

CANADA / JUDGMENT

R. v. Budd

2025 BCSC 2460

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Supreme Court of British Columbia

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2025 BCSC 2460 R. v. Budd

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Budd,

2025 BCSC 2460

Date: 20251204

Docket: 73182-2

Registry: Chilliwack

Rex

v.

Randall Stanley Budd

Before: The Honourable Justice E. McDonald

Oral Reasons for Sentence

Counsel for the Crown:

R. Kandola

Counsel for the Accused:

T. Spettigue

Place and Date of Hearing:

Chilliwack, B.C.

December 2, 2025

Place and Date of Judgment:

Chilliwack, B.C.

December 4, 2025

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[1] These oral reasons were delivered orally. They have since been edited for distribution and publication.

Introduction

[2] On June 16, 2025, the accused entered a guilty plea to one count of possession of Methamphetamine for the purpose of trafficking, contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19.

- [3] The Crown's submission is that a two-year custodial sentence followed by a period of probation would be appropriate to reflect the need for deterrent sentence and to account for Mr. Budd's personal circumstances.
- [4] The defence argues that a suspended sentence, or alternatively, a conditional sentence order ("CSO") would be appropriate in the circumstances due to Mr. Budd being a first-time offender and because he is an Indigenous person who has struggled for many years with addiction and who is now living in residential addiction recovery centre. The defence submits that a suspended sentence or a CSO would allow Mr. Budd to pursue rehabilitation and addiction treatment, while also meeting the other goals of sentencing.
- [5] My task is to craft an appropriate sentence having regard to Mr. Budd's personal circumstances, which I will discuss in detail later, the nature of the offence, the purposes and principles of sentencing set out in the Criminal Code, R.S.C. 1985, c. C-46. To be a fit sentence, it must be proportionate to both the offence's gravity and Mr. Budd's degree of responsibility.

Circumstances of the Offence

- [6] Although there was no agreed statement of facts, counsel for Mr. Budd did not oppose the summary of facts set out by the Crown at the sentencing hearing other than characterizing Mr. Budd's actions as part of a dial-a-dope scheme. The defence submits that Mr. Budd was involved in street level drug trafficking of methamphetamine which was not part of a sophisticated dial-a-dope scheme.
- [7] Based on the Crown's summary of the facts, I will briefly set out the circumstances of the offence.
- [8] On March 16, 2022, the police began an investigation into suspected drug trafficking based on hand-to-hand activity associated with a vehicle registered to someone at an address on X in Chilliwack. ("X Residence")
- [9] Earlier in the day, before the police executed a search warrant at the X Residence, the police observed Mr. Budd leaving the residence and walking to engage in what appeared to be hand-to-hand interactions with persons that he met in an alley. He was then observed returning to the X Residence carrying a black backpack. The police found mail and prescription medication in the X Residence belonging to Mr. Budd as well as mail for the registered owner of the vehicle, and Mr. Budd's sister, R.
- [10] The police located Mr. Budd in the upstairs master bedroom with a black backpack near his feet. The bedroom and the backpack were searched and illicit drugs were found along with indicia of trafficking, such as baggies, scales and a score sheet. The backpack at Mr. Budd's feet contained various illegal drugs, including 82.35 grams of methamphetamine, with a value of between \$4,700 to \$8,200. The methamphetamine located in the backpack is the subject of Mr. Budd's guilty plea. He concedes he possessed the methamphetamine for the

purpose of trafficking.

- [11] Mr. Budd's cell phone was seized, and upon obtaining a warrant, the cell phone was searched. The search of the cell phone revealed text and Facebook messages associated to Mr. Budd's cell phone number. These messages included messages consistent with drug trafficking. In addition, the police also answered incoming calls to Mr. Budd's cell phone at the scene from persons requesting quantities of various illicit drugs.

