CANADA / JUDGMENT

R. v. Chahal

2022 BCSC 1409

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2022 BCSC 1409 R. v. Chahal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Chahal,

2022 BCSC 1409

Date: 20220722

Docket: 83517-2; 83517-3; 83517-4

Registry: New Westminster

Regina

v.

Sarbjit Singh Chahal

Before: The Honourable Mr. Justice Macintosh

Oral Reasons for Sentencing

Counsel for the Crown:

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M.J.E. Wheeler

Counsel for the Accused:

M.N. Stern

M. Shamess

Place and Dates of Hearing:

New Westminster, B.C.

June 2, 3 and 8, 2022

Place and Date of Judgment:

New Westminster, B.C.

July 22, 2022

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[1] Mr. Chahal was convicted by a jury on December 4, 2021, of importing into Canada methamphetamine, contrary to s. 6(1) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 [CDSA]; and of possessing methamphetamine for the purpose of trafficking, contrary to s. 5(2) of the same statute.

[2] On November 18, 2018, Mr. Chahal was driving a truck across the border from the United States into Canada at the Pacific Highway border crossing. The truck had a secret compartment installed in the jockey box in the tractor (i.e., in the truck itself as distinct from the trailer it was hauling). The jockey box is a storage place designed to be accessed from outside. It is located toward the back of the truck and is accessible from both the driver's side and the passenger side. Jockey boxes are designed to hold paraphernalia one would expect a trucker to carry on the road, including work belts, gloves, miscellaneous cables, flares, and hand tools. The secret compartment in the jockey box was installed sometime after the truck left the manufacturer. In the secret compartment on November 18, 2018, authorities found approximately 30 kgs of 100% pure crystal methamphetamine.

[3] Mr. Chahal at trial argued he was not guilty because he was importing the drug under duress. The jury rejected that defence. The threshold issue for his sentencing is whether Mr. Chahal was in fact under duress of some sort, despite the jury having rejected duress as a defence to the charges. Mr. Chahal argues that we cannot know what element or elements of the defence of duress were missing and that the facts disclosed on the balance of probabilities at least some aspects of duress, which should be taken into account as a significant mitigating factor for reducing the sentence.

[4] The Crown's first position is that there was no duress of any kind in the case. Duress was concocted by Mr. Chahal when he had no other defence available. Alternatively, the Crown argues that any duress that may be found is insignificant for purposes of the sentencing assessment.

[5] Mr. Chahal submits that the duress he faced should result in a sentence of two years less a day, to be served as a conditional sentence. Alternatively, if duress is not found as a mitigating factor, he submits that a sentence of four years is appropriate. (Section 742.1 of the Criminal Code, R.S.C. 1985, c. C-46 [Code], paragraphs (c) and (e)(ii) would render a conditional sentence unavailable in this case given the possible maximum terms of imprisonment. However, those provisions were found to be unconstitutional, and therefore unenforceable, in R. v. Chen, 2021 BCSC 697. Following Re Hansard Spruce Mills Ltd., [1954] 4 D.L.R. 590 (B.C.S.C.), the Crown accepts that R. v. Chen is binding and makes no submission that a conditional sentence is unavailable as a matter of constitutional law in Mr. Chahal's case. I am proceeding on that same basis.)

[6] The Crown seeks a sentence of nine years in jail for importing, and five years in jail concurrently for possession for the purpose of trafficking. I did not understand the Crown to propose a lesser sentence if I found some degree of duress. Instead, the Crown's alternative submission, noted earlier, is that any duress was so insignificant that it should not serve to reduce what is otherwise a fit sentence. The Crown relies on the fact that Mr. Chahal had agreed at one point to transport the drug across the border for money without being threatened, thus placing himself in a vulnerable situation. Further, the Crown submits that about two-and-a-half weeks passed between the threat and the commission of the offence, leaving Mr. Chahal with a wide avenue of escape.

Fact Finding at Sentencing

[7] Mr. Chahal in the sentencing hearing carries the onus of proving, on a balance of probabilities, that he operated under some form of duress when he imported the methamphetamine. He argues that duress alone drove him to bring in the drug. Duress or some degree of coercion falling short of duress can be a mitigating factor in sentencing as found in R. v. Delos Santos, 2014 BCSC 34, at paras. 34-37. See also R. v. Datt, 2014 BCCA 484, paras. 26-28, and other decisions I will discuss later in these reasons.

