Citation: ☼ Date: ☼

File No:

Registry: Vancouver

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

(Criminal Division)

REGINA

v.

U

REASONS FOR SENTENCE
OF THE
HONOURABLE JUDGE J. BAHEN

Counsel for the Crown:	S. Smith-Kerr
Counsel for the Defendant:	P. Kent-Snowsell
Place of Hearing:	Vancouver, B.C.
Date of Hearing:	May 28, 2014
Date of Judgment:	June 24, 2014

Introduction

[1] U has entered a guilty plea to the charge that on or about the 15th day of June, 2011, at Vancouver, he participated in a riot, contrary to section 65 of the *Criminal Code.* This is an indictable offence with a maximum potential penalty of two years imprisonment. The minimum potential penalty for this offence is an absolute discharge. The Crown has not proceeded with the charge in Count two, and will be entering a stay of proceedings on that charge at the conclusion of the sentencing hearing. This offence was a part of the riot following the final game in the Stanley Cup series at Vancouver. The Crown seeks a sentence of 60 days imprisonment, to be served in the community as a Conditional Sentence Order, pursuant to section 742.1 of the *Criminal Code.* The Defence seeks a Conditional Discharge, pursuant to section 730 of the *Criminal Code.*

[2] For the reasons that follow, I have decided in the specific circumstances of this offence and this offender, the fit sentence to be imposed is a suspended sentence with a period of probation for 12 months.

Circumstances of the Offence

[3] The Crown has filed a document entitled "Admissions of Fact" as Exhibit 3 at this sentencing hearing. The general circumstances of the riot and the more specific description of the damage and looting of downtown retail stores and business premises have been described in summary form within these "Admissions of Fact". There is no dispute regarding the accuracy of the Crown's overview of the riot circumstances. There were hundreds of incidents involving serious harm to people and business enterprises caught in the path of the riot as it expanded from the initial outbreak of riot

incidents near the Canada Post building on West Georgia Street. The damage caused to property and the dangerous risks of serious physical injury created to countless people, including police, fire department personnel, ambulance service members and the citizens of Vancouver have been previously described by the Honourable Judge Low in *R. v. Yates*, 2012 BCPC 0250, at paras. 15-16. In Exhibit 3, the "Admissions of Fact", at paragraph 11 the outbreak of the riot is described as follows:

> As the rioting crowds occupied West Georgia Street and the surrounding areas, multiple commercial premise windows were broken and the contents of the premises looted. Vehicles were vandalized, broken into and set on fire. Crowds of people faced off against the police and projectiles were thrown at the police. Numerous police officers and civilians were assaulted. An atmosphere of lawlessness, violence and destruction quickly consumed the downtown core of Vancouver.

[4] The "Admissions of Fact" filed as Exhibit 3, include a summary description of the participation of Mr. U in the riot, at paragraphs 49 to 51. In the preceding paragraphs of the admissions, the general circumstances of the riot events in the area of the 600 block of Granville Street were described, including the residential building at 610 Granville Street. The commercial retail premises in the 600 block of Granville Street are a part of the same building. Mr. U 's actions during the riot and his later contact with police investigators in 2012 are described in the "Admissions of Fact" as follows:

> [49.] At approximately 10:00 p.m. U made his way into the 600 block of Granville Street. By this time rioters were actively involved in the destruction and looting of The Bay on Seymour Street, West Georgia Street and Granville Street. At the same time, rioters were vandalizing and looting Mego Luggage, Sterling Shoes, Swimwear and Yedina Clothing.
>
> [50.] While in that block U proceeded to the Swimwear store. By that time the glass store front door was windows had been destroyed and

> rioters were actively looting the store. U then entered Swimwear through the broken glass door, selected merchandise and then exited the store.
>
> [51.] The video contained in the DVD marked Exhibit 2 and the photographs attached at Tab 10 of the Crown Book of Documents depicts Utting's participation in the riot at Swimwear.

