
CANADA / JUDGMENT

R. v. Creighton

2018 BCSC 1387

COURT

Supreme Court of British Columbia

DECIDED

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2018 BCSC 1387 R. v. Creighton

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Creighton,

2018 BCSC 1387

Date: 20180306

Docket: 77784-2

Registry: Nanaimo

Regina

v.

Melissa Anne Edwards

Steven William Creighton

Michelle Belcourt

Tyson Brent Reavley

And:

Docket: 79492-2

Registry: Nanaimo

Regina

v.

Steven William Creighton

Before: The Honourable Mr. Justice Baird

Oral Reasons for Sentence

for Steven William Creighton and Michelle Belcourt

Counsel for the Crown:

J. Farenholtz

Counsel for the Accused Creighton:

K. Bradshaw

Counsel for the Accused Belcourt:

B. Movassaghi,

Agent for J. Watt

Place and Date of Trial:

Nanaimo, B.C.

April 25-28, 2017

May 1-5, 2017

May 8-11, 2017

Place and Date of Judgment:

Nanaimo, B.C.

March 6, 2018

[1] THE COURT: Mr. Creighton and Ms. Belcourt, a forfeiture order will likely be made concerning the items on the exhibit flowchart. Most of them are probably not controversial. I am going to give Ms. Bradshaw some time to look over it, but I will make a forfeiture order of the things on that list subject to arguments by counsel.

[Ancillary orders spoken to]

Introduction

[2] This is a sentencing hearing. After a series of voir dieres on different subjects, Steven Creighton invited me to convict him of counts 4 and 6 on Nanaimo indictment 77784, as amended, alleging respectively trafficking in heroin and fentanyl and trafficking in cocaine, on January 9, 2015. At the same point in the proceedings, Michelle Belcourt entered guilty pleas to the same counts, each of them contrary to s. 5(1) of the Controlled Drugs and Substances Act.

- [3] In addition, Mr. Creighton has entered guilty pleas to three counts on indictment 79492, charging that on October 20, 2016, he possessed cocaine, fentanyl and methamphetamine for trafficking purposes.

Background

- [4] On January 3, 2015, Constable Dufrane of the Nanaimo RCMP performed a spot check at a well-known drug house on Needham Street, here in Nanaimo. While he was there, he observed a white Honda Civic belonging to Melissa Edwards. She was driving the vehicle, with Mr. Tyson Reavley as her passenger.
- [5] Under the observation of police officers, Mr. Reavley got out of the vehicle and entered the drug house. While he was inside, Constable Dufrane talked to Ms. Edwards. He suspected that she and Mr. Reavley were involved in the drug trade. An investigation of their activities was initiated. It was later determined that they were staying at the Travelodge on the Old Island Highway and Stewart Avenue.
- [6] Ms. Edwards and Mr. Reavley were street-level drug dealers, operating a dial-a-dope service organized and run by Mr. Creighton. Mr. Creighton was engaged in his activities with his then-girlfriend, Ms. Belcourt. She admits to being aware of Mr. Creighton's activities throughout and, on two occasions, witnessed by police investigators, she admits to having knowingly distributed bulk pre-weighed and packaged narcotics to Ms. Edwards and Mr. Reavley for street retail.
- [7] At 11:00 p.m. on January 7, 2015, Ms. Edwards and Mr. Reavley left the Travelodge, where it turned out they were living in Room 225 -- and I will talk more about Room 225 in a minute -- and they travelled to North Nanaimo where they met with Mr. Creighton on a quiet secondary road. Ms. Edwards and Mr. Reavley parked and waited at the location for some time. Eventually Mr. Creighton drove up in a Volkswagen Touareg. As Corporal Nguyen of the local RCMP detachment watched, there was a quick and obviously prearranged interaction between Mr. Creighton and Mr. Reavley. Corporal Nguyen thought that he was witnessing a drug reload. It probably was. At any rate, after a brief meeting, the parties went their separate ways.
- [8] On January 8, 2015, there was more surveillance of Mr. Creighton driving around town in the Touareg. During the same period of time, a surveillance unit was watching the Edwards Honda at the Travelodge. There was another unit watching over 161 Summit Drive where Mr. Creighton and Ms. Belcourt were living together.
- [9] At 11:05 p.m. the same night, Ms. Belcourt was seen getting into a taxicab at 161 Summit Drive. She proceeded to the Mac's Milk store at the corner of Norwell Drive and Departure Bay Road to meet with Mr. Reavley and Ms. Edwards, whom the police had followed from their hotel. Ms. Edwards was driving the white Honda Civic. Mr. Reavley was already out of the car when Ms. Belcourt arrived. Ms. Belcourt walked directly to Mr. Reavley and gave him something. She was heard to say, "tell your girl", as she departed. She was noted to be heavily

pregnant at the time.