Circumstances of the Offender

- [12] Mr. Budd is 34 years old. He is an Indigenous person and a member of the Lax Kw'alaams First Nation located in the Prince Rupert area of British Columbia. Mr. Budd's father was also a member of the Lax Kw'alaams First Nation and his mother is of Norwegian-Canadian lineage.
- [13] I have the benefit of a detailed Gladue report respecting Mr. Budd that was prepared in 2022, in relation to another matter. The Gladue report provides details of Mr. Budd's background and personal circumstances.
- [14] Mr. Budd's parents separated when he was approximately four years old due to substance abuse and other problems experienced by Mr. Budd's father. Mr. Budd's mother raised Mr. Budd and his siblings as a single mother. Mr. Budd has several brothers and sisters including both full and half-siblings.
- [15] In his teens, due to leaving home and entering into a couple of tumultuous romantic relationships, Mr. Budd began to use cocaine and other illicit drugs. By 2011, he had developed addictions to numerous drugs, including methamphetamine.
- [16] Mr. Budd was born and raised in Chilliwack. Mr. Budd's mother and his siblings reside in Chilliwack. Although Mr. Budd's father was not present in his life as he grew up, his father now resides with Mr. Budd's older sister, R. In January 2021, Mr. Budd also moved in with R. Until recently when he became homeless, Mr. Budd resided with R. and her children. R. is very supportive of Mr. Budd's addiction recovery and abstinence from drugs.
- [17] Mr. Budd was born with hydrocephalus that required medical monitoring. Mr. Budd's mother indicated the condition could cause developmental, physical and intellectual impairments but she had no recollection of Mr. Budd missing any of his developmental milestones.
- [18] Mr. Budd described his childhood as marked by financial instability. His mother was a single mother reliant on social assistance. He recalled the family moving regularly due to the high cost of rent and his attending eight different schools by the time he was in grade 8.
- [19] At age 13, Mr. Budd reported that his mother re-partnered. Mr. Budd's mother and his stepfather are still together. Mr. Budd described that things got much better for the family when his stepfather and his mother got together.

- [20] Mr. Budd's older half-brother was diagnosed with ADHD and this sibling had some significant challenges as a child. Apparently, he lived in foster care for some years due to significant behavioural problems. When the brother returned to live with the family, Mr. Budd's sister described that he was involved with drugs and crime and he was a very negative influence on Mr. Budd.
- [21] Mr. Budd moved out of the family home when he was 17 years old and he moved in with his girlfriend. Mr. Budd worked for his girlfriend's father installing insulation. He and his girlfriend started using cocaine. When his girlfriend became pregnant and apparently terminated the pregnancy over his objection, the couple broke up. This relationship and its end in 2011, caused Mr. Budd a great deal of emotional hurt and his use of crystal methamphetamine began around this time.
- [22] In 2018, Mr. Budd formed a romantic relationship with another woman. However, they both struggled with crystal methamphetamine use and the relationship ended in late 2018. Since that time, Mr. Budd has not had any other romantic partnerships. He has no dependents.
- [23] In secondary school, Mr. Budd reports he struggled to learn but does not believe he was ever diagnosed with a learning disability. He stopped attending school in grade 10 and he has never graduated. Mr. Budd reported facing racism from both his Indigenous and non-Indigenous peers associated with his appearance. This was described as appearing too white to be considered an Indigenous person, and too Indigenous looking to be considered a white person.
- [24] Mr. Budd has a limited history of employment, dating back more than a decade. He worked for three years installing insulation and two years at a commercial bakery. Mr. Budd reported that he supported his drug addiction by selling drugs and he also received monthly social assistance.
- [25] Despite struggling with drug addiction, Mr. Budd's physical health is overall good. Although he has suffered from cellulitis in his legs that required ongoing treatment including with antibiotics. His mental health is good and he denied any history of diagnosed mental health issues.
- [26] Mr. Budd reports that he started drinking and using marijuana at age 13. At age 17, he started to use cocaine and eventually methamphetamine regularly. As mentioned, Mr. Budd was suffering from polysubstance addiction issues from 2011 onwards, including at the time of the offence.
- [27] Mr. Budd has made efforts to deal with his addiction issues. He used Suboxone but he relapsed. In April 2025, Mr. Budd overdosed. He continues to battle his drug addiction and has recently restarted the use of Suboxone as part of a treatment program.
- [28] Mr. Budd told the pre-sentence report ("PSR") writer that he accepts responsibility for the offence. He admits he committed the offence to support his own drug addiction. The Gladue report writer noted that Mr. Budd displays insight into his problematic thinking. However,

the PSR report writer noted, Mr. Budd did not appear to have any insight about the public harm associated with his offence. Mr. Budd mentioned applying for social assistance or getting a job, which suggests he recognizes other routes to income that do not involve drug dealing.

- [29] Mr. Budd made no mention to the PSR report writer of a desire to pursue sobriety. Both his mother and his sister indicated that they believe that Mr. Budd requires treatment for his addiction. However, since the PSR was prepared, Mr. Budd has been participating in an introductory drug treatment program run by Ruth and Naomi's Recovery Centre in Chilliwack. Shortly before the sentencing hearing, Mr. Budd was admitted into the residential treatment program offered by that centre.
- [30] As mentioned, he has started Suboxone medication because the residential program requires abstinence and regular drug testing. Mr. Budd was able to secure a place in the residential treatment program through his earlier participation in the introductory program.

