

CANADA / JUDGMENT

R. v. Chia

2014 BCSC 1955

COURT

Supreme Court of British Columbia

DECIDED

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2014 BCSC 1955 R. v. Chia IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Chia, 2014 BCSC 1955 Date: 20141007 Docket: 26138 Registry: Vancouver Regina v. Henry Kal-Geat Chia Manh Phu Nguyen Before: The Honourable Madam Justice Duncan Oral Reasons for Sentence Re Accused Henry Kal-Geat Chia Counsel for the Crown: J.N. Walker Counsel for the Accused Chia: D.B. Geller Place and Dates of Trial: Vancouver, B.C. January 6-10, 2014 January 21, 2014 June 4, 2014 Place and Date of Judgment: Vancouver, B.C. October 7, 2014

- [1] THE COURT: Mr. Chia is before me today to be sentenced on three offences on Indictment 26138-5: Count 1, trafficking in cocaine; Count 2, possessing cocaine; and Count 6, possession of a loaded restricted firearm. Mr. Chia entered guilty pleas to those three offences on June 4th of this year.
- [2] He was arrested on March 7, 2012, after about a week of surveillance by the Combined Forces Special Enforcement Unit acting on a tip from an informer. Mr. Chia was observed in and around a home and a business in Richmond. The business, known as Local Boys Garage, was a car detailing business. Police observed Mr. Chia meet with a Mr. Nguyen, and when they arrested Mr. Nguyen, he had two kilograms of cocaine in his vehicle. When Mr. Chia was arrested, he also had cocaine in his possession, as well as a loaded handgun.
- [3] After a week-long voir dire, I ruled Mr. Chia's arrest was premised on lawful grounds. The cocaine is valued at approximately \$35,000 a kilogram on a wholesale basis, and the amount of the drug is not insignificant.
- [4] Mr. Chia is currently 29 years of age. He was born and raised in British Columbia and graduated from high school in Burnaby. A few months before his arrest in 2012, I understand from his counsel he was a successful businessman with a good relationship with a young woman who was a nurse. Mr. Chia was involved in a motorcycle accident which had a devastating physical effect on him and caused him to be prescribed a cocktail of drugs, including OxyContin, which I am given to understand is a highly addictive drug.

- [5] Mr. Chia had recently expanded his business prior to the accident. Specifically, he took a lease on a premise in Richmond. His business began to suffer financially and, as a result, he undertook some unstable sublet tenants in the building in Richmond. Mr. Chia himself had money trouble. He became involved in the sale of drugs and, as a result, finds himself before me today.
- [6] Mr. Chia has a criminal record for break and entry in 2007, as well as a conviction for assault with a weapon. He received a conditional sentence of two years less a day, as well as a weapons prohibition, which he breached in the commission of the offences before me.
- [7] Counsel jointly submitted a global sentence of four years and 10 months, with credit for 46 and one-half months' time served. I have been given no reason to question this joint submission. Mr. Chia is still young and, according to his counsel, Mr. Geller, he has prospects for rehabilitation and likely future success if he stays away from the wrong crowd. The sentence proposed addresses denunciation and deterrence, two important factors when one is dealing with drugs and firearms offences, but it also does not discard the prospect that Mr. Chia can in fact rehabilitate himself and get back on track with a successful business or a job.
- [8] Mr. Chia, I am going to ask you to stand up while I impose sentence.
- [9] On Count 6, the firearms offence, I impose a sentence of four years and 10 months, and from that, as proposed by counsel, I deduct 46 and a half months' credit for time served. That leaves a total sentence of 11 months left to serve.
- [10] On Counts 1 and 2, I impose concurrent sentences, that is concurrent to each other and concurrent to the sentence on Count 6, of three years.
- [11] I am also going to make some other orders, so Mr. Chia, you can sit down. I just have a question for Mr. Walker.
- [12] Mr. Walker, is it anticipated that the 46 and a half months that counsel have agreed is the equivalent of time served, that applies across the board on all three counts, so the concurrent sentences on Counts 1 and 2 are concurrent to each other and concurrent with the time left to be served on Count 6?
- [13] MR. WALKER: Correct.
- [14] THE COURT: Yes, okay, thank you.
- [15] In terms of ancillary orders, I order that a sample of Mr. Chia's DNA be taken for purposes of retention in the DNA Data Bank, unless the decision is made that the sample has already been taken. I leave that to the authorities to determine. I also leave that to the authorities to arrange a time and place to take a DNA sample.