- [10] The following day, January 9, 2015, Ms. Edwards was seen in her white Honda Civic parked at the rear of the Travelodge Hotel, obviously dealing in dope. A number of people came in rapid succession and had dealings with her of a hand-to-hand nature. Later on, just before 10:00 p.m., she and Mr. Reavley departed the Travelodge in the Honda Civic and returned to the same Mac's Milk store on Norwell Drive.
- [11] More or less simultaneously, Ms. Belcourt was observed leaving 161 Summit Drive in the Touareg. The police had been watching the residence for hours and they knew that Mr. Creighton remained inside. Ms. Belcourt was carrying an 8 by 11-inch box. She drove to the Mac's Store, arriving at the same time as Edwards and Reavley. Reavley got out of the car and had a brief meeting with Ms. Belcourt, who remained seated in the Touareg. She gave him the box with which he returned to the Honda Civic. The police moved in and arrested all three subjects on the spot.
- [12] As an incident to the arrest, Ms. Edwards's Honda was searched. The items seized included a woman's purse containing scoresheets, a wallet with cards in it, identification in Ms. Edwards's name, ten spits of crack weighing 0.4 grams each, 0.6 grams of heroin, and two spits of morphine and fentanyl weighing 1.1 grams each.
- [13] The package recently given by Ms. Belcourt to Mr. Reavley was found in the front passenger area of Ms. Edwards's vehicle. It was found to contain 50 blue spitballs containing 0.2 grams of heroin and fentanyl; six green spitballs containing 0.7 grams of heroin and fentanyl; 25 white spitballs containing 0.6 grams of heroin and fentanyl; six white spitballs containing 1.1 grams of heroin and fentanyl; 47 black spitballs containing 0.4 grams of crack cocaine; two rectangular 30 gram bricks of heroin, fentanyl and crack cocaine; and two flip cellphones.
- [14] The estimated total street value of the substances in this package was over \$30,000. This was, in other words, a significant drug reload, indicating a brisk and highly profitable trafficking business, on a reasonably sizable scale, of highly poisonous, dangerous and addictive narcotics.
- [15] Documents in Mr. Creighton's name and over \$1,000 in cash were found in the Touareg. A short time later Mr. Creighton was arrested at 161 Summit Drive, which was later searched on authority of a warrant. The following items of note were seized:
- on the kitchen island, a clear plastic bag containing 21.8 grams of what appeared to be a cutting agent; a clear plastic bag with white powder residue inside; approximately \$3,500 in Canadian currency; a clear Ziploc bag containing dime bags, and drug scoresheets;

- in the dining room, a large white cloth bag containing large plastic bags with numerous bite holes for fashioning spitballs; drug scoresheets; a blue flip cellphone identical to the ones found in the box that Ms. Belcourt delivered to Ms. Edwards and Mr. Reavley; two digital scales covered with powder residue;
- in the living room, two laptop computers;
- on the desk in the upstairs living area, a white digital scale covered in powder residue; a cellphone; a clear plastic jar with powder residue inside; two plastic trays with powder residue inside; two scoresheets;
- elsewhere in the residence were found documentation related to Mr. Creighton and Ms. Belcourt, and sundry scoresheets, cellphones and so on.

[16] The police also searched Room 225 of the Travelodge Hotel where Ms. Edwards and Mr. Reavley had been staying. There they located scoresheets clearly establishing an ongoing business relationship of some duration with Mr. Creighton. The coded language in the scoresheets referring to narcotics was identical to scoresheets found at 161 Summit Drive, and there was uniformity across documentation seized at both locations concerning the retail prices to be demanded for the various drugs in question. A document seized from the hotel contained instructions to Ms. Edwards and Mr. Reavley on how to manage their shifts, explaining how records must be kept, money accounted for, and so on.

Steven Creighton

- [17] Steven Creighton was born on January 26, 1992, and is now 26 years old. He is a lifelong resident of Nanaimo. His mother was a substance abuser with whom he has had almost no contact since the age of 9. He was raised by his maternal grandparents, Bill and Darlene Creighton, who have been present in court throughout his trial, and I note for the record they are present today for his sentencing.
- [18] A psychiatric report was prepared which suggests that Mr. Creighton was exposed in utero to narcotic drugs and alcohol. The report-maker believes that this has likely impaired Mr. Creighton in his cognitive functioning. Mr. Creighton underwent psychometric testing, revealing that his overall intellectual functioning is below average. An earlier psychological evaluation submitted in evidence suggested that over a range of adaptive behavioural areas, Mr. Creighton was functioning at levels typical of people half his age.
- [19] Mr. Creighton's grandparents present as reputable and respectable people who have done their very best for him over many years. They are strangers to the drug trade or any other type of criminal activity. They describe Mr. Creighton as a shy but friendly young man who gave them no trouble while he was growing up. Darlene Creighton says that, if anything, Mr. Creighton was rather a docile and easily-manipulated young person.

