

CANADA / JUDGMENT

R. v. Brodek

2023 BCSC 1562

COURT

Supreme Court of British Columbia

DECIDED

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2023 BCSC 1562 R. v. Brodek

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Brodek,

2023 BCSC 1562

Date: 20230630

Docket: 40718-2; 40721-2; 40734-2; 40737-2; 40768-3

Registry: Port Alberni

Rex

v.

Josef Brodek

Before: The Honourable Mr. Justice Giaschi

Oral Reasons for Sentence

Counsel for the Crown:

J. Rutherford

Counsel for the Accused:

C.L. Hodson

(as Agent for J. Dosanjh)

Place and Date of Trial/Hearing:

Nanaimo, B.C.

April 27-28 and June 30, 2023

Place and Date of Judgment:

Nanaimo, B.C.

June 30, 2023

Overview

- [1] The defendant was initially charged with 40 counts of mostly drug and weapons related offences under five separate indictments: 40718-2, 40721-2, 40734-2, 40737-2, and 40768-3. The indictments covered the period from February 2, 2020, to May 22, 2022. Several of the indictments were amended and the defendant has now pleaded guilty to eight counts.
- [2] In relation to Indictment 40718-2, on May 6, 2022, the defendant pleaded guilty to Counts 1, 8, 9, and 10, and the balance of the charges were stayed. The guilty pleas were entered after a Charter voir dire and a challenge to a search warrant were determined against the defendant. The counts to which the defendant pleaded guilty all occurred on February 2 or 3, 2020, in the City of Port Alberni, and are more particularly as follows:
- a) Count 1 - possession of a controlled substance, to wit, diacetylmorphine (heroin) and fentanyl for the purposes of trafficking, contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 [CDSA];
 - b) Count 8 - possession of a prohibited weapon, prohibited device, or prohibited ammunition, a Remington .338 calibre rifle, while not being the holder of a licence under which he may possess it, contrary to s. 91(2) of the Criminal Code, R.S.C. 1985, c. C-46 [Criminal Code];
 - c) Count 9 - possession of a prohibited weapon, prohibited device, or prohibited ammunition, a Winchester Model 70 .270 calibre rifle, while not being the holder of a licence under which he may possess it, contrary to s. 91(2) of the Criminal Code; and
 - d) Count 10 - possession of a prohibited firearm, restricted firearm, or non-restricted firearm, an SKS 7.62 rifle with bayonet, while not being the holder of a licence under which he may possess it, contrary to s. 91(1) of the Criminal Code.
- [3] Indictment 40721-2 initially included three counts. However, on April 27, 2023, the Crown applied to amend the indictment by rolling two of the counts into a single count. The amendment was not opposed and was granted. Thereafter, the accused pleaded guilty to one count of possession of firearms on February 2 and 3, 2020, to wit, a Remington .338 calibre rifle and a Winchester Model 70 .270 calibre rifle, while he was prohibited from doing so, contrary to s. 117.01 of the Criminal Code.

- [4] Indictment 40734-2 initially included four counts alleged to have occurred on March 13, 2022, in the City of Port Alberni. Again, on April 27, 2023, the indictment was amended by rolling the four counts into one. Under the amended indictment, the defendant pleaded guilty to one count of possession of controlled substances for the purpose of trafficking on March 13, 2020, contrary to s. 5(2) of the CDSA. The drugs involved were methamphetamine, cocaine, diacetylmorphine (heroin)/fentanyl, and hydroxybutanoic acid (GHB).
- [5] In respect of Indictment 40737-2, which involved one count of possession of ammunition contrary to s. 117.01(1) of the Criminal Code, the Crown advised that this charge would be stayed at the conclusion of sentencing.
- [6] Indictment 40768-3 initially included 19 counts for drug-related offences in February and May 2022. Again, on April 27, 2023, the indictment was amended by rolling Counts 3 and 4 into Count 2, and by amending Count 6 to include methamphetamine, cocaine, GHB, and fentanyl. The defendant pleaded guilty to the amended counts. The Crown advised that all other charges under this indictment were to be stayed at the conclusion of sentencing. The counts to which the defendant pleaded guilty were:
- a) Amended Count 2 - that between February 2022 and May 14, 2022, at or near the City of Port Alberni, he did unlawfully traffic in a controlled substance, to wit: methamphetamine, contrary to s. 5(1) of the CDSA; and
 - b) Amended Count 6 - that on or about the 18th day of May, 2022, at or near the City of Port Alberni, he did unlawfully possess controlled substances, to wit: methamphetamine, cocaine, GHB, and fentanyl for the purposes of trafficking.
- [7] In summary then, the defendant has pleaded guilty to four drug-trafficking offences and four weapons offences as follows:
- a) Three counts of possession of controlled substances for the purposes of trafficking, all counts include fentanyl;
 - b) One count of trafficking in a controlled substance;
 - c) Three counts of being in possession of a weapon without a licence; and
 - d) One count of possession of firearms while prohibited.
- [8] The accused is currently in custody and has been in custody since May 18, 2022.
- [9] The Crown seeks a global sentence of 16 years, less time served. The defendant says an appropriate global sentence is nine years, less time served.

Facts

Circumstances of the Offence

[10] The circumstances of the offences are mostly set out in an agreed statement of facts as follows:

FACTS UNDERLYING Files 40718-2 and 40721-2 (the related s. 117 charge)

1. RCMP commenced two investigations in late 2019 and early 2020 concerning suspected drug dealing in Port Alberni.
2. One investigation was in response to a complaint at The Shelter, a local facility which houses people who struggle with addiction. Staff members believed drug dealing was taking place in Unit #225 which belonged to a resident named Anita Littlejohn, who is an indigenous woman.
3. The second investigation arose from Cpl. Carroll observing what he believed to be a possible drug deal taking place at Mr. Brodek's residence at 3009 10th Avenue in Port Alberni.
4. Over time these two investigations merged into a single investigation into Mr. Brodek. After several weeks of observations at both locations and some further surveillance of Mr. Brodek involving short duration meets with various individuals at The Shelter and in other locations around the city, Cpl. Carroll arrested Mr. Brodek.
5. Incident to the arrest, the officer seized almost a thousand dollars, a cellphone, score sheets, a scale, keys which operated both the truck and opened a lower rear entrance to 3009 10th Avenue - and a backpack.
6. Within the backpack were drugs, all packaged for street level sale. Total amounts seized were:
 - a. 8.09 grams of fentanyl or heroin/fentanyl;
 - b. 68.14 grams of cocaine;
 - c. 90.79 grams of methamphetamine; [and]
 - d. An assortment of other drugs in pill form including morphine (10 pills), oxycodone (6 pills), and MDA (24 pills)
7. Cpl Carroll obtained a search warrant for the premises at 3009 10th Avenue, and when executing the warrant determined that Mr. Brodek resided in the lower suite. A search of the lower suite resulted in the seizure of drugs (primarily concealed in a red toolbox hidden in the ceiling), guns, and cash, specifically:
 - a. Approx. 745 grams of methamphetamine: over half in bulk and the remainder packaged in gram amounts appropriate for street level sale;
 - b. 68 MDA pills;
 - c. 15.76 grams of cocaine, packaged for street level sale;

