
CANADA / JUDGMENT

R. v. Chan

2021 BCSC 1607

COURT

Supreme Court of British Columbia

DECIDED

3 August 2021

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2021 BCSC 1607 R. v. Chan

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Chan,

2021 BCSC 1607

Date: 20210803

Docket: 27984

Registry: Vancouver

Regina

v.

Duke Yin Chan and Lawton Louis Ma

Before: The Honourable Mr. Justice A. Ross

Oral Reasons for Sentence

Counsel for the Crown:

D. Meneley

C. Fast

Counsel for the Accused Duke Yin Chan:

S. Wright

Place and Date of Trial/Hearing:

Vancouver, B.C.

May 25 & June 8-9, 2021

Place and Date of Judgment:

Vancouver, B.C.

August 3, 2021

- [1] THE COURT: On June 26, 2020, I convicted Mr. Chan on eight counts of possession of various drugs for the purpose of trafficking. The controlled substances included fentanyl, heroin, cocaine, and W-18.
- [2] These are my reasons on Mr. Chan's sentencing.
- [3] The Crown submits that Mr. Chan was a mid- to high-level trafficker and a sentence of nine years is appropriate in his circumstances. The defence submits that the appropriate sentence would be a conditional sentence or alternatively two years' incarceration, followed by three years' probation.
- [4] The opposing positions obviously indicate a large gulf in the possible sentences for this type of crime.
- [5] I have outlined below counsel's opposing positions, the case law supporting those positions, my analysis, and my decision.

Background

- [6] These charges arise from the execution of a search warrant on a residential suite located at Number 520, 4818 Eldorado Mews in Vancouver. I refer to that building as the "Eldorado" and the suite as the "Stash House".
- [7] As part of an investigation project, Mr. Chan had been observed by the Vancouver Police surveillance team at the Eldorado on dates between January 14 and 17, 2017.
- [8] The Vancouver Police Department executed a search warrant at approximately 9:55 a.m. on February 3, 2017.
- [9] While the search was ongoing, Mr. Chan arrived at the fifth floor of the Eldorado. He was arrested at the scene. Keys seized from Mr. Chan opened the door to the Stash House.
- [10] A water bottle seized within the Stash House bore the DNA of Mr. Chan. Significant drug paraphernalia and substances were found within the suite.
- [11] Mr. Chan was charged along with a co-accused, Mr. Ma, on March 10, 2019.
- [12] Mr. Chan and Mr. Ma initially pleaded not guilty to the counts on the indictment. They raised several Charter arguments. Ultimately I found that there had been six breaches of Charter rights of the two co-accused. Pursuant to s. 24(2) of the Charter, they sought a stay of proceedings. Unfortunately, Mr. Ma passed away during the course of the voir dieres and

before the 24(2) decision. As a result, the case continued solely against Mr. Chan. I dismissed Mr. Chan's 24(2) application. Following that ruling, Mr. Chan invited a conviction based upon an agreed statement of facts which I discuss below. I convicted Mr. Chan on June 26, 2020.

- [13] In January 2021, Mr. Chan applied to reopen the Crown's case on the voir dres to argue a new development in the law relating to privacy rights. I dismissed that application.
- [14] As noted, prior to his conviction, counsel achieved an agreed statement of facts. Exhibited to that document is a chart that accurately lists the drug exhibits seized during the search of the Stash House. The chart sets out the amounts of each seizure, the nature of the substance, and the location where each exhibit was found within the suite. The amounts of each drug or combination of drugs seized within the stash house total:
- a) with respect to Count 1, 93.75 grams of cocaine;
 - b) with respect to Count 2, 6.13 grams of heroin;
 - c) with respect to Count 3, 475.84 grams of fentanyl;
 - d) with respect to Count 4, 100.41 grams of W-18;
 - e) with respect to Count 5, 94.17 grams of heroin and W-18;
 - f) with respect to Count 6, 408.73 grams of fentanyl and W-18;
 - g) with respect to Count 7, 26.46 grams of heroin and fentanyl;
 - h) with respect to Count 8, 15.84 grams of heroin, fentanyl, and W-18.
- [15] The report of Detective Constable Kazuta exhibited to the agreed statement of facts provided evidence that the possession of the drugs seized from the Stash House was for the purpose of trafficking.
- [16] Since the date of conviction, a Pre-Sentence Report has been prepared. Further, the Crown has tendered the expert report of Sergeant Boechler regarding the nature and value of the drugs seized.
- [17] Sergeant Boechler's report dated August 3, 2020, describes the operation as a mid-level drug trafficking operation. The defence does not take issue with that characterization. Sergeant Boechler notes that mid-level drug traffickers typically purchase bulk amounts from high-level dealers, often at the kilogram level. They break down the drugs, often involving cutting into smaller amounts for street-level distribution.
- [18] Sergeant Boechler also described the dangers of this type of operation. In cutting the drugs down for street-level distribution, the high purity drugs are mixed with a buffering agent. The mixing is often done in a retail blender designed for home use, such as a "Magic Bullet" brand blender. That type of blender was found in the Stash House. According to his report, two milligrams of pure fentanyl, an amount equivalent to a few grains of salt, is considered

