not met.

[62] The Crown relies on three authorities for general sentencing principles. *R. v. Roadhouse* [2012] BCJ No. 2558, *R. v. Jack* [1991] B.C.J. No 3340 and *R. v. Weekes* [1990] B.C.J. No. 1897.

[63] In Roadhouse, the sentencing judge imposed a global sentence in circumstances where there was an unlawful confinement, threatening and assault causing bodily harm where the accused confined the complainant over periods of time and sexually assaulted her and caused her to pass out when he would tape over her mouth. There was a joint submission for a \$2000 fine. The sentencing judge declined to follow the joint submission and imprisoned the accused for 2 years stressing the principles of protection of the public, and proportionality. The case discusses at length the appropriate circumstances in which a judge may depart from a joint submission. But in holding the sentence to be fit the Court of Appeal said at para 56 that: “the sentencing judge was troubled that the offences were ongoing over the period of a few weeks. He concluded that the appellant’s actions were cruel and intended to intimidate and degrade the complainant”. In that case there was no previous record of violence however the circumstances of the offences were more serious than those present here.

[64] In the Jack case the accused was on probation for a similar offence of assaulting a woman when he committed a subsequent offence of assaulting another woman. The court referenced the need for a deterrent sentence.

[65] In the Weekes case the BCCA noted that in cases of domestic violence the need for general and specific deterrence must be emphasized.

[66] The Criminal Code now includes as aggravating factor evidence that the accused abused a common law partner or spouse. See 718.2 (a) (ii). While neither of the victims were common law partners or spouses, the Crown submits that the common

law as evidenced by _____ recognizes the need for sentences in relation to domestic violence to stress deterrence and denunciation.

Defence Position

[67] The defence submits that I should consider that the accused has been in custody since he was arrested on these charges (November 30, 2013) and that if I calculate that period of time at a 1.5:1 ratio, that as of June 24, 2014 the accused has spent a total of 7 months in custody, which at a 1.5: 1 ratio is equivalent to 10.5 time served. Defence Counsel submits that is sufficient time in custody having regard to the aggravating and mitigating factors in this matter and the principles of sentence.

[68] Defence counsel submits that the while the principles of deterrence and denunciation are significant here, I should consider Mr. R _____'s steroid use as equivalent to a drug addiction given the presence of what Defence Counsel submits and Mr. R _____ anecdotally reports is the presence of body dysmorphic disorder.

Defence counsel submits that Mr. R _____ now has insight in to the impact steroids have on his criminal offending behaviour, he is willing to take counselling, is remorseful for his behaviour as is evidenced by his comments in the PSR/Psych Assessment and early guilty plea, has strong support in the community and has a positive record of employment while in the community. Defence counsel therefore submits that I should in balancing the principles of sentence give significant weight to the principle of rehabilitation and impose a time served sentence and probation for a period not exceeding the present period for which he is bound by Judge Cowling's order in Nanaimo which expires in February 2017.

[69] In the event that I believe a further custodial sentence is necessary, the defence submits that I should impose a CSO as the conditions precedent for the imposition of that type of sentence are satisfied in this case.

[70] Defence counsel notes in his submissions the following:

- the accused has used steroids since he was 18. During the height of his steroid use the accused was spending approximately \$5000 per month to support this habit. In addition, he needed to consume around 10, 000 calories to support his body's demand for energy given his steroid consumption and workout schedule.
 - The accused used steroids more frequently and excessively commencing in July of 2013. The Psychiatric Assessment describes that he reported feeling like his muscles were wasting away, which leads the Psychologist to observe that this is consistent with Body Dysmorphic Disorder.
 - In response to the Crown's submission that the accused was able to turn off this aggressive behaviour when he was with people he was not in an intimate relationship with, the defence submits that he is only triggered in this fashion when he is with people with whom he is in an intimate relationship with. I do note however that he did not appear to present in this fashion when he was with _____, which was also when he was using steroids.
-
- Mr. R _____ says that he would snap in and out of his behaviour when he was with _____ and _____ confirms in the PSR that she noticed that his behaviour changed when he began using steroids.

- The National institute on Drug Abuse on Steroids, references that one of the side effects of excessive steroid use is snapping in and out of apparent awareness.
- Both the PSR and the Psychological Assessment confirm that the accused now acknowledges that these relationships were dysfunctional and the cure lies with him. He reports feeling ashamed, remorseful and defence urges me to find that this behaviour was driven by his abuse of steroids that was driven by an underlying disorder that caused his consumption of steroids to feed this distorted body image.
- He is otherwise a productive, employable member of the community who has a supportive and knowledgeable family and other supports in place in the community.
- Defence also submits that placing him in Jail for any further period of time is not necessary to address the principles of sentence, given that his primary issue is an addiction to steroids, which he now understands is a major contributing cause of his offending.

