

COURT OF QUEEN'S BENCH OF MANITOBA

B E T W E E N:

HER MAJESTY THE QUEEN)	<u>Counsel:</u>
)	
)	<u>ASHLEIGH C. SMITH</u>
- and -)	for the Crown
)	
)	<u>MITCHELL G. ENRIGHT</u>
CRAIG DORLAND ROBERT HALL,)	for the accused
)	
)	JUDGMENT DELIVERED:
accused.)	June 25, 2021
)	

TURNER J.

INTRODUCTION

[1] On January 6, 2020, Craig Hall pled guilty to four counts of robbery. Those robberies occurred between March 8 and April 3, 2018.

[2] The matter has taken some time to get to sentencing because Mr. Hall applied to withdraw three of the guilty pleas. On May 17, 2021, I denied that application (see ***R. v. Hall***, 2021 MBQB 105).

[3] Crown counsel submits the sentences imposed for each robbery should be served consecutively. She argues that, when the principle of totality is taken into account, the total sentence should be one of twelve years.

[4] Mr. Hall submits the robberies were a "spree", and as a result the sentences imposed should be served concurrently. He argues a sentence equal to five years is appropriate.

CIRCUMSTANCES OF THE OFFENCES

[5] The four robberies occurred at four separate commercial establishments in Winnipeg. Each robbery involved at least one employee. Crown counsel contacted the employees shortly before the sentencing hearing to advise them of their right to provide a Victim Impact Statement. The employees told Crown counsel they were not interested in completing a Victim Impact Statement mainly due to the passage of time. Instead, Crown counsel included, in her oral submissions, some of the employees' statements to the police.

[6] The first robbery occurred March 8, 2018, at The Joint on Portage Avenue. Mr. Hall entered the store wearing a mask and armed with a BB gun that looked very much like a handgun. Alexander Hilton and two other employees were present at the time. Mr. Hall approached the employees and said to them, "This is a robbery." Mr. Hilton told the two other employees to go to the back room and he would deal with the situation. He thought the handgun was real.

[7] Mr. Hall approached the cash register. Mr. Hilton gave Mr. Hall the coin portion of the cash register, and Mr. Hall demanded the rest. The total amount taken was \$520. Mr. Hall also asked for a particular type of vaping device, but he was told the store did not carry it. Mr. Hall left the store through the front door.

[8] The second robbery occurred March 17, 2018, at the Fabutan on Grant Avenue. Victoria Bacon was working alone when Mr. Hall entered the establishment with his face covered with a zipped-up sweater mask. Mr. Hall was brandishing the same BB gun, and Ms. Bacon thought it was a real handgun. Four customers were present at the time.

[9] Mr. Hall approached Ms. Bacon, pointed the gun at her, and said, "Give me the money." Ms. Bacon gave him the cash tray, which contained \$150. When Ms. Bacon confirmed that was all the money, Mr. Hall said to her, "Don't fuck around." He then put the money in his bag and left the store.

[10] The third robbery occurred March 24, 2018, at the Subway restaurant on Osborne Street. Mr. Hall was wearing a sweater with a hood that zipped up to create a mask and was holding the BB gun in his hand. Jeremie Cook was working alone when Mr. Hall entered the restaurant, pointed the gun at him, and said, "I want all the money now. Open the safe now. Open the till." Mr. Cook described the gun as a "pistol", and he believed it was real.

[11] Mr. Cook opened the safe and gave Mr. Hall \$300. Mr. Hall then demanded money from the cash register and asked for the entire cash tray, which contained \$110.

[12] When the police arrived on the scene after Mr. Hall left the restaurant, they observed Mr. Cook was not injured but was visibly shaken up.

[13] Given the similarities of these robberies, the Winnipeg Police Service started a project to investigate the group of offences. Through their investigation, they identified

a GMC Jimmy truck that had been involved in several robberies. They determined the truck was registered to Julie Penner, who was Mr. Hall's domestic partner at the time.

