

CANADA / JUDGMENT

R. v. Colligan

2020 BCSC 1139

COURT

Supreme Court of British Columbia

DECIDED

31 July 2020

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2020 BCSC 1139 R. v. Colligan

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Colligan,

2020 BCSC 1139

Date: 20200731

Docket: 91735-2

Registry: Kamloops

Regina

v.

Daniel James Colligan

Before: The Honourable Mr. Justice Marchand

Oral Reasons for Judgment

Counsel for the Crown:

A. Varesi

Counsel for the Accused:

D. Melville

Place and Date of Hearing:

Kamloops, B.C.

February 25, 2020

Place and Date of Judgment:

Kamloops, B.C.

July 31, 2020

Introduction[1]

- [1] In 2011, Daniel Colligan was charged with three counts of trafficking cocaine in Kamloops, British Columbia. Mr. Colligan did not appear in court for his trial in October 2013. A warrant was issued for his arrest. The warrant was executed on December 6, 2018 in Edmonton, Alberta. Mr. Colligan was transported to Kamloops, where he entered guilty pleas on December 17, 2018 and was then released on bail, by consent.
- [2] Between 2011 and today, Mr. Colligan has completely turned his life around. That is commendable but the fact that he did so while on the lam presents a challenge at the sentencing stage. How can the court impose a sentence that discourages offenders from fleeing justice generally while at the same time promoting public safety by supporting the rehabilitation of a particular offender specifically?

Circumstances

- [3] In December 2010, the police received information from a confidential informant that Mr. Colligan was trafficking cocaine and methamphetamine by way of a dial-a-dope operation. The confidential informant provided the police with a telephone number that was associated with the operation.
- [4] On February 3, 2011, an undercover police officer telephoned the number and asked to purchase crack cocaine. The officer was directed to meet a black car at the Halston Market. At about 11:30 p.m., the officer met a black car at that location. Mr. Colligan was riding as a passenger. He asked the officer how he got the number. On receiving a satisfactory answer, the driver of the black car provided the officer with 0.6 grams of crack cocaine in exchange for \$80. Mr. Colligan then directed the driver to put the money in the centre console.
- [5] On February 10, 2011, a different undercover officer telephoned the number and asked to purchase \$80 worth of cocaine. The officer was directed to the North Hills Mall parking lot. At about midnight, the same black car arrived. Mr. Colligan was driving. A female in the black car provided the officer with 0.68 grams of crack cocaine in exchange for \$80. The officer asked if he could get more. Mr. Colligan replied that he could call.

- [6] On February 18, 2011, the first undercover officer called the number and asked to purchase \$40 of crack cocaine. The officer was directed to a convenience store on 8th Street on the North Shore. At about 8:00 p.m., Mr. Colligan arrived in a van. The officer asked for an additional \$40 of cocaine. Mr. Colligan motioned to a female passenger who opened a plastic baggy and removed a packet containing 0.62 grams of crack cocaine. The female passenger handed the packet to the officer and the officer handed \$80 to Mr. Colligan.
- [7] Mr. Colligan was arrested sometime later. He was released on a police undertaking. An information was sworn on March 24, 2011 and this matter was eventually set for trial on October 15, 2013. As noted earlier, Mr. Colligan did not appear at his trial.

