

CANADA / JUDGMENT

R. v. Cooke

2024 BCSC 1481

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 1481 R. v. Cooke IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Cooke, 2024 BCSC 1481 Date: 20240802 Docket: 183197-2 Registry: Victoria Rex v. Zoran Cooke and Atta Otchere Before: The Honourable Mr. Justice Milman Oral Reasons for Sentence Counsel for the Crown: M. Adams Counsel for the Accused, Zoran Cooke: O. James The Accused, Atta Otchere, represented by counsel and appearing in person: P.A. Blokmanis (July 3, 2024) A. Otchere (August 2, 2024) Place and Date of Hearing: Victoria, B.C. July 3, 2024 Place and Date of Sentence: Victoria, B.C. August 2, 2024 I. Introduction

- [1] On April 24, 2024, I found Mr. Cooke and Mr. Otchere guilty of possession of cocaine for the purposes of trafficking, contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 [CDSA]. They are now before me for sentencing.
- [2] The Crown seeks custodial sentences against both of them, 12 months in the case of Mr. Cooke and nine months in the case of Mr. Otchere, with both of those terms followed by a period of 12 months' probation, including 40 hours of community service. In addition, the Crown seeks a number of ancillary orders, including a 10-year firearms prohibition against both, a DNA order against Mr. Otchere (Mr. Cooke having already provided a sample) and a forfeiture order in respect of certain of the items found with them upon their arrest, including some cash, containers and bags.
- [3] Counsel for Mr. Cooke does not dispute that a custodial sentence is called for, but he submits that the appropriate term for him is eight-to-nine months, plus a period of probation. Mr. Cooke does not oppose the Crown's proposed ancillary orders or probation terms, other than the Crown's proposal that he complete 40 hours of community service as a term of his probation.
- [4] Mr. Otchere submits that the appropriate disposition in his case is a conditional sentence lasting nine months, with the first six of those months spent under house arrest, followed by a period of probation. He is not opposed to the Crown's proposed probation terms and ancillary orders, other than the Crown's proposal that he be required to provide a DNA sample.

- [5] Both of them have proposed adding a term to their respective probation orders that they undergo counselling. II. Circumstances of the Offence
- [6] The circumstances of the offence were set out in my conviction decision, now reported as 2024 BCSC 700. In brief, Mr. Cooke and Mr. Otchere were arrested on May 14, 2021. At the time, Mr. Otchere was driving a rented Volkswagen Passat and Mr. Cooke was sitting in the front passenger seat. The Passat had just been observed by police engaging in a short duration stop with a pedestrian whom the police had been watching because they suspected that he was engaged in illicit drug purchases.
- [7] Following the arrest, Mr. Cooke, Mr. Otchere and the Passat were searched by the police. In the course of those searches, the police found a total of 37.27 grams of crack cocaine in various locations, divided into 106 small packages wrapped in small plastic baggies. The total street value of the cocaine seized was estimated by police to be between \$2,800 and \$3,400. The police also seized four cellphones and about \$140 in cash. III. Circumstances of the Offenders A. Mr. Cooke
- [8] Mr. Cooke is 35. He immigrated to Canada from Jamaica with his family when he was one year old. He was raised in Scarborough, Ontario, and spent most of his childhood residing in a low-income housing complex. A childhood friend recalled that it was normal to see robberies and gun violence at the school they attended. While growing up, Mr. Cooke was presented with poor role models. He came to be drawn to the lifestyle that criminal activity appeared to make possible.
- [9] At 16, he was expelled from school because of allegations of bullying and theft, allegations which he denies. After leaving high school, he went to work at a drug store but left after a year because he found the level of responsibility required of him in that role unduly burdensome. After that, he took on more casual work until he moved to British Columbia with Mr. Otchere. They have been residing together for the last year in an apartment rented by Mr. Otchere in Victoria.
- [10] For the past two years, Mr. Cooke has been working on a part-time basis for a semi-retired owner of a carpentry business, who is able to keep Mr. Cooke employed for up to three days a week during the high summer season.
- [11] Mr. Cooke has a ten-year old son with a former partner. He has kept in contact with both the boy and his mother, who still live in Ontario. The mother told the author of the pre-sentencing report that she has recently seen an improvement in Mr. Cooke's motivation to better himself. She describes Mr. Cooke as a supportive co-parent. He speaks with his son several times a day. He pays child support of \$400-\$500 per month. Mr. Cooke says that he wants to play a bigger role in his son's life.
- [12] Mr. Cooke has also befriended a disabled elderly lady who has become something of a maternal figure for him. He visits her weekly and helps her with shopping and housework.

