

CANADA / JUDGMENT

R. v. Aeichele

2022 BCSC 195

COURT

Supreme Court of British Columbia

DECIDED

20 January 2022

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2022 BCSC 195 R. v. Aeichele IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Aeichele, 2022 BCSC 195 Date: 20220120 Docket: 45595-2 Registry: Penticton Regina v. Cheryl Lynn Aeichele Elkena Michael Knauff Before: The Honourable Mr. Justice G.P. Weatherill Oral Reasons for Judgment on Sentencing In Chambers Counsel for the Crown appearing by videoconference: F. Lépine Counsel for the Accused Aeichele appearing by videoconference: J. Pennington Counsel for the Accused Knauff appearing by videoconference: M. Patterson Place and Date of Trial/Hearing: Kelowna, B.C. January 20, 2022 Place and Date of Judgment: Kelowna, B.C. January 20, 2022

- [1] THE COURT: On June 1, 2020, I convicted both Ms. Aeichele and Mr. Knauff of possession of methamphetamine, cocaine, and fentanyl for the purpose of trafficking contrary to s. 5(2) of the Controlled Drugs and Substances Act, Statutes of Canada 1996, c. 19 [CDSA], and they are both before me today for sentencing.
- [2] The facts of the case are set out in my oral reasons for judgment given June 1, 2020, and relate to events that occurred on September 20, 2017, in the Walmart parking lot in Penticton. I will not repeat the facts in detail. Suffice it to say that both accused -- both offenders were caught red-handed with what are known on the street as "dime bags" of the illicit drugs and drug paraphernalia. I am satisfied that both were involved in a dial-a-dope operation and were caught in the process of attempting to sell illicit drugs at the street level.
- [3] In the vehicle that they were in at the time of their arrest, the police recovered drugs packaged in baggies of various quantities, money, a digital scale, empty dime bags, two cellphones, credit cards, and identification belonging to third parties, various quantities of illicit drugs in a small safe including methamphetamine, solid block cocaine, powdered cocaine, and a mixture of cocaine, benzocaine, and a fentanyl-cocaine mixture.
- [4] The amount of drugs involved are 25.88 grams of cocaine, 9.14 grams of fentanyl, and 28.47 grams of methamphetamine. All three are Schedule I drugs under the CDSA and each count is punishable by a maximum term of life imprisonment. Ms. Cheryl Aeichele

- [5] Dealing first with Ms. Aeichele, according to the materials filed on this sentencing, as supplemented by Mr. Pennington's submissions, Ms. Aeichele was born in Vernon, BC, on September 15, 1978, making her 43-years-old. She indicates that she is close to her family. She has three daughters aged 25, 22, and 20, fathered during two separate or different relationships. Her oldest daughter's father died of a drug overdose in 2014.
- [6] She has had mental health issues starting at age 13. There have been suicide attempts. She suffers from PTSD going back to childhood abuse issues.
- [7] She has apparently been in a relationship with someone called "Mike" for the past year-and-a-half. That relationship is going well. She says the relationship is healthy and supportive.
- [8] In October 2021, she was living in a residence in Penticton where there was a home invasion. She was assaulted along with others in the home and subsequently cooperated with the police; as a consequence she was confronted and stabbed by a person because of being a Crown witness. She received serious injuries. This has compounded her PTSD. The person who attacked her was convicted, subsequently released, and has moved to Vernon where Ms. Aeichele currently lives. Ms. Aeichele is now fearful of leaving her home and is hypervigilant for her safety.
- [9] Ms. Aeichele was previously addicted to cocaine while she was involved in an abusive prior relationship. She was clean for about seven years with periods of relapses. She says she has not used drugs for five years and has no desire to involve herself in drug use of any kind. She has consumed alcohol in the past on a daily basis, but her current use is minimal. She attends Narcotics Anonymous meetings four to five times per month. She has also received treatment at Crossroads Community Church in Vernon for drug dependency. She has a history of self-harm prior to 2015.
- [10] She has also had head injuries in the past and, as mentioned, was seriously assaulted in 2019 in Penticton during a home invasion by four individuals. She was stabbed in the back, knocked unconscious, and sustained serious physical injuries including stab wounds, broken ribs, punctured lungs, and what she describes as a gashed eye, resulting in numerous physical injuries and mental health sequelae. She suffers from PTSD, OCD, and hypervigilance and hyperarousal. She has distressing thoughts and recurrent nightmares.
- [11] She also has a history of being sexually abused as a child starting at age five and spanning several years. She has attempted suicide on three occasions, the last one being in 2015 when she overdosed on pills.
- [12] Ms. Aeichele has an unrelated but very dated prior record for breach of probation.
- [13] She is currently providing daycare assistance to elderly gentlemen who are suffering from cancer.