Impact on the Community

- [8] The illicit sale of cocaine, particularly by way of dial-a-dope operations, takes a terrible toll on individuals and the community. In *R. v. Aguilera Jimenez*, 2020 YKCA 5, the Court succinctly explained at paras. 49-50 as follows:
- [49] Cocaine is a highly addictive drug that inflicts untold misery on users, those in their orbit and society generally. It destroys lives, tears families apart and damages communities. For all of these reasons, trafficking in cocaine is considered a serious offence which should attract significant consequences. Doing so in a dial-a-dope operation increases the seriousness of the offence and is treated as an aggravating factor for purposes of sentencing: *R. v. Lloyd*, 2016 SCC 13 at para. 26; *R. v. Crompton*, 2009 YKSC 16 at para. 11; *Diedricksen* at para. 10.
- [50] Dial-a-dope operations involve ordering illicit drugs by phone for delivery, which facilitates access for purchasers and enables the drug trade to infiltrate communities. Such operations require, among other things, forethought and planning, drug suppliers and equipment, including cell phones and delivery vehicles: *R. v. Dickey*, 2016 BCCA 177 at para. 28. As Justice Henderson explained in *R. v. Franklin*, 2001 BCSC 706 at para. 20, dial-a-dope operations increase the availability of hard drugs because they allow anyone interested, including adolescents, to purchase them without venturing beyond the comfort and safety of suburban locations. They also allow drug dealers to profit handsomely with relative ease, leaving a trail of destruction in their wake.

Circumstances of Mr. Colligan

- [9] In considering the circumstances of Mr. Colligan, I have had the benefit of a detailed and thoughtfully prepared "Gladue" report.
- [10] Mr. Colligan is 34 years old. He self-identifies as Métis. His childhood was marred by trauma and instability.

- [11] When Mr. Colligan's Métis mother was two, she and her 13 siblings were apprehended due to neglect and malnourishment. Mr. Colligan's mother was then placed in an orphanage until she was adopted by a non-Indigenous family at age four. She ran away from home at 15 and was placed into foster care. She met Mr. Colligan's father and entered into a relationship with him when she was 16. He was 23.
- [12] Mr. Colligan's father was a drug-addicted member of the Hell's Angels. He was emotionally, physically and sexually abusive to his mother. Mr. Colligan's mother became an alcoholic. She says that she was "the perfect victim". Due to her age and background, she was vulnerable. In her words, she "had nobody".
- [13] Mr. Colligan was born in North Vancouver, but was raised by his parents until age five in Kamloops. Mr. Colligan witnessed his father's abuse of his mother, which culminated in a horrifying attack when Mr. Colligan was five years old. Mr. Colligan jumped on his father during the attack and ended up being covered in his mother's blood. His father was charged with attempted murder and fled.
- [14] Mr. Colligan's mother re-partnered but things did not improve much for Mr. Colligan. Mr. Colligan's mother's new partner was physically abusive to him. Mr. Colligan says that this man "beat on" him daily. Though the home situation was not good, Mr. Colligan lost his second father-figure following his mother's separation from him when Mr. Colligan was eight years old.
- [15] Mr. Colligan's mother reports that Mr. Colligan was a hyper child. Following her separation from her second partner, she reached out to social services for help, hoping it would be temporary. Unfortunately, it did not turn out that way. Mr. Colligan was removed from his mother's care and placed in a series of private foster homes and group homes. Mr. Colligan grew up feeling abandoned by his mother.
- [16] Mr. Colligan struggled in foster care. He did not see his mother much. He experienced negative messaging about his family and identity as an Indigenous person. Being alienated from his family, he internalized this messaging. He began using substances at age 13 to deal with his mental health issues. He did not complete high school. By age 17, he was addicted to alcohol, marihuana and cocaine, and began selling drugs to support his habit.
- [17] At age 18, Mr. Colligan aged out of foster care and was released from a group home. By that time, he had already been in conflict with the law. He was dropped off at the Salvation Army with a backpack full of clothes, but not much else, other than a bunch of probation orders. By age 19, he began using crystal meth. As a result of its ravaging effects, his mother describes that he became quite skinny.
- [18] During this time, Mr. Colligan entered a relationship and had a son who is now 14. Mr. Colligan's son was adopted out. The relationship did not last. Mr. Colligan's many attempts to reach his former partner and her parents have been unsuccessful. As a result, Mr. Colligan has not had any contact with his son.

