

Citation: ☀ R. v. Bolton
2023 BCPC 96

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File No: 35538-1-K
Registry: Terrace

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REX

v.

MELODY CHRISTIEN CORA BOLTON

**REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE D. PATTERSON**

Counsel for the Crown:	K. Costain
Counsel for the Defendant (via. Videoconference):	J. Maxwell
Place of Hearing:	Terrace, B.C, B.C.
Date of Hearing:	May 3, 2023
Date of Judgment:	May 3, 2023

[1] THE COURT: These are my reasons for sentence. I reserve the right to order a transcript and edit these reasons for sentence to make them grammatically correct or more readable, but the result and substance of my decision will not change.

[2] Melody Christien Cora Bolton has pled guilty to count 2 of Terrace Court Information 35538-1-K;

Melody Christian Cora BOLTON, on or about the 17th day of July, 2021, at or near New Aiyansh, in the Province of British Columbia, in committing assault of Norman Brown, did cause bodily harm to Norman Brown, contrary to Section 267(b) of the *Criminal Code*.

[3] The Crown and Ms. Bolton have not come before the Court with a joint submission on sentence. The Crown seeks a suspended sentence with a probation period to follow in the amount of 18 months. Mr. Maxwell, who has ably represented Ms. Bolton, has asked for a discharge and pointed out several mitigating factors.

[4] Ms. Bolton and Mr. Brown are both citizens of the Nisga'a First Nation. Mr. Brown, the victim in this case, is Ms. Bolton's intimate partner. He is also the father of Ms. Bolton's two youngest children.

Relevant *Criminal Code* Sections

[5] Section 2 of the *Criminal Code* defines "intimate partner" as:

intimate partner with respect to a person, includes their current or former spouse, common-law partner and dating partner; (*partenaire intime*)

[6] Section 718 of the *Criminal Code* states that:

The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, 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 following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;

- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community;
and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

[7] Section 718.1 of the *Criminal Code* states:

A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[8] Section 718.2 of the *Criminal Code* includes the following obligations that are relevant to Ms. Bolton's sentencing:

A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing ...
 - (ii) evidence that the offender, in committing the offence, abused the offender's intimate partner or a member of the victim or the offender's family.
- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

[9] Section 718.201 of the *Criminal Code* states:

A court that imposes a sentence in respect of an offence that involved the abuse of an intimate partner shall consider the increased vulnerability of female persons who are victims, giving particular attention to the circumstances of Aboriginal female victims.

The PreSentence Report

[10] It is not easy to comprehend what Ms. Bolton has gone through during her life. Exhibit 1 is the *Presentence Report* prepared by Community Corrections to provide the

Court with information about Ms. Bolton's life. It is a very telling document. It is hard to read. It must have been difficult for Ms. Bolton to look through it.

[11] I sit as a judge in predominately Indigenous communities. Indigenous defendants continue to come before the Court in far greater numbers percentage-wise than non-Indigenous defendants, despite the Supreme Court of Canada's admonition 24 years ago in *R. v. Gladue*, [1999] 1 S.C.R. 688, telling sentencing judges and society at large that we need to get our tackle together and proceed with understanding the reality of Indigenous people's lives. *Gladue*, and *R. v. Ipeelee*, 2012 SCC 13, were supposed to serve as a wake-up call for our society that we need to do something to assist Indigenous people and sentence Indigenous people differently. We are not doing a very good job of it.

[12] I will not go into great detail expounding what was said in the *Presentence Report* as it has been filed as an exhibit. Still, I will read a couple of excerpts, and I apologize to Ms. Bolton if this brings -- if I retraumatize you by reading this. Still, I think it is appropriate and needs to be said so that everyone understands how I came to the appropriate sentence for you. Starting at page 2:

Ms. Bolton advised that she was repeatedly sexually assaulted by one of her brothers, the abuse taking place periodically from when she was nine until she was 22 or 23 years old. She reported that she was sexually assaulted by at least three other males, all family friends and relatives. She reported her brother to the police for one of these incidents when he was an adult, and he was convicted of sexual assault in 2008. She advised that she has forgiven him for this and is now able to interact with him again, although they are not particularly close. Another significant trauma that Ms. Bolton reported was witnessing her father attempt to kill himself in front of her by putting a shotgun in his mouth. She reported that she was the one who took the gun from his hands. She said this is the most traumatic event of her life. She also reported that both parents quit drinking completely when she was a young adult and said they now run a sober non-violent household. She said she remains close to both and can turn to them for help if she needs it, preferring to ask her father for money and her mother for advice. She said her parents are currently helping raise two of her sister's children.