- [20] In the midst of his developmental disadvantages, however, there was one saving grace. He was a good athlete. He was a particularly useful competitor in BMX cycling, I have been told. In 2010, in fact, he represented Canada in this event at the Youth Olympic Games in Singapore. Unfortunately, not long after his return to Canada, he sustained a debilitating injury to his right ankle and foot, effectively ending his BMX cycling career.
- [21] Not long after this, he reconnected with his natural father, a drug and alcohol abuser, who had long been entirely absent from his life. The father's influence on Mr. Creighton was not positive. Their reunion came at a very bad time. BMX cycling had been the principle focus of Mr. Creighton's life, and was the mainspring of his conception of self-worth. He was upset and depressed by his inability to train and compete. Through his father -- through his own father -- he was introduced for the first time to the drug world, and he began using cocaine.
- [22] As Mr. Creighton's cocaine addiction progressed, he became entrenched in a negative peer group, and he descended into a shiftless, unproductive and antisocial lifestyle. Around this time, he had his first negative dealings with the law. He was convicted and received non-custodial sentences for breach of undertaking and assault. I was told that he took paid employment here and there during this time, but it does not seem to me to have amounted to much. From approximately the age of 20 until his arrest and present incarceration, he made his living by trafficking in narcotics, indulging his own addiction along the way.
- [23] It seems that Ms. Belcourt entered Mr. Creighton's life when he was around 22 years old, and she was 37. They were both addicts when they met, and I do not doubt that substance abuse and codependence had a lot to do with what would otherwise seem an incongruous connection between the two of them.
- [24] Ms. Belcourt is not only much older than Mr. Creighton, but in my estimation, she is far more mature and experienced. She had a stable upbringing within a healthy nuclear family unmarked by abuse or addiction. She had pursued post-graduate vocational training and had a history of useful employment in responsible positions. She had been married and had two children. Mr. Creighton, on the other hand, was young, callow and so far had done very little with his life. A crucial aspect of their relationship with each other, I believe, was that Ms. Belcourt badly needed opiates and Mr. Creighton had constant access to them.
- [25] In due course, sometime in 2014, this drug-addled friendship turned into an intimate relationship. The two of them now have a child together. It will be recalled that Ms. Belcourt was pregnant at the time of the surveillance operation and her arrest. Her son by Mr. Creighton, a little boy named Mason, arrived on March 15, 2015, so next week he is going to be three. He was born with an opiate addiction. Social workers apprehended him at birth.

- [26] Both accused were released from custody on January 9, 2015. Summonses to attend court were issued several months later. Neither of them has ever been bound by conditions of bail. They continued to live together at 161 Summit Drive until July 2015, when they moved into the basement suite of Bill and Darlene Creighton's house. During this post-arrest period, they tried to clean themselves up and straighten out. Their goal was to secure Mason's return from the custody of the Ministry of Children.
- [27] Mr. Creighton did all right for a time. He told me that he got involved in BMX coaching, worked as a roofer, took his air brake certification, and worked part-time at Harmac. He confirmed that Ms. Belcourt stayed clean throughout. By November 2015, the Ministry had granted the couple access visits with Mason, and in January 2016, the baby was returned to his parents' full-time care and custody, without conditions.
- [28] Things seem to have gone along reasonably well for several months after this, but then Mr. Creighton relapsed and resumed dealing drugs. Ms. Belcourt was not prepared to go along with this lifestyle any longer. The couple agreed to separate. Ms. Belcourt moved out of the basement suite with the baby and took lodgings elsewhere in Nanaimo.
- [29] On October 20, 2016, Mr. Creighton was caught once again selling drugs in the parking lot of a local shopping mall. He sped away in his car when the police moved in to apprehend him. He was stopped and arrested within minutes some blocks away. His car was searched. The police found \$2,000 in cash in the centre console, as well as two cellphones on which calls came in from people looking to purchase drugs.
- [30] The police arranged to meet up with one of these callers at a pre-arranged location. They were approached by one of Mr. Creighton's customers who asked for \$40 worth of cocaine and \$40 worth of heroin. The customer was arrested and later provided a statement to the police to the effect that he had been buying drugs from Mr. Creighton for the past six months.
- [31] On October 21, 2016, the police executed a search warrant on the basement suite of Bill and Darlene Creighton's residence where they located 462.63 grams of cocaine in rock and powder form; 163.3 grams of methamphetamine; 7.63 grams of fentanyl; 0.3 grams of fentanyl/heroin; 0.7 grams of heroin; 560 grams of cutting agent; \$18,610 in cash; drug paraphernalia, scales, baggies, a vacuum sealer, blenders, scoresheets, and a metal press used to make drugs into solid blocks for redistribution.
- [32] In respect of both the January 2015 and October 2016 arrests, Mr. Creighton admits that he was running a dial-a-dope operation that involved him purchasing multi-ounce quantities of heroin, fentanyl, methamphetamine, and cocaine, and repackaging them for street-level distribution by himself or by other individuals working for him.

- [33] The psychiatric report indicates that Mr. Creighton readily admitted his responsibility for his crimes. "I was selling drugs in Nanaimo", he said, "heroin, cocaine, methamphetamine. They found traces of fentanyl in the drugs as well." He expressed remorse about his criminal misconduct that the psychiatrist considered to be unfeigned. Mr. Creighton said that he was glad to have been arrested and incarcerated because it was a "wake up call".
- [34] Mr. Creighton exhibited multiple cognitive deficits under psychometric and intellectual skills testing. These included impoverished vocabulary and use of expressive language, low ability in solving abstract problems, weak auditory attention span, and overall learning ability at the low end of the range, the 18th percentile. The psychiatric report concluded:

Mr. Creighton exhibits multiple cognitive deficits at current testing. These include borderline to low average intellectual ability. He has a rather restricted vocabulary, and while root word decoding and spelling skills are fine, he has a hard time with higher level abstract reasoning with words. He does far better with visual reasoning and hands-on activities. He has a poor auditory attention span, and this would be a problem on mental activities which required him to stay on task for more than a few minutes at a time. Mr. Creighton has limited memory abilities and verbal memory testing shows a sluggish learning curve in acquisition rate. This finding calls for the need to use external memory aids to help him keep track of important and relevant details, ranging from appointments to tips and suggestions he was given during counselling sessions. He also has low processing speed when it comes to naming fluency and his executive control functioning is quite limited.