[8] The procedure for finding facts at sentencing, after a jury verdict, was summarized by Justice Crossin in R. v. Maulen, 2022 BCSC 468, at paras. 2-4, as follows:

[2] It is of course not known how the jury reached its verdict. The task of the Court is to come to findings, based on the evidence and verdict rendered by the jury; to serve as a factual basis in assessing an appropriate sentence in this matter.

[3] This approach is governed by s. 724(2) of the Criminal Code, R.S.C. 1985, c. C-46. It reads as follows:

724 (2) Where the court is composed of a judge and jury, the court

(a) shall accept as proven all facts, express or implied, that are essential to the jury's verdict of guilty; and

(b) may find any other relevant fact that was disclosed by evidence at the trial to be proven, or hear evidence presented by either party with respect to that fact.

[4] The Supreme Court of Canada in R. v. Ferguson, 2008 SCC 6, set out the procedure for the finding of facts by a judge following a jury trial:

[16] unlike a judge sitting alone, who has a duty to give reasons, the jury gives only its ultimate verdict. The sentencing judge therefore must do his or her best to determine the facts necessary for sentencing from the issues before the jury and from the jury's verdict. This may not require the sentencing judge to arrive at a complete theory of the facts; the sentencing judge is required to make only those factual determinations necessary for deciding the appropriate sentence in the case at hand.

[17] Two principles govern the sentencing judge in this endeavour. First, the sentencing judge "is bound by the express and implied factual implications of the jury's verdict" The sentencing judge "shall accept as proven all facts, express or implied, that are essential to the jury's verdict of guilty" and must not accept as fact any evidence consistent only with a verdict rejected by the jury

[18] Second, when the factual implications of the jury's verdict are ambiguous, the sentencing judge should not attempt to follow the logical process of the jury, but should come to his or her own independent determination of the relevant facts In so doing, the sentencing judge "may find any other relevant fact that was disclosed by evidence at the trial to be proven" To rely upon an aggravating fact or previous conviction, the sentencing judge must be convinced of the existence of that fact or conviction beyond a reasonable doubt; to rely upon any other relevant fact, the sentencing judge must be persuaded on a balance of probabilities It follows from the purpose of the exercise that the sentencing judge should find only those facts necessary to permit the proper sentence to be imposed in the case at hand. The judge should first ask what the issues on sentencing are, and then find such facts as are necessary to deal with those issues.

[9] That is the process I am to employ here with respect to duress or coercion.

Was There Duress or Some Degree of Coercion?

[10] Courts in Canada have used various words or phrases to describe something like duress in mitigation of sentence after duress as a defence to a charge of importing was rejected at trial. These words or phrases include duress, near duress, compulsion, coercion and importuning. Selecting somewhat at random, I will generally use coercion as the descriptor.

[11] Mr. Chahal's testimony at trial included the following. In July of 2018, a man named Karmjit Sran, referred to as Karm by Mr. Chahal, approached Mr. Chahal at work to recruit him as a drug courier. Karm had been grooming him for that role, beginning in January. Mr. Chahal initially declined. (Incidentally, an admission at trial was that Karm died in 2020.)

[12] In mid-August 2018, Mr. Chahal suffered a heart attack. He was off work for about six weeks. He changed his mind in that time about being a courier. On October 4, 2018, he told Karm that he would be a courier in order to earn the $20,000 he was offered. On the same day, or perhaps October 5, Karm requested, and Mr. Chahal gave him, a key to the truck. There was no direct evidence of whether the secret compartment was installed in the 24 hours Karm had the key or whether he just copied the key then to have the compartment installed at another time. By his evidence, Mr. Chahal did not know of the compartment before he was in the United States heading back to Canada in the truck on or about November 16, 2018.

[13] Mr. Chahal testified that after agreeing to be a courier and receiving from Karm a burner phone for that purpose, he got cold feet during a trip to the United States sometime around October 17 to 19. He called Karm then and said he was not going to do it. It had been during that trip that he was supposed to pick up drugs. Mr. Chahal, who testified through an interpreter, and testified at some length, explained why he changed his mind. In essence, he said that he came to his senses and realized he could not do this because he would be letting everyone down. He returned from the States to the Canadian border, crossing in his truck on October 21. The authorities inspected the truck while Mr. Chahal waited inside the Customs office. They found the secret compartment. It was empty. They did not alert Mr. Chahal to their discovery and sent him on his way in his truck back into Canada.