[71] Defence Counsel has provided me with a number of authorities to inform the range of sentence, including the availability of a CSO should I determine that more jail is required to address the principles of sentence.

[72] R. v. Preston, 1990 CanLII 576 (BCCA) is cited by Defence Counsel as broad authority for courts to consider the principle of rehabilitation when dealing with

individuals who are addicted drug users. The BCCA in Preston noted that: *When the benefit to be derived to society as a whole, as a result of the successful rehabilitation of a heroin addict, is balanced against the ultimate futility of the short-term protection which the community enjoys from a sentence of incarceration, I believe it is right to conclude that the principle of deterrence should yield to any reasonable chance of rehabilitation which may show itself to the court imposing sentence.*

[73] At page 17 in Preston the BCCA found that: *A court would only be justified in giving more weight to the possibility of rehabilitation, rather than deterrence, where there is a reasonable basis for believing that the motivation to change is genuine and there is a reasonable possibility that it will succeed.*

[74] Finally in Preston the BCCA articulates their understanding of the difficulty of assessing the sincerity of the offender's stated desire to rehabilitate.

[75] In making submissions that I should favour the principle of rehabilitation over the principles of deterrence and protection of the public, Defence Counsel refers me to a number of other cases which he submits are authority for the proposition that no more jail is necessary in these circumstances. Both counsel acknowledge that they have had difficulty finding specific cases that are similar to the facts present here. They also both agree that the cases they provide speak more to general principles rather than specifically identifying a range of sentence here.

AGGRAVATING AND MITIGATING CIRCUMSTANCES

[76] I find the following factors to be Mitigating Circumstances in this case:

- Guilty Plea-the accused has acknowledged his guilt and has plead guilty at an early opportunity. No trial dates were set, he has spared the victims from testifying in court and I am told three weeks of trial time has been saved.
- He is remorseful-I accept that he is genuinely remorseful for his behaviour and he has expressed a willingness to attend for counselling. He also appears to have gained some greater insight in to his steroid use and the underlying reason for why he is using them.
- The Accused has the support of his family and friends in the community.
- He is a hard worker and completed all of his 200 hours of community work service during the 2 year CSO as well he maintained employment. His employer is supportive of him, but may not be able to continue his employment due to the nature of the offence.
- Suffered from some form of Body Dysmorphic Syndrome, which at least in part triggered his steroid use.

[77] I find the following factors to be Aggravating Circumstances in this case:

- Previous record for Assault and threats occurring in the context of an intimate relationship. In that offence the accused also was controlling, isolating and threatened to harm the victim if she left him.
- The two present offences occurred with women he was involved in an intimate relationship with.

- The violence was ongoing, not isolated. It included punches to the face and body, choking, kicking and slapping which resulted in injuries to both victims, including scratches, cuts, bleeding, bruised ribs and some scarring. Injuries were present for periods of days and in some cases, weeks. He also destroyed or damaged some of their property
- The accused's behaviour was controlling, abusive, demeaning and threatening. The accused isolated the victims from their family and friends, including in the case of _____, taking away her wallet, keys, closing her Facebook account and her independence, demanding that she quit her job. He did not permit _____ to spend time alone and when he was working he forced her to stay in his car in the locked compound at his place of employment. He also threatened both victims with physical and financial harm if they left him.
- The violence occurred in their home and in one instance, in front of Ms. F _____ young child.
- He used steroids and syringes to administer the steroids in contravention of his CSO.
- According to the Psychological Assessment he is a moderate risk to reoffend and that increases to a high risk if he abuses steroids.

Principles of Sentence

[78] Section 718 outlines the principles of sentence. Section 718 details the fundamental purposes of sentencing. The fundamental purpose of sentencing as

prescribed by s 718 of the Criminal Code is to contribute to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the enumerated objectives: denounce unlawful conduct, deter the offender and other persons from committing similar offences, separate offenders where necessary, rehabilitate offenders, provide reparations for harm done to the community or victims, to promote a sense of responsibility in offences and acknowledge the harm done to the victim and to the community.