- [19] Mr. Colligan then looked for his father. He hoped to get away from his life of substance abuse. At some point, he re-connected with his father in Kamloops. Mr. Colligan's mother reports that his father was physically abusive to him. Mr. Colligan's father has since passed away and Mr. Colligan does not talk about it.
- [20] In any event, Mr. Colligan entered a new relationship in Kamloops and had a second son who is now eight. The relationship did not last. I was not given any information regarding the nature of Mr. Colligan's relationship with his eight-year-old son, if any.
- [21] Mr. Colligan then began a relationship with his current partner, Amber Murray. In 2012, Mr. Colligan broke off all of his negative associations and moved with Ms. Murray to Edmonton. Mr. Colligan was sick of his drug lifestyle and the vicious cycle of being in and out of jail. By this time, Mr. Colligan had accumulated an unenviable criminal record consisting of seven youth and 15 adult convictions. Of greatest relevance to the matters at hand, in 2010, Mr. Colligan was convicted of two counts of possession for the purpose of trafficking in ecstasy and cocaine valued at about \$4,500. He received an effective 14-month jail sentence and a ten-year firearms prohibition.
- [22] While in Edmonton, Mr. Colligan began attending NA and AA meetings. He found employment in the oil industry and has been steadily employed since that time. He has obtained a large number of employment-related "tickets". As of the date of the sentencing hearing, he was working as a well site supervisor with a production testing company and had an annual income of \$180,000.
- [23] Mr. Colligan and Ms. Murray have two children, who are six and one. Mr. Colligan reports that Ms. Murray's first pregnancy was a major factor in his efforts to become clean. He wants to make a better life for himself and his family. He is the sole income earner for his family and knows he has to keep his job to do so. He works in a drug-free environment and is subject to mandatory drug testing. After some initial set-backs, with the support of his family, NA, AA and some counselling funded by his employee assistance program, Mr. Colligan has been clean and sober for a number of years.
- [24] Mr. Colligan's self-reports of his changed lifestyle are supported by a number of letters of support from Ms. Murray, friends and co-workers. These letters paint a picture of a trustworthy, hardworking family man who can be counted on to help others in need.
- [25] Given his history, it is hardly surprising that Mr. Colligan is disconnected from his Métis heritage. That was, in fact, the goal of Canada's historic assimilationist policies. Looking forward, Mr. Colligan hopes to connect with his Métis heritage. He has applied for a Métis citizenship card. He hopes that understanding more about his heritage and culture will help him to build his self-esteem, re-instate his value system and continue to lead a pro-social life.

- [26] Mr. Colligan has come to understand how harmful his offending conduct was. He is remorseful and recognizes that he must be punished. No matter what the sentence is, Mr. Colligan says that he is committed to maintaining his new lifestyle.

Crown and Defence Positions on Sentence

- [27] The Crown does not dispute the significant progress Mr. Colligan has made in his life. The Crown also recognizes that a conditional sentence order ("CSO") was an available sentencing option at the time of Mr. Colligan's offences. Nevertheless, the Crown submits that a step up from Mr. Colligan's last sentence is appropriate.
- [28] More specifically, the Crown submits that a two-year custodial sentence, less credit for the 11 days Mr. Colligan has already served in custody, would properly reflect the progress Mr. Colligan has made, as well as the seriousness of his offences. The Crown also submits that such a sentence is necessary to discourage others who might be inclined to flee justice with a view to reducing the personal consequences of their criminal conduct by cleaning up and getting a job.
- [29] Mr. Colligan asks: What good would be served by sending an Indigenous man, who has so completely turned his life around, to a correctional facility for two years? Mr. Colligan submits that a restrictive two-year less one-day CSO would be appropriate. Mr. Colligan knows his punishment must reflect the fact that he absconded to Alberta. He says he is not looking for a reward for having done so. He says he is asking for jail, but that it be served in the community.