- d. Approx. 3 gallons of GHB in a white jug;
- e. Bundles of cash in \$50 and \$100 denominations totaling \$90,000
- f. A cash box concealed in the ceiling containing \$10,239.76;
- g. An additional \$2105 cash from the bedroom;
- h. An SKS rifle with bayonet and no trigger lock (in a bag under the kitchen table);
- i. A stolen Remington Model 700 .338 calibre rifle with no trigger lock plus two rifle scopes (in a bag under the kitchen table);
- j. A stolen Winchester Model 70 .270 calibre firearm with no trigger lock (in the bedroom closet on the floor leaning against the wall);
- k. Multiple scales which had residue of Cocaine, Methamphetamine, and Fentanyl [and]
- l. Scoresheets detailing names and amounts of money owed for drug product
- 8. The drugs seized were valued as follows:
 - a. The 8 grams of fentanyl had a street value between \$2000 and \$3200
 - b. The 92 MDA pills had a street value of \$460
 - c. The methamphetamine had a street value ranging from \$46,400 if sold by the ounce . . . or of \$84,200 if sold by the "point" . . .
 - d. The GHB had an approximate street value of \$10,000 [and]
 - e. The 97.25 grams of cocaine had a street value of approximately \$6000 (if sold by the ounce) to \$9725 (if sold by the "point" . . .).
- 9. Mr. Brodek's cellphone was also searched pursuant to a warrant, along with Ms. Littlejohn's. The texts between the two confirm that Ms. Littlejohn was contacting Mr. Brodek regarding drug sales for herself and other residents [at] The Shelter.
- 10. Further texts from Mr. Brodek's phone indicate he was selling directly to street level users, including people at the Shelter, as well as supplying other dealers such as Ms. Littlejohn.
- 11. Numerous texts are between Mr. Brodek and a person identified as "Iacko" wherein the two address the quality of drugs Iacko prepared for Mr. Brodek and monies owed amounting in the tens of thousands of dollars. Mr. Iacko appeared to be supplying Mr. Brodek with drug product. One text from [Mr.] Iacko to Mr. Brodek from January 18 2020 stated: "Bro so the count on that paperwork was way off it was supposed to be 12400 and you only have me 11860 and if you remember the last time you were also short by 500 so let's try to stay on top of that bro the total for [yesterday's] stuff 15300".
- 12. After his arrest Mr. Brodek was subject to a police undertaking restricting him from attending The Shelter or from possessing any weapons or ammunition.

FACTS UNDERLYING File 40734-2

13. On March 12, 2020 Mr. Barry Heraldson reported a home invasion into his residence at 3009 10th avenue. Mr. Heraldson lived upstairs. The basement was targeted, which was the residence of Josef Brodek. Police attended and processed the scene. Photos obtained pursuant to this investigation showed a wood fore stock of a rifle on the floor of the basement.
14. On March 12, 2020 A "sawed off shotgun" was located by a pedestrian in Roger Creek Park, Port Alberni . . . The gun was lying on the side of a public trail. The firearm was accidentally discharged prior to attendance by police as the pedestrian had attempted to secure and "clear" it themselves. The firearm, a 16-gauge shotgun, was missing its fore stock.
15. On March 13, 2020 Port Alberni Crime Reduction Unit drafted and executed a search warrant at 3009 10th Avenue to recover firearm parts and ammunition from inside the residence.
16. Mr. Brodek was detained in the residence. Without having been told anything about the reason for the search he advised police "the shotgun" was not his and the fore stock was "in the garbage".
17. During the search, a significant quantity of street level packaged drugs were located in a brown satchel in the living room of the residence. A Section 11 CDSA warrant was sought and granted. Subsequent search resulted in the seizure of:
 - a. 287.89 grams methamphetamine worth up to approx \$14,200 if sold by the "point" . . .
 - b. 65.81 grams crack cocaine worth \$6581 if sold by the "point" . . .
 - c. 88.64 grams powder cocaine worth \$8864 if sold by the "point" . . .
 - d. 66.88 grams heroin/fentanyl worth up to \$6652 if sold by the "point" . . .
 - e. 197 pills MDA worth between \$197 to \$985 [depending on the price per pill]
 - f. 6450 ml GHB worth \$6,450;
 - g. Approximately 1299 plastic "baggies"
 - h. Scales;
 - i. Various calibres of ammunition suitable for multiple kinds of firearm contained in a tool box and in a bag from the bedroom;
 - j. The fore stock sought in the initial warrant; and
 - k. \$12,102 cash

FACTS UNDERLYING File 40768-3

18. Two years later, on February 25, 2022, on February 26, 2022, and then again on May 14, 2022, Mr. Brodek sold methamphetamine and GHB to [an] undercover police officer.
19. On February 25 2022, when the Undercover Officer . . . contacted Mr. Brodek by phone he asked for "water and e", street terms for GHB and ecstasy (MDMA). Mr. Brodek charged a higher price than is typical, advising the [undercover officer] the ecstasy [he] was going to get were the "blue dolphins" and they are "really good ones", so they are "a little more". When the two met to exchange \$140 for the drugs, Mr. Brodek again assured the officer the blue dolphins were really good, calling them "deadly".
20. The next day another meet was arranged for the same assortment of drugs. Again the [undercover officer] purchased "blue dolphins", this time for \$90. The [undercover officer] noted Mr. Brodek was driving the same car on both days, a grey KIA SUV.
21. On May 14th 2022, the [undercover officer] contacted Mr. Brodek again to get some "blue dolphins" and some "side" (methamphetamine), and offered to stop by Mr. Brodek's house as he was in a hurry. Mr. Brodek instead directed the [undercover officer] to another address at 3925 6th Ave in Port Alberni, which is a residence owned by a man named "William". William met the [undercover officer] there and let him wait inside the home for Mr. Brodek.
22. While inside the officer noted an automatic keypad lock that deadbolted the door once the men were inside. William assured him it did this all the time. William told the [undercover officer] that Mr. Brodek gave him free drugs for allowing drug exchanges to take place in his home. Mr. Brodek eventually arrived and accepted \$90 for drugs.
23. All of the blue dolphin pills purchased by the [undercover officer] were sent to Health Canada for analysis, and all came back as a mix of methamphetamine and heliomethylamine.
24. On May 18, 2022, Mr. Brodek was arrested for six counts of trafficking drugs, one count of possession for the purpose of trafficking, and prohibited driving. He had a large number of keys on his person including keys to an APEX storage unit.
25. A Search Warrant was granted for the grey Kia SUV and for an APEX storage unit to which Mr. Brodek had keys. The bulk of the drugs in the KIA were in a suitcase in the back of the vehicle; these drugs were primarily packaged for sale. The drugs in the storage locker were in large bulk amounts in large ziplock bags, with some separated into street level sale amounts.
26. From those two locations police seized, in total:
 - a. 208.94 grams of methamphetamine (approx. \$10,000 if sold by "point");
 - b. 146 pills of methamphetamine and heliomethylamine, blue and marked with dolphins (worth between \$730-\$1460 if sold at \$5-\$10/pill as MDMA);