to be the median deadly dose. That is, the toxicity that would kill half of the subjects of a test population. If the mixing of the fentanyl and the cutting agents is done imprecisely, then the amount of fentanyl in each dose can vary widely. The street-level product can have hotspots containing more fentanyl than expected. Put simply, those hotspots can have fatal effects.

- [19] Sergeant Boechler estimated the conservative valuation of the drugs seized at approximately \$124,150. The Crown notes that his estimate was prepared before any quantitative analysis had been completed. In submissions, the Crown extrapolated from the quantitative testing to a significantly increased value of the drugs found at the stash house. However, I accept the defence submission that I should not consider counsel's estimates in the absence of expert evidence.

Personal Circumstances of the Offender

- [20] Mr. Chan is 45 years old. He is married and has two children. His older child is the product of a prior relationship; that child does not factor into Mr. Chan's submissions.
- [21] Mr. Chan's younger child, age six, is on the autism spectrum. I am informed that she is non-verbal and requires significant care. This is not a mitigating factor, but it is a collateral fact to be considered.
- [22] According to the Pre-Sentence Report, Mr. Chan grew up and graduated from high school in Vancouver, then worked in warehousing, courier driving, and janitorial services. His counsel submits that he then made a bad decision. He now regrets that decision. That decision was becoming involved in trafficking. There is no evidence of trauma or other adverse events leading to Mr. Chan's travel down a criminal path. There is no evidence that he had any drug dependency issues.
- [23] Mr. Chan has no prior convictions.
- [24] Since being charged, Mr. Chan has been employed as a sheet-metal fabricator and as a driver for a mail delivery company. He presented letters of support from his employers. His counsel submits that Mr. Chan separated himself from the drug subculture as soon as he was arrested.

Aggravating and Mitigating Factors

- [25] As noted above, the Crown submits that the only mitigating factor in this case is that Mr. Chan has no prior convictions. However, the Crown argues that this should not be a significant mitigating factor. The Crown says that Mr. Chan is a mature individual who clearly made a decision to be involved in a criminal enterprise for profit. With respect to a similar history, in *R. v. Nelson*, 2021 BCCA 192, the B.C. Court of Appeal wrote at para. 51:

- [51] I would add that, as in R.M., the appellant was not a first-time offender in the sense that concept is generally considered as a mitigating factor on sentencing. He was a mature individual, whose conduct spanned a period of several years and demonstrated a high degree of moral blameworthiness. The judge committed no material error, in my view, in finding that denunciation and general deterrence were to be given primary emphasis, despite the absence of prior convictions.
- [26] Although there is no evidence of "several years" of criminal activity, the Crown notes that Mr. Chan had the Eldorado condominium in use as a Stash House for some considerable period before his arrest.
- [27] The Crown says that the aggravating factors in this case are as follows:
- 1) First, the serious nature of the charges, there were a variety of substances seized and charged, each is a Category 1 controlled substance which would carry a maximum sentence of life imprisonment.
 - 2) Second, the purity and potency of the drugs seized. The drugs were also mixed together. These facts create the potential for hotspots leading to overdoses and death. Further, they increase the profit potential.
 - 3) Third, the Crown concedes that this was not a wholesale operation, but submits that it was at the mid to high level.
 - 4) Fourth, Mr. Chan had a leadership role, and also a distributorship role. He had the keys to the apartment and a fob allowing entry. He clearly had occupation of the stash house. As discussed below, this element is disputed by Mr. Chan.
 - 5) Fifth, the sophisticated nature of the operation indicated that Mr. Chan had put planning and forethought into obtaining the stash house, the equipment, the materials, the mixing agents, and the drugs.
 - 6) Sixth, the profit motive, which the Crown says can clearly be inferred from the value of the drugs.
 - 7) Seventh, the public emergency which was clear from 2015 onward. The Crown submits that the emergency peaked in early 2017 at the time of this arrest.
- [28] On that basis, the Crown submits that a lengthy prison sentence is warranted.
- [29] In response, Mr. Chan submits that the absence of any prior offences is a significant mitigating factor.
- [30] Mr. Chan also submitted that the evidence indicates that he played a subservient role in the trafficking enterprise. On this issue, the two sides did not agree. The Crown took issue with counsel's submission in respect of Mr. Chan's role and argued that the evidence led to a different conclusion.

- [31] To resolve these issues, a Gardiner hearing was conducted. Counsel directed me to the reasons of the B.C. Court of Appeal in *R. v. Pahl*, 2016 BCCA 234, and ss. 723-724 of the Criminal Code, R.S.C. 1985, c. C-46, on the proper approach to such a hearing. Aggravating factors must be established by the Crown beyond a reasonable doubt. Mitigating factors must be established by the defence on a balance of probabilities. Although hearsay evidence is admissible, the podium is not equivalent to the witness box.
- [32] The Crown's position is that Mr. Chan was an active and highly-involved member of the trafficking operation with knowledge of the amounts of controlled substances and participation in the process of powdered substances at the stash house. He was also the primary person responsible for storage and distribution of the substances.
- [33] As noted above, Mr. Chan was originally charged with the co-accused, Mr. Ma. Mr. Ma passed away prior to conviction. In general, Mr. Chan's submissions at sentencing indicated that Mr. Ma had a greater leadership role in the operation. The Crown disputes that position and submits that the evidence establishes the opposite.
- [34] The Crown specifically disputes the following mitigating assertions by Mr. Chan in this hearing:
- 1) First, his co-accused, Mr. Ma, owned the drugs.
 - 2) Second, Mr. Chan received direction from Mr. Ma.
 - 3) Third, Mr. Chan was not aware of the amounts or purity of the substances.
 - 4) Fourth, Mr. Chan's only activities involved supplying Mr. Salamacha, a street-level dealer, and making the stash house at the Eldorado available to Mr. Ma.
 - 5) Fifth, not all of the meetings between Mr. Chan and Mr. Salamacha constituted drug sales.
 - 6) Sixth, Mr. Chan was aware of the activities at the Stash House, but those activities were not his doing.
- [35] The Crown points to a number of surveillance reports that show attendances by Mr. Chan at the stash house on almost a daily basis during the period of surveillance. They also show almost daily meetings between Mr. Chan and Mr. Salamacha between January 20 and January 28, 2017.
- [36] The Crown also relies on excerpts from phone interactions taken from two cellphones that were seized from Mr. Chan. Although those text messages do not indicate that Mr. Chan was giving orders to others, they also do not indicate that Mr. Chan was taking orders or direction from Mr. Ma.
- [37] The Crown submits that the only inferences to be drawn from the totality of the evidence are the following:

- 1) First, Mr. Chan is the person most connected to the stash house at Eldorado. He was issued a fob and a key with his name being given to management. His sister was registered on title. He was the only person who travelled by himself to the Eldorado during the period of surveillance. Hence, access and control over its contents are established. He was the only person with regular access.
 - 2) Second, the interior of the stash house, including the presence of blenders and a dehydrator, indicated that this was clearly used for the storage and processing of drugs. In addition to the drugs on hand, there were numerous bulking agents. It would have been obvious to anyone what was going on within that apartment.
 - 3) Third, the paraphernalia within the Stash House, including the bullet mixers, the dehydrator, and the two gas masks, clearly indicate that the stash house was obtained for the purpose of processing drugs. Further, the purchase of the other appliances was clearly for the purpose of processing drugs. Still further, the ownership of the two masks indicates that two people were involved in the process.
 - 4) Fourth, The nature of the substances found in the stash house indicate two things, the Crown submits. It had a high value and thus Mr. Chan needed full control over the stash house and, second, it was lethal in nature and Mr. Chan knew it. He knew that the mixing of the product was important. Further, he had to have complete knowledge in order to produce product that was non-lethal.
 - 5) Fifth, as noted, Mr. Chan met Mr. Salamacha almost daily and had meetings with others which the Crown submits indicated further drug deals. Mr. Ma did not have any such meetings while under surveillance. Mr. Chan met Mr. Salamacha at least 11 times between January 20 and 27. This regularity indicates that this was the primary activity of Mr. Chan on a daily basis.
- [38] The Crown submits that these five factual items lead to the inference that Mr. Chan was, in fact, fully involved in the drug-processing operation and he had a full knowledge of the amounts and purity of the substances in the stash house. He was primarily responsible for the storage and distribution of the drugs. The Crown further submits that there is no evidence of Mr. Ma's involvement that would supplant the obvious inference from the evidence listed above.
- [39] In response to the Crown's submission, Mr. Chan concedes that he participated in a mid-level trafficking operation. However, he disputes the Crown's suggestion that his participation was at the high end of that mid-level range. He submits there is no evidence of any leadership role.
- [40] Mr. Chan submits that the inference to be drawn from the facts is that his role was lower in the hierarchy than his co-accused, Mr. Ma. Mr. Chan notes that:

- 1) Mr. Chan had obtained the Stash House condominium in his name and was on the building's records. This suggests that Mr. Ma was one step further insulated than Mr. Chan, because he was not insulated from detection;
 - 2) Mr. Ma supplied Mr. Chan with product and it was Mr. Chan's role to supply that product to Mr. Salamacha, the lower-level dealer;
 - 3) the analysis of DNA evidence found in the stash house only identified Mr. Ma's DNA on the respirator, suggesting that the only evidence was that Mr. Ma was involved in the processing of the drugs. On that basis, Mr. Chan's counsel denies that he was involved in the mixing or packaging of the product;
 - 4) although the Crown submits that evidence taken from Mr. Chan's phone suggests that he was in a leadership position, Mr. Chan submits that a full review of the texts indicates that apart from Mr. Salamacha, he was delivering product directly to street-level users.
- [41] As noted above, the Crown's position on aggravating factors must be established beyond a reasonable doubt. The defence propositions need only be established on the balance of probabilities.
- [42] I accept Mr. Chan's submission that the totality of the information extracted from his cellphone indicates that Mr. Salamacha was Mr. Chan's only customer above the individual user level. While he had a number of other customers, they were individual users. I accept Mr. Chan's submission that it would be incongruous for a person in a leadership position within this type of drug operation to be dealing at the street level.
- [43] Having said that, I do not accept Mr. Chan's submission that the evidence regarding his connection to the stash house is indicative of a lower tiered role within the operation. His name was on the building manager's documents and his sister was the registered owner of the stash house. However, I infer from that evidence that Mr. Chan was more, not less, involved in the operation. I find that this alleged mitigating factor is not established on the balance of probabilities.
- [44] The evidence submitted by the Crown on this hearing does not, in my opinion, elevate Mr. Chan's participation to the higher level or a leadership role in the operation. As noted, the Crown concedes that there is no evidence of Mr. Chan issuing instructions or directions to any subordinates. Similarly, there is no evidence of Mr. Ma issuing instructions to Mr. Chan.
- [45] Having reviewed the evidence and the positions of the parties in relation to the disputed facts, I am led to the conclusion that Mr. Chan was an active participant in a mid-level drug operation. He supplied Mr. Salamacha as part of that operation. He also did some street-level dealing. His role was not subservient to Mr. Ma's, neither was his role superior to Mr. Ma's. Instead, the two men were participating together with each taking on different but necessary and equal roles within the operation.

