

In the Court of Appeal of Alberta

Citation: R v Barron, 2026 ABCA 270

Date: 20260818
Docket: 2501-0151A
Registry: Calgary

Between:

His Majesty the King

Respondent

- and -

Christopher John Barron

Appellant

The Court:

**The Honourable Acting Chief Justice Dawn Pentelechuk
The Honourable Justice Jolaine Antonio
The Honourable Justice Joshua B. Hawkes**

Memorandum of Judgment

Appeal from the Sentence by
The Honourable Justice L. W. Robertson
Sentenced the 22nd day of April, 2025
(Dockets: 230065252P1; 230557969P1; 230831869P1;
230927915P1; 240370585P1; 240804096P1)

Memorandum of Judgment

The Court:

I. Introduction

[1] The appellant Christopher John Barron was convicted of two counts of robbery, two counts of attempted robbery, and other related offences. He was sentenced to 2,790 days in custody, less credit for time served. He appeals that sentence, arguing the sentencing judge erred by improperly imposing consecutive sentences, arriving at a demonstrably unfit global sentence in light of comparator cases, failing to adequately consider his personal circumstances, and double counting. For the reasons that follow, the appeal is allowed in part.

II. Background

[2] During the five days from August 17 to 21, 2022, the appellant robbed two pubs in northeast Calgary and attempted to rob two others. On all occasions, he wore a medical mask over the lower part of his face and pointed or brandished an imitation handgun. He fled the robberies on August 17 and 18 with, respectively, \$2,950 and \$4,500. During the attempted robbery on August 21, a staff member resisted and the appellant fled without any money. About twenty minutes later, the appellant attended at the fourth pub where he was confronted by patrons. A struggle ensued. During the struggle, the appellant struck a staff member in the head multiple times, causing no apparent injury. The patrons were ultimately able to subdue the appellant, and he was arrested by police.

[3] The appellant was granted judicial interim release in 2023. Contrary to the terms of his release, he failed to report to a probation officer during two periods: between May 31 and June 9, 2023, and again between April 23 and 30, 2024. He also failed to attend a docket appearance in September 2023, and a sentencing hearing in September 2024.

[4] The appellant pleaded guilty to two counts of robbery (*Criminal Code*, RSC 1985, c C-46, s 344(1)(b)), two counts of attempted robbery (*Criminal Code*, ss 463, 344(1)(b)), one count of using an imitation firearm while committing or attempting to commit an indictable offence (*Criminal Code*, s 85(2)(a)), one count of wearing a face mask while committing or attempting to commit an indictable offence (*Criminal Code*, s 351(2)), two counts of failing to report contrary to the conditions of a release order (*Criminal Code*, s 145(5)(a)), one count of failing to attend court contrary to an appearance notice (*Criminal Code*, s 145(3)), and one count of failing to attend court contrary to the terms of a release order (*Criminal Code*, s 145(2)(a)).

[5] Crown counsel argued that each robbery and attempted robbery should receive a consecutive 2.5-year sentence, reduced from the normal three-year starting point to account for the guilty plea. For the other offences, Crown counsel submitted: the masking should attract one year; the use of an imitation firearm, a further two years; the two failures to report, one month each; the failure to attend docket court, one day; and the failure to attend the sentencing hearing, one month. Crown counsel acknowledged “things become difficult” determining how much that total sentence of over 13 years should be reduced to reflect the totality principle and “the spree like nature” of the robbery offences. He submitted not “too much of a discount” should be given considering the severity of the offences and that “we can’t give bulk discounts for crime”.

[6] Defence counsel briefly reviewed the appellant’s background, advising that the appellant had suffered abuse as a child, left home when he was 14, experienced mental health issues, and had long struggled with cocaine addiction. In the years preceding the offences, back injuries had forced the appellant out of doing home renovation work, which had been his livelihood for 25 years. Counsel proposed three years for each robbery and two years for each attempted robbery, with those sentences to run concurrently, not consecutively, in part because they were committed as “a spree”. Counsel further proposed two months consecutive for the masking offence, one year consecutive for using an imitation firearm, and concurrent sentences for the remaining offences – 30 days for all except the failure to attend docket court, which was suggested should be only one day. The total sentence proposed by the appellant was four years and two months.