[14] The fourth robbery occurred April 3, 2018, at a Subway restaurant on St. Anne's Road. Police had the truck under surveillance at the time. They observed Mr. Hall entering the Subway restaurant wearing the same disguise as in the previous robbery.

[15] Melanie Nery and Prabhjot Kaur were working in the restaurant at the time and were closing up for the night. Mr. Hall demanded money from the safe and cash register, and threatened to shoot if he did not receive same. Ms. Nery told the police she thought the gun was made of plastic or was a fake, but Ms. Kaur believed it was real, describing it as a "police gun". Ms. Kaur tried to open the safe, but she could not get it to open because she was panicking. Ms. Nery managed to get the safe to open, and she provided Mr. Hall with the money from the safe and cash register.

[16] Mr. Hall left the Subway restaurant, ran northbound, and got into the waiting truck, driven by Ms. Penner. The truck turned westbound, and the police attempted to pull it over. The truck eventually came to a stop at which time Mr. Hall ran away on foot.

[17] Given that the police did not know the gun in Mr. Hall's possession was truly a BB gun, the Winnipeg Police Service Tactical Support Team became involved in attempting to arrest Mr. Hall. The Winnipeg Police Service helicopter (AIR1) and K-9 Unit were also involved.

[18] Mr. Hall was seen running westbound across St. Mary's Road. AIR1 maintained surveillance of Mr. Hall until he was arrested in the back lane of Glenlawn Avenue approximately eighteen minutes after the truck was first stopped.

MR. HALL'S BACKGROUND

[19] A pre-sentence report was ordered when Mr. Hall first entered his guilty pleas. After I denied his application to withdraw the guilty pleas, Mr. Hall no longer wished to have a pre-sentence report completed. Mr. Hall's background and circumstances were thoroughly addressed by his counsel in his submissions.

[20] Mr. Hall is thirty-four years old. He was born in Regina, Saskatchewan. His father was an abusive alcoholic. Mr. Hall left home at fifteen years old when his family was living in Surrey, British Columbia. He was taken into care of Child Protection Services in British Columbia after he left home. He has a Grade 9 education, and his mother advised he was diagnosed with Attention Deficit Hyperactivity Disorder.

[21] Mr. Hall's mother was the main support of the family, and Mr. Hall remains close to her. They speak on the phone almost every day. Mr. Hall's plan after his release from custody is to move to St. Walburg, Saskatchewan, where his mother and stepfather live.

[22] Mr. Hall started using methamphetamine at approximately fifteen years of age when he left home. I am told the majority of his criminal record is due to his addiction to methamphetamine.

[23] Between 2002 and 2007, Mr. Hall's record consists primarily of sentences for property-related offences, including twenty-one counts of theft and three counts of possession of property obtained by crime. For those offences, Mr. Hall received sentences generally described as "short shots" or short sentences of incarceration in a provincial institution. His longest sentence for two thefts in 2007 was eight months after six months of pre-sentence custody.

[24] Mr. Hall was sentenced for two robbery offences in 2009. He received a sentence of seven months after three years and five months of pre-sentence custody.

[25] Mr. Hall was sentenced in 2010 to an eight-month conditional sentence order for one count of possession of property obtained by crime. He successfully completed that sentence in the community.

[26] Mr. Hall was sentenced to his most recent and longest sentence in June 2012 in Surrey, British Columbia. Mr. Hall received a total sentence of seven years for two robberies (seven years for the offences relating to the first robbery and two-and-a-half years concurrent for the offences relating to the second robbery). One robbery was of a liquor store and involved pointing a sawed-off shotgun, wearing a disguise, and dangerous operation of a motor vehicle. The other robbery was of a commercial location and involved the unauthorized possession of a prohibited or restricted weapon and wearing a disguise.