- [13] Mr. Cooke became involved with drug trafficking when he was in his mid-20s and still living in Ontario. He says he was attracted to the money, the clothes, the cars and the overall lifestyle, which he found exciting. He has a criminal record that he acquired prior to his arrival in British Columbia. In 2009, when he was 21, he was convicted of possessing a prohibited firearm and failing on two occasions to comply with the terms of his recognisance. In 2014, he was convicted of drug trafficking and received a further 60 days after having already served 135 days, the equivalent of a six and a half-month sentence overall. In 2016, he was convicted of obstructing a police officer. In 2017, he was convicted of armed robbery and received a custodial sentence of 21 months and 15 days, followed by two years of probation. B. Mr. Otchere
- [14] Mr. Otchere is currently 36. He was born in Ghana and emigrated with his family to the United States in 1989, and from there to Canada in 1991. He is one of eight children. He has a strained relationship with his mother and his siblings, other than his twin sister. His father was deported back to Ghana in 1993 and passed away before Mr. Otchere was able to visit him in Ghana later in life.
- [15] Mr. Otchere was raised in a social housing project in the Lawrence Heights area of Toronto, which was a neighbourhood in which drugs, gangs and gun violence were prevalent. His mother had to work long hours, leaving Mr. Otchere and his siblings neglected at times. His mother often beat him when he was a child.
- [16] He recalls being unfairly targeted by officials at his school, and later by police. He did not complete high school but he was able to complete all of his high school credits at an adult learning centre in Toronto. He never obtained his high school diploma for want of sufficient community service hours.
- [17] He has two sons, now aged 18 and 7, from two previous relationships, one of which lasted a short time, the other more than 15 years. Both of his sons reside in Toronto with their mothers. He regularly travels back to Toronto to see them. While in Toronto, he also takes on temporary work to supplement his income.
- [18] He is currently in a new relationship with a woman whom he met six years ago in Toronto, but who now resides in Calgary.
- [19] Due to the family's circumstances, Mr. Otchere was forced to begin working at an early age. He acquired some experience in the construction industry. He says that today he earns most of his income from investments, completing online surveys and an online clothing business that he has been operating since 2015.

- [20] To his credit, Mr. Otchere has shown himself to be community-minded in some respects. He served as a mentor to community youth in Lawrence Heights. He intends to return there to assist in revitalising that community. In his remarks to me at the conclusion of the sentencing hearing, which I accept as genuine, he told me, among other things, that there is more to him than his mistakes and he wants to be a positive role model for young people.
- [21] Mr. Otchere has no criminal record. However, his bail supervisor has advised that while on bail pending the outcome of this proceeding, his reporting has at times been inconsistent, although this has improved more recently. Mr. Otchere's explanation is that he was out of town on those occasions when he failed to report.
- IV. Discussion
- [22] Section 718 of the Criminal Code, R.S.C. 1985, c. C-46, sets out the principles that are to be applied in passing sentence. The objectives of sentencing are stated to include the following:
- a) to denounce unlawful conduct;
 - b) to deter the offender and others from committing offences;
 - c) to separate offenders from society, where necessary;
 - d) to promote the rehabilitation of offenders;
 - e) to provide reparations for harm done to victims; and
 - f) to promote a sense of responsibility and acknowledgment of the harm done to victims and the community.
- [23] The relative weight and importance of the various factors will vary with the circumstances of the offence and the individual offender. A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Further, a sentence must be consistent with sentences for similar offences and offenders. Sentences must not be unduly long or harsh. I am required to look to all available sanctions, other than imprisonment, that are reasonable in the circumstances.
- [24] Crown counsel argues that both Mr. Cooke's and Mr. Otchere's moral culpability is high in this case because this was dial-a-dope operation that they engaged in for profit, rather than to feed an addiction. In such cases, he submits, the courts have seen a need to emphasise the objectives of denunciation and deterrence over others.
- [25] Often quoted when sentencing offenders for offences of that kind are the following remarks in *R. v. Gill*, 2013 BCCA 320:
- [22] It is well known that dial-a-dope operations enable a pervasive and rapid dissemination of illicit narcotics that wreak destruction to both the individuals who use them and to our community. The proliferation of these operations has significantly increased accessibility to these drugs, and their harmful effects.