- [14] According to Ms. Aeichele's PSR and psychological assessment report, which I have had the benefit of reading, Ms. Aeichele has been assessed as having a low risk of reoffending as long as she stays off using drugs. Mental health treatment has been recommended to address her posttraumatic and mood symptoms, hopefully, to improve her day-to-day functioning and reduce the likelihood of relapsing into substance abuse.
- [15] She could also benefit from counselling and substance abuse programs.
- [16] On Ms. Aeichele's behalf, Mr. Pennington seeks a sentence of no more than 18 months and says her sentence should be a conditional sentence order pursuant to s. 762.1 of the Criminal Code. Mr. Elkena Knauff
- [17] Dealing next with Mr. Knauff, according to the materials available to me as supplemented by Mr. Patterson's submissions, Mr. Knauff was born on July 29, 1985, making him 36 years old currently. He is the youngest of four siblings. He reports a positive relationship with his mother, but not his father who has passed away. His father was apparently an abusive man and an alcoholic and was deported to Germany when Mr. Knauff was five.
- [18] Mr. Knauff continues to suffer the lasting psychological effects of the abuse by his father and remains untreated. He does not trust authority.
- [19] His formal education ended in grade eight. Since then, he has been working in construction, drilling, and paving industries. His latest employer reports that his attendance at work was inconsistent and that he was an unreliable employee. This past employer did not give a positive reference. Mr. Knauff says he wants to start his own paving company and claims to be working odd jobs with a dump truck and trailer that he owns.
- [20] Further, Mr. Knauff's PSR does not leave a positive impression that he has legitimate employment. It states, ". . . concerns persist around the legitimacy of his employment and his truthfulness."
- [21] The PSR reports that Mr. Knauff has an extensive history of substance abuse including using cocaine and methamphetamine. He says he stopped using cocaine in early 2021. This is contrary to a prior PSR wherein he stated that he stopped using cocaine in September 2017 when he was arrested on these charges.
- [22] Mr. Knauff has fathered three children from two different partners. His two daughters from his first partner are currently being cared for by his mother.
- [23] He has a history of associating and living with unsavoury persons involved in drugs and other crimes. He is well known to the RCMP. He says he now wants to distance himself from pro-criminal people. According to the PSR, despite this stated desire, the PSR says, "There is no evidence suggesting he has made attempts to connect with prosocial people."

- [24] Mr. Knauff's criminal history dates back to 2014. He has convictions for assault, aggravated assault, carrying a concealed weapon, flight from the police when being pursued, failure to comply with a recognizance, and failure to comply with a release order. He attributes this criminal history to his attitude, bad life choices, substance abuse, lifestyle, anger, and violence towards others -- violent tendencies towards others.
- [25] He continues to have untreated addiction to drugs and untreated psychological issues arising from his counselling. He says that he needs counselling and other help to treat these afflictions.
- [26] While he takes responsibility for the drugs found on his person when he was arrested on these charges on September 20, 2017, he does not accept responsibility for the drugs found in the car that he was in, despite my findings at trial.
- [27] On Mr. Knauff's behalf, Mr. Patterson seeks a sentence of two years less a day making him eligible for a CSO pursuant to s. 762.1 of the Criminal Code.
- [28] Alternatively, he seeks a nine-month jail sentence less time served to be followed by 24 months' probation to include addiction counselling. Crown's Position on Sentence
- [29] Given Mr. Knauff's criminal record, the Crown is seeking a term of imprisonment of four years.
- [30] The Crown seeks a period of incarceration for Ms. Aeichele of 18 months. Conditional Sentence Orders
- [31] Conditional sentence orders, that is, sentences that can be served in the community with supervision, are available if, in this case:
- a) convicted of an offence and the court imposes a sentence of imprisonment of less than two years;
 - b) the court is satisfied that the service of the sentence in the community would not endanger the safety of the community;
 - c) service of the sentence in the community would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2 of the Criminal Code;
 - d) the offence is not one for which a maximum term of imprisonment is 14 years or life, that is s. 742.1(c); and
 - e) the offence does not involve trafficking in drugs; that is s. 742.1(e)(ii).