[79] Section 718.2(b) provides that similar sentences should be imposed for similar offences and similarly situated offenders; s. 718.2(d) requires restraint on the imposition of sentences of imprisonment; and s. 718.2(e) directs that all available sanctions other than imprisonment that are reasonable in the circumstances must be considered. Pursuant to s. 718.1 of the *Criminal Code*, a sentence must be proportional to the gravity of the offence and the degree of responsibility of the offender.

[80] In cases dealing with violence against an intimate partner the principles of denunciation and deterrence are often the most significant. (See the Weekes case). In this case Defence Counsel urges me to consider rehabilitation as a significant factor on the basis that he says the accused's steroid use was driven by body dysmorphic disorder that drove his steroid abuse.

[81] Section 718.2 informs me that I must account for the aggravating and mitigating circumstances when balancing the principles of sentence.

[82] I must also consider the principle of totality and remember that incarceration is to be seen as a last resort.

[83] When I consider the aggravating factors which include the pattern of abuse demonstrated by Mr. R in both cases and similar to the offence involving where he physically, mentally and emotionally abused them. The violence occurred within the context of an intimate relationship and the accused attempted to control these women, and isolate them from their friends and family. In 's case he even controlled her finances and her movements when he was not in her company by forcing to her to quit her job and stay in his car while he worked. During this period of time he assaulted her and caused her injury that resulted in pain and in some instances scarring. experienced similar controlling behaviour and on one occasion she was assaulted in front of her child.

[84] When these women attempted to get away from the accused he threatened to harm them, and financially ruin them.

[85] Mr. R also presents as someone who is remorseful. He has plead guilty, acknowledged his wrong doing and is determined, with the support of his family to stop using and abusing steroids. I accept that at least a part of his abuse of steroids may be linked to a distorted view of his body, but I don't accept that his steroid use is the single factor that causes his offending behaviour against women. It may certainly exacerbate it as noted by the psychologist.

[86] I have come to the conclusion that there are other factors which drive his offending behaviour as well. I say this because I note that he has been able to control his behaviour around his family and friends. His mother, with whom he lived, did not even know that he was using steroids again. His employer described him as "docile

and reserved", even when he is in situations where there is a "propensity for hostility".

also noted that when she was involved with Mr. R between early July 2013 until they broke up in August 27, 2013 he was "loving, caring and made her feel safe". She did not indicate there were any issues with his behaviour towards her during this time period.

[87] From this behaviour I find that the while steroids may have contributed to his rage and controlling behaviour, I do not find that they were the only cause. Accordingly I accept the conclusion of the Psychologist when he states that the accused is at a moderate risk to reoffend if he is not using steroids.

[88] It follows from this finding that even if the accused stops using steroids that he is still at a moderate risk to reoffend. I cannot find that the principle of rehabilitation should be preferred where it may be in conflict with the principles of deterrence and denunciation. I must balance the principles of sentence and the aggravating and mitigating factors here including the accused's past related criminal history and the pattern of prolonged and controlling abuse that occurred with two intimate partners. Against those factors I note that the accused is genuinely remorseful, was gainfully employed and has expressed a desire to take counselling and gain further insight in to his offending behaviour and steroid abuse. His family is aware of this behaviour and will support him in the community. In my view after carefully balancing the principles of sentence and the aggravating and mitigating factors present, I have concluded that a period of jail is necessary in order to address the principles of sentence, in light of the aggravating and mitigating circumstances present here. I do not conclude that 18 months jail is necessary; however I conclude that 15 months jail is appropriate. The

length of the sentence here addresses the aggravating factors while giving the accused credit for the presence of the significant mitigating factors. The sentence is comprised of 9 months on each offence relating to (Count 2 & 4) which will run concurrent to each other and 6 months consecutive for the offence relating to (Count 8).

How should I calculate pre trial custody ?

[89] The Crown submits that I should consider the time from when the accused's CSO expired, which is February 01, 2014. Defence Counsel submits that the Federal Crown did not pursue any CSO Breaches and the accused was never found to be in breach of his CSO. Accordingly section 742.6(9) was never engaged. Defence therefore submits that I should consider that the accused was in custody on the charges before me since the day he was arrested and that time served begins to run from that date, not from February 01, 2014 as the Crown argues.

[90] Both counsel agree that the accused was detained on the substantive file and the CSO Breach pursuant to section 515(6) although no CSO hearing was ever commenced or concluded. Both counsel also agree that the accused's CSO sentence began to run again as of December 6, 2013(Date of the Detention Order) and that the CSO was concluded February 01, 2014.