- c. 61.20 grams of cocaine (worth approx. \$6120 if sold by "point");
 - d. 35.94 grams of fentanyl mixed with benzodiazepine (worth \$4320 if sold by "point");
 - e. 792.5 ml of GHB (worth \$792);
 - f. 74.795 grams of MDMA;
 - g. 39 pills of MDA;
 - h. 473 pills and 83 pieces of Benzodiazepine (worth approx. \$5000 if sold at \$10/pill);
 - i. 195.74 grams of Cannabis;
 - j. Score sheets;
 - k. Approximately \$5000 cash;
 - l. Hundreds of small bags and baggies;
 - m. A Glock replica handgun (from under the seat in the KIA); and
 - n. Four replica pistols (from the storage unit).
27. Police also obtained a search warrant for Mr. Brodek's residence, now at 3822 7th Avenue. When police initially attended, Mr. Brodek's girlfriend Ms. Jessica Illet answered the door. Police were aware that two young children (aged 3 and 7) resided in the home, and Ms. Illet advised the children were not home at that time, so they [the children] did not witness the execution of the warrant. From the home police seized:
- a. A syringe and measuring cup stained with GHB (from the open shed)
 - b. A waterbottle containing GHB ([on the] shelf in the front entryway)
 - c. A "smokey moonshine" jar containing 5ml GHB ([in the] kitchen cupboard)
 - d. Two cans of bear spray ([in the] kitchen cupboard)
 - e. A black case containing drug pipes and confirmed 0.15 methamphetamine in baggies as well as two morphine pills (top of dresser in adult bedroom)
 - f. A functioning electronic scale ([in a] bedroom dresser drawer)
 - g. A Narcan kit with pipes and drug residue ([in the] dresser drawer)
 - h. A clear green lidded container with 0.72 grams of methamphetamine ([in the] dresser drawer)
 - i. A Beretta pellet gun ([in the] dresser drawer) [and]
 - j. A pellet rifle (behind the dresser [drawer])
28. Mr. Brodek has been held in custody since May 18th 2022.

29. At the time of these offences, Mr. Brodek was subject to a lifetime weapons prohibition under s. 109 of the Criminal Code.

Pre-Sentence Report

[11] I have been provided with a pre-sentence report filed July 21, 2022. The report discloses:

- a) The defendant is 53 years of age, was born in Slovakia, and emigrated to Canada at the age of 12. He left home at the age of 17 to escape his father, who had issues with alcohol and was strict, controlling, and physically abusive of both him and his mother.
- b) The defendant left school after completing Grade 10. He worked seven or eight years as a painter but then had to quit because of carpal tunnel syndrome. For the past 10 years, he has been in receipt of disability benefits.
- c) The defendant maintains contact with his mother and sister.
- d) The defendant has multiple children, including:
 - i. a daughter from a previous relationship who is now 31 and resides in Mississauga. He does not have a close relationship with her;
 - ii. a biological son from a second relationship with a Jody Carlson. That son is 17 years of age. Jody Carlson had three other children whom he considers his stepchildren. All of these four children were raised by Jody Carlson's mother, Vina Carlson;
 - iii. he has a biological daughter, aged 16, from a previous relationship with R.F. This daughter has also been raised by Vina Carlson; and
 - iv. he possibly has an additional son that was mentioned in a 2017 pre-sentence report.
- e) The defendant has a grandson whom he has not seen due to his current incarceration.
- f) He has been in a relationship with Jessica Illet for the past two years.
- g) The defendant claimed to have a drug addiction which he mostly hid from his family. He claims that he sold drugs to support his own drug habit. He commenced smoking hashish at age 15 and progressed to harder drugs at age 17. By his mid-twenties, substance abuse was a problem. For the past 10 years, he has been addicted to crystal meth.
- h) Vina Carlson confirmed that the accused has had drug addiction issues since she has known him. She said that other than his drug addiction, the accused was a very nice person, helpful, and good to his children.
- i) The defendant quit drinking alcohol in 2012.
- j) The defendant stated that he was receiving addiction counselling at Vancouver Island Regional Correctional Centre ("VIRCC") and expressed a desire for further counselling and residential treatment.

- k) The report writer confirmed that the defendant had attended counselling a couple of times. Further, although the defendant told the writer that counselling had never been offered to him previously, the report writer noted that services were, in fact, offered to him and that he was not cooperative.
- l) The defendant has no history of mental health concerns, although he has been depressed since being in custody.
- [12] The report writer notes that the defendant was cooperative, compliant, and respectful since being remanded in custody. However, the report writer also notes that the defendant's Community Corrections file indicates his overall compliance has not been positive.
- [13] The report writer noted that the accused's perception into the impact of his offences on the community is limited and that he minimizes his own behaviour, justifying his drug trafficking on the grounds that:
 - 1) If he did not sell drugs, someone else would; and
 - 2) That no one overdosed on the drugs he sold.

Prior Convictions

- [14] The defendant has a lengthy criminal history starting in 1988 and comprising over 50 convictions. These include:
 - a) One count of sexual assault;
 - b) 19 counts of break and enter;
 - c) Six counts of theft;
 - d) Four counts of possession of stolen property from 1989;
 - e) Two counts of assault;
 - f) Two counts of assault of a police officer;
 - g) Six counts of breach of court orders;
 - h) One parole violation;
 - i) Two counts of escape; and
 - j) Four driving offences.
- [15] In addition, the defendant has drug or weapons-related convictions, namely:
 - a) One for possession of a controlled substance, one for possession for the purposes of trafficking, and one for possession of a firearm in December 2003; and
 - b) One conviction for possession for the purposes of trafficking in 2010.