- [32] With respect to the availability of CSOs for cases in this court that engage s. 742.1(c) and (e) (ii) as this case does, the Crown does not concede the correctness of a recent decision of this Court in *R. v. Chen*, 2021 BCSC 697, which is currently under appeal, but for today's purposes concedes that a consideration of a CSO for the offenders in this case provided a CSO would be fit and proper in all of the circumstances, the Crown agrees that a CSO would not be an illegal form of sentencing. As was stated in *R. v. Proulx*, 2000 SCC 5 at para. 35:
- [35] . . . conditional sentences were designed to permit the accused to avoid imprisonment but not to avoid punishment.
- [33] While the Crown takes the position that *Chen* was wrongly decided and is appealing that decision, it accepts that judicial comity dictates that there is no basis for me to depart from the reasoning in *Chen* in sentencing Ms. Aeichele and Mr. Knauff. Aggravating and Mitigating Factors Aggravating Factors
- [34] The aggravating factor respecting Ms. Aeichele is that the drugs involved included fentanyl which has been described in numerous cases as dealing in death and being a scourge on society.
- [35] The aggravating factors respecting Mr. Knauff are:
- a) at the time he committed these offences, he was bound by a 12-month probation order imposed on April 25, 2017;
 - b) the nature of the drugs involved included fentanyl;
 - c) after being released on this matter, he committed eight more crimes and was convicted of those; and
 - d) the nature of his criminal record. Mitigating Factors
- [36] The mitigating factors respecting Ms. Aeichele are:
- a) the lack of any meaningful criminal record;
 - b) the strength of family and community support and involvement that she has; and
 - c) her compliance with her bail conditions for a lengthy period.
- [37] I have not been able to find any mitigating factors respecting Mr. Knauff. Purpose and principles of sentencing
- [38] The principles of sentencing are set out in s. 718 of the Criminal Code as follows: 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.

[39] Section 10 of the CDSA provides that, without restricting the generality of the Code provisions on sentencing, the fundamental purpose of any sentence under the CDSA is to contribute to the respect for the law and the maintenance of a just, peaceful, and safe society. At the same time, sentencing judges are encouraged to consider rehabilitation and treatment in appropriate circumstances and acknowledge the harm done to victims and to the community. Discussion

[40] Ms. Aeichele and Mr. Knauff, I am going to emphasize that the maximum penalty for the offences that you have been convicted of is life in prison. In *R. v. Voong*, 2015 BCCA 285, the BC Court of Appeal identified a range of six to 18 months for a first-time dial-a-dope conviction absent exceptional circumstances. In *R. v. Smith*, 2017 BCCA 112, the Court of Appeal established that the range of sentence for street-level trafficking in fentanyl, even for a first-time offender, is between 18 and 36 months barring exceptional circumstances.

[41] Ultimately, the ranges set out by Voong and Smith are guidelines and the court retains its discretion if the circumstances warrant to depart from those ranges. The ultimate question is, in all of the circumstances, what is the fit and just sentence in each case? It must be an individualized sentence for each individual offender in each individual case.

[42] For the purposes of sentencing you, Ms. Aeichele, I recognize you are to be considered very close to a first-time offender.

[43] Mr. Knauff, you, on the other hand, are not a first-time offender. You have amassed 15 convictions since 2014 for breaching court orders, release orders, and failing to appear. You have a past conviction for fleeing from a police officer in 2020 contrary to s. 320.17 of the Code. When you committed the offences you are now being sentenced for, you were on probation. You have also been sentenced for eight crimes committed since September 20, 2017, the date of these offences.

[44] The very recent decision of the Supreme Court of Canada in *R. v. Parranto*, 2021 SCC 46, has tempered that ranges of sentencing are a mandatory consideration. Ranges of sentencing and starting points are to be considered tools that provide a non-binding guidance for sentencing judges. They are referred to as "navigational buoys". They are not straightjackets.

[45] Proportionality is the primary sentencing principle. Parity and individualization inform it. The gravity of the offence may be constant, but the individual offender varies.

