
CANADA / JUDGMENT

R. v. Chan

2015 BCSC 481

COURT

Supreme Court of British Columbia

DECIDED

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2015 BCSC 481 R. v. Chan

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Chan,

2015 BCSC 481

Date: 20150130

Docket: 26044

Registry: Vancouver

Regina

v.

Chun Siu Chan

Manraj Singh

Parminderjit Singh

Before: The Honourable Madam Justice Gropper

Oral Reasons for Sentence

(Re Accused Chan and Manraj Singh)

Counsel for the Crown:

A. Chan

J.M. Whiting

Counsel for the Accused Chun Siu Chan:

P.E. Briggs

Counsel for the Accused Manraj Singh:

R.T. Gill

For the Accused Parminderjit Singh:

No appearance

Place and Date of Trial/Hearing:

Vancouver, B.C.

November 24 - 26, 2014

Place and Date of Judgment:

Vancouver, B.C.

January 30, 2015

Introduction

[1] THE COURT: On October 3, 2014, a jury convicted Mr. Chun Siu Chan and Mr. Manraj Singh of the one count in the indictment which reads -- well, I am not quoting, which is, rather, between January 19, 2007, and April 5, 2007, at or near Vancouver, British Columbia, or elsewhere in the Province of British Columbia; in the City of Windsor, Ontario, and elsewhere in the Province of Ontario; and at or near Ontario, California, or elsewhere in the United States of America, did unlawfully conspire together, the one with the other or others of them, with Ricky Yao Heng Chou, Sandeep Singh Hans, Lachman Chahal, and with a person or persons unknown, to commit the indictable offence of importing a controlled substance, cocaine, contrary to s. 6(1) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 [CDSA], and did thereby commit an offence contrary to s. 465(1)(c) of the Criminal Code, R.S.C. 1985, c. C-46.

Facts

[2] In accordance with s. 724(2) of the Criminal Code, where the court is composed of a judge and jury, the court shall accept as proven all facts, express or implied, that are essential to the jury's verdict of guilty. In that regard, I adopt most, but not all, of the Crown's facts.

[3] I find the following facts are essential to a guilty verdict:

1. Chun Chan and Manraj Singh were the speakers on calls entered as evidence.
2. The calls show an agreement between the accused and other parties to import cocaine into Canada from the U.S.

3. The evidence shows that at least one shipment of cocaine was imported by this group in February 2007, that is, 147 kilograms of cocaine that was seized at the Windsor border crossing on February 19, 2007. This load was in a tractor-trailer unit driven by Hans and Chahal. The calls showed 25 kilograms of the load belonged to the accused.
4. Starting in approximately February 5, 2007, beginning with call 44 in a series of calls, the accused exchanged code words and telephone numbers to facilitate the pickup of cocaine in California. Chun Chan talked to Ricky Chou who talked to Parm Singh who talked to Manraj Singh. Manraj Singh was given the task of directing the truck drivers.
5. The Drug Enforcement Agency in the U.S. identified the cellphone number of the truck driver, Sandeep Hans as he was under surveillance in California. Sandeep Hans and Lachman Chahal were seen making one pickup of luggage from an Asian male on February 16, 2007, while in California. After this exchange, intercepted calls confirmed the accused's load of cocaine was picked up by the truck drivers, referring to calls 92 to 110.
6. When the truck drivers arrived at the Windsor border crossing on February 19, 2007, they were referred to secondary inspection. A total of 147 kilograms of cocaine was seized from the tractor-trailer unit inside seven duffle bags and a suitcase. The suitcase contained 25 bricks of cocaine weighing 28.08 kilograms with the plastic wrappings. As well, the telephone number that Manraj Singh had been using was found written on a piece of paper in the wallet of Hans.
7. When they did not hear from the truck drivers, the accused tried to find out what happened. Manraj Singh and Parm Singh said they would drive to the border crossing. Three South Asian males were seen at the Windsor compound of the Canada Border Services Agency ("CBSA") on February 20, 2007, peering inside. In a call on February 22, 2007, Parm Singh told Ricky Chou, "Bad news." After it was confirmed that the truck drivers had been arrested and the cocaine seized, Ricky Chou and Chun Chan discussed who would be responsible to pay for the loss. Chun Chan put pressure on Ricky Chou who in turn pressured Parm Singh. Parm Singh and Manraj Singh went to speak with Sandeep Hans.
8. The direction of communication was the same throughout the conspiracy. Chun Chan to Ricky Chou, Ricky Chou to Parm Singh, Parm Singh to Manraj Singh, Manraj Singh to Sandeep Hans, then back up the same way. Chun Chan never spoke with Parm Singh or Manraj Singh and Manraj Singh never spoke with Ricky Chou or Chun Chan.
9. After the cocaine was seized at the border crossing, the calls showed the parties were trying to find out what happened. The accused spoke about waiting for the driver, Sandeep Hans, to get out of jail to get the court documents and to get compensation for the lost load.
10. There was an ongoing agreement between these individuals to import cocaine into Canada. The calls show there was an earlier shipment of 15 kilograms of cocaine which was successfully imported in February 2007, referring to calls 1 to 43.