III. Sentencing decision

[7] On April 22, 2025, the sentencing judge sentenced the appellant to 2,790 days – over 7.5 years – in custody, less credit for time served.

[8] He identified several aggravating factors. The robbery offences were serious and violent; they were pre-planned; pub staff were threatened and one was struck; the offences were committed over a five-day period which allowed the appellant time for reflection; the stolen money was not recovered; and the appellant used a mask and a realistic imitation weapon. The sentencing judge did not give the appellant’s single prior conviction for theft any weight, as he considered it a negligible offence by comparison. He concluded the robbery offences were grave and the appellant bore a high degree of moral culpability. He identified the appellant’s remorse and guilty plea as a significant mitigating factor. While not mitigating per se, he reviewed and acknowledged the appellant’s “difficult personal background”.

[9] The sentencing judge stated, “The multiple robberies or attempted robberies in this matter require consecutive sentences, as do the face mask and use of an imitation weapon charge”. He said he would attempt to ensure the total sentence did not exceed the appellant’s overall culpability or serve as a crushing or disproportionate blow. However, he found caution was required to avoid giving the appellant a “bulk discount for what are really separate offences”.

[10] He sentenced the appellant to 720 days for the first robbery, 900 days for the second, and 720 days for the first attempted robbery, all to run consecutively. For the second attempted robbery, he sentenced the appellant to an additional 720 days to run concurrently. An additional consecutive 300 and 120 days were imposed for the use of an imitation firearm and masking offences. An additional 20 days was imposed for the two failure to report offences together, and an additional 10 days was imposed for the two failure to appear offences together. The total sentence of 2,790 days was reduced by a credit of 382 days for time already served, making the custodial time remaining 2,408 days.

IV. Grounds of appeal and standard of review

[11] The appellant appeals his sentence, arguing the sentencing judge erred by: 1) imposing consecutive sentences; 2) arriving at a demonstrably unfit global sentence in light of comparator cases; 3) failing to properly consider his disadvantaged background, longstanding addiction, and mental health issues; and 4) impermissibly double counting his use of a mask and an imitation weapon.

[12] An appellate court will not interfere with a sentence unless the sentence is demonstrably unfit or the sentencing judge made an error in principle that had an impact on the sentence. If a sentence is demonstrably unfit or there was a material error in principle, an appellate court must perform its own sentencing analysis to determine a fit sentence with deference to the sentencing judge's findings of fact and identification of aggravating and mitigating factors, to the extent they are not affected by an error in principle: *R v Sheppard*, 2025 SCC 29 at paras 39, 41; *R v Friesen*, 2020 SCC 9 at paras 26-29 [*Friesen*]; *R v Lacasse*, 2015 SCC 64 at paras 41-44.

V. Analysis

A. Consecutive sentences

[13] The first ground of appeal relates to what the appellant calls the “structure” of the sentences imposed: he alleges the sentencing judge erred in making some sentences consecutive when they should have been concurrent, largely on the basis that the substantive offences were committed as a “spree”.

[14] Barring a material error in principle or an overall sentence that is demonstrably unfit, the “structure” of sentences imposed for multiple offences will not give rise to a stand-alone ground of appeal: *R v McDonnell*, [1997] 1 SCR 948, 1997 CanLII 389 at para 46 [*McDonnell*]. The fundamental principle of sentencing is that the sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Multiple appropriate pathways may be taken if they lead to a proportionate sentence: *Criminal Code*, s 718.1; *R v Roberts*, 2020 ABCA 434 at para 31.