- [26] In *R. v. Voong*, 2015 BCCA 285, the Court held that in the absence of exceptional circumstances, the range for a first dial-a-dope trafficking conviction is between six months to eighteen months in prison. Where exceptional circumstances justify a non-custodial sentence, a suspended sentence can meet the principles of sentencing, but such a sentence will rarely be imposed.
- [27] In support of his position on sentence, Crown counsel refers to the following authorities: *R. v. Cisneros*, 2014 BCCA 154; *R. v. Oates*; 2015 BCCA 259; *R. v. Herrell*, 2014 BCCA 114; *R. v. Laflamme*, 2021 BCCA 401; *R. v. Garie*, 2022 BCCA 382; *R. v. Khosravi*, 2019 BCSC 509 and *R. v. Trifunski*, 2022 BCSC 610.
- [28] Mr. Cooke cites *R. v. Voong*, 2015 BCCA 285; *R. v. Alibhai*, 2008 BCSC 1549; *R. v. Lever*, 2006 BCSC 979 and *R. v. Nguyen*, 2001 BCCA 624 in support of a custodial sentence in the eight-to-nine-month range. He submits that *Alibhai* is the case that is most similar to this one. The offender in that case received a custodial sentence of nine months.
- [29] Mr. Otchere cites *R. v. Lawson*, 2022 BCSC 2035; *R. v. Gibb*, 2022 BCSC 1853; *R. v. Harrower*, 2021 BCSC 1796; *R. v. Aeichele*, 2022 BCSC 195; *R. v. Kirk*, 2023 BCSC 301 and *R. v. Sehn*, 2021 BCSC 2292 in support of his argument that this is an appropriate case for a conditional sentence.
- [30] I agree with Crown counsel that there are a number of aggravating factors present in this case, including the following:
- a) cocaine is a substance listed on Schedule 1 of the CDSA (I note that s. 10(2) of the CDSA requires the court to consider, as an aggravating factor, the fact that Mr. Cooke and Mr. Otchere were involved in trafficking such a substance);
 - b) this was a dial-a-dope operation, although Crown counsel acknowledges that it was a relatively low-level and unsophisticated one; and
 - c) Mr. Cooke and Mr. Otchere appear to have engaged in trafficking not to feed an addiction, but merely to make easy money.
- [31] In the case of Mr. Cooke, a further aggravating factor is his criminal record. His previous sentence of six and a half months for trafficking was insufficient to deter him. For that reason, his counsel does not dispute that a lengthier prison sentence is called for this time.
- [32] Nevertheless, as Crown counsel acknowledges, there are some mitigating circumstances to be considered.
- [33] First, there were no weapons in their possession, to the surprise of the investigating police officers.

- [34] Second, both of them were raised in neighbourhoods where they became exposed to violence, crime and the drug subculture at an early age. Their role models encouraged criminal behaviour. In the case of Mr. Otchere, he experienced violence and neglect in the home as a child. He lost his father at an early age. I accept that he has been unfairly targeted by authorities at times, causing him to lose a job and a home he was renting.
- [35] Despite these difficulties, both have made positive contributions to society by supporting their children and others.
- [36] Another mitigating factor in Mr. Otchere's case is the lack of a criminal record.
- [37] It appears that Mr. Cooke played a primary role in the trafficking that occurred, and Mr. Otchere a secondary one. That being said, the level of Mr. Otchere's involvement and his motive for engaging in this behaviour is unclear.
- [38] Both have expressed at least some degree of remorse. Mr. Cooke expressed to the author of the pre-sentencing report his regret at having involved Mr. Otchere in drug trafficking. In his remarks to me, Mr. Otchere apologised to the community for his actions. Despite indications to the contrary in their remarks to the author of the pre-sentencing reports, both have indicated their willingness to undergo counselling as a term of any probation order that is made. However, neither has taken any concrete steps toward rehabilitation of their own accord.
- [39] I agree with Crown counsel that the prospects of rehabilitation are questionable. The financial burdens on both of them remain. Neither is fully employed. Their expressions of remorse and intention not to re-offend have been qualified and guarded.
- [40] In Mr. Cooke's case, the primary issue to be resolved is the appropriate length of his custodial sentence. Unlike in Alibhai, Mr. Cooke has already served a prison term for this same offence. In addition to the earlier conviction for trafficking, he received a custodial sentence of 21 months and two years of probation following his conviction in 2017 for robbery. This history distinguishes Mr. Cooke's situation from that of Mr. Alibhai to some extent, as does the fact that a slightly larger quantity of cocaine was found in this case. Having said that, I agree that Alibhai is the case most similar to this one of those cited by counsel.
- [41] With respect to Mr. Otchere's submissions in favour of a conditional sentence order, I agree with Crown counsel that the authorities Mr. Otchere relies upon are distinguishable, insofar as they involve offenders struggling with their own substance abuse and, in several of them, taking active steps to manage their problem. Overall, I am not persuaded that Mr. Otchere's circumstances are sufficiently unusual to justify departing from the ordinary range, although I do accept that the mitigating factors listed earlier justify a sentence at the low end of that range.