Then skipping down to page 3:

The mother of four children herself, Ms. Bolton advised that her two older children were fathered by her former common law partner, Julian Davis [phonetic], and her younger two are with Norman Brown who was interviewed as both the victim of her offence and her "on-again/off-again" (currently off) common law partner and best friend of the last 20 years. Ms. Bolton reported that Mr. Brown has assaulted her on several occasions in the past, a claim that is confirmed through Community Corrections log notes.

[13] I should note, as well, that Mr. Brown was convicted on February 22, 2023, of assaulting Ms. Bolton. Mr. Brown was sentenced to 120 days of jail and 12 months of probation. Page 4:

Ms. Bolton reported that she attempted suicide by overdosing on over-the-counter painkillers, Tylenol, when she was 16 years old. She advised that she would also talk to friends about harming herself, but only when she was drinking and, she said, never again took action to try to end her life. She said that when she was a teenager there was also a period lasting several months when she would harm herself by cutting her arms, but she managed to stop doing this without outside intervention. She advised that she was formerly diagnosed with depression in 2018 and prescribed antidepressants which she took for two or three months before deciding to discontinue using them. Ms. Bolton described herself as an outgoing, happy, loving, and caring person while also acknowledging that she has a quick temper. When asked to describe her current mood as a number between zero and 10, Ms. Bolton affirmed that her current mood is seven out of 10 on a scale that ascribes zero to how she felt when her father tried to kill himself and 10 how she felt when the whole family took a trip to Edmonton when she was 18 years old, a trip that she said was the last trip the whole family took together. Ms. Bolton advised that she first experimented with alcohol on her 13th birthday when her cousins provided her with Silent Sam Vodka. She said she experienced at most a buzz of mild intoxication at that time. She acknowledged that alcohol did briefly become problematic for her when she was 22 or 23 years of age. Ms. Bolton stated that cocaine use has been more problematic than alcohol, and she acknowledged she used it daily for an extended period. She said she was hospitalized twice with possible cocaine overdoses. She also said she uses cannabis every other day but does not consider this to be problematic. Ms. Bolton advises that she believes depression drives her to use drugs. It was being interviewed about her substance use that she first disclosed the repetitive sexual assaults that she suffered when she was growing up. It would thus seem very probable that her drug use is rooted in the extensive trauma she experienced as a child, not only from the sexual assaults but also due to the intense trauma of her father's suicide

attempt and the repetitive alcohol-fueled violence she witnessed in the home.

[14] Finally, returning to the top of page 5:

After attending the Transformations Retreat, Ms. Bolton reported a big boost to her overall mood and sense of well-being. Tina Bolton also commented on the upswing of her daughter's mood, saying that she is now much more expressive and engaged and has been coming down from her apartment to their house to socialize much more frequently than she did before she went to the seminar.

[15] A question I often ask of Crown, which I did not ask in this case, is, would you have been seeking a different sentence if this had been a male defendant? Given the facts, I understand why the Crown is seeking a suspended sentence and 18 months of probation. With context brought by the *Presentence Report*, the circumstances that brought Ms. Bolton before the Court can be understood, albeit not excused, and thus the criminal charge and hence the guilty plea.

The Facts

[16] The facts are pretty simple.

[17] While Ms. Bolton was residing away from the house she had previously shared with Mr. Brown – getting counselling and help for her substance use disorder – she returned to the home where Mr. Brown was looking after their two children. Ms. Bolton and Mr. Brown got into a verbal altercation, which ended when Ms. Bolton used a soup bowl to hit Mr. Brown in the back of the head, causing a cut and requiring four stitches to close the wound.