[15] The decision to direct sentences to be served consecutively or concurrently is a discretionary one, albeit one guided by principle. “[T]he general rule is that offences that are so closely linked to each other as to constitute a single criminal adventure may, but are not required to, receive concurrent sentences, while all other offences are to receive consecutive sentences” [emphasis added]: *Friesen* at para 155. A similar, converse discretion also exists where offences are not closely linked to each other. Section 718.3(4)(b)(i) of the *Criminal Code* requires that sentencing judges “shall consider directing” that sentences be served consecutively when “the offences do not arise out of the same event or series of events”; it does not require that consecutive sentences be imposed. Ultimately, “[d]etermining whether sentences should be consecutive or concurrent is a fact-specific inquiry to be undertaken in the context of each case”: *R v Bertrand Marchand*, 2023 SCC 26 at para 95 [*Bertrand Marchand*].

[16] The appellant invokes the concept of a “spree” to suggest the sentencing judge erred in ordering all but one of the robbery-related sentences to be served consecutively. This Court has used the term “spree” to connote “[m]ultiple offences that do not form part of the same criminal ‘transaction’ but which occur close in time and type and share a factual nexus”. In some circumstances, “spree” offences “have been treated as forming part of a single transaction for the purposes of sentencing”: *R v Trapasso*, 2014 ABCA 66 at para 13 [*Trapasso*]. Courts are more likely to apply the “spree” concept “in cases of younger offenders or petty offenders who engage in a series of *property* offences close in time and circumstances” [emphasis in original]: *R v May*, 2012 ABCA 213 at para 9 [*May*]. By contrast, “crimes of violence are intrinsically distinct”, and gratuitous or dangerous escalations relative to other offences in a series may “demand recognition by a consecutive sentence”: *May* at paras 7, 9. Ultimately, “there is no established test or threshold for determining when a series of offences will constitute a spree and it remains in the discretion of the sentencing judge”: *Trapasso* at para 13.

[17] The fact that offences were committed as part of a “spree” is not a mitigating factor. As explained in *Trapasso* at para 12:

A mitigating factor reduces the seriousness of the offence and/or the culpability of the offender. Multiple offences committed within a proximate time frame cannot logically be considered mitigating factors. An offender’s moral blameworthiness or the seriousness of his offence cannot be reduced for having committed more than one offence or put another way, an offender cannot reasonably expect leniency for having committed multiple offences instead of only one.

[18] At its highest, the concept of a “spree” of offences “is an extension of the totality principle”: *Trapasso* at para 15. Therefore, it may play a role in determining whether sentences for multiple offences “are to be served concurrently or consecutively or a combination of the two”: *Trapasso* at para 13. In pursuit of totality, the “spree” concept should be applied with caution, since its “[u]nthinking or indiscriminate use... can lead to a suggestion that crime is cheaper by the dozen. The concern about undervaluation of magnitude is particularly acute for crimes of violence... It

also fits poorly to cases of mature offenders who have low prospects of rehabilitation”: *Trapasso* at para 15, quoting *May* at para 10.

[19] Since there is no established test for when a series constitutes a “spree”, failure to label a series of offences as a “spree” cannot amount to an error in law. The purposive question is not whether a series constituted a “spree”; it is whether sentences for offences committed in a series should be served concurrently, consecutively, or in a combination of the two. Absent a statutory mandate, that decision is plainly a discretionary one.

[20] The decision to order concurrent or consecutive sentences should be treated with the same deference on appeal as decisions concerning the length of sentences: *McDonnell* at para 46. We are not satisfied the sentencing judge made an error in principle in deciding that question in this case. The sentencing judge accurately instructed himself on totality and proportionality. Despite the parties’ focus on the “spree” label, he did not err by passing over the superficial question of labelling and proceeding to the substantive question of how concurrent and consecutive sentences should be deployed in service of those principles.

[21] The appellant also takes issue with the sentencing judge’s statement that “[t]he multiple robberies or attempted robberies in this matter require consecutive sentences, as do the face mask and use of an imitation weapon charge”. He submits this phrasing suggests the sentencing judge believed consecutive sentences for all these offences were required by law, when in fact the *Criminal Code* only mandated a consecutive sentence for the offence of using an imitation firearm: *Criminal Code*, s 85(4). We cannot accept the appellant’s premise. Immediately after making the quoted statement, the sentencing judge adverted to the totality principle, and he ultimately imposed a concurrent sentence for one of the attempted robberies. It is apparent the sentencing judge was simply stating his conclusion in this case, not making a statement about what the law required generally.