- [16] On Counts 1 and 2, I order a 10-year weapons prohibition under s. 109(1)(a) of the Criminal Code, and on Count 6, I order a 10-year firearms weapons prohibition under s. 109(1)(b) of the Criminal Code.
- [17] These offences occurred prior to Parliament's change in the approach to the victim fine surcharge. Ordinarily these offences would attract a victim fine surcharge. Mr. Walker for the Crown takes no position on that.
- [18] Mr. Geller, what are Mr. Chia's financial prospects at this point?
- [19] MR. GELLER: Well, at the moment, he's -- at the moment, obviously they're very poor, but he expects they'll better in some time. But I would ask, under the circumstances, that this not be imposed because of his circumstances over the last two years. He's -- he had no prospects. He won't have any prospects immediately upon his release. His plan is to basically undergo a regimen of rehabilitation and then get back into the workforce.
- [20] THE COURT: All right, thank you, Mr. Geller. In the circumstances, given the legislation as it was prior to Parliament's amendment of it, I do have the discretion to waive the victim fine surcharge on all three counts and I do so in the circumstances before me.
- [21] Mr. Walker, I understand you will stay the outstanding counts on the indictment.
- [22] MR. WALKER: That is correct, My Lady. The Crown directs a stay of proceedings with respect to the outstanding counts.
- [23] THE COURT: Thank you, and finally, just for the record, I have signed off on an order respecting what can loosely be described as the fruits or the proceeds of the crimes before me, and they are outlined in 16 points on the order, and the order can be filed.
- [24] Unless there is anything else, counsel, those are my reasons.
- [25] MR. WALKER: I'm sorry, My Lady, I just want to make sure, I think you might have misspoke or I might have misheard, but you said the total sentence, four years, 10 months, minus 46 and a half?
- [26] THE COURT: Yes.
- [27] MR. WALKER: Leaving 11 and a half to serve, I think you just said 11, but --
- [28] THE COURT: I did say 11, so I will correct --
- [29] MR. WALKER: So it is 11?
- [30] THE COURT: I will correct that --
- [31] MR. WALKER: Okay.
- [32] THE COURT: -- to what counsel jointly submitted. I thought I heard 11 months, but if -- Mr. Geller, was it 11 and a half months left to serve?

- [33] MR. GELLER: Well, if that's the math, that's the math, on the joint submission.
- [34] MR. WALKER: All right, I just didn't want there to be an inconsistency --
- [35] THE COURT: No.
- [36] MR. GELLER: No.
- [37] MR. WALKER: -- between what you said as the credit and what's left to serve.
- [38] THE COURT: Okay, so 46 and a half months' credit.
- [39] MR. GELLER: Yes, from 58, is --
- [40] THE COURT: Yes, so that is --
- [41] MR. GELLER: -- 11 and a half.
- [42] THE COURT: -- four years, 11 months, is that correct?
- [43] MR. WALKER: No, so the total -- the total sentence in terms of months would be 58 months, right.
- [44] THE COURT: Fifty-eight months -- four years, 10 months, yes, so that is the total sentence, and from that we deduct --
- [45] MR. GELLER: Eleven and a half, 46 and a half. It is 11 and a half.
- [46] MR. WALKER: Yes, so 58 minus 46 and a half is 11 and a half.
- [47] THE COURT: Yes.
- [48] MR. WALKER: Right.
- [49] THE COURT: Eleven and a half months left to serve.
- [50] MR. WALKER: Thank you. "Duncan J."

The Honourable Madam Justice Duncan

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