Other Evidence

- [16] In addition to the information contained in the pre-sentence report concerning rehabilitation efforts, I have been provided with a certificate of completion dated October 2022, certifying that the defendant has successfully completed a course on "Living Without Violence" while at VIRCC.
- [17] I have also been provided with a letter from the canteen supervisor at VIRCC who writes that the defendant has been working in the canteen since October 2022, that he is a joy to work with, and that he has a positive attitude and good work ethic. He further writes that the defendant looks forward to fulfilling his role as a father to his children and believes he will "be there for them in the future, as well as being a positive contributing member of society".
- [18] The defendant also spoke to the court. He acknowledged that he was accountable and that he needed treatment. He apologized to his family, friends, and people he had hurt. He said he planned to work on himself and, after treatment, to have a plan for the rest of his life.

Impact on Victims and Community

- [19] I have been provided with the report of the Coroners Service titled, "Unregulated Drug Deaths - Summary" for the period to the end of March 2023. The report contains cold hard data of the continuing opioid crisis. The number of unregulated drug deaths in March 2023 are suspected to be 197, which equates to 6.4 deaths per day, a nine-percent increase over the year prior.
- [20] For the Island Health Authority, which is the appropriate authority for Port Alberni, the number of deaths increased from 60 in 2013 to 272 in 2020, to 398 in 2022. For the local health area of Alberni/Clayquot, the number of deaths increased from five in 2016 to 26 in 2022.
- [21] The substances most involved in drug deaths are fentanyl, cocaine, and methamphetamine. In 2022, fentanyl was involved in 86 percent of deaths, cocaine in 38.8 percent, and methamphetamine in 44.2 percent. I observe that the defendant's convictions involve all of these particular drugs.
- [22] It is also relevant that Port Alberni, where the offences occurred, is a small and somewhat isolated community with a significant Indigenous population. The defendant must have been a significant player in the distribution of drugs in the community, and he was supplying drugs directly or indirectly to Indigenous persons. I have been provided with an article from the North Shore News dated April 4, 2023, reporting on a forum held in Port Alberni by the Tseshaht First Nation to address the opioid crisis. The article reports that Port Alberni "is seeing an increase in drug-induced deaths".

Submissions

- [23] The Crown submits that the various convictions ought to attract a total sentence of 18.5 years, broken down as follows:
- a) Under 40718-2: three years on the possession for purposes of trafficking conviction and two years on the three weapons-related offences, for a total of five years;
 - b) Under 40721-2: firearm possession, 18 months;
 - c) Under 40734-2: possession for the purposes of trafficking, five years on the basis of the step-up principle;
 - d) Under 40768-3: three years on the trafficking conviction and seven years on the possession for purposes of trafficking conviction, to be served concurrently.
- [24] The Crown submits that based on the totality principle, the total sentence of 18.5 years should be reduced to 16 years.
- [25] The defence submits that the total sentence before consideration of the totality principle should be 11 years, broken down as follows:
- a) Under 40718-2: three years on the possession conviction and one year on the three weapons-related offences, for a total of five years. I note that the difference between the Crown's position and the defence position under this indictment is whether the firearms conviction should be two years or one year;
 - b) Under 40721-2: firearm possession, six months consecutive;
 - c) Under 40734-2: possession for the purposes of trafficking, three years consecutive; and
 - d) Under 40768-3: two years on the trafficking conviction and 3.5 years on the possession conviction to be served concurrently.
- [26] The defence submits that the total sentence of 11 years should be reduced to nine years, based on the totality principle, subject to adjustment for time served.
- [27] Defendant's counsel advised that after the first arrest and seizure of funds, the defendant was beaten and had to continue dealing, to both support his habit and to pay off his drug debts.
- [28] The defendant submits his moral culpability is diminished, because his criminality is rooted in addiction. More specifically, the defendant submits:
- a) He turned to drugs and became addicted because of a troubled childhood;
 - b) He needed to sell drugs to support his addiction;
 - c) He was mid-level in the drug hierarchy, but not far from street level, and did not have a sophisticated drug operation; and

- d) He did not live a lavish lifestyle from drug trafficking.

General Principles of Sentencing

[29] The general principles and purposes of sentencing are set out in ss. 718 through 718.201 of the Criminal Code. The purpose and objectives of sentencing are set out in s. 718, which provides:

Purpose

718 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.

[30] 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 (s. 718.1).

[31] Other principles of sentencing that I am required to take into account are set out in s. 718.2. In summary, these are:

- a) Aggravating or mitigating circumstances, including deemed aggravating circumstances as set out in s. 718.2(a). Aggravating circumstances are deemed to include evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation, and evidence that the offence was committed while the offender was subject to a conditional sentence order made under 742.1 or released on parole, statutory release, or unescorted temporary absence under the Corrections and Conditional Release Act, S.C. 1992, c. 20.
- b) The sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances (s. 718.2(b));
- c) Where consecutive sentences are imposed, the combined sentence should not be unduly harsh or long, i.e., the so-called totality principle (s. 718.2(c));

- d) The offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances (s. 718.2(d)); and
 - 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 (s. 718.2(e)).
- [32] I observe that s. 718.2(d) and (e) encompass what is commonly referred to as the restraint principle, and is not restricted to simply determining whether a jail term should be imposed. It also applies in determining the length of any term of imprisonment: *R. v. H.M.*, 2023 ONSC 1002 at para. 20.

Concurrent versus Consecutive

- [33] Section 718.3(4) of the Criminal Code addresses consecutive sentences for multiple offences. It provides:
- (4) The court that sentences an accused shall consider directing
 - (a) that the term of imprisonment that it imposes be served consecutively to a sentence of imprisonment to which the accused is subject at the time of sentencing; and
 - (b) that the terms of imprisonment that it imposes at the same time for more than one offence be served consecutively, including when
 - (i) the offences do not arise out of the same event or series of events,
 - (ii) one of the offences was committed while the accused was on judicial interim release, including pending the determination of an appeal, or
 - (iii) one of the offences was committed while the accused was fleeing from a peace officer.
- [34] The decision to impose consecutive or concurrent sentences is discretionary. Generally, concurrent sentences are appropriate where the acts constituting the offence[s] were part of a linked series of acts within a single endeavour: *R. v. G.P.W.* (1998), 106 B.C.A.C. 239 at para. 35; *R. v. Li*, 2009 BCCA 85 at para. 47.
- [35] However, consecutive sentences may be appropriate where the offences constitute "invasions of different legally-protected interests", even if they arise out of the same incident: *R. v. McCrea*, 2008 BCCA 227 at paras. 7-8.
- [36] Where an offender is convicted of both drugs and weapons offences committed at the same time, there is no hard and fast rule that consecutive sentences be imposed: *R. v. Borecky*, 2013 BCCA 163 at para. 25; *R. v. Mann*, 2018 BCCA 265 at paras. 82-85; and *R. v. Lee*, 2018 BCCA 428 at paras. 17-19.