[22] We find no reviewable error in the sentencing judge’s exercise of discretion in determining which sentences should be served consecutively and which should be served concurrently.

B. Parity

[23] The appellant further submits the global sentence of 2,790 days (before adjustment for pre-sentence custody) is demonstrably unfit in comparison to other cases.

[24] Sentencing judges are required to take parity into consideration, being the principle that “a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances”: *Criminal Code*, s 718.2(b); *Friesen* at paras 31-33.

[25] We are unable to conclude the trial judge failed to properly consider parity, because the cases cited by the appellant as quantum comparators are either distinguishable or consistent with

the outcome arrived at in this case. For example, the appellant relies on *R v Farkas*, 2011 ABCA 340, but that was an appeal from a sentencing judge's decision not to adopt a joint submission. A sentencing judge's task in a joint submission hearing is fundamentally different from their task in a conventional sentencing hearing: *R v RPA*, 2025 ABCA 300 at paras 31-37. The appellant also relies on *Trapasso*. However, the accused in *Trapasso* received consecutive three- and four-year sentences for two robberies, consistent with the approach taken by the sentencing judge in the present case.

C. Circumstances of the offender

[26] The appellant submits the sentencing judge failed to give adequate mitigating weight to his disadvantaged background, longstanding addiction and mental health issues.

[27] The personal circumstances of an offender can have a mitigating effect on blameworthiness. For example, an offender might have a mental disability or substance use disorder that imposes serious cognitive limitations, such that moral culpability is reduced: *Friesen* at para 91; *Bertrand Marchand* at para 73.

[28] In his discussion of mitigating factors, the sentencing judge acknowledged “the difficult personal background” of the appellant, including the abuse he endured as a child, and his struggles with addiction and mental health issues. However, he ultimately concluded these aspects of the appellant's personal circumstances were not mitigating.

[29] In relation to the alleged mental health issues, the sentencing judge had noted, “No formal diagnosis of any kind has been placed before the Court” and “an early attempt to have a true forensic, psychological and psychiatric assessment was abandoned”. As the appellant rightly acknowledges, the sentencing judge “was entitled to be cautious about the extent to which asserted mental health issues could reduce moral blameworthiness in the absence of a diagnosis or completed assessment”.

[30] As to the addiction issues, circumstances bearing on whether an untreated addiction mitigates, aggravates or is neutral is always case specific and may include whether the offender had a real opportunity to get addiction treatment but declined it and whether the offender knew they tended to behave violently under the influence of drugs: *R v Phillips*, 2023 ABCA 210 at para 31; *R v Boles*, 2025 ABCA 236 at para 37. The sentencing judge did not have access to any details regarding the appellant's addiction, other than it “has been off and on over the last 30 years with cocaine”.

[31] Ultimately, the weighing or balancing of factors can constitute an error in principle only if by emphasizing one factor or by not giving enough weight to another, the sentencing judge exercised his discretion unreasonably: *Friesen* at para 26; *R v Parent*, 2024 ABCA 112 at para 27.

The appellant has not persuaded us that by giving the identified personal circumstances no mitigating weight the sentencing judge exercised his discretion unreasonably in this case.

D. Double counting

[32] Finally, the appellant submits the sentencing judge committed a “double counting” error. We accept that submission.

[33] As previously noted, the appellant was convicted of wearing a face mask while committing or attempting to commit an indictable offence (*Criminal Code*, s 351(2)) and using an imitation firearm while committing or attempting to commit an indictable offence (*Criminal Code*, s 85(2)(a)). For these offences respectively, the sentencing judge imposed sentences of 120 days and 300 days, each to be served consecutively.