- [35] Mr. Creighton's grandmother, Darlene, was also interviewed by the evaluator. She described Mr. Creighton, as I have previously said, as a reserved and shy person who is easily led.

Michelle Belcourt

- [36] Michelle Belcourt was born on November 19, 1977, and is now 40 years old, some 14 years senior to Mr. Creighton.
- [37] Her overall claim is that she was merely a courier or delivery person in Mr. Creighton's operation. She says, and Mr. Creighton has agreed, that Mr. Creighton was the operating mind of this dial-a-dope operation. Ms. Belcourt claims that she was uninvolved in trafficking, other than on the two occasions where she was observed doing so by the police -- that is on February 8 and 9, 2015 -- at the Mac's Milk store.
- [38] I have a very strong suspicion that Ms. Belcourt was more profoundly involved in Mr. Creighton's drug dealing activities than she is letting on. It is far more likely, I think, that she exerted a greater influence on Mr. Creighton than either of them is prepared to admit. I find it more than a little curious that this much older, far more mature and intellectually capable person was a mere spectator in this ongoing and apparently lucrative business. There were flourishes in evidence here and there indicating Ms. Belcourt's more active participation.

- [39] However, the only proven instances of her engagement in drug trafficking consist of the two instances that the police described in evidence. It would be wrong of me to speculate about her possibly deeper implication in Mr. Creighton's wrongdoing. She was a fentanyl addict herself at the time, of course, and it may be, as intimated by her counsel, that her main attraction to Mr. Creighton was his constant and abundant access to her opioid of choice. It may have been a matter of indifference to her how the substance was acquired or whether it was distributed to others, as long as she got her share.
- [40] Ms. Belcourt was born in Surrey, British Columbia. Her parents, who have been in court intermittently during these proceedings, now reside in Harrison Hot Springs. Like Mr. Creighton's grandparents, they seem to me to be straightforward and good natured people. They have been married for 47 years. Ms. Belcourt has an older sibling who lives in Surrey and leads a law-abiding and productive life. Her upbringing seems to have been happy and wholesome.
- [41] Unfortunately, as a teenager, Ms. Belcourt was diagnosed with a pituitary gland tumour. This tumour was surgically removed and post-operatively she was prescribed opiates for pain relief. Over the years she became addicted to prescription drugs including morphine, oxycontin and Percocet. Abuse of these substances, I gather, had become a constant and dominating feature of her life by the time she was in her 20s.
- [42] After travelling on a number of occasions to Asia to pursue work as a model, Ms. Belcourt returned to live in British Columbia, where at the age of 21 she fell unexpectedly pregnant after a brief relationship with a person who had formerly been only a friend. The first of her children, a daughter named Mackenzie, duly arrived. Mackenzie is now 17 years old.
- [43] At age 23, Ms. Belcourt acquired a certification in early childhood education that led to a five-year career working in daycare centres in Surrey. During this time she married Paul Belcourt and together they had a daughter named Madison, who is now 13 years old and lives with her father, from whom Ms. Belcourt separated in 2008.
- [44] I heard in fact that both Madison and her older half-sister, Mackenzie, now live with Paul Belcourt. Is that right?
- [45] THE ACCUSED MICHELLE BELCOURT: That's correct.
- [46] THE COURT: Since her January 2015 arrest, Ms. Belcourt has resumed regular contact with her parents and with her older children.
- [47] In 2008-2009, Ms. Belcourt went back to school and received a certification as a hospital lab technician. She did her practicum at Surrey Memorial Hospital, and afterwards she was hired there as a lab tech, working mostly in the emergency department. Ms. Belcourt worked at Surrey Memorial from 2009 to 2012, all along continuing to manage her longstanding addiction to prescription painkillers. She was, I find, a functioning prescription drug addict.

- [48] However, by 2012, Ms. Belcourt realized that her addiction was getting out of control and she needed help. She made a clean breast of things with her employers and her union at the hospital, and through her extended health plan, she was funded to attend the Edgewood Recovery Centre over on Boxwood Road here in Nanaimo.
- [49] She entered the facility in March 2012 and remained there as a resident for four-and-a-half months, leaving in July 2012. She was required to attend the facility thereafter on an outpatient basis, from July to December. During the outpatient phase, she had a relapse in opioid use that was revealed by a urine test required both by Edgewood's regulations and by the stipulations of her employer's rehab policies.
- [50] After this, things came completely unglued for Ms. Belcourt. She started using fentanyl regularly, and her life descended into chaos. Towards the end of 2012, and during all of 2013 and 2014, Ms. Belcourt was in the throes of a serious opioid addiction. She lost control of her life. She did not see her parents through all that time and rarely saw her daughters. It was in the midst of this mayhem that she hooked up with Mr. Creighton in the Nanaimo drug subculture. They were friends at first, but this progressed by degrees into an intimate relationship.
- [51] At a certain point in 2014, disgusted with herself and her lifestyle, Ms. Belcourt moved back to Surrey, where she planned to pull herself together. Not long after she arrived, however, Mr. Creighton came to join her, and while they lived together on the mainland for several months, Ms. Belcourt became pregnant with Mason. She thought about terminating the pregnancy but changed her mind. In November 2014, she returned to Nanaimo to live with Mr. Creighton and await the baby's arrival. By this time, Mr. Creighton's business activities were going full tilt. It is obvious that Ms. Belcourt was aware of their full extent, and she was involved at least to the degree detailed in evidence.
- [52] The main thing concerning Ms. Belcourt, however, is how she has cleaned herself up since January 2015. Her arrest, she told me, made a huge impression on her as she had never dealt with the police before in her life. The second shock came on March 15, 2015 when, as I have said, Child Protection officials apprehended her baby at birth.
- [53] She continued living with Mr. Creighton, it has to be acknowledged, for another year or more, but she resolved to do everything in her power to get Mason back. She got on the methadone program. She swore off all other opioids. She took counselling and treatment. She did everything that the Ministry of Children required her to do, such that, as previously mentioned, by early 2016, Child Protection officials were satisfied that she posed no risk to Mason, and he was returned to her care and custody where he has remained to this day.
- [54] Ms. Belcourt has also reconnected with her parents, who told me that they are overjoyed to have their daughter back. She continues to enjoy the firm and committed support of Mr. Creighton's grandparents, Bill and Darlene Creighton, who advised me, amongst other things, that Ms. Belcourt is welcome to stay with Mason in their basement suite for as long as she likes. She has not been arrested or otherwise come to the attention of police in over