[14] On or about the same day, October 21, Karm met with Mr. Chahal. There were one or two meetings between them at about that time. Mr. Chahal apologized to Karm. He said he was sorry but he was out, meaning he would not participate. Within a few days after that, Karm drove in an SUV to Mr. Chahal's house. He had two men with him in the back seat. They collected Mr. Chahal and drove to a Tim Hortons. Again, Mr. Chahal apologized. Karm said to Mr. Chahal that he would have to pay two million dollars if he backed out. Karm said, "You have to do it. Bring in the drugs, we have no choice." One of the two men in the back asked if Mr. Chahal had two million dollars and Mr. Chahal said, "Of course not." After some moments of silence, Mr. Chahal repeated that he would not do it. Then a man in the backseat said, "We have ways. Either we do it or they can come and shoot you and they can kill your children, as well." Mr. Chahal then gave in. He replied that if he had no choice, he would have to do it.

[15] Mr. Chahal did comply. He went to his dispatcher and asked for a trip to California. He told Karm, probably a few days before November 14, that the trip was organized. Karm came to see him, probably the evening before the trip. He gave Mr. Chahal a flip phone. Karm shook his hand, squeezing it forcefully. He gripped Mr. Chahal's shoulder with his other hand. He addressed Mr. Chahal as brother. He said, "Brother, you are not going to do what you did last time. You must bring this stuff and if you don't bring it over, your life is in danger, and they

will kill me, as well."

[16] The above is a relatively brief summary of the lengthy evidence Mr. Chahal gave in the matter of duress.

[17] He proceeded at trial to testify about the time in California during the final trip, including how he rendezvoused with the "Mexican-looking" man who brought the methamphetamine to Mr. Chahal's vehicle and who did most of the work in transferring the packets of the drug form the duffel bag he had carried them in to the secret compartment in the jockey box of the truck. He testified that he had expected the drug would be placed in the trailer until the other man directed him to the truck. There, the other man opened the secret compartment by operating a sophisticated electrical switch on a panel inside the truck, which presumably had been modified or installed when the secret compartment itself was installed. A visual inspection would not reveal that electrical switch, and photographs show, and two officers who testified said, that the secret compartment probably would not be detected through a visual inspection by someone untrained in the installation or detection of such compartments.

[18] In cross-examination, Mr. Chahal said that the seal for the trailer door was given to him at the product warehouse in California but he agreed that the standard practice would be that the seal was put on at the warehouse. Mr. Chahal testified that the other man eventually asked him to assist in placing the drugs inside the secret compartment.

[19] I am mindful of Mr. Chahal's general circumstances as disclosed by the evidence. He was not only without a criminal record, he was also a hardworking family man, popular and helpful in his community, and devout in his religion. At the same time, he lived in an area of the Lower Mainland riddled with violence associated with drug-trafficking. In other words, he was a normal citizen who would feel vulnerable to the threats he spoke of, knowing that drug trade killings were a reality where he lived.

[20] Some parts of his testimony about the threats struck me as testimony that would not be invented as part of a fictitious story of duress. They had a ring of truth. For example, after he was threatened by Karm and the other men in the car, Mr. Chahal went into the spiritual space in his home, a sort of shrine area. Crown cross-examined him about this and assumed that he had gone into the room to pray. Mr. Chahal answered that, no, he did not go into the room to pray. He went in to compose himself. He was so frightened by the threats that had just been conveyed to him that he had to compose himself before his family saw him. His response to the suggestion that he went in there to pray, saying, "No, I didn't pray. I was composing myself," is in my view indicative of someone attempting to accurately recall what in fact transpired.

[21] It is also relevant that on October 21, 2018, the border inspection officers found the secret compartment empty when they inspected it without Mr. Chahal's knowledge. That was the end of the trip in which Mr. Chahal backed out of transporting the drugs while he was in the United States. The empty compartment is at least somewhat corroborative of Mr. Chahal's testimony that he had backed out of the enterprise prior to the subsequent threats by Karm and the other two men.

[22] The Crown at trial maintained the burden of disproving duress beyond a reasonable doubt. It could do so by negating one or more of the elements of a duress defence. We cannot know which element or elements of duress were missing in the mind of the jury. For duress as a defence, there must be an explicit and implicit threat of present or future death or bodily harm. The accused must reasonably believe that the threat will be carried out. There must be no safe avenue of escape. There must be a sufficiently close connection in time between the threats and the future execution of the threats. The accused must have caused no greater harm by committing the offence than the harm that was threatened, and the accused must not have been a party at the time of the offence to a criminal conspiracy or association whereby he knew he might be subject to compulsion or threats.