[5] The police investigation after the riot led to a video tape showing persons looting at the Swimwear Store. A photograph of Mr. U was produced from the video evidence and this photograph was posted to the police investigation website and printed on a police poster distributed to the public during 2011 and 2012. There were two anonymous tips provided to the police identifying Mr. U in these photographic images. In May 2012 the police investigators went to Mr. U 's place of work and asked him to attend at the Vancouver Police Station for an interview. Mr. U did attend later at the police station as requested, where he was interviewed by investigators. A summary of his contact with the police is included in the "Admissions of Fact" at paragraphs 56 and 57 as follows:

> [56.] On May 12, 2012, U attended the Vancouver Police Department located at 3585 Graveley Street, Vancouver and met with Detective Fincham. U was then interviewed by Detective Fincham and shown photographs and a video clip depicting his involvement in the Riot. U identified himself and then stated the following regarding his involvement in the Riot:
>
> a) he had taken the Skytrain downtown and watched the game at an outside screen at Canada Place with a friend;
>
> b) he had consumed beer at home prior to going downtown and once downtown had consumed a 26 ounce bottle of vodka;
>
> c) he recalls the Canucks losing the game and then walking with his friend to Fresh Slice at the Waterfront Station to get some pizza;
>
> d) after having pizza he finished the bottle of vodka;
>
> e) after leaving Fresh Slice his friend received a text message from his dad stating that there was a Riot;

f) he said to his friend "...let's go look at it...", because "...I'd never been in a riot; I'd never seen a riot before, so I thought let's go take a look at it.";

g) he and his friend then walked southbound from the Waterfront Station to the Live Site;

h) he stated that the rest of the night was a blur and that he recalled nothing further about the evening;

i) the next day his friend told him that he had gone "...into a store and took some swim shorts, I think it was, at one, Swimwear or whatever the hell it was...";

j) he did not keep the shorts, stating "...apparently I dropped them or threw 'em back in or something...";

k) when asked if he was the only person that went into the Swimwear store, U replied no. He was then asked "...So there were other people going in, in and out then?..." and he replied "...Way before me.";

l) when his friend told him what he had done he stated he was so ashamed and "...if I was not drunk I would never have done it...";

m) he stated that he did not look at the Website because he was too scared, he "...didn't want to see if, what I could find or what, you know,...see if I see, knew anybody else...", and he was "...I was just kinda hoping that this would never come up...";

n) he knew the Riot was on the news and was hoping that his involvement was not discovered.

[57.] At the conclusion of the interview, Detective Fincham asked U if he wished to provide an apology letter. U advised Detective Fincham that he had already prepared a letter of apology to Swimwear which was at his residence. That apology letter was e-mailed to Detective Fincham by U on May 14, 2012, and is attached at Tab 11 of the Crown Book of Documents. (Exhibit 1)

[6] The Crown has filed three victim impact statements from persons who live or work in the area of the 600 block of Granville Street where Mr. U participated in this riot by entering a clothing store called "Swimwear". During his entry into the store, he took an item of clothing and carried it with him as he left the store. The clothing may have been swim shorts, but Mr. U was not sure, and he dropped the clothing somewhere outside the store. There were no employees inside the swimwear store at

the time of the riot. In his victim impact statement, the store owner notes the heavy financial burden for his store as a result of the damage and losses suffered in the riot. Merchandise with a value of over $54,000 was lost. This amount does not include the costs of damage to property and equipment or the expenses in cleaning the store after the riot. He also describes the reaction of the store employees when they arrived at their workplace on the day after the riot as follows:

> Although our staff were not in the store during the break-ins, the visceral effect of arriving next morning among the destruction and chaos including blood stained and burned mannequins has had a traumatic effect on all of them. There is a lingering fear of operating the store during our evening hours that makes it very uncomfortable for our many younger female staff members subsequent to this terrible event.

[7] The harm caused to people and businesses in this riot is a significant consideration in assessing the gravity of the offence committed by participants in this riot. The assessment of the degree of moral blameworthiness for an individual participant in the riot cannot be considered in isolation. Each riot offender shares a degree of further responsibility, beyond the scope of their own physical acts, as the entire riot must be viewed as part of the context for the sentencing of the individuals who chose to join the riot and contributed to the harm it caused to the community. This aspect of sentencing for offences involving participation in a riot has been explained by Madam Justice Garson for the British Columbia Court of Appeal at paragraph 27 of the Court's recent decision in *R. v. Peepre*, 2013 BCCA 115, as follows:

> Special considerations apply to sentences imposed for participation in a riot. Sentencing an offender for participation in criminal acts that involve widespread public disorder requires a court to look not only at the offender's individual conduct, but also at the broader context in which the individual participated. A rioter is culpable not only for his own conduct:

> he bears, in a general way, a share of responsibility for the more widespread acts of lawlessness in which he participated.... Citizens of Vancouver and members of the larger community present at the scene of the Stanley Cup riot were terrorized by the acts of violence to persons and property that occurred. That violence, and the public's consequential feeling that law and order had been cast aside, is significant in our consideration of the fitness of Mr. Peepre's sentence. Participation in a riot is a deliberate criminal act that has grave consequences for the safety and security of our community. The corollary of that fact is that those who participate must expect to be punished severely....