11. After the 147 kilograms of cocaine were seized, there were discussions about future shipments in calls 133, 135, 136, 137, 143, 145, 147, 163, and 164.
12. The drug expert, Staff Sergeant Pat Murphy, gave evidence about the value of the cocaine. He testified that 25 kilograms of cocaine would have cost the group approximately \$400,000 to \$500,000 to obtain. The potential value of the 25 kilograms would be approximately \$2 million if sold on the street at the gram level.

Principles of Sentencing

[4] The Criminal Code sentencing provisions set out the purpose and objectives of sentencing and the principles to be considered in imposing sentence. The relevant provisions are ss. 718, 718.1 and 718.2(a), (b) and (e). First, s. 718 describes the fundamental purpose of sentencing and lists objectives. Those that are relevant here are denunciation, deterrence, separating offenders from society where necessary, rehabilitation, reparations and to promote a sense of responsibility in offenders.

[5] Section 718.1 provides the fundamental principle as:

A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[6] Section 718.2 provides other sentencing principles which the court imposing a sentence shall take into consideration:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender,
- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

[7] In the trial decision *R. v. Oliynyk, Lepage, and Ferris*, 2006 BCSC 572 [Oliynyk], aff'd in *R. v. LePage*, 2010 BCCA 249, the court describes the theme of sentencing where the conviction involves the importation of high quantities of cocaine at para. 87:

The cases do establish the consistent theme that the paramount sentencing principles in the importation of high quantities of cocaine, or conspiracies to do so, are deterrence and denunciation. Rehabilitation plays a minor part as a sentencing principle. The consistent theme underscored repeatedly in the cases is that importation of cocaine justifies a very severe sentence.

[8] In *R. v. Nasogaluak*, 2010 SCC 6, the court describes the focus of s. 718.1 and the concept of proportionality at paras. 40 and 41:

The objectives of sentencing are given sharper focus in s. 718.1, which mandates that a sentence be "proportionate to the gravity of the offence and the degree of responsibility of the offender". Thus, whatever weight a judge may wish to accord to the objectives listed above, the resulting sentence must respect the fundamental principle of proportionality. Section 718.2 provides a non-exhaustive list of secondary sentencing principles, including the consideration of aggravating and mitigating circumstances, the principles of parity and totality, and the instruction to consider "all available sanctions other than imprisonment that are reasonable in the circumstances",

It is clear from these provisions that the principle of proportionality is central to the sentencing process

[9] In relation to aggravating factors in drug importing conspiracy cases, the authorities refer to the following non-exhaustive list:

1. the size of the shipment: LePage at para. 18;
2. the sophistication of the enterprise: Oliynyk at para. 89;
3. the role of the accused and his place in the hierarchy: R. v. Epp, 2006 BCCA 570 at para. 15; and
4. whether it is an ongoing enterprise: LePage at para. 15.

[10] In regard to three of those factors, they apply to both Mr. Chan and Mr. Singh. The shipment was 25 kilograms and it was a sophisticated and ongoing enterprise. There are other principles of sentencing which apply to Mr. Chan's circumstances, including the consideration of post-offence convictions, concurrent versus consecutive sentences and the totality principle.