- [37] However, where consecutive sentences are imposed, a firearms offence cannot also be treated as an aggravating factor: Lee at para. 20. Further, where consecutive sentences are imposed, the totality principle must be applied: Mann at para. 85.

Totality Principle

- [38] Where a defendant is convicted of more than one offence, the sentencing judge must craft a global sentence which reflects the overall gravity of the offences and the defendant's moral blameworthiness. This is a two-stage process. At the first stage, the court determines the appropriate sentence for each offence and whether they are concurrent or consecutive. At the second stage, if consecutive sentences are imposed, the court must assess whether the resulting overall sentence is unduly harsh or disproportionate. If it is, it must be adjusted to arrive at an appropriate global sentence. (R. v. G.F., 2018 BCCA 339 at paras. 35- 37).

Credit for Time Served

- [39] Sections 719(3) to (3.2) provide that a court may take into account any time spent in custody when determining the sentence to be imposed and may, if the circumstances justify, give credit for pretrial custody to a maximum of one and one-half days for each day spent in custody.

Ancillary Orders

- [40] I will not address the legal principles regarding ancillary orders, as the ancillary orders to be imposed in this matter are agreed.

Relevant Case Law

- [41] The parties have referred me to a number of authorities that address the impact of fentanyl trafficking on sentence and that otherwise provide a guide for the appropriate sentences to be imposed. I do not intend to address all of the cases to which I have been referred, but limit my comments to only the most relevant.
- [42] The Crown refers me to R. v. Parranto, 2021 SCC 46, where at paras. 86-91, Justice Moldaver addresses the gravity of large-scale trafficking in hard drugs. He notes that such trafficking causes "death, destruction, and havoc" in communities across Canada, leads inexorably "to a host of other ills, including an increase in all manner of crimes", has devastating consequences for families, and has significant, if not staggering, costs to society. At para. 92, he observes that significant sentences are imposed for trafficking in hard drugs, and provides examples of sentences of nine and 10 years.
- [92] Trafficking in hard drugs is thus a "crime with such grievous consequences that it tears at the very fabric of society" (Pushpanathan, at para. 79). Significant penitentiary sentences are regularly imposed for individuals who traffic in large quantities of such drugs, which, as we shall see, are far less deadly than fentanyl (see, e.g., R. v. Bains, 2015 ONCA 677, 127 O.R. (3d) 545 (9 years for possession of one kilogram of heroin for the purpose of trafficking); R. v.

Athwal, 2017 ONCA 222 (12 years for conspiracy to possess heroin for the purpose of trafficking); R. v. Chukwu, 2016 SKCA 6, 472 Sask. R. 241 (10 years for the possession of 0.59 kilograms of heroin for the purpose of trafficking); R. v. Dritsas, 2015 MBCA 19, 315 Man. R. (2d) 205 (9 years for possession of cocaine for the purposes of trafficking for a "high-level cocaine trafficker involved in kilo-level deals" (para. 9)).

- [43] At paras. 93-98 of Parranto, Moldaver J. specifically addresses fentanyl. He notes that fentanyl "has altered the landscape of the substance abuse crisis in Canada", is extremely dangerous, is highly addictive, carries a high risk of overdose, and has been responsible for a large percentage of deaths. At para. 101, he concludes that "sentencing judges should feel justified where circumstances warrant in applying mid-level double-digit sentences and, in particularly aggravating circumstances, potential sentences of life imprisonment for large-scale trafficking in fentanyl.
- [101] Ultimately, largescale trafficking in fentanyl is a crime that preys disproportionately on the misery of others -- the marginalized and those whose lives are marked by hopelessness and despair. It is a crime motivated by greed and by a callous disregard for the untold grief and suffering it leaves in its wake. Above all, it is a crime that kills -- often and indiscriminately. It follows, in my view, that what matters most is that those individuals who choose to prey on the vulnerable and profit from the misery of the Canadian public for personal gain are sentenced in accordance with the severity of the harms they have caused. Fentanyl trafficking, and largescale trafficking in particular, are a source of unspeakable harm. Accordingly, while the range of sentences currently imposed for the directing minds of largescale fentanyl operations straddles the upper single digits and lower double digits, sentencing judges should feel justified, where circumstances warrant, in applying a higher range, consisting of mid-level double digit sentences and, in particularly aggravating circumstances, potential sentences of life imprisonment.
- [44] I note that at para. 99, Moldaver J. expressly said that his comments about higher sentences "do not apply to sentences for street-level trafficking or where traffickers are motivated by a need to support their own addiction".
- [45] In Lee, the offender's vehicle was searched and police found a handgun, ammunition, 11.7 ounces of cocaine, 65.7 grams of heroin and fentanyl mix, nine ounces of crystal methamphetamine, 500 millilitres of GHB, and cash. The offender pleaded guilty to one count of possession for the purpose of trafficking and one count of possession of a prohibited firearm. At trial, he was sentenced to four years on the possession charge and three years on the weapons offence to be served consecutively. The sentence was appealed, primarily on the basis that the sentencing judge should have imposed concurrent sentences.
- [46] The Court of Appeal held the trial judge did not err by imposing consecutive sentences and that the global sentence of seven years was fit. At para. 22, Justice Garson wrote:

- [22] As the Crown emphasized, citing, among other authorities, Mann and R. v. Smith . . . fentanyl is a scourge that imposes intolerable risks on society and sentences of four to six years' imprisonment have been imposed for offences involving trafficking in fentanyl alone. Similar sentences have also been imposed in cases involving substantial quantities of cocaine and methamphetamine . . . In addition, a three-year sentence for a firearm conviction in "true crime" circumstances is near the bottom of the appropriate range of sentences . . . In my view, considered against this backdrop, taking into account the circumstances of the offences and Mr. Lee's recent, related criminal record and prohibitions, the seven-year global sentence imposed by the judge is manifestly fit. I would not disturb it on appeal. [Citations omitted.]
- [47] Mann, involved trafficking convictions for fentanyl and carfentanil, an even more dangerous drug, and firearms offences. The offender was given four years for fentanyl trafficking, five years for carfentanil trafficking, and three years for the firearms offences. The trafficking sentences were concurrent. The firearms sentence was consecutive.
- [48] On appeal, at paras. 86-87, Justice Finch addressed the court's prior decision in R. v. Smith, 2017 BCCA 112, where the court held that the sentencing range begins at 18 months for a first-time offender engaged in street-level trafficking, and that the top of the range could exceed 36 months depending on the circumstances. Justice Finch held that 36 months was not a cap and further clarified that Smith was not applicable where there were elements of a mid-level trafficking scheme and the conduct of the appellant was found to display an extreme indifference to human life. In result, the appeals of the sentence were dismissed.
- [49] In R. v. Kim, 2022 BCSC 518, the accused was convicted on nine counts of possession for the purpose of trafficking and five firearm offences, all of which stemmed from the execution of two search warrants. The drugs involved in the possession offences included 170.06 grams of heroin, carfentanil, fentanyl, analogues and derivatives of fentanyl, 216.43 grams of cocaine, 81.49 grams of methamphetamine, 76 grams of oxycodone and acetaminophen, and 109.97 grams of Alprazolam. The firearms offences concerned a loaded handgun, an unloaded handgun, and two unloaded semiautomatic rifles. The offender was sentenced to 10 years for the fentanyl, 10 years for the analogues and derivatives of fentanyl, carfentanil, six years for the heroin and meth, two years for the other drugs, and to five years and three years on the firearms offences. All sentences were concurrent, which meant a global sentence of 10 years.
- [50] I note that the circumstances in Kim involved a dial-a-dope operation, which appears to be of significantly greater sophistication than what is before me. Justice Devlin described the operation as "a sophisticated and high-volume drug trafficking operation", and the defendant before her had a "significant" role in the operation: paras. 13-14.
- [51] The defendant referred me to R. v. Wilkinson, 2021 BCSC 896, which concerned a defendant charged inter alia with two counts of possession for the purposes of trafficking under one indictment, and possession of a prohibited firearm under another indictment. The drugs

involved were a heroin and fentanyl mix of 97.3 grams, cocaine, and methamphetamine. The defendant had experienced significant trauma, both as a child and as an adult, was addicted to drugs, and had an extensive criminal record. At para. 21, Justice Steeves noted that there was some consistency in the authorities in applying a sentence of four years to the possession for the purpose of trafficking. The mitigating factors were the defendant invited a conviction after a voir dire, he expressed some remorse, had a difficult life, and was addicted. The aggravating factors were his significant record, multiple drugs were involved, he was trafficking in a small community, and fentanyl was involved. Justice Steeves sentenced the defendant to four years on the fentanyl-related conviction. Concerning the conviction for carrying a firearm contrary to a prohibition order, Steeves J. noted that such offences normally carry a sentence of six to 12 months applied consecutively to any possession conviction. However, aggravating factors included the firearm was loaded, the accused escaped police, the accused had had two prior prohibitions, and the defendant's criminal history included crimes of violence. Justice Steeves sentenced the defendant to four years on the weapons offence. Justice Steeves then reduced the total sentence of eight years to six years applying the totality principle.

- [52] I consider Wilkinson to be instructive in relation to the appropriate sentence for the possession for the purpose of trafficking convictions before me. I find it less helpful on the weapons offences, given there was a loaded weapon.
- [53] The defendant also referred me to *R. v. Harrower*, 2021 BCSC 1796. It had some similarities with the present case in that there were possession for the purpose of trafficking charges approximately two years apart, and part of the defendant's involvement was due to his addiction to drugs. However, the defendant in *Harrower* was in his twenties, had a much less extensive criminal record and, most significantly, was not in possession of fentanyl.
- [54] *R. v. Campbell*, 2021 BCSC 853, involved two counts of possession for the purpose of trafficking for which the defendant pleaded guilty. The drugs involved included fentanyl (627 grams), cocaine (846 grams), and methamphetamine (395 grams). The accused admitted to being a mid-level trafficker and admitted he sold drugs to make money, although he did not live a lavish lifestyle. The accused also had a long history of drug addiction but had undergone treatment. Justice Ker noted several mitigating factors including a genuine expression of remorse, a genuine understanding of the harm caused to society, the lack of a criminal record, and the significant rehabilitative steps the defendant had undertaken. She found he embodied "the model of exceptional circumstances" and she determined he should be sentenced below the range for the volume and type of drugs involved. The sentence imposed was two years imprisonment followed by three years probation on both counts to be served concurrently.
- [55] I observe that in *Campbell*, Ker J. noted, at paras. 65 and 75, that the sentence range for a mid-level dealer in fentanyl was between three and 10 years, depending on the amount of fentanyl involved, the duration of the enterprise, and other circumstances.

- [56] In *R. v. Renshaw*, the defendant was found guilty after a trial of 11 counts of possession for the purpose of trafficking, one count of obstructing a police officer, and one count of possession of a prohibited weapon. The parties were agreed on the sentences to be imposed for obstruction and the weapons offences, three months and 12 months respectively. They disagreed on the sentences for the possession for the purpose of trafficking offences, which involved fentanyl and mixes containing fentanyl. The Crown sought a global sentence of eight years, whereas the defendant argued for a conditional sentence of two years. Justice Gerow found that the defendant was at the lower end of mid-level dealing and dealt in part to support his own habit (para. 59). A global sentence of three years was imposed. The aggravating factors were the amount of drugs involved, that the defendant had a prohibited weapon, and the defendant's criminal record that included a conviction for possession for the purpose of trafficking. The mitigating factors were the defendant was addicted, had a difficult upbringing, expressed a willingness to deal with his addiction, and had support in his community.
- [57] I was also referred to *R. v. Myles*, 2020 BCSC 564, by the defendant in relation to the appropriate range of sentences for firearms offences. The defendant in that case was convicted on 13 counts of firearms-related offences, including possessing firearms while prohibited from doing so under five separate prohibitions. Justice Power noted at para. 21 that sentences for s. 117 offences will generally, but not always, be consecutive. In relation to the four offences of possessing a firearm while prohibited, the defendant was sentenced to six months for each count concurrent with each other, but consecutive to the other convictions for which he was sentenced to 15 months.

Analysis

Proportionality: Gravity of the Offence and Moral Blameworthiness

- [58] The cases make it clear that deterrence and denunciation are the primary principles of sentencing when addressing convictions of possession for the purposes of trafficking. The cases equally make it clear that drug trafficking is a scourge on society.
- [59] Two relevant factors in determining the moral blameworthiness of the defendant are: first, the level at which the defendant operated within the drug trafficking hierarchy; and, second, his motivation, which is to say was he selling drugs to support his addiction or to make money.
- [60] The Crown says the defendant was a mid-level dealer who ran a sophisticated operation. The defendant says he was, at best, a low-mid-level dealer and that he sold drugs merely to feed his habit.