[27] Mr. Hall started serving this last sentence at an institution in Ontario. He was moved to Dorchester Penitentiary in New Brunswick where he remained for six to nine

months. He was then moved to Drummond Institution in Quebec. He received his statutory release in February 2015. Although Mr. Hall requested to complete his parole in St. Walburg, Saskatchewan, where he felt he would have the support of his mother and stepfather, he was told there were concerns about sufficient support and programming in rural Saskatchewan. He was instead released to a halfway house in Winnipeg. During the time Mr. Hall was incarcerated and while on parole, he participated in several programs on topics including relationships, anger management, and substance abuse.

[28] Mr. Hall had one positive drug test result while on parole, which sent him to Stony Mountain Institution for eighty-eight days. It was determined the test result was a false positive caused by prescription medication Mr. Hall was taking at his doctor's direction. Mr. Hall had no other incidents while on parole, and his sentence was completed on December 24, 2017.

[29] By all accounts, Mr. Hall did well during his three years on parole. He worked as a roofer for a time and then for a heating company. He started as a labourer and was promoted to a supervisor role. He continued at that job until his arrest on April 3, 2018.

[30] Mr. Hall told me he had found it hard to deal with everyday things on his own after having completed his most recent sentence. He has no family in Winnipeg and few friends. He spoke articulately about the fact that he had found it difficult when the structure of the institutions and halfway houses was gone. The bills were piling up, and he no longer felt stable. Mr. Hall kept in touch with a program facilitator with whom he

worked while on parole, but she could only do so much after Mr. Hall was no longer on parole.

[31] Mr. Hall turned back to methamphetamine. He met Ms. Penner while on parole. He moved in with her after his release from the halfway house. Ms. Penner was also addicted to methamphetamine. I was told the motivating factor for these robberies was to get money to buy more methamphetamine.

[32] Mr. Hall agrees the robberies were planned, but submits he acted out of desperation to get more methamphetamine. He points to the fact that he even took the change from some of the cash registers. He also submits the robberies were not particularly sophisticated or well thought out and points to the fact that he wore the same, distinctive mask each time.

SENTENCING PRINCIPLES

[33] The sentencing of an offender is an individualized process that requires the balancing of many factors. Section 718 of the *Criminal Code* specifically directs sentencing judges to consider that the fundamental purpose of sentencing is "to contribute ... to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions". This is to be achieved by balancing the enumerated objectives: denunciation; general and specific deterrence; separation of offenders; rehabilitation; reparation; promotion of a sense of responsibility in the offender, and acknowledgment of the harm done to the victim or to the community.

[34] A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender (section 718.1 of the *Criminal Code*). The Supreme Court of Canada in *R. v. Nasogaluak*, 2010 SCC 6, [2010] 1 S.C.R. 206 at para. 42, stated:

[T]he degree of censure required to express society's condemnation of the offence is always limited by the principle that an offender's sentence must be equivalent to his or her moral culpability, and not greater than it. The two perspectives on proportionality thus converge in a sentence that both speaks out against the offence and punishes the offender no more than is necessary.

[35] Robbery is a serious offence punishable by up to life imprisonment. As Mainella J.A. said in *R. v. Okemow*, 2017 MBCA 59 (CanLII) at para. 111: "It is, unfortunately, a common crime; accordingly, it is well accepted that the sentencing objective of general deterrence is of paramount importance." As such, the offender's conduct must be emphasized, rather than the offender's personal circumstances (*R. v. Dalkeith-Mackie*, 2018 MBCA 118 (CanLII) at para. 21).

[36] Robbery is an inherently violent crime. Individuals who work in commercial or retail settings should not have to be afraid that a member of the public may walk into their place of work with what they believe to be a real gun, and threaten to shoot them if they do not hand over whatever money is at hand. Sentences for such random offences with innocent, random victims must be significant to achieve the goals of denunciation, general deterrence, and specific deterrence.

[37] The Crown and Mr. Hall agreed the starting point for a robbery sentence is two to four years for an offender with prior good character and no criminal record and where the victim was a vulnerable employee of a convenience store or gas station, or a taxi

driver (*R. v. Charlette*, 2015 MBCA 32 (CanLII); *Okemow, Dalkeith-Mackie; R. v. McIvor*, 2019 MBCA 34 (CanLII)).