Criminal Record

- [31] Mr. Budd has one conviction for possession for purposes of trafficking arising from an offence on November 22, 2019 with a disposition on March 31, 2023. Following the disposition for the 2019 offence, he was subject to a 12-month CSO and probation for 12 months. During the period of his supervision, he incurred one breach for breach of his curfew.
- [32] With respect to the 2019 offence, Mr. Budd reported as required to his probation officer and he engaged in one-on-one appointments with the probation officer. Mr. Budd also attended appointments with an Indigenous Wellness Counsellor at Chilliwack Addiction and Prevention Services, and he met with his counsellor monthly. The counsellor confirmed that Mr. Budd was actively engaged in the services.

Does Mr. Budd Qualify as a First Time Offender?

- [33] The defence submits that Mr. Budd comes before the court as a first-time offender. The Crown agrees that for Mr. Budd's 2019 offence, that was disposed of in 2023, it cannot be treated as an aggravating factor for sentencing on the subject offence, but the Crown disagrees that Mr. Budd can be treated as a first-time offender.
- [34] In *R. v. Pete*, 2019 BCCA 244 [Pete], the Court of Appeal confirmed that in circumstances where there is no criminal record pre-dating the index offence, the offender must be treated as a first-time offender. The conviction for an offence after the index offence might be relevant to prospects for rehabilitation on the sentencing for the index offence, but it cannot be regarded as an aggravating factor as if it was a criminal record.

- [35] Based on the Pete decision, counsel for the defence submits that Mr. Budd should be viewed as a first-time offender because Mr. Budd's one conviction is associated with an offence that, while it occurred in 2019, was not disposed of until 2023, after the date of the subject offence.
- [36] The Crown submits that Mr. Budd was treated as a first-time offender at the time of the 2023 disposition for the 2019 offence and therefore, I should not treat Mr. Budd as a first-time offender. I disagree.
- [37] In Pete, at para. 35, Justice Butler discusses the principle that has applied in this province since the decision in *R. v. Jung*, [1976] B.C.J. No. 147 [Jung]. In Jung, a sentence appeal was allowed where in sentencing an accused for trafficking heroin, the judge erred in treating him as an offender with a criminal history. The court found the sentencing judge had erred because he had treated post-offence convictions as prior convictions.
- [38] In Pete at para. 40, the court explains how to treat post-offence convictions as follows:
- A sentencing judge should not treat post-offence convictions as prior convictions or as an aggravating circumstance calling for a harsher sentence. The danger in doing so is that the offender may be treated more harshly than his or her record warrants. The degree of culpability of a first-time offender is not as high as someone who has been convicted and sentenced of other offences at the time of commission of the subject offence.
- [39] In my view, the principle referred to and explained in Pete and Jung indicates that for purposes of sentencing Mr. Budd for the subject offence, I am not permitted to treat his "post-offence convictions as prior convictions or as an aggravating circumstance calling for a harsher sentence": Pete, para. 40. Put differently, he comes before the court as a first-time offender.

Additional Information Regarding Mr. Budd's Aboriginal Community and History

- [40] I have already referred to many details contained in the Gladue report. The report also contains details of Mr. Budd's Aboriginal community and its history, especially as it relates to the devastating impact of colonialism, disease and the residential schools legacy, which damaged and continues to damage generations of people. An official with the Lax Kw'alaams First Nations described the decimation of the population and breakdown of their traditional matrilineal system of governance which continues to be felt by the community and its families.
- [41] Mr. Budd's paternal grandmother is a residential school survivor. Mr. Budd is also an intergenerational survivor and inheritor of the legacy of the residential school system as embodied by the absence of his father from his life.

- [42] The Gladue Report sets out many adverse factors affecting Indigenous people in general that are present in Mr. Budd's life, including: familial instability and breakdown with the absence of his father due to his father's struggles with substance abuse; low educational achievement, poverty and criminality; early introduction to substances; and intergenerational effect of the Indian residential school system. The report contains a number of options and supports available for Mr. Budd's healing needs.

Letters of Support

- [43] Mr. Budd's sister, R., and Mr. Budd's mother provided letters of support. Those letters describe Mr. Budd as a caring and gentle person. The letters also express deep concern about Mr. Budd's well-being and his need for support and treatment to overcome his addiction.
- [44] I accept that Mr. Budd has a strong family support system. It is clear that his family cherishes him and that he is regarded as an important family member. It is also clear that his family believes he comes before the court as a result of his addiction but not because he is entrenched in a criminal lifestyle.