[11] How should the court treat convictions relating to offences that occurred after the events giving rise to these charges? These events occurred in February, March and April 2007. Mr. Chan was arrested for criminal activity in Toronto, Ontario in 2010. When he was arrested in July 2010, he learned that there was a warrant for his arrest in this matter. The Toronto charges went to trial in February 2014. Mr. Chan pleaded guilty and he was sentenced to 12 years. The effective sentence was six years and seven months taking pretrial custody into account. He is currently serving time on those offences.

[12] In R. v. Johnson (1998), 131 C.C.C. (3d) 274 (B.C.C.A.), the court addresses these circumstances at para. 14:

The third ground of appeal is that the sentencing judge erred by relying on the drug convictions relating to offences which occurred several months after the assault, as a prior criminal record justifying a longer sentence on the assault charges. It is common ground that treating the drug convictions as a prior record in these circumstances would constitute error.

[13] The sentence in Mr. Chan's case must address whether it is to be concurrent or consecutive to the sentence imposed in Ontario in 2014. In that regard, I would refer to *R. v. Li*, 2009 BCCA 85, where the court describes the test at para. 42:

The test for the imposition of a consecutive or concurrent sentence is "whether the acts constituting the offence were part of a linked series of acts within a single endeavour"

[14] Mr. Chan concedes that a consecutive sentence is appropriate.

[15] The third principle which must be taken into account in Mr. Chan's case is the totality principle. It was described by the Ontario Court of Appeal in *R. v. Johnson*, 2012 ONCA 339 at para. 18:

a combined sentence must not be unduly long or harsh in the sense that its impact simply exceeds the gravity of the offences in question or the overall culpability of the offender. The overall length of the custodial period imposed must still relate to and reflect the variety of sentencing goals, including denunciation, deterrence (specific and general), rehabilitation, the need to separate offenders from society where necessary, and the general imperative of promoting respect for the law and the maintenance of a just, peaceful and safe society: Criminal Code, s. 718. In this regard, the authorities recognize that where the ultimate effect of the combined sentences is to deprive the offender of any hope of release or rehabilitation, the functional value of these sentencing principles meets the point of diminishing returns:

Range of Sentence

[16] Section 465(1) of the Criminal Code provides:

Except where otherwise expressly provided by law, the following provisions apply in respect of conspiracy:

(c) every one who conspires with any one to commit an indictable offence not provided for in paragraph (a) or (b) is guilty of an indictable offence and liable to the same punishment as that to which an accused who is guilty of that offence would, on conviction, be liable;

[17] At the time of the offence, s. 6 of the CDSA did not prescribe a minimum sentence for importing cocaine. The maximum sentence was and remains imprisonment for life.

Applicable Sentencing Authorities

[18] The parties have provided several authorities. I consider the following most relevant to my considerations here:

1. *R. v. Epp*, 2006 BCCA 570:

The accused pleaded guilty to unlawfully importing 100 kilograms of cocaine into Canada using his freightliner tractor and propane tanker trailer to do so. The accused was 35 years old, married with two children and had no prior criminal record. Mr. Epp was at the lowest level of the importing scheme; his role was likened to that of a courier but on a larger scale.

The Court of Appeal reduced the sentence imposed by the provincial court judge from 14 years to 10 years and concluded that the 10-year sentence properly addressed the need for general deterrence and took into account the particular circumstances of Mr. Epp including his age, his family obligations, the continuing support of his family and his church, the lack of a criminal record, his cooperation with the police and his early guilty plea.

2. R. v. Oliynyk, Lepage and Ferris, 2006 BCSC 572; R. v. LePage, 2010 BCCA 249:

The offenders were convicted of a conspiracy to import 32 kilograms of cocaine. Mr. Oliynyk was the person who directed the importing scheme. Mr. LePage was the second-in-line and a close collaborator of Mr. Oliynyk. His role was to find the best sources of cocaine at the most favourable prices in order to obtain the best profit. Mr. Ferris was involved in the illicit activities, joined Mr. LePage in finding sources of cocaine and stood to share in the profits. His role was less than that of Mr. LePage. The trial judge sentenced Mr. Oliynyk to 18 years based on his central role in the conspiracy, the large amount of cocaine involved and a previous conviction that had resulted in a sentence of 10 years. Mr. LePage had no criminal record, but he worked closely with Mr. Oliynyk and was sentenced to 12 years in jail. Mr. Ferris, who had no criminal record, was sentenced to eight years in jail.