[23] From Mr. Chahal's testimony at trial, which I have addressed in the last several pages above, I am satisfied that he has shown at least on the balance of probabilities that some components of duress, perhaps better called coercion, have been made out. On the balance of probabilities, I find that specific threats to kill him and his children were made by Karm and at least one of the men in the back of the SUV. I find he reasonably believed the threats would be carried out. It was common ground, even at trial, that Mr. Chahal did not cause greater harm by importing and possessing the drug than the harm that was threatened against him and his children.

[24] The Crown argued before the jury, and before me in sentencing, among other points, that Mr. Chahal had safe avenues of escape after the threats were made to him and that too much time passed between the threats and any possible future execution of the threats. Even if either of those assertions is true, and I do not make any such finding, it does not follow that Mr. Chahal has not shown coercion on the balance of probabilities such that it should be a mitigating factor for sentencing. I find that he has established coercion that was not insignificant for him.

The Sentencing Analysis Including Coercion as a Mitigating Factor

[25] The Crown in seeking sentences of nine years and five years jail concurrent relies on s. 718.2(b) of the Code, calling for similar sentences on similar offenders for similar offences committed in similar circumstances.

[26] The Crown cites R. v. Parranto, 2021 SCC 46, at paras. 19-22, as authority permitting the sentencing judge to discern a range which in turn calls for the judge to consider other cases which best match the gravity of the offence and the circumstances of the offender in the case at bar.

[27] The Crown cited other cases under s. 718.2(b) of the Code, but said that the following seven cases were particularly informative taking into account the absence of relevant criminal records among the accused, the quantities of drugs being imported, and the modus operandi of trucking the drugs across the international border:

(1) R. v. Sandhu, 2003 BCSC 2033, involving 45 kgs of cocaine, where the offender was a 35-year-old truck driver, sentenced to nine years;

(2) R. v. Epp, 2006 BCCA 570, involving 126 kgs of cocaine, where the offender was a 35-year-old truck driver, sentenced to 10 years;

(3) R. v. Couvillon, February 20, 2009, Surrey Registry No. 165524-1, involving 92 kgs of cocaine, where the offender was a 40-year-old truck driver, sentenced to nine years;

(4) R. v. Kang, 2009 BCSC 1827, involving 100 kgs of cocaine, where the offender was a 31-year-old truck driver, sentenced to eight years;

(5) R. v. Trigueros Sibrian, 2011 BCSC 1516, involving 65 kgs of cocaine, where the offender was a 42-year-old truck driver, sentenced to eight years;

(6) R. v. Pocasangre, 2013 BCSC 193, involving nine kgs of cocaine, where the offender was a 48-year-old truck driver, sentenced to eight years; and

(7) R. v. Dhillon, 2013 BCSC 1769, involving 30 kgs of cocaine, where the offender was a 37-year-old truck driver, sentenced to eight-and-a-half years.

[28] Although I have listed the quantities of the drugs imported in these sentencing decisions, it is not as though there is a scale linking a precise quantity of drug to a particular sentence. What the cases listed above have in common is that the quantities were substantial by any measure. There can be no suggestion that 30 kgs of methamphetamine is other than a substantial quantity of a drug that is harmful in every way.

[29] The Crown in relying on these decisions focusses on the need for denunciation and deterrence in the sentencing, as do the decisions themselves. I would note, too, that several of these decisions in turn considered numerous other decisions, usually from this Court. I believe Justice Williams in Sandhu, for example, considered 25 earlier authorities.

[30] Mr. Chahal also brought these same decisions and others to my attention. His main two points in seeking to distinguish them all were, first, the absence of coercion in any of these cases; and second, the presence of a profit motive instead of coercion being the motive for the defendant's conduct. Mr. Chahal's reasoning in part was that full duress is a complete defence with a result that the closer the facts of the case are to full duress, the more they must count as a substantial factor for mitigation.

[31] Counsel for Mr. Chahal directed me to Mr. Chahal's otherwise blameless life, which I will further address below. They focussed their legal submissions on the proportionality principle and cited para. 10 from Parranto in stressing that the sentence must be proportionate not only to the gravity of the offence but also to the degree of responsibility of the offender, particularly in Mr. Chahal's case taking compulsion into account. They directed me to the need for restraint, citing R. v. Proulx, 2000 SCC 5, at paras. 16-17, and to the need for individualization and parity, citing Parranto, at para. 12, which relied in turn on R. v. Lacasse, 2015 SCC 64.