POSITIONS OF THE PARTIES

[38] The Crown submits Mr. Hall should be sentenced as follows:

- for the March 8, 2018 offence – five years
- for the March 17, 2018 offence – four years, to be served consecutively
- for the March 24, 2018 offence – three years, to be served consecutively
- for the April 3, 2018 offence – four years, to be served consecutively

[39] Crown counsel says each sentence should be reduced by one year for totality, therefore resulting in a total sentence of twelve years. She agrees Mr. Hall should receive enhanced credit for his pre-sentence custody. Mr. Hall has been in custody for three years and eighty-three days; therefore, with enhanced credit at 1.5:1, he has 1,767 days (or four years and ten months) of pre-sentence custody.

[40] Mr. Hall submits a twelve-year sentence would be crushing. He acknowledges he is not entitled to be in the two- to four-year starting point and says he should be in the range of three to five years. He says he should receive concurrent sentences of imprisonment of one day (satisfied by his appearance in Court), with a credit of 1,767 days for pre-sentence custody. He says a sentence just shy of five years concurrent on all four charges is a fit and appropriate sentence. Although not suggested by counsel, Mr. Hall told me he thinks he would benefit from a period of probation. Probation Services

could help him with the issues that he says have arisen when he was last released from a halfway house, and he is motivated to participate in programming.

CONSECUTIVE VERSUS CONCURRENT SENTENCE

[41] In deciding whether Mr. Hall should receive consecutive or concurrent sentences, I must ensure the general principles and goal of sentencing are still achieved. I must focus on the nature and circumstances of the offences and the connectedness of the offences to each other.

[42] In *R. v. Maroti*, 2010 MBCA 54 (CanLII) at para. 22, Steel J.A., quoting from Clayton C. Ruby et al., *Sentencing*, 7th ed. (Markham, ON: LexisNexis Canada Inc., 2008) at para. 14.10, listed the multitude of phrases used by courts to express the same concept:

- a break in the transaction
- really separate invasions of the community's right to peace and order, notwithstanding they are historically interdependent
- one multi-faceted course of criminal conduct
- one transaction
- part of the same transaction or endeavour
- closely linked together
- one continuous criminal act
- one single enterprise
- single criminal adventure
- reasonably close nexus

[43] Justice Steel went on to state (at para. 22), "Although different courts have at different times used each of these phrases, I believe that they were all attempting to answer the same question – Is the connection between two offences sufficiently close to order the sentences imposed to be served concurrently as opposed to consecutively?"

[44] Regardless of whether I impose consecutive or concurrent sentences, a sentence must be imposed for each of the four offences. There will be no "free ride" given to Mr. Hall in respect of any offence (*R. v. Wozny*, 2010 MBCA 115 (CanLII) at para. 44). Ultimately, the total length of the sentence should not vary significantly whether consecutive or concurrent.

[45] It is helpful to review the cases provided by counsel where the Court considered whether the sentences imposed are to be served concurrently or consecutively:

***R. v. Arbuthnot*, 2009 MBCA 106 (CanLII)**

[46] The offender committed thirteen offences over the course of seventeen days. This series of offences started with a break and enter into commercial premises for which the offender was arrested and released, and ended when he was arrested after fleeing from police in a vehicle through busy city streets and crashing. In between, he committed eleven robbery offences involving gas stations. The root cause of the offender's actions was the need to get money for drugs. Most of the offences were committed while the offender was on a drug-fuelled fourteen-day binge. The Court of Appeal found the offences were similar, continuous and recurring and the gravamen of the offences was the same: rob vulnerable targets to feed an addiction. The offences were committed

within a sustained and relatively short period of time. As a result, the offender's conduct attracted concurrent sentences.