[46] I proceed with the analysis of the sentencing principles on the basis that Mr. Chan had that level of involvement.

Parties' Positions

[47] As a preliminary matter, Mr. Chan's counsel sought a ruling relating to the minimum sentence requirements and the provisions of the Criminal Code that would preclude the imposition of a conditional sentence. Counsel cited the decision of Justice Schultes of this court in *R. v. Chen*, 2021 BCSC 697, striking down those provisions.

[48] Counsel for Mr. Chan and the Crown agreed that, for the purpose of this case, there is no reason for me to depart from the reasoning in *Chen*. The Crown's position is that a conditional sentence is not within the range of appropriate sentences on the facts of this case. Hence, the parties agreed that I should proceed with the sentencing hearing and imposition of sentence. I discuss the defence submissions below.

[49] The Crown's position is that the offences under s. 5(2) of the CDSA, of which Mr. Chan stands convicted, are very serious and relate to deadly drugs. He operated a sophisticated drug operation at the mid-to-high level in the midst of the opioid crisis. The only mitigating factor, according to the Crown, is that Mr. Chan does not have a criminal record.

[50] The Crown seeks a sentence of nine years' imprisonment on each of the fentanyl-related charges, Numbers 3, 6, and 8.

[51] On Counts 1, 2, 4, and 5, which relate to cocaine, heroin, and a compound called W-18, the Crown seeks concurrent sentences of five years.

[52] Mr. Chan's position is that the sentence proposed by the Crown is significantly out of step with prior decisions and is inappropriate on the facts.

[53] The Crown's submission focused on the progression of sentencing cases from 2017 to the present.

- 1) In *R. v. Smith*, 2017 BCCA 112, our Court of Appeal established a general principle that sentencing for a first-time offender dealing fentanyl at the street level begins at 18 months' imprisonment. The court did not place a top end on the range. The Court of Appeal's reasons in *Smith* are oft referenced in subsequent decisions.
- 2) In *R. v. Mann*, 2018 BCCA 265, our Court of Appeal upheld sentences of four years for trafficking fentanyl, in addition to longer sentences for carfentanyl. Of note in *Mann*, the sentences were mitigated by the youth of the parties, the lack of a criminal history, and the offender's guilty pleas.
- 3) In *R. v. Lloyd*, 2019 BCCA 128, our Court of Appeal upheld a six-year prison sentence imposed on a 29-year-old with ten prior convictions. The court noted that the six-year sentence was at the "higher end of the range", but was not demonstrably unfit.

- 4) In *R. v. Oswald*, 2019 BCSC 1861, Justice Kent imposed a sentence of eight years for an offender at the high end of the mid-range in a case involving guns, domestic abuse, and 69 prior convictions.
- 5) Most recently, in *Nelson*, our Court of Appeal upheld the sentence of 11 years to a first-time offender convicted of trafficking in carfentanyl. There was also a four-year sentence for dealing in fentanyl.
- [54] On that basis, the Crown submits that nine years is an appropriate sentence. They acknowledge that this sentence tends towards the high end, but submit that it is appropriate because of the factors discussed above.
- [55] I noted at the outset Mr. Chan's initial position that a conditional sentence order was appropriate on these facts. He cites *R. v. Nesbitt*, 2012 BCCA 243, and *R. v. Kreutziger*, 2005 BCCA 231, as appellate authority for the proposition that, in the right circumstances, a conditional sentence can be imposed in place of imprisonment. The conditional sentence allows the judge to craft a sentence with appropriate conditions that can lead to rehabilitation, reparations to the community, and promotion of a sense of responsibility.
- [56] In the alternative, if a prison sentence is to be ordered, Mr. Chan submits that the cases and the range of sentences submitted by the Crown are significantly more serious than his own circumstances. He submits that a nine-year sentence would be appropriate for a hardened criminal who is likely to reoffend. To contrast the length of the sentence proposed by the Crown against the present facts, Mr. Chan points to the decisions in:
- 1) *R. v. F.D.W.*, 2018 BCPC 374, where Wolf P.C.J. imposed a sentence of ten years to a mid level heroin, cocaine, and fentanyl trafficker with 13 prior convictions, Mr. Chan submits that the offender in *F.D.W.* was a hardened criminal who was likely to reoffend, hence he was at the opposite end of the spectrum from Mr. Chan;
 - 2) *Oswald*, where the court found that the offender, who had a long criminal record and few mitigating factors, received a sentence of eight years, in part because he "displayed a high degree of moral culpability". Justice Kent found Mr. Oswald to be at the high end of a mid-level trafficking operation, which involved a firearm and a related charge of domestic abuse;
 - 3) *R. v. Ranu*, 2019 BCPC 97. The offender was sentenced to seven years' imprisonment for trafficking in fentanyl, heroin, and cocaine. Mr. Ranu was found in possession of a greater amount of controlled substances than Mr. Chan. He also had a prior criminal record with two related convictions. The court found that he was actively encouraging customers to switch from heroin to fentanyl toward his own monetary gain. These factors increased his moral culpability.