Mr. Chahal's Background and Circumstances

[32] Mr. Chahal is now 56. He was 52 at the time of the offence and had no criminal record. He moved to Canada with his mother and four siblings when he was 14. His wife is a maintenance worker at the Surrey School Board. One son, aged 33, is now taking a real estate course; the other, aged 29, is a truck dispatcher. The Chahals adopted a niece and brought her from India in 1990 to live with the family. She is now married and working.

[33] Mr. Chahal owns the family's home in Surrey. He has an extensive working history, at least from age 19, up to and after the events in 2018. He has been a millworker, a cook, the owner of a sports bar and of a video store, and for many years a trucker. He has also run a dance academy and performed at community events as a drummer and a dancer. His spirituality came to light in 2012, and Mr. Chahal links that to the death of his father at that time. He has in recent years served as a lay religious leader.

[34] Mr. Chahal suffered a heart attack in the summer of 2018. He has received triple bypass surgery. Since 2018, he has struggled with feelings of depression, guilt and anxiety and received some psychiatric help.

[35] I was shown letters of support by Mr. Chahal's immediate family, his extended family, friends and community members, and his priest and members of his prayer group. The letters support the submission that what happened in this case is outside the entire history of this man. He is respected and loved by family, his friends, and others in the community. He has been a good husband and parent, a good worker, a giving member of the community. As is the case for most drug couriers, he had no criminal record, which of course is partly why he was recruited to bring in the drugs.

Case Law Examining Coercion in Mitigation of Sentence

[36] Mr. Chahal relies on Justice Voith's decision, when Voith J. was on this Court, in R. v. Basit, 2014 BCSC 868. Mr. Basit was sentenced to two years less a day under a conditional sentence order. He had pled guilty to possessing cocaine for the purpose of trafficking. A 13-day trial had earlier resulted in a hung jury, and he pled guilty on the eve of his retrial. He did not dispute that he imported the cocaine. Like Mr. Chahal, his main submission in the sentencing hearing was that he acted solely because of duress as a result of threats against him and his family. At paras. 37-46 in Basit, Voith J. considered the impact of coercion in determining the appropriate sentence. Moral culpability is reduced, and the coercion is treated as an extraordinary or extenuating mitigating circumstance. When he ordered a conditional sentence of two years less a day, Voith J. examined what the sentence might have been in the absence of coercion, as well as the sentence the Crown was seeking. The Crown requested a custodial sentence of three years; see para. 23. The Crown suggested that a sentence of three-and-a-half years would have been appropriate in the absence of coercion (para. 47). Justice Voith, however, reviewed comparable cases, and at paras. 47-54 found that the appropriate range would have been only two to two-and-a-half years. Linked to that range was the relatively small quantity of cocaine involved in the Basit case (see paras. 4, 13 and 61).

[37] By contrast in Mr. Chahal's case, the evidence showed that the methamphetamine he brought into Canada was worth between $510,000 and $575,000 wholesale, and would be broken down into something like 300,000 doses of the drug.

[38] From Basit, I have considered not only the impact of coercion on sentencing in general terms, but also on what the sentence might have been in the absence of coercion in that case. The point there is that Voith J. was mindful that the duration of the conditional sentence order was very close to the duration of the sentence that probably would have been ordered without coercion. That, in my view, must be kept in mind, and contrasted with the large gap between the conditional sentence order requested here and the eight or nine-year sentence ordinarily discernible for Mr. Chahal's offence in the absence of coercion. Even if Mr. Chahal's commendable personal circumstances would make a fit sentence for him something slightly less than eight years in the absence of coercion, there would still be an appreciable gap between that sentence and the conditional sentence order he seeks.

[39] Mr. Chahal also relied on R. v. Valentini, [1999] O.J. No. 251 (C.A.). There, the Court examined the impact on sentence of threats made against two of four accused. As in Mr. Chahal's case, the threats had formed the basis of a duress defence that did not succeed with the jury. Justice Rosenberg, writing for the Ontario Court of Appeal, found that importuning or duress constitutes an extenuating factor justifying a sentence outside the six to eight-year range (see para. 107 in Valentini). Of the two accused subjected to importuning or duress in Valentini, a Mr. Bonin and a Ms. Tepsa, the facts in Mr. Bonin's case are somewhat closer to Mr. Chahal's facts, although there are still differences in the two cases. Mr. Bonin was 25 and a drug user with a serious drinking problem. He had a grade eight education. He was a

courier bringing 3.5 kgs of cocaine into Canada in his suitcase after flying up from Aruba. Mr. Chahal emphasizes that Mr. Bonin was to be paid $10,000 and submits that since he was in the conspiracy for money, his position for sentencing is worse than Mr. Chahal's.