- [46] Therefore, the question in this sentencing case is what is the fit sentence I should impose on you both that reflects the gravity of the offences, the degree of your responsibility, and each of your unique circumstances.
- [47] Before discussing what I consider a fit sentence for each of you, I want to emphasize that you were both convicted of possession for the purpose of trafficking hard drugs. That means that you had drugs in your possession that you intended to traffic to others. The drugs that you had are drugs that we are all reminded on a daily basis cause death, destruction, havoc in our communities. Those drugs cause direct and indirect harms to society. Dealing in and abusing drugs leads to addictions, leads to debilitating adverse health consequences, and frequently it leads to death. Also, addiction to drugs leads to all kinds of other crimes and it has grown to the point in our society -- and as I say we are reminded on a daily basis of the death and destruction and havoc it causes to all communities right across Canada.
- [48] Drug use also leads to a host of other ills including increased crime, gangs of criminals, violence, shootings, death of innocent victims who are caught in the crossfire. So the point is that the proliferation of drugs destroys people's lives and impacts families and goes well beyond addicts and leads to breathtakingly high costs to society.
- [49] As mentioned, I recognize that the offences you are being sentenced for today are possession for the purpose of trafficking. Neither of you has been convicted of trafficking. In my view, however, the comments I have just made are equally appropriate and applicable to possession for the purpose of trafficking offences. Mr. Knauff's Sentence
- [50] Mr. Knauff, dealing first with you, despite Mr. Patterson's able submissions that suggest you are an untreated addict and with untreated and, I gather, not formally diagnosed psychological issues, there is nothing about this case or your personal circumstances that persuade me that you should not be incarcerated for what you have been convicted of. You have not shown any indication that your criminal behaviour is going to change, that you are going to cease associating with unsavoury persons, or that you have any inclination to turn your life around. There is nothing that distinguishes you from other cases where people convicted of similar crimes have been routinely sent to prison.
- [51] The overarching theme of your PSR is that you were not honest or forthright with its author. That is a significant concern to me.
- [52] Mr. Patterson argues for a conditional sentence order. Before I can consider a CSO for you, the sentence I am intending to impose must be less than two years and I must be satisfied that having you serve the sentence in the community would not endanger its safety.
- [53] While you do not have prior convictions for crimes under the CDSA, your convictions under the Criminal Code include serious offences such as aggravated assault (one year jail); assault causing bodily harm (16 months' probation); and disguising your face with intent to commit an offence (225 days). You have served a number of shorter jail sentence, mostly between 14 days and 30 days, for various other offences.

- [54] As I mentioned, I do not consider you to be a first-time offender. Further, it is apparent to me, from a review of your criminal record and despite what you told me earlier this afternoon regarding orders, that you have no respect for court orders or indeed the law.
- [55] Dealing with the safety to the community and, given your criminal record, I am not satisfied that the safety of the community can be preserved by a CSO. There is no basis for any belief that you have the ability or willingness to comply with conditions of a CSO. Your history of breaching court orders speaks for itself. I consider there would be a significant risk of you reoffending if you were to serve your sentence in the community.
- [56] I agree with the Crown, frankly, that your record is difficult to reconcile with any notion that you would comply with a CSO. Therefore, given that the safety of the community cannot be preserved and the prerequisites have not been met, a conditional sentence cannot be considered in your case.
- [57] It would simply not be consistent with the fundamental purposes and principles of sentencing.
- [58] There is a clear and compelling line of authority holding that denunciation and deterrence are primary considerations in fashioning a sentence for a dial-a-dope operation which is what I have concluded you were involved in when you were arrested. Taking all those considerations into account, I have concluded that because of the real and pressing need to denounce and deter this conduct in the community, a term of imprisonment must be imposed.
- [59] Having weighed the circumstances, Mr. Patterson's submissions on your behalf, and your PSR; having considered the sentencing principles, in particular, the primary principle of proportionality, the gravity of these offences, and your degree of responsibility, I consider that a fit and proper sentence that would be just in these circumstances for you is 30 months' incarceration on each of the three convictions to be served concurrently. Ms. Aeichele's Sentence
- [60] Now, Ms. Aeichele, in this case, there are factors which weigh in your favour. It is relevant that you have no criminal record to speak of. There is some basis to believe that you have made changes in your life and that you are in the process of moving forward in a positive direction.
- [61] On the other hand, there are aggravating factors. Among those is that this was a dial-a-dope operation involving fentanyl.
- [62] As mentioned, the Crown is seeking a sentence of 18 months which is the bottom end of the Smith range. Whether your sentence should take the form of a CSO or actual imprisonment depends on whether I consider that the purpose and principles of sentencing can be achieved through a CSO.