Sentencing Principles

- [30] Sections 718-718.2 of the Criminal Code [Code] set out the purpose and principles of sentencing.
- [31] Under s. 718, the fundamental purpose of sentencing is to protect society and promote respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions. The objectives of such sanctions include denouncing unlawful conduct, deterring offenders and others from committing crimes, separating offenders from society where necessary, rehabilitating offenders and promoting a sense of responsibility in offenders.
- [32] Section 718.1 sets out the fundamental principle of sentencing. Under s. 718.1, a sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the offender.
- [33] Section 718.2 sets out a number of other sentencing principles. Under s. 718.2(a), sentences are to be increased or reduced to account for any aggravating or mitigating circumstances. Section 718.2(b) sets out that sentences should be similar for similar offences committed by similar offenders in similar circumstances. Finally, s. 718.2(c) to (e) promote restraint in sentencing.

[34] Under s. 718.2(c), the combined effect of consecutive sentences should not be unduly long or harsh. Under s. 718.2(d), offenders should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances. Section 718.2(e) has special importance in the circumstances of this case. It provides as follows:

- (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

[35] Without restricting the generality of the Code provisions on sentencing, s. 10(1) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 [CDSA] provides:

the fundamental purpose of any sentence for an offence under [Part I of the CDSA] is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation, and treatment in appropriate circumstances, of offenders and acknowledging the harm done to victims and to the community.

[36] Section 10(2)(b) of the CDSA provides that the court must consider a previous conviction for a designated substance offence, such as possession for the purpose of trafficking, to be an aggravating factor.

Gladue Principles

[37] Given Mr. Colligan's Métis heritage, s. 718.2(e) of the Code deserves special attention.

[38] Section 718.2(e) was introduced in 1996. Cases such as *R. v. Gladue*, [1999] 1 S.C.R. 688 and *R. v. Ipeelee*, 2012 SCC 13 make it clear that it is a remedial provision that was and is intended to deal with the crisis of over-representation of Indigenous offenders in the Canadian criminal justice system. Sadly, the statistics are worse today than they were in 1996.

[39] The crisis described by the Supreme Court of Canada has been driven by the alienation, poverty, substance abuse, lower educational attainment, lower rates of employment, and bias experienced by Indigenous Canadians as a result of Canada's colonial history and destructive assimilationist policies, including a disproportionate number of child apprehensions.

[40] While these are broader societal issues, the Court in *Gladue* and *Ipeelee* has recognized that sentencing Indigenous offenders has a role to play in addressing their over-representation in the criminal justice system. Indigenous offenders are different from other offenders because, in the words of the Supreme Court of Canada, they "are victims of systemic and direct discrimination".

[41] To help address the crisis, *Gladue* and *Ipeelee* changed the way Indigenous offenders are sentenced, though not necessarily the result. In sentencing an Indigenous offender, a sentencing judge must consider two factors:

1. The unique systemic or background factors which may have played a part in bringing the particular offender before the courts; and
 2. The types of sentencing procedures and sanctions which may be appropriate in the circumstances.
- [42] According to Gladue and Ipeelee, a sentencing court must take a holistic approach to imposing a fit sentence. A fit sentence is one that is proportional and appropriately balances the seriousness of the offence with the moral blameworthiness of the offender. In striking the appropriate balance, the unique systemic or background factors that may have played a part in bringing the particular offender before the court speaks to the moral blameworthiness of the offender. While a causal connection between systemic and background factors, and the offence at issue need not be established, a link may be important or helpful in finding a fit sentence.
- [43] Finally, restorative sentences may be more appropriate for Indigenous offenders, but taking a restorative approach will not necessarily lead to a reduced sentence. Generally, the more serious or violent the crime, the more likely it will be, as a practical matter, that the terms of imprisonment will be the same for an Indigenous and a non-Indigenous offender.