[18] Ms. Bolton telephoned the police on herself. She asked the police switchboard operator if her dad had called them about her having hit her ex over the head with a soup bowl. The police went to the house. Neither Ms. Bolton nor Mr. Brown were at the home when they attended. The police subsequently located Mr. Brown at the New Aiyansh Health Centre, where he was getting four stitches in the back of his head from the wound inflicted when Ms. Bolton had used the plastic soup bowl to hit him in the

back of the head. The police later located and arrested Ms. Bolton for assaulting Mr. Brown.

Discussion

[19] Ms. Bolton is 40 years of age, Nisga'a, and by all accounts, she has made significant strides in her life since the offence date of July 17, 2021.

[20] Section 730(1) of the *Criminal Code* says that:

Where an accused, other than an organization, pleads guilty to or is found guilty of an offence, other than an offence for which a minimum punishment is prescribed by law or an offence punishable by imprisonment for fourteen years or for life, the Court before which the accused appears may, if it considers it to be in the best interests of the accused and not contrary to the public interest, instead of convicting the accused, by order direct that the accused be discharged absolutely or on the conditions prescribed in a probation order made under subsection 731(2).

[21] In my view, it is wrong to assume that it is always in the best interest of an offender to have a discharge. But in this case, I do not doubt that it is in Ms. Bolton's best interest. Based upon the *PreSentence Report* and what defence counsel has told me, I do not doubt that Ms. Bolton is a person of good character. Moreover, the prosecutor told me Ms. Bolton has no criminal record.

[22] I do not doubt that in the rural Nass Valley, located in the traditional territory of the Nisga'a people, it is in the public interest and not contrary to the public interest to grant Ms. Bolton a discharge. Frankly, it is in the public interest to try and assist individuals like Ms. Bolton to avoid a criminal record if they are an appropriate candidate for a discharge. In my view, the actual and potential consequences of a conviction for Ms. Bolton outweighs the value of the stigma.

Decision

[23] Having considered the gravity of the offence, the frequency or prevalence of these types of crimes in the community, the attitudes of the general public to

spousal/intimate partner assaults, especially causing bodily harm, the lack of planning of the offence, and the fact that there was no personal gain that I am aware of, I do not believe that a discharge, in this case, would bring public confidence in the law to a lower level than it already is.

[24] I am also of the view that as part of society's action plan to:

- a. remedy systemic discrimination against Indigenous people,
- b. reverse the extreme overrepresentation of Indigenous defendants in the criminal justice system, and
- c. do more than merely pay lip service to the Truth and Reconciliation Commission's Final Report released in 2015,

we need to identify appropriate cases involving Indigenous offenders for discharges.

And if we, as sentencing judges, error, error on the side of the Indigenous person.

[25] In all the circumstances of this case, I am satisfied that a discharge is appropriate. There will be a conditional discharge.

[26] I am placing Ms. Bolton on probation for 415 days. Ms. Bolton's probation will expire at the same time that Mr. Brown's probation expires.

[27] The conditions of the probation term will be as follows:

[28] 2001, you must keep the peace and be of good behaviour. You must appear before the Court when required to do so by the Court. You must notify the Court or the probation officer in advance of any change of name or address and promptly notify the Court or the probation officer of any change of employment or occupation.

[29] 2103, you must report in person -- sorry. Mr. Maxwell, was your client going to be staying in Terrace overnight?

[30] THE CLERK: Your Honour, I muted him. That was the feedback. Sorry, just one moment. That's why we were getting feedback. Mr. Maxwell, can you unmute yourself now? I had to mute you because we were getting feedback.

[31] CNSL J. MAXWELL: Yes, I understand. I actually don't know. You could ask the -- I think that's appropriate to ask Ms. Bolton.

[32] THE COURT: All right. Ms. Bolton, you were planning to head back today?

[33] THE ACCUSED: Yes.