three years since her arrest. She is, by all accounts, a capable and devoted caregiver to Mason, and she has resumed an active and affectionate relationship with Madison and Mackenzie, her two elder children.

Principles of Sentencing

- [55] As the offences at bar date back to early 2015, counsel have agreed that the enhanced range of sentence for fentanyl trafficking articulated in *R. v. Smith*, [2017] B.C.J. No. 471, is not applicable. While I accept this, the facts before the court remain serious and worthy of strong rebuke. Both offenders before the court were distributing highly noxious and potentially lethal narcotics to the general public here in Nanaimo, and they were doing so for their own enrichment, as well as to feed their own addictions.
- [56] Even though the *Smith* decision does not apply, and this is because, for your edification, it was before it became publicly well-known just how lethal fentanyl is, the Crown points out that by early 2015 when these two offenders were arrested, there had already been 11 fentanyl-related deaths in Nanaimo alone. It is entirely possible, in fact, that one or the other or more of these casualties might have come from fentanyl distributed by these offenders. Can they have been unaware of this? Is it much of an excuse if they were not?
- [57] The offences at bar are serious, *Smith* or no *Smith*. A stern measure of punishment is clearly in order. I would note however that the present offenders were not pure profiteers. They were, in part at least, addicts feeding their own drug dependencies. On the second go-round of his offending, I was also told that part of the problem bearing down upon Mr. Creighton, as well, was that he was in debt to his suppliers because of the earlier arrest, in which tens of thousands of dollars of product were seized by police, and he was out there trying to make up the difference.
- [58] Because of their addictions, because they are in part the victims of the drug trade, I accept that the moral culpability of these two offenders may be somewhat diminished. In *Ms. Belcourt's* case, I must weigh her limited involvement in the trade, along with her three years of post-offence good conduct, and the compelling evidence that she has rehabilitated herself from a serious opioid addiction, which I recognize, *Ms. Belcourt*, is no mean feat. I know that it is difficult, it takes a lot of guts, it takes a lot of strength of character. And I congratulate you on your efforts so far. I bear in mind, as well, the practical reality that *Ms. Belcourt* is the primary caregiver to a three-year-old child who is completely dependent on her.
- [59] The main principles of sentencing in a case like this are, of course, denunciation, deterrence and protection of the public. Rehabilitation is another factor that must be considered, and its importance will vary from case to case, depending on the proven willingness of the offender to turn things around, and the degree of confidence that the court has in the durability of the offender's recovery.

[60] People engaged in dial-a-doping ordinarily go to jail. As Bennett J.A. said, in *R. v. Voong*, 2015 BCCA 285, at paragraph 59:

... absent exceptional circumstances, the sentence for a first offence or with a minimal criminal record, dial-a-dope drug seller will be in the range of six to eighteen months imprisonment, depending on the aggravating circumstances. Exceptional circumstances may include a combination of no criminal record, significant and objectively identifiable steps towards rehabilitation for the drug addict, gainful employment, remorse and acknowledgement of the harm done to society as a result of the offences, as opposed to harm done to the offender as a result of being caught. This is a non-exhaustive list, but at the end of the day, there must be circumstances that are above and beyond the norm to justify a non-custodial sentence. There must be something that would lead a sentencing judge to conclude that the offender had truly turned his or her life around, and that the protection of the public was subsequently better served by a non-custodial sentence. ...

SENTENCE - CREIGHTON

[61] In Mr. Creighton's case, we are talking not so much about dial-a-doping, in my opinion, as mid-level distribution. A jail sentence for Mr. Creighton is completely unavoidable. To his credit, he has never suggested otherwise. For him the principles of denunciation and deterrence are paramount. I intend to remove him from our community for public protection, and to emphasize this court's condemnation of his serious and repetitive criminal behaviour.

[62] I bear in mind, however, that Mr. Creighton is still a young man. He has had an unfortunate early life in which he has been badly let down by his own parents. I also bear in mind his intellectual and cognitive deficits, and that he has never before served a jail sentence. I will exercise all the restraint that the law permits in dealing with him as a first-time serious offender.