- [63] I was impressed and persuaded by your PSR; the three positive letters of support including your NA sponsor, Ms. Knox, Ms. Robicheau, and your daughter, Amanda; and Mr. Pennington's submissions; and in particular your heartfelt comments to me that you made earlier today that you have taken steps to turn your life around and that a sentence in the lower end of the Smith range would be a fit sentence in your case, and that it should be served in the community on conditions that will promote your good conduct and that will prevent a repetition of the same types of offences or the commission of other offences.
- [64] I reach this conclusion recognizing that the Supreme Court of Canada stated in Proulx, that conditional sentence orders can be tailored to provide elements of denunciation and deterrence.
- [65] Accordingly, I impose an 18-month conditional sentence to be served in the community. This 18-month CSO is on all three charges to be served concurrently. You must comply with this conditional sentence order for a period of 18 months.
- [66] The conditions upon which you will serve your conditional sentence are -- now, Madam Clerk, I will go through the Picklist. Starting with 6001, Ms. Aeichele, you must keep the peace and be of good behaviour. You know what that means?
- [67] THE ACCUSED AEICHELE: Yes, Your Honour.
- [68] THE COURT: Why do you not come up here so we can hear you? So 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 your conditional sentence supervisor in advance of any change of name/address and promptly notify the court or supervisor of any change in employment or occupation. You must remain in British Columbia unless you have prior written permission from the court or your conditional sentence supervisor to leave the province, okay?
- [69] THE ACCUSED AEICHELE: Okay.
- [70] THE COURT: You will do that?
- [71] THE ACCUSED AEICHELE: Yes, I will.
- [72] THE COURT: 6002, you must report in person to a conditional sentence officer which is first floor, 1355 Water Street. That is the courthouse here.
- [73] THE ACCUSED AEICHELE: Okay.
- [74] THE COURT: By -- what time can you report? What time is it open until, Madam Clerk?
- [75] THE ACCUSED AEICHELE: I can leave here and go.
- [76] THE CLERK: I believe they close at 4:00.
- [77] THE ACCUSED AEICHELE: Or maybe not.

- [78] CNSL J. PENNINGTON: Mr. Justice, given that she resides in Vernon, could she report to the Vernon probation office by sometime tomorrow?
- [79] THE COURT: By four o'clock tomorrow?
- [80] THE ACCUSED AEICHELE: Yes.
- [81] THE COURT: Can you do that?
- [82] THE ACCUSED AEICHELE: Yes, I can.
- [83] THE COURT: Okay, to the probation officer at the Vernon Courthouse in Vernon --
- [84] THE ACCUSED AEICHELE: Okay.
- [85] THE COURT: -- by four o'clock tomorrow.
- [86] THE ACCUSED AEICHELE: Yes. Is that everything?
- [87] THE COURT: Pardon me?
- [88] THE ACCUSED AEICHELE: Am I done up here?
- [89] THE COURT: No.
- [90] THE ACCUSED AEICHELE: Oh, okay.
- [91] THE COURT: We are going through a list here.
- [92] THE ACCUSED AEICHELE: Okay.
- [93] THE COURT: 6101, you must have no contact or communication directly or indirectly with Mr. Elkena Knauff, your co-accused, okay?
- [94] THE ACCUSED AEICHELE: Yes.
- [95] THE ACCUSED KNAUFF (via videoconference): Your honour may I speak?
- [96] THE COURT: 6201, when first reporting to your conditional sentence supervisor, you must provide them with the address where you live and your phone number, and you must not change your address or phone number without prior written permission from your conditional sentence supervisor.
- [97] THE ACCUSED AEICHELE: Yes, Your Honour.
- [98] THE COURT: For the -- this is -- sorry, the numbers I have --
- [99] CNSL J. PENNINGTON: [Indiscernible/videoconference].
- [100] THE COURT: -- in my notes are different than the numbers that I got here. So I am just cross-referencing.
- [101] THE ACCUSED KNAUFF: It's fucking bullshit. Your Honour, do I have to be here still?