The Court of Appeal dismissed the appeals of Mr. Oliynyk and Mr. LePage.

3. R. v. Li, 2009 BCCA 85:

Mr. Li sought to appeal a sentence of 13 years imposed upon him for five drug-related offences including two counts of importing MDP2P (a Class A precursor). The court considered a sentence for each offence and then addressed whether the cumulative sentence imposed was excessive.

The Court of Appeal upheld a 13 year sentence on the basis that Mr. Li minimized his culpability and displayed a lack of appreciation for the significant harm that his conduct posed to individuals who purchased and used the drugs. Mr. Li appeared to be indifferent to the societal costs of drug abuse and the devastating personal cost to drug users and their families. He played a central role in the drug trade in the Lower Mainland. He was a key player in a highly sophisticated importation scheme of MDP2P to be used in the manufacturing of ecstasy. He had a criminal record and repeatedly refused to comply with court orders. He continued his illegal drug business while on bail.

4. R. v. Chahal and Hans, 2010 ONSC 4537:

Mr. Hans and Mr. Chahal are named in this indictment as co-conspirators along with Mr. Chan and Mr. Singh. The 25 kilograms of cocaine which Mr. Chan and Mr. Singh have been convicted of importing was part of the 147-kilogram load that was hidden in Hans and Chahal's 18-wheel tractor-trailer unit. Mr. Hans absconded during the trial.

Both Hans and Chahal were convicted of unlawfully importing cocaine into Canada and unlawfully possessing cocaine for the purpose of trafficking. The trial judge reviewed the state of the law with regard to the importation of cocaine. He considered that the need for general

deterrence was a guiding sentencing principle, particularly for those in the trucking industry who carry contraband across the border. He also considered the enormous amount of the drug found in the truck as a significant aggravating factor. He imposed a sentence on Chahal of 16 years for Count 1 and seven years for Count 2 to be served concurrently. Mr. Hans was sentenced to the same sentence in absentia.

5. R. v. Khakh, (November 14, 2011), Vancouver 192494-7 (B.C.P.C.):

Mr. Khakh was found guilty of conspiracy to import 21 kilograms of cocaine into Canada from California between March and April 2007. He occupied a high-level role and was a trusted member of the conspiracy with important responsibilities. He dealt directly with Mr. Vong, a central figure in the conspiracy, and with the truck driver through an intermediary. The court found the conspiracy was of a sophisticated nature and Mr. Khakh played a significant role of responsibility. The court describes the most important principles of sentencing in the case as denunciation, deterrence and protection of the public on the basis that drugs cause a significant harm to the society generally. The court refers to rehabilitation as an important consideration, but a secondary concern.

Mr. Khakh had a criminal record from the United States and had served a short custodial sentence. The court sentenced him to nine years.

6. R. v. Bains, (December 3, 2012), Vancouver 202092-1 (B.C.P.C.):

Mr. Bains was found guilty of conspiracy to import 6.79 kilograms of heroin between August and September 2007. Mr. Bains was the coordinator of three couriers. The court found that Mr. Bains was involved in every aspect of the importation of heroin and insulated himself from physically dealing with the heroin. Mr. Bains was a family man and did not have a prior criminal record. He was sentenced to a term of imprisonment for 12 years.

Mr. Bains appealed his conviction, however, his appeal was dismissed by the B.C. Court of Appeal, indexed at 2014 BCCA 43, on February 3, 2014

Chun Siu Chan

Circumstances of the Offender

[19] Mr. Chan was born in Vietnam in 1969. He is 44 years old. He went to school in Hong Kong. He came to Canada with his family in 1981 when he was 13. He graduated from high school and attended the University of British Columbia in Science and Engineering, after which, he attended the British Columbia Institute of Technology. He worked for a cellphone company in 1995. In 1997, he was convicted of breaking and entering and he spent 90 days in custody. In 1998, Mr. Chan became involved in operating a nightclub. In 2004, he sold the nightclub and was unemployed. After this offence, he renovated and built a new house for his parents and siblings.