R. v. Maroti, 2010 MBCA 54 (CanLII)

[47] The offender committed seven robberies, carried out at knife-point, involving gas stations, within a ten-day period. He specifically targeted Domo gas bars because he had worked there in the past and knew the employees would offer no resistance. The Court of Appeal found the sentences were properly imposed on a concurrent basis as the offences took place over a short period of time and as part of a continuous drug-fuelled spree.

R. v. Wozny, 2010 MBCA 115 (CanLII)

[48] The offender committed a number of gas station robberies over the course of one-and-a-half months. In most of the robberies, he was armed and disguised. The robberies occurred at all hours of the day and night. The offender's motivation was to obtain money to buy drugs to support his addiction. The sentencing judge decided the robberies should be treated as "spree" offences and the sentences imposed should be served concurrently. The Court of Appeal disagreed in part with the sentencing judge's decision and found some of the sentences should have been consecutive and some, concurrent. The Court imposed a sentence of two-and-a-half years for the robbery that occurred July 28, 2007; a concurrent sentence of three-and-a-half years for the five robberies that occurred in August 2007 (consecutive to the sentence imposed for the July 28 robbery); and, a concurrent sentence of four-and-a-half years for the eleven

robberies that occurred in September 2007 (consecutive to the sentences imposed for the July and August robberies).

R. v. Kozussek, 2013 MBCA 52 (CanLII)

[49] The offender committed nine robberies over the course of three to three-and-a-half weeks. The Court of Appeal stated the sentencing judge appeared to have mixed the concurrent and consecutive sentencing regimes, applying elements of each to arrive at the final sentence. Although the Court found the sentencing judge committed an error in that regard, it found the ultimate sentence of seventy-two months was fit.

R. v. Harper, 2016 MBCA 64 (CanLII)

[50] The offender committed six robberies over the course of two weeks, which were carried out for his street gang. In each robbery, the offender carried and displayed a loaded sawed-off rifle and disguised his face. With the exception of one, the robberies took place between 6:30 p.m. and midnight, and each robbery took only a few minutes. The offender demanded cash, cigarettes, and, in some, lottery tickets. No one was physically injured; however, the offender pointed the rifle at some victims, threatened to shoot in two of the robberies, and pumped the rifle in one of the robberies. The Court of Appeal found the robberies were committed as part of a spree motivated by substance abuse and gang pressure, and therefore the sentences should be concurrent.

R. v. Okemow, 2017 MBCA 59 (CanLII)

[51] The offender pled guilty to fourteen offences that occurred when he was fourteen years old. The most serious of the offences involved two armed robberies: one was of

a convenience store on June 26, 2014; the other was a street mugging of two university students on June 29, 2014. Although there is not a lengthy discussion on the consideration of whether the sentences should be consecutive or concurrent, I note the sentence imposed by the Court of Appeal for the second armed robbery was to be served consecutive to the sentences for the first armed robbery.

R. v. McIvor, 2019 MBCA 34 (CanLII)

[52] The offender committed two armed robberies on the same day within approximately eight hours, involving a convenience store and a gas station. At the convenience store, he wielded a knife. At the gas station, he wielded a metal bar. He concealed his identity when he committed the robberies. He said the robberies were motivated by his drug addiction. Although both the Crown and the defence sought concurrent sentences for the two offences on the basis they were sufficiently interconnected, the sentencing judge imposed consecutive sentences. The majority of the Court of Appeal held that given the robberies were committed within such a short period of time and were motivated by the offender's drug addiction, the sentences should have been concurrent (*McIvor* at paras. 43–44).

[53] In respect of the circumstances of Mr. Hall's offences, I consider the following:

- The robberies occurred over the course of just less than a month, on a basis of approximately one a week.

- The robberies targeted commercial establishments with relatively few employees, albeit three different types of locations: a vape shop, a tanning salon, and two Subway restaurants.
- The robberies occurred at different times of the day and in different areas of Winnipeg.
- During the robberies, Mr. Hall was armed with a BB gun that looked very much like a real handgun and his face was covered with a mask.
- The robberies were primarily motivated by Mr. Hall's desire to get cash to purchase methamphetamine.
- Mr. Hall targeted the cash register of all four locations, as well as the safe if he believed the location had one.

