
CANADA / JUDGMENT

R. v. Cross

2020 BCSC 939

COURT

Supreme Court of British Columbia

DECIDED

19 June 2020

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

2020 BCSC 939 R. v. Cross

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Cross,

2020 BCSC 939

Date: 20200619

Docket: 82722

Registry: Nanaimo

Regina

v.

Courtenay Serah Cross

Before: The Honourable Mr. Justice Riley

Oral Reasons for Sentence

Counsel for Crown:

J.E. Farenholtz

Counsel for the Defendant:

K.D. Bradshaw

Place and Date of Hearing:

Nanaimo, B.C.

June 19, 2020

Place and Date of Sentence:

Nanaimo, B.C.

June 19, 2020

- [1] THE COURT: Following a ruling upholding the validity of a search warrant, Ms. Cross acceded to a finding of guilt on several drug offences, specifically one count of possession of heroin and fentanyl for the purpose of trafficking, and one count of possession of cocaine simpliciter. All of that took place in January of 2019. Ms. Cross's sentencing hearing was originally scheduled for June of 2019, but she failed to appear at sentencing, a warrant was issued, and she was not apprehended until December of 2019. Ms. Cross has been in custody since that time and is now before the Court for sentencing.
- [2] Ms. Cross is appearing at this sentencing proceeding by video. The reasons for that have to do with the COVID-19 pandemic, and protocols in place to minimize the associated risks within the provincial remand system. As I understand it, bringing Ms. Cross to court in person would have required her to be in isolation for some period of time, which would be otherwise unnecessary. In these circumstances, both parties consented to Ms. Cross appearing by video from the remand facility where she is being held. I note that no viva voce evidence was called by either party at sentencing. In these circumstances, an order was made under s. 650 (1.2) of the Criminal Code, R.S.C., 1985, c. C-46 [Code] that Ms. Cross could appear by video at the sentencing hearing.

Circumstances of the Offences

- [3] The police had been investigating suspected drug activity at 512 Albert Street in Nanaimo. On 28 January 2017, the police obtained a warrant to search a number of units in that building, including unit number 6, believed to be occupied by Ms. Cross.
- [4] The police executed the warrant at 2:40 am on 28 January 2017. They entered unit number 6 to find Ms. Cross and her former co-accused Mr. Belanic sitting on a couch in the living room. Both were taken into custody.
- [5] In the subsequent search of unit number 6 and Ms. Cross's person, the police located: (a) 8.63 grams of a substance determined to be a mixture of heroin and fentanyl, in the apartment itself; (b) 2.95 grams of fentanyl, and a small scale, in Ms. Cross's purse; (c) 2.17 grams of cocaine, in a jacket said to belong to Ms. Cross; (d) \$800 in cash; and (e) assorted drug use paraphernalia, including multiple smoking bongs, tinfoil with burn marks, and syringes.
- [6] Ms. Cross was charged with multiple counts of possession of controlled substances for the purpose of trafficking. At trial, following a ruling upholding the validity of the search warrant, Ms. Cross admitted that the heroin and fentanyl (items (a) and (b) above) were for the purpose of trafficking and acceded to a finding of guilt to a single count of possession of

these two substances for the purposes of trafficking. With respect to the cocaine, the Crown agreed that Ms. Cross should be convicted of the lesser included offence of possession simpliciter.

Circumstances of the Offender

- [7] Ms. Cross is 44 years old. She was born in Squamish and grew up in a small town on Vancouver Island. She appears to have had a difficult childhood. She was raised by her mother and had little contact with her father. Her mother worked as a nurse and also appears to have had problems with alcohol, which affected Ms. Cross.
- [8] Ms. Cross has had substance abuse issues starting at a very young age. She started drinking alcohol at the family home at around the age of five. She started using marihuana and hashish while still in elementary school. By the time she started high school, Ms. Cross was drinking alcohol and using marihuana almost every day. She tried crack cocaine for the first time at the age of 14 or 15, and shortly thereafter began using it on a regular basis. She later started using heroin.
- [9] Ms. Cross attended high school until her grade 12 year but did not graduate. She often skipped school to use drugs or alcohol. When she did attend school she was often under the influence of drugs or alcohol. Ms. Cross later completed a trade certificate program and VIU, but she does not appear to have put that training to use.
- [10] Ms. Cross's history of gainful employment is sporadic at best. She worked as a clerk or cashier in high school, and also has work experience as a dish washer. Ms. Cross told the author of the PSR that she has not had "legitimate" employment for quite some time, explaining that for the most part she has supported herself by working in the sex trade and selling drugs.
- [11] Ms. Cross has a 22 year old son. Ms. Cross relinquished custody of her son to her mother when the child was about two or three, because Ms. Cross did not want him to be around her when she was abusing substances. Ms. Cross now has regular phone contact with her son, but does not see him in person very often as he is busy working.
- [12] Ms. Cross has a lengthy criminal record. By my count it includes 30 convictions. At least seven of these are for what I will refer to as trafficking offences, and seven more are for simple possession of controlled substances. Ms. Cross told the author of the PSR that she was introduced to the drug trade by a boyfriend, and she preferred selling drugs to working in the sex trade. I note that prior to the present offences, Ms. Cross's most recent criminal convictions were in 2013, when she received 13 months in jail for two counts of possession for the purpose of trafficking, and eight months in jail for two counts of possession for the purpose of trafficking arising out of a separate incident.