- [61] I agree with the Crown that the defendant was a mid-level dealer. Although it is clear from the agreed facts that the defendant sometimes sold drugs direct to users, it is equally clear that he supplied other street-level dealers. The evidence supporting the inference that he was a mid-level dealer includes:
- a) The volume and variety of drugs seized in February 2020, March 2020, and May 2022;
 - b) Multiple locations were used at various times for the drug sales and storage of drugs;
 - c) Some drugs were broken down and packaged but others were in bulk;
 - d) There were elements of a dial-a-dope operation; and
 - e) The amount of cash, over \$100,000 seized from his home in February 2020, strongly supports an inference that he was a mid-level dealer.
- [62] Concerning the accused's motivation, the volume and variety of drugs seized and the amount of cash seized suggest that there was a significant profit-making component to the defendant's activities. I accept that the defendant has a longstanding addiction to drugs and that this was part of the reason for his participation in the industry. His drug addiction diminishes his moral culpability somewhat, but I do not agree that he sold drugs only to feed his habit. He also did it to make money.

Aggravating Factors

- [63] There are several aggravating factors that I take into account.
- [64] The fact that the drugs in the possession of the defendant included fentanyl is a significant aggravating factor. The three possession for the purpose of trafficking offences for which the defendant has been convicted all include some fentanyl and the amounts involved were not insignificant. The amount of fentanyl or drugs containing fentanyl was 8.0 grams, 66.88 grams, and 35.94 grams, for a total of in excess of 110 grams. These offences are particularly grave and the moral blameworthiness of the accused is high.
- [65] The defendant's lengthy criminal record is an aggravating factor. Although many of the convictions are dated and concern property crimes, there is a conviction for possession for the purpose of trafficking in 2010 and another in 2003. Hence, the conviction under Indictment 40718-2 is his third conviction for possession for the purpose of trafficking.
- [66] The fact that the offences occurred in the town of Port Alberni, a somewhat isolated community with a large Indigenous population, is an aggravating factor. The defendant must have been a significant player in the distribution of drugs in that community. Additionally, he was selling, directly or indirectly, to Indigenous persons, a vulnerable group.
- [67] In respect of Indictment 40734-2 (March 2020), an additional aggravating factor is that ammunition was seized on this occasion.

- [68] In respect of Indictment 40768-3 (February and May 2022), additional aggravating factors are:
- a) First, these offences took place in February and May 2022, and the defendant's trial in File 40718-2 took place from May 2nd to May 6th. Hence these offences occurred immediately before, during, or immediately after the trial under Indictment 40718-2. Additionally, these offences occurred after the indictment was made in 40734-2.
 - b) Second, the defendant misled the undercover officer as to the nature of the drugs being sold. One of the drugs the undercover officer sought to purchase was ecstasy or MDMA. He was sold "blue dolphins" which, when analyzed turned out to be methamphetamine and heliomethylamine; and
 - c) Third, the defendant stored drugs and drug paraphernalia in a residence in which two young children aged three and seven resided. Although there is no evidence that the children witnessed or were aware of the presence or use of, or trafficking in drugs, they were nevertheless put at needless risk by the defendant.
- [69] The fact the defendant continued his drug activities around the time of his trial under Indictment 40718-2, after pleading guilty to some of those charges and after he was charged under Indictment 40734-2, also demonstrates a lack of rehabilitation or deterrence, and justifies more than a moderate increase or step-up in the sentence to be imposed under Indictment 40768-3: see generally *R. v. Cory*, 2009 BCCA 146 at paras. 6-8.

Mitigating Factors

- [70] There are mitigating factors that I take into account.
- [71] First, the defendant's guilty pleas are mitigating factors. However, the effect of the guilty plea on sentence varies with the circumstances, in particular on when it was made: *R. v. Dulude*, 2008 BCSC 510 at paras. 27-28.
- [72] In relation to the later indictments, the guilty pleas were made before trial and are entitled to substantial weight. In relation to the charges under Indictment 40718-2, the defendant only pleaded guilty after voir dres were held and determined against him. This does not negate the mitigating effect of the guilty plea but does attenuate it in relation to the convictions under that particular indictment.
- [73] Second, the accused's expression of remorse is a mitigating factor. However, as in *Mann* at para. 90, the mitigating effect of his expression of remorse is tempered by his failure to fully recognize his contribution to the harm caused, as indicated by his continued involvement in the drug business in 2022. I also refer to the pre-sentence report where the writer noted the defendant had limited perception into the impact of his offences on the community, minimized his own behaviour, and justified his drug trafficking on the grounds that (1) if he did not sell drugs, someone else would, and (2) that no one overdosed on the drugs he sold.

- [74] Third, the defendant's efforts at rehabilitation since his incarceration are deserving of some mitigating effect. However, those efforts have, in my view, been minimal. Significantly, the presentence report indicates that the defendant had not been cooperative with rehabilitation efforts in the past and had previously refused services when offered. His continued involvement in the drug business in 2022 also strongly indicates rehabilitation is not high on his list of priorities.
- [75] The defendant submits that he has community support which ought to be considered a mitigating factor. I do not agree that the defendant has much community support. The presentence report indicates that he has minimal contact with his children and grandchildren.

Appropriate Sentences

40718-2

- [76] Under 40718-2, the defendant is convicted on Count 1, possession for the purpose of trafficking, contrary to s. 5(2) of the CDSA and Counts 8, 9, and 10, possession of firearms contrary to s. 9 of the Criminal Code. The parties are agreed that an appropriate sentence for the possession conviction is three years. They disagree on the sentence for the three weapons-related convictions. The Crown submits that these offences should carry a sentence of two years each, consecutive to the possession conviction, but concurrent to each other. The defendant submits the weapons offences should be two years concurrent with each other and with the possession offence.
- [77] In my view, any sentences for the weapons offences should be concurrent to each other, but consecutive to the possession for the purpose of trafficking conviction. Although the firearms convictions arose out of the same incident, these offences constitute "invasions of different legally-protected interests".
- [78] In my view, the sentences sought by the Crown for the firearms offences are, however, excessive.