- [20] In 2010, Mr. Chan was convicted of conspiracy to commit an indictable offence, possession of a scheduled substance for the purpose of trafficking, conspiracy to commit an indictable offence and possession of a Schedule I substance for the purposes of trafficking. He received a cumulative sentence of 12 years which, as I have said, was imposed on February 14, 2014. He received credit for pre-sentence custody and had to serve an effective sentence of six years and seven months. He has served approximately five years and eight months of that sentence.
- [21] Mr. Chan, in speaking to the court, apologized for his involvement in the drug trade. He has come to realize the devastating effect of drugs on communities, particularly in small rural towns. He looks forward to a future with his family and to a role as a contributing member of society.
- [22] The aggravating factors to which I have already referred are the size of the shipment and the ongoing and sophisticated nature of the enterprise.
- [23] In terms of Mr. Chan's particular role, that is disputed. The Crown says that he was a top player who directed others through Ricky Chou. He demonstrated a willingness to resort to violence to collect the money that was lost when the shipment was confiscated by the CBSA. Mr. Chan says that he was not at the highest level. He clearly reported to someone higher and referred frequently to his boss in the intercepted calls. He was not the importer or the broker. He did not purchase the cocaine in California. His responsibility was to coordinate the transport and, when it was confiscated, to pursue payment for the 25-kilogram load. Mr. Chan says he made only one reference to violence and he referred to himself having to shoulder \$500,000. Mr. Chan says he had no control and he had to put pressure on Mr. Chou to make sure that the truckers paid.

Role of the Offender

- [24] I find that Mr. Chan was relatively high up in the conspiracy. He had control and directed others through Ricky Chou. At the same time, he had a boss who appeared to be pressuring him to determine what happened to the confiscated load and to pay for it. He was not involved in purchasing the cocaine. There is some evidence that he was involved in the monetary aspects of the conspiracy, although the evidence in that regard is not clear. I find Mr. Chan's role to be similar to that of Mr. LePage as opposed to Mr. Oliynyk, referring to both the Supreme Court and Court of Appeal decisions in that matter.
- [25] His role is also, in my view, similar to the role played by Mr. Bains in *R. v. Bains*. Mr. Bains was found guilty of a conspiracy to import 6.79 kilograms of heroin. He was central to the operation. It was a commercial enterprise carried out solely for financial gain. The enterprise was ongoing. Mr. Bains had others handle the drugs and he attempted to insulate himself. Mr. Bains was sentenced to imprisonment for 12 years.

Criminal Record

- [26] Neither Mr. Bains nor Mr. LePage had a criminal record. Mr. Chan has a dated record from 1997 for breaking and entering. He also has a sentence that he is currently serving in respect of events which occurred in Toronto in 2010. They took place before Mr. Chan was arrested on this charge and the trial took place in February 2014 before the trial of this charge. As I have stated, Mr. Chan is serving a sentence on those charges.
- [27] I decline to take the Toronto charges into account in determining the appropriate sentence for Mr. Chan. I accept his position that had he been arrested for these offences closer to the time that the events took place, he may have been tried sooner and perhaps would not have had the opportunity to commit the criminal offences in Toronto or, alternatively, he may have responded to rehabilitation and decided to change his lifestyle to a law-abiding one.
- [28] I exercise my discretion to find that Mr. Chan must serve a consecutive sentence for the reasons provided in Li. I must impose a fit sentence where the offender is at the same time serving a remainder of a sentence for a previous conviction. The acts constituting this offence were not part of a linked series of acts related to the Toronto offences nor were they a single endeavour.
- [29] I consider that Mr. Chan's delay argument is better addressed by not considering the Toronto offences as an aggravating factor. Rather than reduce the sentence on the basis of delay, if I find there was such, I will determine a fit sentence without reference to the Toronto offences. The result, in my view, is the same.