Positions of the Parties

- [45] The Crown submits that an appropriate sentence is a two-year custodial sentence followed by one year of probation.
- [46] The Crown submitted that the sentencing range applicable to the charge of possession for the purpose of trafficking methamphetamine is six to 30 months. The Crown did not refer to any authorities during the sentencing submissions.
- [47] The defence seeks a suspended sentence with a strict probation order or, alternatively, a six-month conditional sentence order with probation to follow.
- [48] The defence submits that the court must keep in mind that after the subject offence, Mr. Budd was convicted of a drug-related offence for which he served a conditional sentence. While he had one violation related to a curfew check, he was put back on the CSO and he completed that sentence. Since 2023, he has not had any further convictions despite ongoing struggles with addiction. The defence submits that this indicates Mr. Budd has already served a sentence for trafficking and has been able to avoid reoffending.
- [49] The defence advised that Mr. Budd has been accepted into a residential drug treatment program beginning with a four-month phase 1. If there has been adequate progress and positive behaviour, Mr. Budd would be eligible to continue in the residential program for up to two years.

- [50] The program involves one year of "structured addiction recovery programming" involving, among other things, one-on-one coaching and counselling. The second year is a relapse prevention program that involves working with a counsellor with a focus on reintegration into the community. The program requires weekly random urine testing and nightly breathalyzer testing, along with full-day programming.

Legal Principles

- [51] The fundamental purpose of sentencing is set out in ss. 718 to 718.2 of the Code.
- [52] Section 718 provides that the fundamental purpose of sentencing is "to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions" with reference to six objectives. The objectives in s. 718 include: denunciation of unlawful conduct; deterrence of the offender and of other persons from committing offences; separation of offenders from society, where necessary; assistance in the rehabilitation of offenders; provision of reparations for harm done to victims or to the community; and the promotion of a sense of responsibility in offenders and acknowledgment of the harm done to victims or to the community.
- [53] In s. 718.1 of the Code, the principle of proportionality is set out, requiring that a sentence be proportionate to the seriousness of the offence and the offender's degree of responsibility.
- [54] Section 718.2 sets out a number of specific principles that a court must take into consideration in sentencing. Section 718.2(a) provides other sentencing principles and it provides for increasing or decreasing a sentence for "any relevant aggravating or mitigating circumstances relating to the offence or offender". Section 718.2(b) provides that "a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances".
- [55] Subsection 718.2(c) outlines what is referred to as the totality principle, which requires that where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh.
- [56] Subsections 718.2(d) and (e) emphasize the need for restraint in the use of imprisonment. These provisions require that an offender not be deprived of liberty if less restrictive sanctions are appropriate in the circumstances, and that 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 Indigenous offenders.
- [57] As Mr. Budd is an Indigenous offender, s. 718.2(e) of the Code and the Gladue factors applicable to him require that I must do more than simply pay "lip service" to the factors so as to give full force to the remedial purpose: *R. v. Davis*, 2025 BCCA 113 at para. 35.

- [58] In cases involving drug trafficking, the authorities establish that denunciation and deterrence are of paramount importance, but the importance of rehabilitation in providing for long-term protection of the community must also be kept in mind: *R. v. Colligan*, 2020 BCSC 1139 at paras. 62-63.
- [59] I may impose a conditional sentence in this case if the applicable conditions set out in s. 742.1 of the Code are satisfied. To do so, I must be satisfied, among other things, that the service of the sentence in the community would not endanger the safety of the community, and that it would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718-718.2 of the Code.
- [60] In approaching sentencing, I remind myself not to lose sight of the individualized nature of the assessment before me, which is an assessment that requires me to weigh the objectives of sentencing in a manner that best reflects the circumstances of this case and of this offender: *R. v. Nasogaluak*, 2010 SCC 6 at para. 43.

Application of Sentencing Principles

- [61] I begin the analysis by considering the mitigating and aggravating factors.

Aggravating and Mitigating Factors

- [62] In this case, there are some aggravating factors, including that the trafficking involved methamphetamine which is recognized in the authorities as a dangerous substance. The Crown also points out that Mr. Budd was arrested with the drugs in a residence where children were living.
- [63] In terms of mitigation, Mr. Budd entered a guilty plea, thereby saving judicial resources.
- [64] Another mitigating factor is associated with the many important Gladue factors that apply to Mr. Budd's personal circumstances.
- [65] Given Mr. Budd's Indigenous heritage, I must also apply the principles from *R. v. Gladue*, [1999] 1 S.C.R. 688 and *R v. Ipeelee*, 2012 SCC 13, in determining an appropriate sentence. Mr. Budd does not report being especially connected to his Indigenous heritage and community, but his family reported that his school experience included some exposure to Indigenous culture.
- [66] His mother explained that she made efforts to expose Mr. Budd and his siblings to their Indigenous culture and heritage through attending cultural events. The Gladue report makes clear that Mr. Budd's current circumstances are related to the many harms resulting from our history of colonialism and the grave harms resulting from the residential school system, including family dislocation, poverty, substance abuse and loss of connection to Indigenous heritage.