40721-2

- [79] Under File 40721-2, as amended, the defendant is convicted on one count of possession of firearms, two rifles, on February 2 and 3, 2020, while prohibited, contrary to s. 117 of the Criminal Code. The Crown submits that the appropriate sentence on this conviction is 18 months. The defence submits the appropriate sentence is six months. They agree that any sentence on this conviction should be consecutive. I agree that any sentence under 40721-2 should be consecutive.

40734-2

[80] Under Indictment 40734-2, as amended, the defendant pleaded guilty to one count of possession for the purpose of trafficking on March 13, 2020, contrary to s. 5(2) of the CDSA. The Crown submits an appropriate sentence on this conviction is five years, whereas the defence submits an appropriate sentence is three years. They agree that any sentence on this conviction should be consecutive.

[81] In my view, five years is excessive and three years is too little. I agree, however, that it should be consecutive.

40768-3

[82] Under Indictment 40768-3, as amended, the defendant is convicted of trafficking contrary to s. 5(1) of the CDSA between February 22 and May 14, 2022, and of possession for the purpose of trafficking on or about May 18, 2022, contrary to s. 5(2) of the CDSA.

[83] The Crown submits appropriate sentences on these convictions are three years on the trafficking conviction and seven years on the possession conviction. The defence submits the sentence on the trafficking conviction should be two years and the sentence on the possession conviction should be 3.5 years. The parties are agreed that the sentences imposed under this file are to be served concurrently with each other, but consecutively with the other files.

[84] I agree that the sentences imposed under this file are to be served concurrently with each other, but consecutively with the other files. However, in my view, the sentences sought by the Crown are excessive and by the defence too little.

[85] Concerning the possession sentence, as I have indicated, due to the aggravating factors, there should be more than a moderate increase in the sentence from that imposed for the possession charge in File 40718-2. However, the increase to seven years requested by the Crown is excessive.

Imposition of Sentence

[86] Mr. Brodek, please stand. I now impose sentence on you as follows:

40718-2

[87] In respect of Indictment 40718-2, as amended:

- a) On Count 1, being possession of a controlled substance for the purposes of trafficking contrary to s. 5(2) of the CDSA, I sentence you to a period of incarceration of three years.
- b) On Counts 8, 9, and 10, I sentence you to a period of incarceration of two years to be served concurrently with each other, but consecutively to the sentence imposed under Count 1 of this indictment.
- c) The sentences imposed on Counts 1, 8, 9, and 10 of Indictment 40718-2 are to be served consecutively with the sentences to be imposed in Files 40721-2, 40734-2, and 40768-3.

40721-2

[88] In respect of Indictment 40721-2, as amended, being one count of possession of firearms on February 2 and 3, 2020, while prohibited, contrary to s. 117.01 of the Criminal Code, I sentence you to a period of incarceration of one year to be served consecutively with the sentences imposed or to be imposed in Files 40718-2, 40734-2, and 40768-3.

40734-2

[89] In respect of Indictment 40734-2, as amended, being a single count of possession of controlled substances for the purposes of trafficking, contrary to s. 5(2) of the CDSA, I sentence you to a period of incarceration of four years to be served consecutively with the sentences imposed or to be imposed in Files 40718-2, 40721-2, and 40768-3.

40768-3

[90] In respect of Indictment 40768-3, as amended:

- a) On Count 2 - being one count of unlawfully trafficking in a controlled substance, contrary to s. 5(1) of the CDSA, I sentence you to a period of incarceration of three years to be served concurrently with the sentence to be imposed under Count 6 of this indictment.
- b) On Count 6 - being possession of controlled substances for the purposes of trafficking, contrary to s. 5(2) of the CDSA, I sentence you to a period of incarceration of five years to be served concurrently with the sentence imposed under Count 2 of this indictment.
- c) The sentences imposed under Counts 2 and 6 of this indictment are to be served consecutively with the sentences imposed in Files 40718-2, 40721-2, and 40734-2.

Global Sentence

[91] The total sentence imposed for all convictions is 15 years.

[92] I must now assess whether the resulting overall sentence of 15 years is unduly harsh or disproportionate. In my view, such a total sentence is unduly harsh and disproportionate.

[93] Considering all of the circumstances and the case authorities, an appropriate global sentence is 10 years.

[94] You may sit down, Mr. Brodek.

Credit

[95] You are entitled to credit for time served.

[96] Mr. Brodek has been in custody since May 18, 2022, which means, including today, he has been in custody for 409 days. He is entitled to a credit for time served of 614 days (409 x 1.5).

[97] For the purposes of Corrections, the remaining sentence is 3,036 days (3,650 - 614), calculated from and including July 1, 2023.

Ancillary Orders

[98] I also make the following ancillary orders:

- a) Mr. Brodek is to give a DNA sample when requested to do so under s. 487.051 of the Criminal Code.
- b) Pursuant to s. 109 of the Criminal Code, Mr. Brodek is prohibited from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, and explosive substance, for life.
- c) Pursuant to s. 16 of the CDSA, all offence-related property that has been seized is forfeit.

[99]

[100] THE COURT: And now I think there are some charges that need to be stayed?

[101] CNSL J. RUTHERFORD: Yes, Justice. I believe there's also a victim fine surcharge. Typically, when a person is going away for this amount of time, the Crown makes no submission. It may be that the court wishes to waive it.

[102] THE COURT: I thought that it was agreed it was going to be waived.

[103] CNSL J. RUTHERFORD: Then yes, it is.

[104] THE COURT: The victim surcharge is waived.

[105] CNSL C. HODSON: Thank you, Justice.

[106] CNSL J. RUTHERFORD: Thank you. And Justice, the Crown then enters a stay of proceedings on File 40737, that being a s. 117 charge, and also the remaining counts on 40768. And I will just say, to be safe, if there are any remaining counts that haven't been dealt with by way of the court's sentencing, the Crown enters a stay on those.

[107] THE COURT: All right, well, the only ones I had were 40737-2 and 40768-3.

[108] CNSL J. RUTHERFORD: Yes, and I think that's all there is.

[109] THE COURT: All right. Mr. Brodek, it is a long time, but it is not so long. I do sincerely hope that you can get the help that you have told me you want to get and that you have an opportunity to pull things together and that we never see you in these premises again.

[110] Thank you, we are concluded.

(PROCEEDINGS ADJOURNED AND RECONVENED)

[111] THE COURT: Yes, a correction to my reasons. I misspoke when I said the total of the various individual sentences was 14 years. It is, in fact, 15 years was the total, that is what I should have said. That does not affect in any way my assessment of what the total sentence should be.

[112] So if these reasons are ordered by anyone for any purpose, that will reflected in the reasons.
All right.

[113] CNSL J. RUTHERFORD: Thank you, Justice.

"Giaschi J."

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