Crown and Defence Positions

- [30] The Crown's position on sentencing is that a meaningful sentence for an organizing mind in a conspiracy to import is 10 years consecutive to the remaining portion of the Toronto sentence which is approximately five years and eight months for an effective sentence of 15 years and 8 months. Mr. Chan calculates that sentence differently. He has been sentenced to 12 years in Ontario and has spent four-and-a-half years in jail. A 9 to 10-year sentence on conspiracy should be consecutive from the actual sentence imposed of 12 years which totals 22 years. He says a 22-year sentence must be reduced for proportionality. Mr. Chan suggests a sentence of four years consecutive from the time left on his Ontario sentence for an effective sentence of 10.5 years or a 10-year concurrent sentence to the Ontario sentence reduced to nine for pre-trial custody between February 2014 and this sentencing date, January 2015, for an effective total of 16 years.

Appropriate Sentence

- [31] I consider that Mr. Chan is further up in the hierarchy than is suggested by the defence, but lower than that suggested by the Crown. He is not at the top of the hierarchy. He clearly reports to a boss, but he is in control and directs others. In his direction of others, he suggests a willingness to resort to violence, at least once, to collect the outstanding debt. It is

a business and Mr. Chan is in the business for profit. Because of the significant risk, there is a significant profit. At the same time, he was not involved in sourcing the drugs as Mr. LePage was, nor was he the top person as Mr. Bains was.

[32] Mr. Chan, will you please stand.

[33] I find that the Crown's submission that a 10-year consecutive sentence to Mr. Chan's Ontario sentence is appropriate. In respect of the calculation of sentence, the consecutive sentence commences at the warrant expiry date of the Ontario sentence which, I understand, is a further five years and eight months. The effective sentence is, therefore, 15 years and 8 months. I find that the totality principle is applicable and, in consideration of that, I reduce the effective sentence to 12 years and 8 months.

[34] I also impose an order that you provide DNA samples for the DNA bank in accordance with s. 487.05(1)(a) and impose a weapons prohibition order under s. 109 for life.

[35] Thank you. If you could be seated.

Mr. Singh

Circumstances of the Offender

[36] A pre-sentence report was filed in respect of Mr. Singh, as were letters of support. Mr. Singh is 36. He is married and is a father of two children. He was born and educated in India. He graduated from high school and is well educated. He came to Canada in 2005. He has been employed since he graduated from high school. When he came to Canada, he worked for various trucking companies as a truck driver. He began working at Canadian National Railway as a truck driver in April 2008. In 2011, Mr. Singh and his cousin started a residential concrete business.

[37] I refer to the aggravating factors which apply to both Mr. Chan and Mr. Singh, that is, the size of the shipment and the sophistication and ongoing nature of the enterprise.

[38] In respect of the role of the offender, Mr. Singh's role is lower than Mr. Chan's and higher than that of a truck driver. He was a transportation specialist who arranged transport and directed the truck drivers.

Criminal Record

[39] Mr. Singh has a post-offence conviction that I am not taking into account in determining the length of sentence in this matter.

Crown and Defence Positions on Sentence

- [40] The Crown seeks a 12-year sentence for Mr. Singh on the basis that he was not merely a truck driver. He removed himself from that, which the Crown says is a hallmark of a higher-up in an organized sophisticated importing scheme. Mr. Singh asserts that an eight-year sentence is an appropriate sentence.
- [41] I consider that the Khakh case and the Oliynyk case, in reference to Mr. Ferris, are comparable. Although each accused in those cases was a truck driver, I find they share the same level of moral culpability as Mr. Singh. Mr. Khakh received a nine-year sentence. Mr. Ferris received an eight-year sentence.
- [42] Mr. Singh, would you please stand.
- [43] Upon consideration of the aggravating factors that I have described and the mitigating factors supporting Mr. Singh, included his expressed remorse, I find that an appropriate sentence for him is eight years in jail.
- [44] I impose a DNA order that Mr. Singh provide a sample of his DNA for the DNA databank, in accordance with s. 487.05(1)(a) and I impose a weapons prohibition under s. 109 for a period of 10 years.
- [45] Have a seat.
- [46] MR. BRIGGS: I just wanted to clarify the sentence you gave my client. It is seven consecutive to now?
- [47] THE COURT: Yes, I reduced it for totality. So it is seven years consecutive to the remaining Ontario sentence.

"Gropper J."

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