[54] Given these considerations, particularly the relatively short period of time within which the offences occurred, the similarity in how the offences were carried out, and the fact that the robberies were motivated by Mr. Hall's desire to get drug money, I conclude that the sentences imposed should be served concurrently.

WHAT IS THE APPROPRIATE SENTENCE?

[55] In coming to the appropriate sentence, I take into account the following aggravating factors:

- During the robberies, Mr. Hall carried and brandished a BB gun that looked very much like a real handgun.
- Mr. Hall threatened some of the employees that he would shoot.
- Although perhaps not as vulnerable as taxi drivers or employees of 24-hour stores, the victims were commercial employees who were just doing their jobs.
- There was a degree of planning and deliberation, evidenced by the fact that Mr. Hall wore a mask to cover his face, armed himself with the BB gun, and knew the two Subway restaurants had safes.
- During the April 3, 2018 incident, Mr. Hall had a getaway driver who was ready and waiting for him when he exited the Subway restaurant.
- Mr. Hall fled when the police attempted to stop him, which led to a chase involving several officers, including the Winnipeg Police Service Tactical Support Team, AIR1 and K-9 Unit.

[56] I also take into account the following mitigating factors:

- Mr. Hall entered guilty pleas (despite the fact that he applied to withdraw the pleas), and the victims did not have to testify.
- None of the victims were physically injured during the robberies.
- The robberies were motivated by Mr. Hall's drug addiction, not by greed.

- Mr. Hall does have prospects for rehabilitation as evidenced by the fact that he completed three years on parole in the community without any real breaches and completed programming while in custody and on parole.

[57] While not an aggravating factor, I do have to consider Mr. Hall's related criminal record as it goes to my consideration of specific deterrence and moral blameworthiness. I note, in particular, Mr. Hall had finished serving his previous seven-year sentence for two robberies (that were strikingly similar to these offences in how they were carried out) just over two months prior to the March 8, 2018 offence. I must also consider that during both of the robberies that led to the seven-year sentence, Mr. Hall carried a loaded, sawed-off shotgun; therefore, those offences should attract a longer sentence than these offences. The fact that Mr. Hall seems to turn, again and again, to robbing commercial establishments points to the importance of specific deterrence in coming to the appropriate sentence.

[58] If I were to sentence Mr. Hall to the sentence of just under five years that he suggests, I would be giving him a free ride on several offences. Mr. Hall acknowledged he is not entitled to the two- to four-year starting point as he is not a first-time offender with prior good character.

[59] However, I also cannot agree a twelve-year sentence is warranted. Such a sentence would be crushing and beyond what is necessary to address denunciation and deterrence.

[60] Keeping in mind the circumstances and factors noted above, as well as the cases submitted by counsel, had Mr. Hall committed only one of the robberies, I would have found an appropriate sentence to be four years. This leads to the difficult question of what is a fit sentence for all four robberies. Mr. Hall cannot get a free ride or volume discount; equally important, the total sentence cannot be crushing. The number of offences is a valid and important sentencing consideration. As noted in *Harper* at para. 66:

[T]he underlying concerns related to sentencing for multiple offences, whether taking a last look at consecutive sentences or setting a global sentence for multiple concurrent offences, are similar – addressing the entirety of the criminal behaviour in a manner that is proportional to the circumstances of the offence and the offender.

[61] Taking into account all four robberies as well as Mr. Hall's circumstances, a fit global sentence is a period of incarceration of nine years concurrent on each robbery. From that I deduct a credit of 1,767 days for pre-sentence custody leaving four years and two months to serve.

[62] I also make an order prohibiting Mr. Hall from possessing any weapon for life as set out in section 109 of the *Criminal Code*, and requiring Mr. Hall to submit to the taking of a sample of his DNA as robbery is a primary designated offence. There will be forfeiture of the BB gun and the phone that were seized from Mr. Hall upon his arrest.

_____J.