[67] Mr. Budd has become disconnected from his heritage and his community, "[l]ike many Indigenous people in Canada, consistent with the objective of Canada's historic assimilationist policies": R. v. Laforge, 2020 BCSC 1269 at para. 86. In crafting the appropriate sentence, I must take a holistic approach to imposing a fit sentence and be mindful that the Court in Gladue and Ipeelee "has recognized that sentencing Indigenous offenders has a role to play in addressing their over-representation in the criminal justice system": Ibid, at paras. 40, 42.

[68] As I discussed earlier, I consider Mr. Budd a first-time offender for the purpose of sentencing.

Was Mr. Budd operating a Dial-A-Dope enterprise?

[69] The defence disagrees with the Crown's characterization of the circumstances of the offence involving a dial-a-dope enterprise. Counsel for the defence does not dispute that callers to Mr. Budd's cell phone were asking for quantities of illicit drugs or that the police observed Mr. Budd leaving the residence and engaging in hand-to-hand transactions with individuals indicative of trafficking activity.

[70] Counsel for the defence also acknowledges that there was a significant quantity of methamphetamine in the backpack, along with other illicit substances, found in Mr. Budd's possession at the time of his arrest. However, defence counsel submits that Mr. Budd's trafficking was unsophisticated street-level trafficking undertaken to support Mr. Budd's own addiction. Further, defence counsel submits there is no evidence to suggest that Mr. Budd was engaged in a sophisticated dial-a-dope enterprise which would attract a higher sentence.

[71] In support of his position, counsel for Mr. Budd relies on R v. Wall, 2018 BCSC 1643 and R. v. Franklin, 2001 BCSC 706.

[72] In Wall, the court found that the accused was not leading a life that resembled a dial-a-doper because he was older, with no involvement in drugs or drug lifestyles for over 35 years. He was not under surveillance nor observed to be involved in trafficking type activities. Rather, he was just pulled over in his vehicle, and when marijuana was smelled, six pounds of marijuana was discovered upon searching his vehicle. Mr. Wall told the officer that he was moving the marijuana as a favour to a friend in exchange for money. Ultimately, the court imposed a suspended sentence with a term of probation for 30 months.

[73] Mr. Budd's situation is somewhat different from that of Mr. Wall because Mr. Budd was involved in illicit drugs and a drug lifestyle for many years. As well, Mr. Budd was observed engaging in the type of hand-to-hand interactions that are indicative of drug trafficking. This is not a situation where Mr. Budd was arrested while driving in a car with methamphetamine but with no other indicia of trafficking.

- [74] In *R. v. Franklin*, 2001 BCSC 706, the accused was convicted of possessing cocaine for the purposes of trafficking and the judge concluded that the accused was running a dial-a-dope business. In noting that the principle of general deterrence should be given considerable weight when imposing a sentence for this sort of offence, the judge commented as follows about the fact there was a dial-a-dope business:
- [47] One does not enter into a Dial-A-Dope operation impulsively or spontaneously. It is necessary to obtain a supplier, to outfit oneself with a pager and a cell phone and a vehicle, and to make sure the word gets around. It is a calculated decision to engage in a particular type of business. It is reasonable to think that those who are considering that decision will take into account the likely penalty they would receive upon conviction. In other words, general deterrence is a genuine consideration in cases of this sort.
- [75] In *Franklin*, the court concluded that when weighing the various sentencing principles, including that incarceration should not be imposed unless and until all other alternate forms of sentencing have been considered that a term of "true imprisonment" is necessary.
- [76] As the court observed in *Franklin*, at para. 17, in the era before dial-a-dope operations, "drugs were disseminated at the street level by purchasers going to certain areas of town and taking the initiative to seek out those who sold drugs," which to some extent constrained the dissemination of drugs. However, dial-a-dope businesses, with their ordering and delivery features, make drugs more readily accessible as they can be delivered by car in fifteen or twenty minutes and handed over for cash.
- [77] I do not find that Mr. Budd was operating a dial-a-dope business. I acknowledge that there is some evidence, for example, of calls being made to Mr. Budd's cell phone at the scene from people seeking quantities of drugs. Texts and social media messages found on Mr. Budd's cell phone were further indicia of trafficking. Mr. Budd was also observed walking and meeting individuals and engaging in hand-to-hand interactions.
- [78] However, unlike the situation described in *Franklin*, there is insufficient evidence to show that Mr. Budd was engaging in a scheme to deliver drugs widely using a vehicle, thereby making the drugs more conveniently and broadly accessible to buyers. I find that Mr. Budd was involved in street-level trafficking and he was doing so to finance his own addiction, but it was not the type of sophisticated dial-a-dope business described in *Franklin*.