- [42] Finally, with respect to the remaining disputed issues, I agree with Crown counsel that it is appropriate to include a number of community work service hours in the terms of probation for both Mr. Cooke and Mr. Otchere, given the harm to the community flowing from their conduct. With respect to the DNA order sought by the Crown in the case of Mr. Otchere, such an order is discretionary. Mr. Otchere has no criminal record. Nevertheless, the Crown argues that a DNA order will have a deterrent effect on him and will discourage further offending. Given the risk of his re-offending, I have concluded that such an order is appropriately made. V. Disposition
- [43] Mr. Cooke, please stand. I am sentencing you to a period of 10 months' imprisonment, followed by a 12-month period of probation. The period of probation will include the following conditions: COMPULSORY CONDITIONS Code s. 732.1(2) 5001 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 the probation officer in advance of any change of name or address, and promptly notify the court or the officer of any change of employment or occupation. REPORT AFTER RELEASE FROM CUSTODY 5004 You must report in person to a probation officer at 836 Courtney Street, Victoria within two business days after your release from custody unless you have obtained, before your release from custody, written permission from the probation officer to report elsewhere or within a different time frame. After that, you must report as directed by your officer. NO CONTACT Code s. 732.1(3) 5101 You must have no contact or communication, directly or indirectly, with Atta Otchere. There will be one exception as follows: You may arrange to attend with a peace officer to remove your belongings from yours and Mr. Otchere's shared residence. ADDRESS No change without notice 5301 When first reporting to your probation officer, you must provide them with the address where you live and your phone number. You must not change your address or phone number without notifying your probation officer in writing at least two days in advance of any change. CHANGES IN EMPLOYMENT 5403 You must provide your probation officer with the details of your employment status. You must inform your officer within two business days of any change in your employment status. NOT LEAVE BC 5304 You must not leave British Columbia unless you have the prior written permission of your probation officer. You must carry the written permission, which can be in electronic format, with you at all times if you are outside the province. NO DRUGS 5602 You must not possess or consume controlled substances as defined in the Controlled Drugs and Substances Act except with a medical prescription. DRUG PARAPHERNALIA 5605 You must not possess drug paraphernalia that is suitable for the sale or consumption of drugs that have not been prescribed for you. COMMUNITY WORK 5801 You must complete 30 hours of community work under the direction of your probation officer. Your community work service must be completed within the first nine months of your probation period COUNSELLING 5701 You must attend, participate in and complete any intake, assessment, counselling, or education program as directed by your probation officer.

- [44] Pursuant to s. 109(2) of the Criminal Code, you are prohibited from possessing any firearm, other than a prohibited firearm or restricted firearm, and any crossbow, restricted weapon, ammunition and explosive substance for a period of 10 years following your release; and any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for life.
- [45] You may be seated.
- [46] Mr. Otchere, please stand. I am sentencing you to a period of six months' imprisonment, followed by a 12-month period of probation. The period of probation will include the following COMPULSORY CONDITIONS Code s. 732.1(2) 5001 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 the probation officer in advance of any change of name or address, and promptly notify the court or the officer of any change of employment or occupation. REPORT AFTER RELEASE FROM CUSTODY 5004 You must report in person to a probation officer at 836 Courtney Street, Victoria within two business days after your release from custody unless you have obtained, before your release from custody, written permission from the probation officer to report elsewhere or within a different time frame. After that, you must report as directed by your officer. NO CONTACT Code s. 732.1(3) 5101 You must have no contact or communication, directly or indirectly, with Zoran Cooke. I am making the same exception for you: You may arrange with Mr. Cooke for him to attend with a peace officer to remove his belongings from your shared residence. ADDRESS No change without notice 5301 When first reporting to your probation officer, you must provide them with the address where you live and your phone number. You must not change your address or phone number without notifying your probation officer in writing at least two days in advance of any change. CHANGES IN EMPLOYMENT 5403 You must provide your probation officer with the details of your employment status. You must inform your officer within two business days of any change in your employment status. NOT LEAVE BC 5304 You must not leave British Columbia unless you have the prior written permission of your probation officer. You must carry the written permission, which can be in electronic format, with you at all times if you are outside the province. NO DRUGS 5602 You must not possess or consume controlled substances as defined in the Controlled Drugs and Substances Act except with a medical prescription. DRUG PARAPHERNALIA 5605 You must not possess drug paraphernalia that is suitable for the sale or consumption of drugs that have not been prescribed for you. COMMUNITY WORK 5801 You must complete 30 hours of community work under the direction of your probation officer. Your community work service must be completed within the first nine months of your probation period COUNSELLING 5701 You must attend, participate in and complete any intake, assessment, counselling, or education program as directed by your probation officer.

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- [48] Also, because this is a secondary designated offence, pursuant to s. 487.051(3) of the Criminal Code, I order that you provide samples of bodily substance, such as, are reasonably required, for the purpose of forensic DNA analysis.
- [49] You may be seated.
- [50] I have signed the forfeiture order that was presented to me at the hearing. I am also waiving the victim surcharge.
- [51] That concludes my decision. "Milman J."

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