- [102] THE COURT: All right. Yes, you have to wait, sorry, hang on.
- [103] THE ACCUSED KNAUFF: -- okay - I'm waiting [indiscernible/videoconference] the truth.
- [104] THE COURT: 6501, you must not possess or consume alcohol or controlled substances as defined by the Controlled Drugs and Substances Act or any other intoxicating substance, except with a medical prescription.
- [105] THE ACCUSED AEICHELE: Yes.
- [106] THE COURT: No drugs, no alcohol.
- [107] THE ACCUSED AEICHELE: Okay, no problem.
- [108] THE COURT: 6601, you must attend, participate in, and complete any intake, assessment, counselling, or education program directed by your conditional sentence supervisor, and this may include, but is not limited to, counselling or programming for alcohol or drug addiction.
- [109] I am going to also order, this is 6701, this is community work, you must complete 100 hours of community work under the direction of your conditional sentence supervisor, and it must be completed within the next year.
- [110] THE ACCUSED AEICHELE: Okay.
- [111] THE COURT: Okay?
- [112] THE ACCUSED AEICHELE: Yes.
- [113] THE ACCUSED KNAUFF: Sure hope you take -- [indiscernible/ videoconference].
- [114] THE COURT: 6903-A, which is cellphones, you may possess one cellphone that has only one phone number and is registered in your name.
- [115] All right, thank you. You may have a seat there.
- [116] THE ACCUSED AEICHELE: Thank you. Ancillary Orders
- [117] THE COURT: Now, by way of ancillary orders, first, pursuant to s. 109 of the Code, both of you are prohibited for life from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, and explosive substance.
- [118] Now, having considered Mr. Knauff's record, I am satisfied that it is in the best interests of the administration of justice to make an order in Form 5.04 authorizing the taking of a DNA sample.
- [119] Mr. Knauff, you must submit to taking a DNA sample as required.
- [120] I am not making a DNA order respecting Ms. Aeichele.

- [121] Lastly, there will be a forfeiture order of the \$795 cash seized by the RCMP at the time of the offenders' arrest.
- [122] That concludes my sentencing. Is there anything else?
- [123] THE CLERK: Yes, Justice, I have a few questions? For that last one, who is the forfeiture? Is that on both of their --
- [124] THE COURT: On both.
- [125] THE CLERK: -- and all counts?
- [126] THE COURT: On all counts.
- [127] THE CLERK: Okay, and the DNA order, sorry, I missed it, discretionary or mandatory?
- [128] THE COURT: I think it is a mandatory order, but I am not sure.
- [129] CNSL J. PENNINGTON: It is -- it would be primary, Mr. Justice.
- [130] THE COURT: So it is mandatory.
- [131] CNSL F. LÉPINE: I believe it is -- it is a secondary -- sorry, a secondary so there is discretion.
- [132] CNSL J. PENNINGTON: Thank you.
- [133] THE COURT: So, thank you. I exercise my discretion to order one for Mr. Knauff and not for Ms. Aeichele.
- [134] THE CLERK: Yes, but it is for -- it is mandatory, we decided?
- [135] THE COURT: Yes.
- [136] THE CLERK: And then lifetime --
- [137] CNSL F. LÉPINE: Well it is not mandatory, this is the court's discretion.
- [138] THE COURT: So it is not mandatory?
- [139] THE CLERK: Thank you.
- [140] CNSL F. LÉPINE: Just one thing that was not addressed. I do not know if Mr. Patterson wants to ask for some deduction for time served. Mr. Knauff has been in custody for 77 days, since November 5, 2021, on charges that he breached his bail [indiscernible] time and a half, just 1.5. I do not know if he wants to save that for these charges from Surrey or if he is asking for a deduction here.
- [141] THE COURT: Mr. Patterson?

- [142] CNSL M. PATTERSON: The charges in Surrey is going to go to trial. Mr. Justice, Mr. Knauff was in and out of custody on these same charges, so I cannot just calculate it from September. What I am going to ask the court to say, and I am sure Corrections will have the perfect record for this, is that this sentence of 30 months is minus any applicable dead time that Mr. Knauff has, please.
- [143] THE COURT: Mr. Lépine, does that work for you?
- [144] CNSL F. LÉPINE: Well, I think on such [indiscernible/videoconference] it is really for the court rather than for Corrections. I think this might result in a number of problems down the road if we do not have the exact numbers.
- [145] THE COURT: So is it 77 days times time and a half?
- [146] CNSL F. LÉPINE: Yes.
- [147] CNSL M. PATTERSON: That is right, plus the other times when he was remanded back to custody for breaches of his recognizance. I am not sure if those dead time was used, but I know -- my friend is right. Since he was arrested in Surrey, it is 77 days as time and a half.
- [148] CNSL F. LÉPINE: It is 115.5.
- [149] THE CLERK: Mr. Justice, Mr. Lépine is right. It is for -- it would -- we cannot just say 77 days. We would have to break it down for each count.
- [150] THE COURT: For each count? Well, he is in custody on all three counts.
- [151] CNSL M. PATTERSON: So it would be 116 days including time and a half.
- [152] THE COURT: All right, so the 30-month prison sentence that I have imposed on Mr. Knauff will be reduced 116 days' credit for time served which is 77 days in custody on these charges times one-and-a-half days.
- [153] CNSL M. PATTERSON: Just for completeness, if any victim fine surcharge is applicable, I would ask for those to be waived given the significant jail sentence that Mr. Knauff will be serving?
- [154] THE COURT: Mr. Lépine?
- [155] CNSL F. LÉPINE: There is no victim fine surcharge because of the Boudreau decision [indiscernible] simply does not apply here.
- [156] THE COURT: Yes, I did not think they did, but okay. So there is no victim surcharge on either.
- [157] THE CLERK: Sorry, I missed that. Was that 116 and 77?
- [158] THE COURT: Seventy-seven and 116. It is -- actually, one-and-a-half is 115.5, rounded up to 116.