Circumstances of the Offender

[8] Mr. U is now 27 years old, he was 24 years old when he committed this offence. There is a pre-sentence report prepared to assist the court in this sentencing. He has no prior criminal convictions. Mr. U has worked in the recent past as a He received a high school diploma in British Columbia in 2005 and he also completed a business diploma program at the College in California in 2008. His employment plans include aspirations to work in the United States, where there are more opportunities for full-time employment in the service industry. In the U.S., there are also more courses that provide year round operation, unlike the seasonal nature of most Canadian facilities. He has been in a long term relationship with C L . She has American citizenship. They have been in a relationship for about 18 months and now live together. He spends a large amount of time at her family's home in the U.S. during the summer months. They plan to move to the United States in the future. His own family is in British Columbia, after arriving here as immigrants from Germany about 25 years ago. He has a close and supportive relationship with his parents. His work here has been seasonal and he was fired from his job in 2012 after the police attended at his place of work regarding this offence. He is not customarily a heavy drinker of alcohol and does

not use drugs. On the date of this offence he drank six beers and a 26 ounce bottle of vodka. He has not been involved in this pattern of heavy drinking at any time since the offence. He wants to provide volunteer community work service as a part of his sentence in this offence. He expresses remorse for his actions. There are collateral sources of support for him in the community, including the friends and family members who have written letters on his behalf which are filed at this sentencing hearing. His friends and family express the shared view of his positive contributions through his honesty and patience demonstrated in his helpful and considerate actions to assist others who need his help. There is a shared concern on his behalf by these letter writers regarding the issue of his travel to the U.S., both for his personal relationship and career opportunity plans.

Analysis

[9] A discharge would be in the best interest of Mr. U but would be contrary to the public interest, in the specific circumstances of this offence and this offender. The offence of participation in a riot does not exclude the granting of a discharge, and this offence has resulted in the imposition of conditional discharges for some offenders in a few recent sentencing decisions, including: *R. v. Lennox*, 2013 BCPC 273; *R. v. Laboissonniere*, 2013 BCPC 182; *R. v. McCusker*, 2014 BCPC 0026; and *R. v. Singh*, (June 9, 2014), Vancouver Registry No. 223682-1-V (B.C.P.C.). There are also some recent sentencing decisions involving participation in this riot offence by offenders who receive a suspended sentence with probation terms, including: *R. v. Gartland*, 2013 BCPC 0374; *R. v. Johal*, (May 16, 2014) Vancouver Registry No. 223688-1-V, (B.C.P.C.); and *R. v. Cacnio*, 2012 BCPC 314. Crown Counsel has referred to a

number of sentencing cases where riot participants were sentenced to a term of imprisonment served in the community as a Conditional Sentence Order, including: *R. v. Prochazka*, (August 28, 2013) Vancouver Registry No. 223612-1-V, (B.C.P.C.); *R. v. Shafqat*, (July 26, 2013) Vancouver Registry No. 223594-1-V, (B.C.P.C.); *R. v. Beirnes*, (October 16, 2013) Vancouver Registry No. 223659-1-V, (B.C.P.C.).

[10] I have considered the decisions in the above cases as well as the other sentencing decisions and the appellate authorities referred to by both counsel at his hearing. I conclude that the role of Mr. U in the riot on June 15, 2011, was brief and impulsive. He did not have any good reason to be in the area as the riot expanded and engulfed the downtown core. There is not any evidence that he participated in any offence beyond the circumstances of the single brief entry to this store through the broken glass at the sidewalk entrance. He did not engage in celebratory or inciting behaviour. I cannot find the brief and fleeting video images are any basis to conclude that his actions at the store were anything more than the drunken impulse he described to police investigators. In particular, I do not find that his conduct in the video clip is in conflict or inconsistent with the later assertion he made to police investigators that he was extremely intoxicated by alcohol consumption when the offence was committed. The item of clothing taken from the store was of unknown value and held no rational basis for interest to Mr. U as he soon discarded it. But the looting he engaged in also forms a part of a stream of looters who entered this store and is a part of the larger context of the riot. He was a young person but his age was not as significant as a factor in sentencing compared to persons who were 18 at the time of the offence. The

expected level of maturity of judgment for any 24 year old varies individually, but is not reasonably described as equivalent to an 18 year old.