Range of Sentence

- [44] Sentencing is a highly-individualized process. The type of available sentence may be constrained by statutory provisions and the range of appropriate sentence is generally established through a consideration of sentences imposed on similarly-situated offenders who have committed similar offences in similar circumstances.
- [45] At the time of his offences, s. 5(3) of the CDSA provided for a maximum sentence of life imprisonment for trafficking in a Schedule I substance such as cocaine. Today, s. 742.1(c) of the Code precludes resort to a CSO for drug trafficking offences, but that was not the case in 2011. All sentencing options, including a CSO, are statutorily available to me.
- [46] The Crown has referred me to a number of sentencing authorities involving repeat drug trafficking offenders being sentenced for trafficking in cocaine by way of dial-a-dope operations. Collectively, *R. v. Cook*, 2001 BCCA 225, *R. v. Tran*, 2007 BCCA 405 and *R. v. Charleyboy*, 2010 BCCA 530 support the Crown's position on sentence. Of note, in *Tran*, the Court of Appeal set aside a CSO and imposed jail of two years less a day and, in *Charleyboy*, the Court of Appeal upheld an effective two-year sentence imposed on an Indigenous offender who had been using cocaine at the time of his offences.
- [47] Of course, sentencing ranges guide but do not bind sentencing judges: *R. v. Nasogaluak*, 2010 SCC 6; *R. v. Lacasse*, 2015 SCC 64; *R. v. Friesen*, 2020 SCC 9; *R. v. Williams*, 2019 BCCA 295.

- [48] The Crown also referred me to two authorities to assist me in considering how to handle the fact that Mr. Colligan evaded justice for almost six years.
- [49] In *R. v. Partridge*, 2005 NSCA 159, the offender was convicted on three counts of spousal assault and absconded for three years. During that time, the offender had maintained steady employment for some time, established a relationship that was free of violence and not been in further conflict with the law. At para. 12, the Court addressed the conundrum presented by the circumstances:
- [12] When an offender jumps bail before sentencing and uses his time at large to rehabilitate himself, two conflicting principles come into play: pre-sentence rehabilitation is a mitigating factor, however, an offender should not be rewarded for his own wrong. In particular, Mr. Partridge should not benefit from his "perpetual defiance of the law" through his continued refusal to submit to sentencing. To reward the consequences of an offender jumping bail, may have the effect of encouraging others to do so. [Cites omitted]
- [50] In the result, the Court concluded that the sentencing judge had made a critical error by failing to take into account the relevance of the offender jumping bail. The Court extended the CSO imposed by the sentencing judge for a further six months and imposed a further 12 months of probation. Had the offender not been so close to completing the service of his CSO, the Court may well have ordered him to serve time in jail.
- [51] In *R. v. Jansons*, 2008 YKCA 15, the offender was subject to a mandatory minimum 90-day jail sentence following his guilty plea to impaired driving. The offender then absconded for eight years. During that time, the offender had left the jurisdiction, obtained employment, supported his family and eventually stopped drinking. Wanting to preserve the offender's progress, the sentencing judge imposed the 90-day mandatory minimum sentence. On appeal by the Crown, the Court of Appeal increased the sentence to one year. The Court reasoned at para. 12 as follows:
- [12] The inescapable message that is conveyed by the imposition of a virtual minimum sentence in circumstances in which, but for the rehabilitation made possible by the abscondment, a two year sentence would have been imposed, is one which encourages flouting of the law. While there can be no doubt that Mr. Jansons' efforts at rehabilitation are to be commended, general deterrence is not served by the imposition of the sentence in the circumstances of this case.
- [52] My consideration of Mr. Colligan's submission that he receive a CSO of two years less one day must start with *R. v. Proulx*, [2000] 1 S.C.R. 61.
- [53] *Proulx* is the leading case on CSOs. In the context of this case, the following principles from *Proulx* are germane:

1. CSOs were introduced to address the problem of over-incarceration in Canada by reducing reliance on incarceration as a sanction and increasing the use of restorative justice principles;
2. CSOs must be distinguished from probation. While probation is primarily a rehabilitative tool, CSOs have both punitive and rehabilitative aspects;
3. Generally, CSOs should include punitive terms that restrict an offender's liberty, such as house arrest;
4. Unless the Code excludes a CSO as a sentencing option, there should be no presumptions for or against the use of a CSO in relation to any specific offence;
5. A sentencing judge is not required to first impose a prison term of fixed duration and then consider if it can be served in the community. Rather, the sentencing judge should reject a penitentiary term and probation measures as inappropriate and then consider whether the remaining option of imprisonment of less than two years could be appropriately served in the community;
6. A CSO need not be of the same duration as the sentence of incarceration that would otherwise have been imposed. All that is required is that the CSO is a fit sentence;
7. The requirement that the sentencing judge be satisfied that the safety of the community would not be endangered by the offender serving their sentence in the community is a condition precedent to the imposition of a CSO;
8. In making this threshold determination, the sentencing judge should consider the risk posed by the specific offender and not the broader risk of whether a CSO would endanger the safety of the community by providing insufficient general deterrence or undermining general respect for the law;
9. A CSO can provide significant denunciation and deterrence. Generally, the more serious the offence, the longer and more onerous the CSO should be;
10. In some cases the need for denunciation or deterrence may be so pressing that incarceration will be necessary;
11. Generally, a CSO will be better than incarceration at achieving restorative objectives, such as rehabilitation, reparations and promoting a sense of responsibility in offenders;
12. Where a combination of both punitive and restorative objectives may be achieved, a CSO will likely be more appropriate than incarceration; and
13. A CSO may be imposed even though there are aggravating circumstances that increase the need for denunciation and deterrence.

- [54] In support of his submission that he receive a CSO, Mr. Colligan has referred me to a number of cases in which CSOs have been imposed on offenders convicted of trafficking much larger amounts of cocaine, including *R. v. Kreutziger*, 2005 BCCA 231 and *R. v. Schneider*, 2007 BCCA 560. Of more relevance, Mr. Colligan also referred me to *R. v. Charlie*, 2008 BCCA 44.
- [55] In *Charlie*, the Court of Appeal upheld an 18-month CSO imposed on an Indigenous offender who was convicted of trafficking cocaine by way of a dial-a-dope operation at a time when he was already serving a CSO in relation to a prior dial-a-dope conviction. The offender had a troubled background, but had made significant progress since his arrest and had become a contributing member of his community. Despite the insidious nature of dial-a-dope operations and the general practice of not offering a repeat offender a second CSO, the sentencing judge had concluded that imprisonment would be counter-productive to society. Essentially, the sentencing judge had given the offender a second chance because his prospects of rehabilitation were so great. In the circumstances, the Court held that the sentencing judge appropriately gave primacy to the offender's rehabilitation.
- [56] Finally, Mr. Colligan referred me to *R. v. Voong*, 2015 BCCA 285 and *R. v. Schneider*, 2019 BCCA 310. In the exceptional circumstances of those cases, offenders involved in trafficking by way of a dial-a-dope operation (*Voong*) and trafficking in fentanyl (*Schneider*) received suspended sentences and probation where ordinarily a custodial sentence would have been required. In contrast, Mr. Colligan highlights that he is seeking a CSO, not probation.

Aggravating Factors

- [57] In this case there are a number of aggravating factors.
- [58] First of all, Mr. Colligan has a significant prior record, including convictions for possession for the purpose of trafficking. To make matters worse, Mr. Colligan committed the offences at issue shortly after completing his 14-month custodial sentence for his prior trafficking convictions.
- [59] Next, Mr. Colligan was a principal participant in an active and ongoing dial-a-dope operation, appears to have had ready access to drugs and utilized other individuals in a way that demonstrates a level of sophistication in the operation.
- [60] Finally, I must of course take into account that Mr. Colligan evaded justice for almost six years.

Mitigating Factors

- [61] There are also a number of mitigating factors. Though Mr. Colligan was on the lam for a considerable length of time, he entered guilty pleas very promptly after his arrest in 2018. He has acknowledged how harmful his conduct was and is sincerely remorseful. Most importantly, despite facing many hurdles and barriers, Mr. Colligan has completely turned his life around. He is now a loving husband, excellent father, good friend and productive employee.