~~[91] Section 742.6(12) of the Criminal Code provides that a CSO starts running again~~
on the making of an order to detain the offender in custody under section 515(6) and unless section 742.7 applies [which it does not here] continues running while the offender is detained under the order.

[92] The question for me to determine is what is the date I should consider the accused was in custody from on the charges before me: November 30, 2013 or February 01, 2014.

[93] In R. v. Langille, 2013 BCCA No 1224 Mr. Justice Harris speaking for the court found that "credit for pre-trial custody cannot be given when a CSO is running". He found that credit for pre-trial custody does not arise until the CSO has expired. He cited both R. v. A.D.P. 2005 BCCA 625 and R. v. English 2012 NCLA 64 as authority for that proposition.

[94] IN R. v. ADP, the accused committed an offence of robbery while he was serving a CSO. The Crown argued on appeal that the trial judge erred in giving the accused credit for time served for the new offence of robbery, when by operation of section 742.6 (12) the accused was also serving his CSO in custody rather than in the community. Madam Justice Southin framed the Crown's ground of appeal as follows: the Crown says the accused was "erroneously credited with time spent in pre-trial custody and applying that credited time towards the effective period of incarceration for the robbery when by operation of law section 742.6(12) the time spent in custody was credited to the CSO".

[95] Madame Justice Southin agreed with the Crown and found at para 20 that if the time spent in pre-trial custody was credited by virtue of section 742.6(12) to the CSO then that time should not be also be "taken in to account in fixing the proper sentence" for the new offence committed while the accused was serving his CSO.

[96] In R. v. English the court agreed with this approach and noted that it would be an error to give an accused credit for time served when he served that time in custody completing his CSO.

[97] Accordingly I conclude that it would be an error for me to give the accused credit for time served from December 6, 2013 through February 01, 2014, as by operation of s 742.6(12) the accused was detained on the CSO on December 6, 2013 and his CSO began running again. The authorities I have noted, two of which are from the BCCA say it is an error to give an accused credit for time served for an offence committed while that time is also being credited to the CSO. In the result, I find that the accused's period of detention that is attributed to time served on these matters before me does not commence until February 01, 2014. The result is that the accused shall receive credit for 5 months served on a 1.5: 1 ratio, resulting in me concluding that as of June 24 the accused has served 7.5 months pre trial custody. This is the amount of time I will consider in determining the further period of custody.

[98] The sentence in this matter, after calculating time served is on counts 2 and 4, 9 months less time served of 7.5 months: 1.5 months remain on that sentence. Counts 2 and 4 run concurrent to each other, but because those incidents are not related to the incidents captured in count 8, which deals with the assault on Ms. , the concurrent sentences on counts 2 and 4 should run consecutive to the sentence on count 8, which is an additional 6 month sentence. The total amount of time therefore that is remaining on Mr. R 's sentence is 7.5 months.

[99] Is a CSO Available?

Section 742.1 of the *Criminal Code* requires that before a CSO may be granted, four conditions must be met: (i) the conviction is for an offence that is other than a serious personal injury offence as defined in s. 752, a terrorism or a criminal organization offence; (ii) the period of imprisonment is less than two years; (iii) service of the sentence in the community would not endanger the safety of the community; and (iv) the sentence would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2 of the *Criminal Code*.

[100] In the matter before me s 742.1 (i) and (ii) are not impediments to a CSO being available.

[101] Regarding condition (iii), in *R. v. Proulx* 140 CCC (3d) 449 a CSO must not be imposed if the safety of the community is endangered. In considering what this means, I must look to the specific threat posed by the offender and not to the broader risk of undermining respect for the law. In considering the risk I must consider the likelihood of the offender reoffending and the gravity of the damage that could ensue if the offender does reoffend.

[102] The remaining issue is whether having regard to the aggravating and mitigating circumstances a conditional sentence order would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2 of the *Criminal Code*.

[103] I have considered the circumstances of this offence including the fact that these offences occurred within the context of a domestic relationship with the victims. The offences before me relate to violent episodes where Mr. R was controlling and exercised his dominance over both of the victims. The incidence of violence was not

isolated, rather it was repeated. Mr. R. also threatened the victims with future harm if they were not compliant with his directions and threatened to destroy them financially if they left him. At least one of the assaults on occurred in front of her daughter and another occurred while this same child waited in the van for her . In my view these are aggravating factors. These were not isolated incidents, there was a pattern of deliberate violence and control, the accused has a prior record for violence occurring in a domestic relationship, however he has also plead guilty, and genuinely is remorseful for his actions and has support in the community. Cases in this jurisdiction as well as elsewhere in Canada have noted that where domestic violence is involved, specific and general deterrence must be emphasized.