[63] The Crown has asked me to consider an aggregate sentence of seven years for you, Mr. Creighton, but I have concluded in light of the factors just mentioned that such a penalty would be unduly harsh and excessive in your specific case. You should be well aware in advance, however, that a sentence of that magnitude may very well be in the range if you commit similar offences in the future.

[64] I am going to give you a break today, Mr. Creighton, because of your youth, your intellectual deficits, and because you are basically a first-time offender. You have blown that credit. It does not come again. The Crown's position, I have concluded, is a little heavy this time, but it will likely be right on the money next time, and if you want to spend the rest of your life in jail, you are on the right track. That is what will happen to you if you do not straighten up, smarten up, and disavow your criminal lifestyle for good.

- [65] Now I am going to ask for counsel's assistance. I did the math on the basis of what you told me the other day, Ms. Bradshaw. By my calculation, Mr. Creighton has already served 504 days in custody. He has been in custody since he was arrested on October 20, 2016.
- [66] MS. BRADSHAW: Yes.
- [67] THE COURT: Employing the usual multiplier of 1.5 days for every day spent in pretrial custody, I have that to the equivalent of 756 days of pretrial custody, or approximately 25 months.
- [68] Bearing in mind the principle of restraint, given Mr. Creighton's background and relative youth, his absence of a related criminal record, his cognitive and intellectual deficits, his acceptance of responsibility for what he has done, and his apparently sincere expressions of remorse, I have concluded that a fit and just sentence would be an additional period of incarceration of 23 months. The idea, Mr. Creighton, is to top it up to 48 months -- that is a four-year sentence.
- [69] I want Mr. Creighton's record to be endorsed with this information, that it amounts to a cumulative total sentence of 48 months or four years in custody. I will take the advice of counsel on this before we break, but I propose to divide it up in the following way:
- on counts 1 and 6 on information 77784-2, a jail sentence of time served, with Mr. Creighton's record to be endorsed with the information that I am attributing 18 months of his dead time to the sentence on those two counts, and they are concurrent sentences;
 - on counts 1, 2 and 4 on indictment 79492, concurrent sentences, each with the other, of 30 months on each charge.
- [70] The remaining seven months, Mr. Creighton, of the dead time available to you, that you have aggregated before today, will be credited to that latter sentence, and the result is a sentence to be served from today of 23 months, which you will serve in a provincial reformatory.
- [71] And I want to make it clear to you, Mr. Creighton, that part of my thinking today is that, if I sent you to the penitentiary, a young man with your problems and vulnerabilities, with no inmate experience, you would be torn limb from limb. This sentence has spared you that result, and I want you to remember it. If you ever get the urge to offend like this again, this sort of consideration will not enter the equation. It will not happen again. Next time for you, it is straight to the pen -- no questions asked, no passing go, no collecting two hundred dollars - it will be you right into the heart of the penitentiary system. Do you understand me?
- [72] THE ACCUSED STEVEN CREIGHTON: Yes, I do.

- [73] THE COURT: The custodial portion of this sentence will be followed by a three-year probation order. The idea, Mr. Creighton, is to keep you under watch, to keep you under supervision and surveillance for a good long time. I want, if I can, to fashion a sentence that is going to wean you off your dependence on quick and easy money. I am worried about this because you are 26 now, you have got no history of gainful employment, and for years your livelihood has been selling drugs.
- [74] Your transition into the legitimate economy is going to be difficult and painful, and the temptation for you to return to your old ways is likely to be pretty strong. So I want to try and create as much distance between you and your former life as I can, to help you along in your rehabilitation. This is the reason for the lengthy probationary period following your release from prison.
- [75] The terms and conditions of your probation will be as follows::
- (1) Keep the peace and be of good behaviour;
 - (2) Report to this court when required to do so by the court;
 - (3) Notify the court or the probation officer in advance of any change of name or address, and promptly notify the court or the probation officer of any change of employment or occupation;
 - (4) Report within 48 hours of your release to the probation office nearest to the place of your release, and thereafter as directed;
 - (5) Remain within the jurisdiction of the court unless written permission to go outside jurisdiction is obtained from the court or probation officer;
 - (6) Abstain from the possession and consumption of CDSA proscribed substances except in accordance with a medical prescription;
 - (7) Attend for, participate in, and successfully complete any counselling directed by the probation officer including for substance abuse;
 - (8) At the direction of your probation officer, complete 240 hours of community service work to be completed within 12 months of your release from custody;
 - (9) Abide by a curfew between the hours of 6:00 p.m. and 6:00 a.m. daily, and present yourself at the door of your residence during curfew hours whenever you are required to do so by your probation officer or a peace officer to monitor compliance with this condition;
 - (10) Seek and maintain suitable lawful employment;
 - (11) Not to possess any weapons within the meaning of that term described in s. 2 of the Criminal Code;
 - (12) Not to possess any cellular telephones or paging devices;

- (13) Not to be found inside any motor vehicle that is not rented, leased, or owned by you, or unless the registered owner is present in the vehicle with you;
- (14) No contact directly or indirectly with Tyson Reavley or Melissa Edwards;