[34] THE COURT: All right. So what I am going to do is I am going to order that you report by telephone to a probation officer at the Terrace Community Corrections Office by 3:00 p.m., tomorrow, May 4, 2023, and after that, you must report as directed by your probation officer.

[35] When first reporting to the probation officer -- 2202, sorry, Madam Clerk, when first reporting to a probation officer, you must provide them with the address or location where you live and regularly sleep and your telephone number if you have one. You must not change them without notifying your probation officer in writing at least two business days before making the change.

[36] 2002, you must have no contact or communication directly or indirectly with Norman Brown. The exceptions are as follows: (a) for the sole purpose of arranging parenting time and picking up and dropping off your children, J.B., date of birth, [omitted for publication], and L.B., date of birth, [omitted for publication]; (b) as allowed by a family or child protection order made by a judge or master who has been given a copy of this probation order. You must file a copy of this probation order in any family or child protection proceeding in which you are a party or become a party.

[37] 2005, you must not go to or be within 25 metres of any place where Norman Brown lives, works, attends school, worships, or happens to be. If you see him, you must leave his presence immediately without any words or gestures. The exceptions are as follows: (a) to pick up and drop off your children for previously-arranged parenting time; (b) as allowed by a family or child protection order made by a judge or master who has been given a copy of this probation order. You must file a copy of this probation order in any family or child protection proceeding in which you are a party or become a party.

[38] 2501 -- and I know your lawyer told me that you were not going to have any problems with this, but do you consent to attending a safety and wellness planning meeting as directed by your probation officer with a representative of your wilp and/or family and other persons invited by your probation officer and to make your best efforts to follow the subsequent wellness plan?

[39] THE ACCUSED: Yes, Your Honour.

[40] THE COURT: All right.

[41] 2501, having consented in Court, you must attend a safety and wellness planning meeting as directed by your probation officer with a representative of your wilp and/or family and other persons invited by your probation officer, and you must make best efforts to follow your subsequent wellness plan.

[42] 2509, you must complete 25 hours of community work service under the direction of your probation officer. Your community work service must be completed no later than December 31, 2023.

[43] 2610, you must not possess directly or indirectly any weapon as defined by the *Criminal Code* of Canada. For greater certainty, this includes firearms and ammunition, and I take it you are not a sustenance hunter; am I correct on that?

[44] THE ACCUSED: Yes, Your Honour.

[45] THE COURT: All right, thank you.

[46] Ms. Costain, it is a secondary DNA offence; am I correct on that?

[47] CNSL K. COSTAIN: That is correct, Your Honour.

[48] THE COURT: I am declining the making of a DNA order given the particular circumstances of this offence.

[49] Victim fine surcharge, Mr. Maxwell? I see her income is set out in the presentence report. Are you asking me to waive that?

[50] CNSL J. MAXWELL: I would so ask for that.

[51] THE COURT: All right. I take it the Crown has no position on that?

[52] CNSL K. COSTAIN: No, Your Honour.

[53] THE COURT: Thank you.

[54] Pursuant to s. 737(2.1) of the *Criminal Code*, I am satisfied, because of your precarious financial circumstances, that the surcharge would create an undue hardship for you. Accordingly, I order that you pay no victim fine surcharge.

[55] I am not waiving the requirement that a justice of the peace read the document to you, and I am not waiving the requirement that you sign it. So you are going to have to stick around the courthouse. The sheriffs will assist you in being able to get into the registry because it will be closed. You will go in, the justice of the peace will read the document to you, you will sign it, they will give you a copy, and what is the most important thing you are going to do before three o'clock tomorrow?

[56] THE ACCUSED: Got to call my PO officer.

[57] THE COURT: Yes, phone the probation office. All right. I mean this when I say this, all the best to you and to Mr. Brown, quite frankly, because that is what is best for your children, and I hope you have a long and wonderful life and I hope your children have a very positive experience with their mom.

[58] THE ACCUSED: Thank you.

[59] THE COURT: Thank you very much. Count 1?

[60] CNSL K. COSTAIN: Yes, directing a stay of proceedings to Count 1 on the information.

(REASONS FOR SENTENCE CONCLUDED)