[40] Mr. Chahal's testimony was that, although he entered the conspiracy to receive $20,000, by the time he arrived in Canada with the drugs on November 18, 2018, it was coercion alone that motivated him. However, Mr. Bonin, like Mr. Chahal, insisted continually that his actions as a courier were caused by his fear from the threats (see paras. 99 and 101(2) in Valentini).

[41] I find that, although Mr. Chahal was acting under coercion, if he had made it into Canada undetected on November 18, 2018, he would have been offered and taken the $20,000. In my view, both Mr. Bonin and Mr. Chahal:

(1) entered the conspiracy in the first place for money;

(2) faced coercion;

(3) maintained that the reason they imported the drugs in the end was due to the threats;

(4) got caught; and therefore,

(5) did not get paid.

[42] The trial judge sentenced Mr. Bonin to nine years imprisonment. The Court of Appeal reduced the sentence to four years concurrent on all charges. At para. 106 in Valentini, Justice Rosenberg wrote in part:

106 It therefore becomes necessary to consider the fitness of the sentence imposed on Bonin in light of the fresh evidence. That evidence shows that the appellant has now married Carole Tepsa and they have three infant children all born since the trial. Bonin has been employed while on bail pending appeal. Taking into account Bonin's limited role in the conspiracy, his prior good character, and the fact that he was subject to threats by Valentini to enter and remain in the conspiracy, I would reduce his sentence from nine years' imprisonment to four years' imprisonment concurrent on all the charges. Bearing in mind the factor of the threats by Valentini, I consider this sentence to be in line with the six- to eight-year range suggested by this court in R. v. Cunningham (1996), 104 C.C.C. (3d) 542 (Ont. C.A.).

[43] In my view, Valentini, like Basit, provides a sound basis for reducing the sentence of a drug courier based on the courier having been subjected to coercion. However, I do not find either decision to be supportive of a conditional sentence order on the facts of Mr. Chahal's case. It will be recalled from Basit above that a probable sentence without duress would have been only two to two-and-a-half years on the facts of that case, and in Valentini, Mr. Bonin was sentenced by the Court of Appeal to fours years imprisonment.

Conclusions

[44] The Crown, as I noted earlier, submits that a sentence of nine years is appropriate even if coercion is made out, which I have found it was. The Crown's position in effect is that the coercion counts for almost nothing in the sentence for this case. I cannot accept that.

[45] I do accept that denunciation and deterrence remain highly relevant, in line with what is emphasized in the seven cases both sides cited, which I listed earlier. But I have found that Mr. Chahal feared for his life and the lives of his children. The two dominant mitigating factors for him are the coercion he faced and his blameless personal life. Where duress is made out as a defence at trial, there is moral involuntariness; see R. v. Ryan, 2013 SCC 3, at para. 23. Where there is coercion despite a conviction at trial, there remains for purposes of sentencing some degree of moral involuntariness. That invokes the principle of proportionality for the sentence to ensure that the sentence is proportional to not only the gravity of the offence, but also the degree of responsibility of the offender; see s. 718.1 of the Code; R. v. Nasogaluak, 2010 SCC 6, at paras. 41-42.

[46] Mr. Chahal's sentence must also be shaped by taking into consideration the principle of restraint whereby the offender's punishment is no more than necessary; see s. 718.2(d) and (e); and R. v. Proulx, cited earlier, at paras. 16-17.

[47] Balancing in Mr. Chahal's case the need for denunciation and deterrence with the principles of proportionality and restraint, and Mr. Chahal's mitigating personal background and the coercion he experienced, causes me to conclude that the proper sentence on Count 1 is four years, and on Count 2, two-and-a-half years concurrent.

[48] The further orders the Crown seeks are not contested. There will be a mandatory firearms prohibition pursuant to s. 109(2) of the Code. The Crown's written submission sought a 10-year firearms prohibition for certain unnamed items, and a lifetime prohibition for others, and Mr. Bick will have to particularize that.

[49] Mr. Chahal will forfeit the duffel bag, magnet, drugs and packaging pursuant to ss. 16(1)(b) and 27(b) of the CDSA, and there will be a DNA order pursuant to s. 487.051(3) of the Code.

[50] Mr. BICK: Thank you, Mr. Justice. I will speak to Madam Registrar after about the ancillary orders.

[51] THE COURT: Very well, thank you.

"Macintosh J."

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