- [159] THE CLERK: Because I just did it on the calculator and that ended up being -- that ends up being 39.
- [160] THE COURT: Ends up being what?
- [161] THE CLERK: Oh, days, and then we are doing 30 months.
- [162] THE COURT: Thirty months -- yes, so, 30 months is -- it is 30 months less 115 days.
- [163] CNSL M. PATTERSON: Hundred and sixteen --
- [164] THE COURT: One hundred and sixteen days.
- [165] CNSL M. PATTERSON: -- Mr. Justice.
- [166] THE COURT: Yes.
- [167] THE CLERK: Okay.
- [168] THE COURT: Okay, Mr. Lépine, anything else, or Madam Clerk, anything else?
- [169] CNSL F. LÉPINE: No, thank you, My Lord.
- [170] THE CLERK: That is it, thank you, Your Honour.
- [171] THE COURT: Anything, Mr. Patterson?
- [172] CNSL M. PATTERSON: Not from me, Mr. Justice, thank you.
- [173] THE COURT: Mr. Pennington?
- [174] CNSL J. PENNINGTON: No, thank you.
- [175] THE COURT: All right. All right. I wish -- I just want to leave you, Ms. Aeichele and Mr. Knauff, with my hope from the court that you understand that what you were doing was wrong and that you have learned by these mistakes and you will look forward to the future as --
- [176] THE ACCUSED KNAUFF: I do.
- [177] THE COURT: -- law-abiding and productive citizens because this society needs law-abiding and productive citizens. So best of luck to you both. All right.
- [178] CNSL M. PATTERSON: Mr. --
- [179] THE CLERK: Mr. Justice --
- [180] CNSL M. PATTERSON: Mr. Knauff, you can dial my office.
- [181] THE CLERK: -- I am just wondering, I --
- [182] THE COURT: Hang on.

- [183] THE CLERK: I am wondering if the registry will take days and months, but I can ask them that and then maybe --
- [184] THE COURT: Well, it should not be too complicated. You can figure it out, but how many months is -- how many months is --
- [185] CNSL J. PENNINGTON: Assuming 900 days.
- [186] CNSL M. PATTERSON: It is 900 days, 30 times 30, 900 days minus 116 days.
- [187] THE COURT: Is that what it is, Mr. Lépine, is it 30 days?
- [188] CNSL F. LÉPINE: If the court is content with months of 30 days, I am content with that. That is fine.
- [189] CNSL J. PENNINGTON: I think, according to the old math, your net sentence is 784.
- [190] THE COURT: What was that?
- [191] CNSL J. PENNINGTON: 900 less 116 --
- [192] THE COURT: 784, okay, if that is the math.
- [193] CNSL J. PENNINGTON: -- should be -- should be 784.
- [194] THE ACCUSED KNAUFF: Your Honour, did I get -- sorry to interrupt, was 30 months. So that is concurrent, correct? That is not -- like 30, 30, 30 months, like 90 months, right? So 30 --
- [195] THE COURT: Thirty months to be served concurrently on all three.
- [196] THE ACCUSED KNAUFF: Okay [indiscernible/videoconference].
- [197] THE CLERK: So it is 784 new days.
- [198] THE COURT: New days.
- [199] THE CLERK: Thank you.
- [200] THE COURT: Okay, thank you, all. "G.P. Weatherill J."

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