Defence Authorities

- [79] The defence has referred me to numerous authorities for the purpose of setting out an appropriate range of sentence.
- [80] In *R. v. Voong*, 2015 BCCA 285, Justice Bennett considered an appeal from a sentence of four individuals who pled guilty to drug trafficking in the context of a dial-a-dope operation. At para. 3, Justice Bennett noted that the sentencing judge imposed suspended sentences accompanied by probation orders, which the appellant alleged was an unlawful substitute for a conditional sentence order, which at the time was prohibited. Three of the four

individuals were selling drugs to support their own drug addictions and those individuals had criminal records. The fourth individual was a young, first-time offender, who was selling drugs to assist a friend to avoid trouble from a drug debt.

- [81] In *Voong*, at para. 59-63, Justice Bennett summarized the principles and the range of sentence applicable, stating as follows:
- [59] In summary, absent exceptional circumstances, the sentence for a first offence or with a minimal criminal record, dial-a-dope drug seller will be in the range of six to eighteen months imprisonment, depending on the aggravating circumstances. Exceptional circumstances may include a combination of no criminal record, significant and objectively identifiable steps towards rehabilitation for the drug addict, gainful employment, remorse and acknowledgement of the harm done to society as a result of the offences, as opposed to harm done to the offender as a result of being caught. This is a non-exhaustive list, but at the end of the day, there must be circumstances that are above and beyond the norm to justify a non-custodial sentence. There must be something that would lead a sentencing judge to conclude that the offender had truly turned his or her life around, and that the protection of the public was subsequently better served by a non-custodial sentence. However, Parliament, while not removing a non-custodial sentence for this type of offence, has concluded that CSO sentences are not available. Thus, it will be the rare case where the standard of exceptional circumstances is met.
- [60] A CSO was considered a sentence of imprisonment because of the strict and punitive conditions that could be imposed. As we have seen above, a suspended sentence can attract similar strict conditions, but only if they are aimed at protection of the public and reintegration of the offender into society. Rehabilitation clearly plays a significant role in both of those conditions.
- [61] A suspended sentence can achieve a deterrent effect, as noted above, as well as a denunciatory effect. And, as *Esson J.A.* stated in *Chang*, the fact of being arrested, tried and convicted, can also address these principles. In other words, the stigma of being a convicted drug trafficker and the consequences of that conviction--for example, restricted ability to travel outside of Canada and exclusion from many forms of employment--may also play a deterrent effect.
- [62] Thus, while it is an error to simply substitute a suspended sentence for a CSO, as they are not governed by the same principles, that does not end the inquiry into whether these non-custodial sentences are fit.
- [63] The issue then for each of these appeals becomes whether there were sufficient exceptional circumstances to justify going outside the normal range of sentence and imposing a non-custodial sentence. In each case, the sentencing judge concluded that there were exceptional circumstances.

- [82] In *R. v. Schneider*, 2019 BCCA 310, the appellant pled guilty to trafficking heroin containing fentanyl. He was an addict living on the street and after being observed consuming drugs, a police officer approached him to buy drugs and he sold the officer \$20 of heroin containing fentanyl. The court concluded at para. 9, that it was an error to conclude that the rare exception to custodial sentences recognized in *Voong* "will never apply where the offender trafficked a substance containing fentanyl". The appellant had a long history of drug use and addiction tied to suffering sexual abuse as a child. The appellant had made enormous and impressive strides in addressing his addiction issues while on strict conditions pending his trial and sentencing. The Court of Appeal was satisfied that in this "rare case" the best outcome was to support the appellant's rehabilitation efforts through a three-year suspended sentence with strict conditions requiring continued treatment and monitoring in the community.
- [83] In *R. v. Colligan*, 2020 BCSC 1139, involved a person charged in 2011 for trafficking cocaine. Mr. Colligan failed to appear at this trial and he was not located until many years later. When he was located and arrested, Mr. Colligan pled guilty to the counts and was released on bail. In the approximate ten-year period before his sentencing, Mr. Colligan had totally transformed his life.
- [84] Mr. Colligan was an Indigenous person with many Gladue factors applicable to his circumstances, including having a vulnerable Indigenous mother who was subjected to physical and emotional abuse by his father. Mr. Colligan was eventually placed in the foster care system and at age 13, he turned to illicit substances to deal with his mental health problems.
- [85] In 2012, when Mr. Colligan's partner became pregnant, he severed all of his past negative associations and moved to Alberta to start over. By that time, Mr. Colligan had a long criminal record including seven youth and 15 adult convictions, including for trafficking cocaine. Mr. Colligan worked, supported his family and led a prosocial life from 2012 onwards.
- [86] In deciding whether to impose a conditional sentence order, Justice Marchand determined, at paras. 69-70, that a highly restrictive CSO of two years less a day was consistent with the fundamental purpose and principles of sentencing given Mr. Colligan's reduced more blameworthiness. This was also a step up from his last sentence for trafficking. Absent Mr. Colligan's absconding, Justice Marchand would have imposed a shorter less onerous CSO followed by probation.
- [87] Most of the cases referenced by the defence involved trafficking of either methamphetamine or fentanyl and some involved first time offenders with personal addiction issues which form the basis for imposing suspended sentences or conditional sentence orders. I found the case of Colligan to be particularly helpful to consider in determining the appropriate sentence for Mr. Budd.