- [57] Mr. Chan contrasts his own circumstances against the offenders in F.D.W., Oswald, and Ranu. Mr. Chan is a first-time offender who did not possess or have access to any firearm or weapon. Although not a mitigating factor, he notes that he has divorced himself from any criminal entanglement and has been living a prosocial existence since his arrest. Hence, he argues that the Crown's suggested sentence is significantly out of the proper range for the facts of Mr. Chan's case.
- [58] Mr. Chan points to the decision in *R. v. Chin*, 2017 BCSC 501, where Justice Ker sentenced a mid-level trafficker to three years' imprisonment. Unlike Mr. Chan, Mr. Chin had 13 prior convictions. Mr. Chan's counsel concedes, however, that the Chin decision was released prior to the Court of Appeal's decision in *R. v. Smith*, which is a touchstone in this area.
- a) Similarly, Mr. Chan points to *R. v. Desbiens*, 2020 BCSC 884, a case involving the possession for the purpose of trafficking of several substances, including fentanyl, and possession of weapons. In that case, for the fentanyl counts, Justice Myers imposed two consecutive sentences of four years, even though the second indictment was for possession for the purpose of trafficking fentanyl while he was on bail from the first charge.
 - b) Counsel also notes, in *R. v. Campbell*, 2021 BCSC 853, Justice Ker sentenced a mid-level fentanyl dealer to two years of imprisonment followed by three years' probation. Justice Ker noted that the 29-year-old offender, who was of Métis ancestry, sold fentanyl and other drugs to street-level traffickers and end users. Mr. Chan says that his situation is similar. Mr. Campbell was noted to have been raised in an abusive household and had a history of substance abuse. After his arrest, he took treatment for his substance abuse, obtained employment, and expressed his remorse. In imposing the two-year sentence to be followed by three years of probation, it is evident that Justice Ker applied restraint on the grounds that Mr. Campbell was a first-time offender, relatively young, and of Indigenous ancestry. Further, his steps towards rehabilitation were considered important.
 - c) In *R. v. Nelson*, 2019 BCPC 168, after trial, the court imposed a sentence of three years for trafficking in fentanyl, cocaine, and methamphetamine on a woman who had been employed as a corrections officer. Although the operation was found to be at the mid level, the offender's involvement was at the lower end.
- [59] I discuss below the comments of Justice Ker relating to the impact on society in the sentencing decision of *R. v. Emery*, 2019 BCSC 1789. Mr. Chan notes that in that case, Justice Ker imposed a sentence of three years for an offender with one prior conviction for possession which bound him to four probation orders at the time he committed the trafficking offence.
- [60] The court found that Mr. Emery was involved in a mid-level operation but also conducted some street-level transactions. Mr. Chan submits that this case is similar to Mr. Emery's circumstances.