SENTENCE - BELCOURT

- [76] Ms. Belcourt's case is different. I have already talked about my suspicion that she was more involved in this serious retail drug business than she has admitted. I continue to suspect that Mr. Creighton is wearing a disproportionate share of the blame for an enterprise that was likely shared more equally between the two of them.
- [77] However the law is clear that I must be satisfied beyond a reasonable doubt of any aggravating feature alleged by the Crown, and the only admissible evidence adduced in this proceeding of Ms. Belcourt's involvement is the two occasions that I have referred to. I bear in mind as well that she was living with Mr. Creighton, was fully aware of the full extent of his activities, and that she benefited substantially from them.
- [78] Ms. Belcourt, in the end, has only been proved to be a bit player in Mr. Creighton's business. More importantly, I am satisfied that she is a person with no prior criminal history who is in the midst of a durable recovery from opioid addiction and, as I have said, this is no small matter.
- [79] As was exhibited with depressing consistency during the trial of this case by the behaviour and comportment of Ms. Belcourt's co-defendants, Mr. Reavley and Ms. Edwards, these substances are not only highly addictive, but tremendously debilitating. You saw the two of them in court. It is no secret what these substances you were peddling do to people. You saw it close up right here in this courtroom during your trial.
- [80] As I was saying, to wean yourself from an opioid addiction is a major achievement, and it is one that I consider you to be in the midst of achieving, and I want you to keep going, I want you to have a full recovery. That ultimately is what is in the community's long-term best interests.
- [81] My conclusion that Ms. Belcourt has well and truly turned her life around is not based only on the materials filed on this sentencing, the submissions of her counsel, the comments of her parents, the observations of Bill and Darlene Creighton, and her own heart-felt and apparently sincere statement made to this court.
- [82] It comes as well from my own observations of Ms. Belcourt in my courtroom. I have been able to make a study of her over three weeks or so of trial and I have consistently noted that she is clean and sober. She has been actively and alertly engaged in her defence, making notes furiously, and consulting animatedly with her lawyer. She showed up every day punctually and neat as a pin.

- [83] Here the principle of parity comes into play. On a separate sentencing hearing, I imposed one year jail sentences on both Tyson Reavley and Melissa Edwards. The Crown is asking for an 18-month jail sentence for Ms. Belcourt, presumably on the basis, in part at any rate, that she occupied a slightly higher rung on the dial-a-dope ladder.
- [84] I would note and emphasize, however, that the behaviour of Mr. Reavley and Ms. Edwards before this court made it clear that their lives continue to be plagued by opioid addiction. They were both obviously actively using during this trial. The proceedings were interrupted on a number of occasions because one or the other of them failed to attend court or passed out in open court.
- [85] Mr. Reavley eventually got himself arrested on new charges and was remanded in custody, after which I had no further problems with him. By the time of his sentencing hearing, he had been in jail for a number of weeks and was already looking healthier and sturdier for his separation from street drugs.
- [86] Ms. Edwards, on the other hand, continued to suffer throughout the entire proceedings. She was obviously high for much of it. She was constantly nodding off. At her sentencing hearing, she was so obviously and seriously intoxicated that I thought she might be in medical danger. I ordered her arrested and taken to hospital. Doctors confirmed that she had heroin in her system.
- [87] The point I am making in mentioning all of this, Ms. Belcourt, is that your case is different from Mr. Reavley's, and different from Ms. Edwards', for precisely the reason that their lives continue to be a shambles because of drug use. There was no plausible way, and their lawyers did not try to argue, that there were exceptional circumstances in their case. They had not rehabilitated. They were still in the thrall of addiction.
- [88] A jail sentence was definitely required for them, not just for denunciation, deterrence, and protection of the public, but also to bring about a sharp and suitably lengthy therapeutic break in each of their drug addiction cycles. Each of them will be bound, furthermore, by lengthy probation orders to assist them in their rehabilitation upon release.
- [89] The difference with Ms. Belcourt is not just the limited extent of her proven involvement in Mr. Creighton's illegal business, but the strong and compelling evidence of her recovery and rehabilitation. I am satisfied that, where she is concerned, the principle of rehabilitation has an enhanced importance, and that those of denunciation and deterrence can be satisfied by a non-custodial sentence. I must also weigh heavily in the balance, as I have said, the reality that she is caring for three-year-old Mason, and that over three years have passed since her arrest without reoffending.

- [90] I do not mind saying, Ms. Belcourt, for your future information, that the message sent in R. v. Smith is now clear. Nobody can claim to be ignorant of the dangers, the lethality of fentanyl, and if you are convicted on any future occasion of trafficking in that substance, I for one would give you a very long sentence, and I would do so without blinking, Mason aside. Do you understand?
- [91] THE ACCUSED MICHELLE BELCOURT: Yes, I do.
- [92] THE COURT: As it is, I am giving Ms. Belcourt the benefit of the lesser range of sentence that applied before Smith came down. In my judgment, an appropriate disposition in Ms. Belcourt's peculiar circumstances will be a suspended sentence, with a lengthy term of probation. My objective is to configure an adequately denunciatory and deterrent penalty while maintaining the positive trajectory that Ms. Belcourt has established in her own rehabilitation and recovery.
- [93] The proper balance in my view lies in making a suitably emphatic statement of the court's condemnation of her offending, and to breed in her a strong sense of responsibility and ownership for the wrongs that she has committed against the health and safety of this community, while simultaneously recognizing her minor role in the drug trafficking business in this case, her four decades of prior good behaviour, her peaceful and law abiding conduct for over three years since her arrest, her apparently durable recovery from opioid addiction, and her responsibility to care for an infant child.
- [94] With all of this in mind, I hereby order that the passing of sentence is to be suspended, and Ms. Belcourt shall be released on the following terms and conditions of a probation order which will remain in effect for three years:
- (1) Keep the peace and be of good behaviour;
 - (2) Report to this court when required to do so by the court;
 - (3) Notify the court or the probation officer in advance of any change of name or address, and promptly notify the court or the probation officer of any change of employment or occupation;
 - (4) Report within 24 hours to the adult probation office on Chapel Street in Nanaimo and thereafter as directed;
 - (5) Remain within the jurisdiction of the court unless written permission to go outside jurisdiction is obtained from the court or probation officer;
 - (6) Abide by a curfew of 6 p.m. to 6:00 a.m. daily and present yourself at the door of your residence during curfew hours whenever you are required to do so by your probation officer of a peace officer to monitor compliance with this condition;
 - (7) At the direction of your probation officer, complete 200 hours of community service work by no later than December 31, 2018;