[104] While the accused was not specifically on probation for the prior assault and threatening offences, there were protective conditions in his CSO. He was also prohibited from using steroids.

[105] The aggravating factors noted above enhance the gravity of the offence. Further, the fact that the accused committed these offences while bound by a CSO for other offences in my view is a factor which I must also consider in assessing whether the principles of sentence can be adequately addressed through the imposition of a CSO.

[106] In this case I do accept and am mindful that the accused was struggling with aspects of his own perception relating to his body image and in that light became obsessed with taking steroids. He has plead guilty and is genuinely remorseful. His plea means that the victims have been spared having to testify in court.

[107] I accept that people suffer from repeated efforts to free themselves from substances they abuse and in this case Mr.R. 's expression of remorse and understanding of his offending behaviour seems to be genuine. However, I must also observe that he was able to control his behaviour with everyone else in his life during this period of time, including with whom he had been involved in relationship during the time he was using steroids. Therefore when I consider his risk to reoffend and the principles of sentence that are operative here, I accept the opinion of the Psychologist that Mr. R is at a moderate risk to reoffend when he is not using steroids. In other words I do not find that his steroid usage is the single factor that drives his offending behaviour.

[108] I have given careful consideration to this sentencing principle, the principles of sentence in s 718, 718.2 (a), (b), 718.2(d), 718.2(e) and 718.01 and I conclude that Mr. R does not meet the *Criminal Code* pre-conditions for the granting of a conditional sentence order as a period of imprisonment is required in order to meet the principles of denunciation, and deterrence which I do conclude, for the reasons stated above, are the principles of sentence I must give greatest weight to.

[109] At paras 67 and 68 in *R. v. L.R.K.* 2011 BCPC, Judge Donnegan observed that:

[68]I am mindful that denunciation and deterrence must be balanced with rehabilitation and I do so; however, in rejecting a conditional sentence order as unable to meet the principles of sentencing I adopt the language of the court once again in *Chimeras* quoted by Mr. Justice Joyce in *Donnelly*. He says "however, there may be circumstances in which the need for denunciation is so pressing that incarceration will be the only suitable way in which to express society's condemnation of the offender's conduct."

[69] Here in Mr. K's case, the need for denunciation is so pressing that incarceration is the only suitable way in which I find to express society's condemnation of his conduct. Although a common assault, they were not minor assaults. They did not consist of a single slap or strike. They occurred in the context of a pattern of physical and emotional abuse. In my view a conditional sentence in this case would not adequately address the principles of denunciation and general and specific deterrence.

[110] Accordingly the remaining 7.5 month custodial sentence shall be served in a provincial custodial facility.

[111] In addition there will be a period of probation to follow. You will be placed on probation for a period of 3 years with the following conditions:

- Keep the Peace and be of Good Behaviour
- You shall appear before the court when required to do so
- You shall report in person within 72 hours after completion of your jail sentence to the Probation Office, and thereafter as and when directed by the Probation Officer
- You will reside where directed by your Probation Officer and not change that address without the prior written approval of your Probation Officer
- You are not to consume or possess any alcohol or non-prescription drugs as ~~defined by the CDSA, including any steroids and you must not possess any~~ syringes unless they are specifically prescribed to you for the injection of prescribed medication.

- You will have no contact directly or indirectly with _____ or _____

- You shall not attend or be within a 100 meter radius of any place you know to be the residence, place of employment or place of education of _____
or _____

- You will attend for, participate in and successfully complete any assessment, programming of counselling or treatment you are directed to attend to at the direction of your Probation Officer, without limiting the generality of this condition, such assessment, counselling, or programming related to anger management, spousal abuse prevention, and such other full time attendance programs in relation to those areas that you may be directed to attend by your probation officer.

- You will not possess any weapons as defined by section 2 of the Criminal Code, except for knives and then your possession of knives will be solely for the purpose of preparing and consuming food.

[112] There is a 10 year Firearm Prohibition pursuant to section 110 of the Criminal Code. In the circumstances it is in the public interest to prohibit you from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, _____
ammunition, prohibited ammunition for a period of 10 years.

[113] There is a DNA order: you must provide a sample of your DNA pursuant to s. 487.05 of the Criminal Code.

[114] There is also a no contact order pursuant to Section 743.21 of the Criminal Code.

You shall have no contact directly or indirectly with

and

for the duration of your custodial sentence you are serving.



PLJ