Principles of Sentencing Deserving of Greatest Emphasis

- [62] The case law clearly establishes that denunciation and deterrence are the primary sentencing principles in a case such as this. A fit sentence must recognize the particularly harmful effects of trafficking cocaine by way of dial-a-dope operations and discourage flight from justice.
- [63] At the same time, I must not lose sight of the importance of rehabilitation in providing for the long-term protection of the community.

Sentence

- [64] In determining a fit sentence, I must take into account that Mr. Colligan has committed very serious offences. He trafficked a highly addictive substance in a manner that made that substance readily available throughout the community, was difficult for the police to detect and wreaked havoc on many individuals, families and the community as a whole. I must also take into account that Mr. Colligan evaded justice for almost six years.
- [65] On the other hand, Canada's assimilation policies have had a profoundly negative effect on Mr. Colligan and his family. As a result, Mr. Colligan developed a drug addiction that led directly to his past criminal lifestyle. In these circumstances, I consider Mr. Colligan to have a reduced level of moral blameworthiness. Further, I must recognize that Mr. Colligan has overcome many hurdles and barriers to completely turn his life around and is now taking responsibility for his actions.
- [66] The Crown acknowledges that a penitentiary sentence is not required and Mr. Colligan acknowledges that a probation order would not be appropriate. I agree. In my view, the appropriate range of sentence is a term of imprisonment of less than two years. The question is whether it is appropriate for Mr. Colligan to serve his sentence in the community.

- [67] On the threshold question of whether Mr. Colligan serving his sentence in the community would endanger the community, I have no hesitation in concluding that it would not. Mr. Colligan has left his negative peer group behind. He no longer uses substances. He has supportive family, friends and co-workers. He attends NA, AA and counselling. At the date of the sentencing hearing, he had steady employment in a high-paying job. He has clearly left his drug addicted criminal lifestyle behind.
- [68] The more difficult question is whether a CSO would be consistent with the fundamental purpose and principles of sentencing. After carefully considering all of the circumstances, I have concluded that the answer is yes.
- [69] In my respectful view, a highly restrictive CSO of two years less one day will adequately address denunciation and deterrence, particularly in view of Mr. Colligan's reduced level of moral blameworthiness. A term of imprisonment, even if served in the community, can be seen as a step up from Mr. Colligan's previous 14-month sentence for trafficking. Notably, that sentence was imposed when Mr. Colligan was a drug addict who posed a significant risk to the community and without the court being made aware of Mr. Colligan's Métis heritage.
- [70] Further, the CSO I will be imposing will not "reward" Mr. Colligan for absconding. Had Mr. Colligan presented himself to the court as fully reformed in 2013, I would have considered the circumstances so exceptional that I would have sentenced Mr. Colligan to a shorter and less onerous CSO, followed by probation. The reason for the length and onerous nature of the CSO I will be imposing is specifically to reflect the fact that Mr. Colligan evaded justice for so long.
- [71] Finally, and most importantly, if s. 718(2)(e) and the calls to action voiced by the Supreme Court of Canada in Gladue and Ipeelee are to have any meaning, a CSO must be imposed in this case. Similar to Charlie, where a CSO would typically not have been available, Mr. Colligan's progress and future prospects are so good that it would be counter-productive to society to incarcerate him in a correctional facility.
- [72] While Mr. Colligan must be punished for his offences and not rewarded for absconding, he is in the process of breaking the cycle of intergenerational trauma and dysfunction that has so negatively affected so many Indigenous families, including his own. Sending Mr. Colligan to jail now would leave his children without their father for a significant period of time and leave them vulnerable to poverty and dislocation. Like Mr. Colligan, his children may suffer attachment injuries, such as feelings of abandonment, insecurity, low self-esteem, anxiety and depression. This type of outcome would clearly increase the chances of Mr. Colligan's children following his previous footsteps into a life of dysfunction, addiction and perhaps even criminal activity.