- (8) Seek and maintain suitable lawful employment;
 - (9) Abstain from the possession and consumption of CDSA proscribed substances except in accordance with a medical prescription;
 - (10) Attend for, participate in, and successfully complete any counselling directed by the probation officer including for substance abuse;
 - (11) No contact directly or indirectly with Tyson Reavley or Melissa Edwards;.
- [95] I will emphasize that you are bound by the curfew condition for the entire duration of this probation order. That is the denunciatory, deterrent aspect of the sentence that, in my view, renders it fit to the gravity of the offences and your moral culpability in committing them. It is also to guarantee your safe and good conduct in the community.
- [96] We will take the morning break now, and I will hear from counsel about any matters arising, including conditions of probation, when we reconvene. Thank you.

[MORNING RECESS]

[97] THE COURT: Yes, Mr. Farenholtz.

[98] MR. FARENHOLTZ: Yes, My Lord. With respect to the probation orders for both Mr. Creighton and Ms. Belcourt, there was a condition about presenting themselves at the door.

[99] THE COURT: Yes.

[100] MR. FARENHOLTZ: There should probably be a time limit -- usually it is within five minutes or something like that. Otherwise --

[101] THE COURT: All right. I will make that amendment then. Present yourself at the door of your residence within five minutes of being required to do so.

[102] The point is pretty clear, right? You are supposed to be at home, so if a police officer or your probation officer -- most likely a police officer -- comes and knocks on your door, I expect you to answer. And I expect you to do it within five minutes.

[103] MR. FARENHOLTZ: Thank you, My Lord. And with respect to the curfew, my friends are going to ask about exceptions for that --

[104] THE COURT: Bona fide medical emergencies?

[105] MR. FARENHOLTZ: Those sorts of things and prior written permission of the probation officer or something to that effect. Crown would take no position with that.

[106] THE COURT: All right. The curfew condition then will be amended -- abide by a curfew of 6:00 p.m. to 6:00 a.m. daily, the only exceptions being bona fide medical emergencies and occasions on which you have the written approval, given in advance, of your probation officer, and then only for compelling personal reasons. If, for example, you have to go to a funeral or something of that nature, then your probation officer can make an exception. But if he or she does, it is to be in writing in advance and for a specific purpose. All right?

[107] MR. FARENHOLTZ: Thank you, My Lord.

[DISCUSSION BETWEEN JUDGE AND COUNSEL]

[108] THE COURT: All right, so in your case then, Mr. Creighton, the curfew condition of your probation order, in addition to the exceptions that I have already talked about -- bona fide medical emergencies and compelling personal circumstances - will include the exception "or in the company of one or either of his grandparents, Bill or Darlene Creighton".

[109] MS. BRADSHAW: Thank you, My Lord.

[110] MR. MOVASSAGHI: My Lord, with respect to the victim fine surcharge, I do not know what Your Lordship's usual practice is with respect to that. Ms. Belcourt is currently not working. She is caring for her three-year-old son. The timing of the offence, I don't recall if the court has the prior discretion that it had to simply waive it and I don't know whether the court would consider finding forthwith default, one day concurrent with the time of her presence here today in court.

[111] THE COURT: Mr. Farenholtz?

[112] MR. FARENHOLTZ: Crown's position is that the victim fine surcharge should apply. Ms. Belcourt is not in custody. She will have time, and --

[113] THE COURT: What about for Mr. Creighton then?

[114] MR. FARENHOLTZ: Mr. Creighton as well. It will come into effect after he is released from prison, when he will have time to get a job.

[115] THE COURT: The victim fine surcharge in respect of Ms. Belcourt will apply, and I expect you to pay it forthwith.

[116] Mr. Creighton, I have been told that you are unable to pay the surcharge because you are serving a jail sentence. I will order it payable forthwith and the custodial result of your failure to pay will follow. It will involve some additional jail time which I hereby direct to be served concurrently with the sentence that I have just imposed. In other words, in practical terms, you will serve no additional time on account of the victim fine surcharge, recognizing as I do that you are not in a position to pay it.

[117] Okay. Anything else?

[118] MR. FARENHOLTZ: Nothing arising, My Lord.

[119] THE COURT: All right. Thank you, counsel.

"Baird J."

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