[34] In his discussion of the robbery-related offences, the sentencing judge identified seven aggravating factors. Four of these factors related directly or indirectly to the fact that the appellant was wearing a face mask or using an imitation firearm:

First, the nature of the offences themselves, especially the robberies or the attempted robberies and the use of the imitation weapon. I would describe these as serious and violent offences.

Second, these were not spontaneous occurrences. Each required a degree of planning. The accused pre-armed himself with an imitation weapon that looked realistic and he disguised himself...

Third, the four complainants who the accused actually personally confronted were faced with the imitation and they were threatened with it. ...

...

Six, the use of the mask to disguise his face was aggravating. It emphasized again the planning undertaken in the endeavours.

And seven, the use of the realistic imitation weapon to threaten the complainants to achieve their compliance.

[Emphasis added]

[35] Sentencing judges are best able to assess the gravity of an offence and blameworthiness of the offender when they are equipped with a full picture of the circumstances, to the extent possible. Therefore, sentencing judges have discretion to consider facts forming part of the circumstances

of an offence that could constitute the basis for a separate charge as aggravating: *R v Di Paola*, 2025 SCC 31 at paras 46-48.

[36] When this discretion is exercised, care must be taken to avoid imposing double punishment. It is an error of principle to consider a set of facts as aggravating for sentencing on one charge and to sentence the offender separately and consecutively for those facts as part of a separate charge: *R v Dichrow*, 2022 ABCA 282 at paras 30, 32 [*Dichrow*]; *R v Dyck*, 2020 ABCA 412 at para 33 [*Dyck*]. Judges “must be mindful not to double count”: *Bertrand Marchand* at para 98. That is what the sentencing judge did in this case. He erred in using the facts of masking and use of an imitation firearm as aggravating factors for the robbery and attempted robbery offences and also sentencing the appellant separately and consecutively for wearing a face mask and using an imitation firearm.

[37] Such an error is material, and thus a basis for appellate intervention, where it is apparent it had an impact on the sentence: *Friesen* at para 26; *Dichrow* at para 32. It is not a further precondition to appellate intervention that the existing sentence is demonstrably unfit or falls outside the range of sentences imposed in the past: *Friesen* at para 27. The Crown’s reliance on *Dyck* at para 33 as suggesting a different threshold for appellate intervention is misplaced.

[38] Given the sentencing judge’s repeated resort to the facts of masking and use of an imitation firearm as aggravating factors for the robbery and attempted robbery sentences, we are satisfied the double counting error had an effect on those sentences.

[39] This places us in a position to sentence afresh on the convictions as they stand. We hesitate to interfere with the sentences assigned to each of the robbery and attempted robbery charges, since each sentence reflects a balancing of the features of each offence. Instead, to remedy the double counting error, we direct that the sentence for the offence of being masked while committing or attempting to commit an indictable offence will be reduced to one day, to be served concurrently. We also direct that the sentence for using an imitation firearm while committing or attempting to commit robbery will be reduced to one day. It will be served consecutively, as required by *Criminal Code*, s 85(4). These adjustments are intended to correct the double counting error that has arisen on these unique facts; the resulting sentences should not be taken as precedents for sentencing these offences in isolation or in combination with other offences.

[40] These adjustments reduce the gross global term in custody to 2,371 days. After deducting credit for time spent in pre-sentence custody, the net global term in custody will be 1,989 days.

VI. Conclusion

[41] The appeal is allowed, in part, to address the double counting error. All other grounds of appeal are dismissed.

[42] The sentence imposed for the *Criminal Code*, s 351(2) offence is reduced to one day, to be served concurrently. The sentence imposed for the *Criminal Code*, s 85(2)(a) offence is reduced to one day, to be served consecutively. All other sentences imposed remain unchanged.

Appeal heard on April 21, 2026

Memorandum filed at Calgary, Alberta
this 18th day of August, 2026

Pentelchuk A/C.J.A.

Antonio J.A.

Hawkes J.A.

Appearances:

A. Beland
for the Respondent

J. Fernandes
for the Appellant