- [61] Finally, Mr. Chan points to the decision of Judge Adams in *R. v. Coddett* (28 June 2019), Richmond 62066-1 (B.C.P.C.). In that case, the court imposed a sentence of four years for trafficking in fentanyl with a concurrent sentence of three-and-a-half years for a firearms offence. That case involved a guilty plea. However, the court noted the sophistication of the operation, the firearms, and body armour.
- [62] The court in that case submitted that the range for mid-level drug traffickers of fentanyl was between four and seven years. The court found that if he had proceeded to trial and lost, the sentence would have been five years. Mr. Chan notes that Mr. Coddett was sentenced to four years, the lower end of that range, despite being convicted of possession of a firearm. I note that the court specifically gives great weight to the early guilty plea in that case.
- [63] Mr. Chan's counsel notes that in the four years since his arrest in February 2017, he has been a model citizen. He notes that three of those years have been on judicial interim release. He has been well employed and has provided letters from his employer and family indicating his commitment to his job and remorse for his prior actions. Counsel notes that the evidence indicates Mr. Chan has divorced himself from any connection to illegal activity.
- [64] Mr. Chan's counsel also notes that he has no prior criminal convictions. Further, he has already felt significant impacts, including the damage to his relationship with his sister who was the registered owner of the stash house condominium which was subject to civil forfeiture. Counsel submitted that Mr. Chan has been wiped out financially. No evidence was submitted to support that submission.
- [65] As noted above, Mr. Chan's first position is that a conditional sentence is appropriate, followed by three years of probation. In the alternative, he submits that the appropriate sentence would involve two years' imprisonment followed by three years of probation. He submits that this form of sentence would provide oversight over Mr. Chan's activities for a significant period of time.
- [66] I have considered the offender's submissions regarding a conditional sentence and I do not find them to be applicable to these facts. For the reasons set out below, I find that a period of incarceration is appropriate in the circumstances of this case.

Principles of sentencing

- [67] Part XXIII of the Criminal Code codifies the principles of sentencing. The principles set out at s. 718 include:
- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
 - (b) to deter the offender and other persons from committing offences;
 - (c) to separate offenders from society, where necessary;
 - (d) to assist in rehabilitating offenders;

- (e) to provide reparations for harm done to victims or to the community; and
 - (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.
- [68] The Crown submits that the primary principles in Mr. Chan's sentencing should be deterrence and denunciation. Crown submits that the court must denounce Mr. Chan's actions because of their significant impact on society, including the victims of these drugs, as well as the impact on the health system and the secondary crimes caused to support drug habits. The Crown submits that this is the community's opportunity to denounce this conduct.
- [69] With respect to deterrence, the Crown acknowledges that specific deterrence is not required in this case. Mr. Chan is a first-time offender and there is no evidence that he has returned to any criminal activity. However, the Crown submits that the sentence should take into consideration what punishment would deter others from the same conduct. The Crown submits that I should infer that Mr. Chan considered the consequences of his actions before entering into this operation.
- [70] The main force of Mr. Chan's submission was that general deterrence does not have the effect of deterring other offenders from performing similar criminal acts. He cites several research papers and the discussion by the then Chief Justice McLachlin in *R. v. Nur*, [2015] 1 S.C.R. 773, indicating that the empirical evidence suggests that mandatory minimum sentences do not provide general deterrence. Hence, he argues I should minimize that factor in my consideration.
- [71] Mr. Chan does not contest that the primary controlled substance located and seized in the stash house was fentanyl. With respect to the aspect of denunciation, much has been written about the impact of fentanyl on our society. The impact of the fentanyl problem was described starkly and accurately by Justice Ker in mid-2019 in *Emery*, citing her own decision from *R. v. Toth*, 2017 BCSC 501. At para. 35, Justice Ker wrote:
- [35] All of the decisions provided by counsel at the sentence hearing refer in some way to the frightening rate at which fentanyl-related overdose deaths continue to occur. All acknowledge that the magnitude of the public health crisis has increased dramatically. Tragically, notwithstanding the passage of nearly two-and-a-half years since the Court of Appeal's decision in *R. v. Smith*, 2017 BCCA 112 increased the range of sentence for street-level dealers of fentanyl to between 18 and 36 months' imprisonment, my observations in *R. v. Toth*, 2017 BCSC 501 at paras. 43 through 45 remain unchanged:
- [43] But in addition to the overdose deaths caused by fentanyl, tragic as they are, there is the further tragedy and misery felt by the family and friends of the deceased.