Deterrence and Denunciation

- [88] The principles of deterrence and denunciation are of paramount importance to determining a fit and appropriate sentence for Mr. Budd.
- [89] The sentence must be proportionate to both the gravity of the offence and the degree of responsibility of the offender. As I have already explained, Mr. Budd's degree of responsibility is reduced due to the many Gladue factors that apply. As well, Mr. Budd is a first-time offender for purposes of this sentencing.
- [90] Our court has recognized that "a conditional sentence order, while most useful in satisfying the principles of rehabilitation and instilling a sense of responsibility, can also provide for deterrence and denunciation": *R. v. Campbell*, 2021 BCSC 323 at para. 40.

Separation of Offender from Society if Necessary

- [91] I have already described the circumstances of the offence, which is serious, the circumstances of Mr. Budd. He is an Indigenous offender who has experienced a significant history of addiction. Considering the length of his addiction, as defence counsel points out, he comes before the court as a first-time offender. In other words, while the subject offence was related to financing his own addiction, he is not a person who had resorted to criminal activity over many years.
- [92] I have also noted that Mr. Budd has independently taken steps to enter into a residential treatment program with strict rules that include curfews, drug testing, restricted use of telecommunication and extensive, daily, programming to treat addiction issues. To some extent, this addresses the principle of the need to separate the offender from society and it meets the underlying objective.

Rehabilitation

- [93] Due to all of the circumstances, including the nature of the offences and Mr. Budd's personal circumstances, including the mitigating factors, rehabilitation is also an important objective.
- [94] Mr. Budd has taken concrete steps to engage in treatment of his addiction including by attending a preliminary program and now entering a residential treatment program that may continue for up to two years.
- [95] The offence of possession of methamphetamine for purposes of trafficking is a serious offence which makes Mr. Budd's moral blameworthiness high, but his blameworthiness is significantly reduced by the Gladue factors that apply and his long standing addiction issues which contributed to his offending behaviour.

Parity of Sentence

- [96] A sentence should be similar to sentences imposed on similar offences, for similar offenders, in similar circumstances: s. 718.2(b), Code.
- [97] I have already referred to the cases that the defence counsel brought to my attention. Those cases establish that courts have imposed conditional sentence orders and suspended sentence orders on offenders who have pled guilty to possession of cocaine and methamphetamine for the purposes of trafficking.

Disposition

- [98] There is no dispute that a conditional sentence order is an available sentence for the subject offence.
- [99] The leading case on whether a CSO is appropriate is *R. v. Proulx*, [2001] 1 S.C.R. 61.
- [100] I have carefully considered whether a CSO would be appropriate or whether a penitentiary sentence is appropriate given the factors in *R. v. Proulx*. I conclude that a CSO would be a proportionate sentence because, for example, CSOs were intended to address the problem of over incarceration which is especially relevant to an Indigenous person with many Gladue factors applicable.
- [101] I note that in *Colligan* at para. 65 and 70, Justice Marchand recognized that absent abscondment, even a shorter and less onerous CSO followed by probation could satisfy the objectives of denunciation and deterrence for trafficking cocaine and methamphetamine while also addressing an offender's reduced level of moral culpability.
- [102] Taking all of the principles into account including the primacy of denunciation and deterrence for this serious offence, along with Mr. Budd's personal circumstances, including that he comes before the court as a drug addicted Indigenous first-time offender, and the other mitigating and aggravating factors, I have determined a just and fit sentence that meets the primary objectives without resorting to institutional incarceration and jeopardizing the progress and steps that Mr. Budd has taken to break the cycle of addiction and trauma.
- [103] Mr. Budd, please stand.
- [104] For the offence of unlawfully possessing methamphetamine for the purpose of trafficking, I sentence you to 18-months to be served as a conditional sentence order.
- [105] You must comply with the terms of the conditional sentence order for a term of 18-months.
- [106] The conditions are:
- a) You must keep the peace and be of good behaviour.
 - b) You must appear before the court when required to do so by the court.