[11] The actions of Mr. U in the period following this offence do not include any efforts to turn himself in to police before they locate him and attend at his workplace. His willingness to make amends is accepted as genuine but he has not initiated the same program of community service in the pre-sentence period that was shown by some of the other offenders in cases where discharges have been imposed.

[12] His aspirations for employment in the U.S. and his genuine motivation to establish himself in that country is accepted, but admissibility or exclusion from U.S. immigration is a collateral consequence that is relevant but not determinative of the fit sentence for this offence and this offender. The actions of the American government authorities in considering any future applications by Mr. U for entry to the United States will be determined by their own laws and the discretionary decision-making powers of the American authorities. A Canadian criminal conviction or a discharge will be one factor, in the assessment by American authorities, using their own legal criteria when considering Mr. U `s potential application for entry to the U.S. The collateral consequence of the loss of his employment may have resulted from the police attendance at his work, but this does not have the same weight as a consequence that is the result of the court imposed sentence on an offender, since the employer made a decision to terminate employment, independent of any court sanction. The U.S. immigration prospects, the local employment and personal relationship are all important elements of the collateral consequences, to be evaluated within the framework of the

factors identified by the Supreme Court in their recent decision in *R. v. Pham*, 2013 SCC 15.

[13] I have concluded that the offender and the offence do not meet the level of moral blameworthiness reflected in the cases where a Conditional Sentence Order was imposed. Mr. U 's role in the Riot was not as extensive as many others, while the actions he took following the offence are not as contrite or restorative as some other offenders. Imposing a conviction and suspending the passing of sentence with probation terms will adequately address the need to achieve denunciation and deterrence. The prospects for rehabilitation are very positive in Mr. U 's case, and the appropriate sentence should not impose an obstacle to this aspect of his future. A Canadian court cannot assume or predict the outcome for individuals seeking to apply for entry into the United States. Mr. U may be subject to adverse collateral consequences, in the forum of the American legal system governing entry to that country, but I have concluded these are potential collateral effects that should not lead to the imposition of a conditional discharge, as that sentencing option is not a fit sentence for this offence and this offender. There are not exceptional circumstances in this offence or this offender as have been found by judges in other riot sentencing decisions where a discharge has been granted. The circumstances of this offence and of this offender merit a form of sentence conveying a greater degree of denunciation and deterrence than would be achieved by a conditional discharge. The imposition of a criminal conviction meets the need to accomplish and apply the essential principles and purposes of sentencing in this case. A suspended sentence is also the best means of

achieving parity of sentence with other decided cases dealing with similar offences and similar offenders.

Conclusion

[14] The sentence imposed for this offence will be a suspended sentence with a Probation Order for a period of 12 months. The following terms will be included in the Probation Order:

- keep the peace and be of good behaviour;
- appear before the court when required to do so by the court;
- notify the court or probation officer in advance of any change of name or address, and promptly notify the court or probation officer of any change or employment or occupation;
- report in person to a Probation Officer at 275 East Cordova Street, Vancouver, B.C,. by 3 p.m. on Wednesday, June 25, 2014, and report thereafter as and when directed for the purpose of supervision of community work service hours;
- complete sixty hours of community work service at the direction and to the satisfaction of your Probation Officer within the first 9 months of this Probation Order;
- for the first three months of this order you are not to be outside the grounds of your residence between the hours of 10 p.m. and 6 a.m. except for medical emergencies or with the written permission of your probation officer;
- you are to present yourself at the door of your residence when requested to do so by a probation officer or any peace officer for the purpose of monitoring your compliance with the curfew condition of this order;
- within 30 days of this order, you shall provide a letter of apology to your Probation Officer to the attention of the Chief Constable Chu and Mayor Gregor Robertson and to the people of the City of Vancouver apologizing for your conduct and action in a manner as approved by your Probation Officer.

[15] The victim fine surcharge, in the amount of $100, will be payable on or before August 25, 2014.

The Honourable Judge J. Bahen
Provincial Court of British Columbia