- [44] Indeed, the risk of overdose for users is not the only danger presented by this extremely hazardous substance; first responders, healthcare workers, citizens wielding naloxone kits and [others] are put in harm's way through the risk of contamination with this substance. That is not to mention the heavy collateral toll on a strapped healthcare system struggling to respond to this epidemic.
- [45] As Judge Van Harten so aptly noted in *R. v. Aujla*, 2016 ABPC 272 (CanLII):
- [1] Once an insidious killer of opioid users, the drug fentanyl has emerged to become a notorious Grim Reaper stalking the streets of Canada's cities and towns. Anyone reading or watching the news understands that fentanyl use has become a serious public health crisis to which governments and law enforcement agencies are attempting to respond.
- [72] The defence does not challenge the significant and frightening impact of fentanyl and the impact it has had on our society.
- [73] The Crown presented evidence showing the number of deaths per month over the past few years. The statistics are horrific.
- [74] Implicit in Mr. Chan's submission regarding the lack of evidence that longer sentences have the effect of general deterrence is a recognition of the seriousness of the drug overdose problem and Mr. Chan's participation in it.

Analysis

- [75] I was assisted in my analysis by both counsel's review of the historical context of sentencing in fentanyl-related convictions. The Crown submits that there have been a progression of sentencing cases involving fentanyl trafficking. While no range has been established for mid-level traffickers, the Crown submits that the courts of this province have increasingly recognized the seriousness of fentanyl-related offences.
- [76] Mr. Chan's counsel concedes that this was a mid-level trafficking operation. As I found above, Mr. Chan was a full participant in that operation. He was neither subservient to nor superior to Mr. Ma.
- [77] The drugs found in the stash house included fentanyl, heroin, cocaine, and W-18. The most concerning of those was, of course, fentanyl. Trafficking in fentanyl was and is producing extreme suffering in the most vulnerable members of our society. Mr. Chan engaged in that enterprise with a pure profit motive. Mr. Chan and Mr. Ma had obtained a large amount of drugs that were being trafficked. Although this was his first offence, it is evident that significant planning and investment had gone into obtaining and outfitting the stash house. However, I do put significant weight on the absence of prior convictions.

- [78] Mr. Chan appears to have distanced himself from all criminal associations since his arrest and the filing of these charges. In my view, the prospect of rehabilitation is good. Specific deterrence is not a great concern in this case. That prospect does not, however, overbalance the gravity of the offence and the need for denunciation.
- [79] As noted, Mr. Chan argues that I should minimize the concept of general deterrence in my consideration. However, I have to consider the sophisticated and substantial nature of the enterprise. Mr. Chan set out to profit from the misery of the most vulnerable members of our society. I have considered Mr. Chan's submissions, but the court must accord appropriate weight to the principles of denunciation and deterrence.
- [80] The range of sentences in the cases submitted by both sides demonstrate the serious nature of the drug-related offences and also the importance of the individual considerations.
- [81] Mr. Chan, would you stand up, please.
- [82] On each of Counts Number 3, 6, 7, and 8, which are the fentanyl-related charges, I impose a sentence of four years' imprisonment on each charge to be served concurrently.
- [83] On Counts 1, 2, 4, and 5, which are the charges relating to cocaine, heroin, and a compound called W-18, I impose a sentence of two years to be served concurrently with the other counts.
- [84] In addition, the Crown seeks the following orders:
- a forfeiture order pursuant to s. 16(1)(a) of the CDSA;
 - weapons and firearms prohibition for life pursuant to ss. 109(1)(c) and (3) of the Criminal Code; and
 - a DNA order pursuant to s. 487.051(3)(b) of the Criminal Code.
- [85] I make the forfeiture order sought by the Crown.
- [86] The weapons and firearms prohibition is mandatory; I impose a ban of ten years.
- [87] In respect of the DNA order, the Crown notes that the DNA evidence linked Mr. Chan to the stash house. I consider that to be sufficient basis for the order and I so impose.
- [88] Mr. Chan, I have imposed a significant sentence upon you. It is my hope that you will serve that sentence and return to becoming a productive member of our society. I believe that you can achieve that goal.
- [89] That ends my reasons.

"A. Ross J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/21/16/2021BCSC1607.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-chan-2021-bcsc-1607>

Prepared on 26 October 2026 · Esheria