- c) You must reside at the Ruth and Naomi's Addiction Recovery Program Facility located at 45466 Yale Road West, Chilliwack, BC, unless you are given written permission by your conditional sentence supervisor to reside elsewhere, and you must provide your conditional sentence supervisor with your cell phone number if you have one.
- d) You must notify the court or your conditional sentence supervisor in advance of any change of name or address and promptly notify the court or supervisor of any change in employment or occupation.
- e) You must remain in British Columbia unless you have prior written permission from the court or your conditional sentence supervisor to leave the province.
- f) You must report in person to a conditional sentence supervisor at Chilliwack Community Corrections, located at 45960 Wellington Avenue, Chilliwack, British Columbia, by 3:00 p.m. on Friday, December 5, 2025, and after that, you must report as directed by your conditional sentence supervisor.
- g) If you are arrested, detained, or serve a jail sentence, you must report in person to your conditional sentence supervisor within two business days of your release from custody so that your conditional sentence supervisor can give you further direction to report.
- h) You must obey the written rules of the Ruth and Naomi's Addiction Recovery Program while you are residing in that facility.
- i) For the first four months, you may not leave the Ruth and Naomi's Addiction Recovery Program Facility at any time unless you are in the immediate presence of a staff member of the facility, or another person who is specifically designated by a staff member of the facility, or unless you have the prior written permission of your conditional sentence supervisor to leave the facility without being in the direct presence of a staff member or designated person. Such permission is only to be given for worship and cultural events, employment, medical appointments, counselling appointments, or to attend addiction recovery events, such as NA or AA meetings.
- j) If you are given written permission by your conditional sentence supervisor, you must carry it with you in paper or electronic format at all times when you are outside of the Ruth and Naomi's Addiction Recovery Program Facility. If a peace officer stops you for any reason, you must immediately show the permission and a copy of this order upon the request of the peace officer.
- k) After the first four months until and including the 12th month, you must obey a curfew by being inside the place where you reside and regularly sleep between 11 p.m. and 6 a.m. each day.

- l) You are to attend, participate in and complete any intake, assessment, counselling or program as directed for you by the staff at Ruth and Naomi's Addiction Recovery Program Facility or your conditional sentence supervisor and this may include counselling or programming for alcohol or substance use.
- m) You must attend, participate in and complete any intake, assessment, program, treatment, or a full-time live-in treatment program, such as the Ruth and Naomi's Addiction Recovery Program, as directed by your conditional sentence supervisor and this may include programming or treatment for alcohol or substance use.
- n) You must present yourself immediately at the door to the place where you are living or answer the phone when any peace officer or conditional sentence supervisor attends or calls to check on you during the curfew.
- o) You must not possess or consume alcohol, drugs, or any other intoxicating substances, except with a medical prescription.
- p) You must not possess directly or indirectly any weapon as defined by the Criminal Code including firearms, ammunition, crossbows, prohibited or restricted weapons or devices or explosive substances, anything used, designed to be used, or intended for use in causing death or injury to any person, or to threaten or intimidate any person, any imitation firearms or weapons, including any compressed air guns, BB or pellet guns, or any related authorizations, licenses and registration certificates and you must not apply for any of these.

[107] I also make the following ancillary orders:

- a) Pursuant to s. 487.051 of the Code, I make an order authorizing the taking of a sample of bodily substance from you for the purpose of DNA analysis and including in the DNA Data Bank.
- b) Pursuant to s. 109 of the Code, you are prohibited from possessing any firearm, cross-bow, restricted weapon, ammunition and explosive substance for life.
- c) The surcharge in this matter is waived.

[108] I further order that all offence-related property identified by the Crown be ordered forfeited pursuant to s. 16(1)(b) of the Controlled Drugs and Substances Act.

[109] Mr. Budd, I wish you success in your rehabilitation and recovery journey. I hope you reflect on your actions and the negative impact to the community from your offence. In the future, I am certain you will remember that your decisions have consequences which can negatively impact you, your family and the entire community. It is clear you are supported by your family and they believe in your ability to heal and rehabilitate. I also remind you that a breach of your conditional sentence order could result in you having to spend the balance of your sentence in custody.

[110] Thank you counsel, we may adjourn.

"E. McDonald J."

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