[73] Denunciation and deterrence are key drivers in the circumstances and outcome of this case, but they can be adequately addressed without resorting to institutional incarceration and jeopardizing all the progress Mr. Colligan has made to better his circumstances and the circumstances of his Indigenous family.

[74] Mr. Colligan, you must comply with a CSO for a term of two years less one day. The conditions are:

- You must keep the peace and be of good behaviour.
- You must appear before the court when required to do so by the court.
- You must notify the court or your conditional sentence supervisor in advance of any change of name or address and promptly notify the court or your conditional sentence supervisor of any change in employment or occupation.
- You must remain in British Columbia or Alberta unless you have prior written permission from the court or your conditional sentence supervisor to leave these provinces.
- You must report by telephone to a conditional sentence supervisor at 102 - 455 Columbia Street, Kamloops, British Columbia by 3:00 p.m. today. If the office is closed, you must continue calling daily during regular business hours until you have spoken to a supervisor and received further direction to report. After that, you must report as directed by your conditional sentence supervisor, which may include reporting in Alberta.
- When first reporting to your conditional sentence supervisor, you must provide them with the address where you live and your telephone number. You must not change your address or telephone number without prior written permission from your conditional sentence supervisor.
- For the first twelve months, you must obey house arrest by being inside your residence, or on its lot, 24 hours a day, every day.
- For the remainder of your sentence, you must obey a curfew by being inside your residence, or on its lot, between 9:00 p.m. and 5:00 a.m. every day.
- You must present yourself immediately at the door to your residence or answer the telephone when any peace officer or conditional sentence supervisor attends or calls to check on you during the house arrest or curfew hours.
- You may be away from your residence during the house arrest or curfew hours with the prior written permission of your conditional sentence supervisor. Such permission is to be given only for employment or other compelling reasons. You must carry the permission, which can be in electronic format, with you when you are outside your residence.

- You may also be away from your residence during the house arrest or curfew hours while at, or going directly to, or returning directly from a healthcare facility because of a medical emergency. If asked, you must provide your conditional sentence supervisor with proof of your attendance at the facility.
- You must not possess or consume alcohol, drugs or any other intoxicating substance, except with a medical prescription.
- You must not enter any liquor store, beer and wine store, bar, pub, lounge, nightclub, beer garden or any other business from which minors are prohibited at any time by the terms of a liquor license.
- You must attend, participate in and complete any intake, assessment, counselling or education program directed by your conditional sentence supervisor. This may include but is not limited to counselling or programming for (a) alcohol or drug addiction; or (b) trauma recovery.
- You must complete 80 hours of community work under the direction of your conditional sentence supervisor. Your community work service must be completed by January 31, 2022.

[75] I must also make two ancillary orders.

[76] Pursuant to s. 109(3) of the Code you are prohibited from possessing any firearm, crossbow, restricted or prohibited weapon, prohibited device, ammunition, and explosive substance for life.

[77] All three counts on the indictment are secondary designated offences. After considering the factors set out in s. 487.051(3) of the Code, I am satisfied that it is in the best interest of the administration of justice to authorize the taking of samples of bodily substances from you. You must attend at a police station within the next 14 days and submit to the taking of the samples. This order is valid until executed.

[78] Mr. Colligan, you should not have left British Columbia to evade justice, but I congratulate you on making such fundamental changes in your life. I am sure that was not easy to do. I know that the CSO I have imposed will significantly restrict your liberty for a long time, but that is necessary in view of the seriousness of your offences and behaviour. At the same time, there are terms in the CSO to support your recovery.

[79] I encourage you to share your Gladue report with your conditional sentence supervisor to enable your supervisor to understand your circumstances and to assist you in connecting with the culturally appropriate resources identified in the report.

[80] Good luck to you and your family.

[81] I thank counsel for their thoughtful and helpful submissions.

"L.S. Marchand J."

MARCHAND J.

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- [1] The delivery of these reasons for sentence have been delayed by the suspension of regular court operations during the Covid-19 pandemic.
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Prepared on 24 October 2026 · Esheria