- [13] As noted above, throughout most of her adult life Ms. Cross has supported herself by working in the sex trade and by trafficking drugs. It is quite obvious that she is involved in this activity to fund her own substance abuse problem, but there is also a small scale commercial component to her drug trafficking. Rather than working in gainful employment, Ms. Cross has chosen to support herself through selling drugs.
- [14] Ms. Cross has evidently made some efforts at treating her drug problem in the past. She has tried methadone treatment, and made some effort to reduce the amount of methadone she uses over time. However, the author of the PSR noted that Ms. Cross had lost contact with her drug treatment care providers in 2009. Ms. Cross also attended a drug counselling program several years ago, but she stopped attending because she found it difficult to discuss her problems in a group with strangers.

Discussion

- [15] The Crown and defence are advancing a joint submission for a sentence of 36 months in custody. The parties also jointly submit that Ms. Cross should receive a total of 9 months credit for time spent in custody, using the normal statutory rate of 1.5:1. Thus, the net sentence recommended by counsel is 27 months.
- [16] I am mindful that the law requires the Court to should show deference to joint submissions. Counsel are well placed to arrive at joint submissions that address the interests of both the public and the accused. For this reason, a trial judge should not reject a joint submission lightly. The judge should only do so where "the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest": *R. v. Anthony-Cook*, 2016 SCC 43 at paras. 32, 55.
- [17] An effective sentence of 36 months in jail is a very substantial penalty. Prior to this, the longest sentence Ms. Cross has received is 13 months in jail. Thus, a sentence of 36 months is a considerable step up from the previous sentences for this offender.
- [18] Nonetheless, I consider a net sentence of 36 months in jail to be entirely appropriate and necessary in this case, for a number of reasons.
- [19] First, Ms. Cross has been found guilty of a very serious drug offence, possession of heroin and fentanyl for the purpose of trafficking. Both of these substances, and fentanyl in particular, have had and continue to have devastating impacts on the community, in a number of ways. Ms. Cross has personal experience with the dangerous nature of heroin, having lost two friends to heroin overdose while she was still a teenager. It is commonly recognized that fentanyl is even more lethal and more dangerous. As stated in *R. v. Lloyd*, 2019 BCCA 128 at para. 33, fentanyl is a "pernicious drug responsible for grievous loss of life, immense and unsustainable strain on our public health system, and devastating impacts on the safety and integrity of our communities."

- [20] Second, Ms. Cross has a criminal record with multiple prior convictions for drug trafficking offences. Provincial jail sentences have not been enough to bring home to Ms. Cross the message that drug trafficking is serious criminal conduct with grave impacts on the community and serious consequences. A substantial penitentiary sentence is called for in these circumstances, in the interests of denunciation, specific deterrence, and general deterrence.
- [21] Third, I am aware of the need to consider rehabilitation, particularly for someone in Ms. Cross's circumstances, whose involvement in the drug trade has been fueled at least in part by her own drug habit. In the long run, society's interests are best served by a sentence that encourages Ms. Cross to deal with her substance abuse problems and become a productive and law-abiding member of the community. However, it is clear that up to this point Ms. Cross has never been fully committed to dealing with her drug problem, and her efforts have been sporadic. By not dealing with her drug problem and by continuing to distribute dangerous and addictive drugs to other people, Ms. Cross is only expanding the scope of the misery caused by these substances to other people. I can only hope that in the time Ms. Cross will spend in the federal penal system, she will come to grips with her problem and take advantage of any programming that is available to her in that regard.
- [22] For all of these reasons, I accept the joint submission. Please stand Ms. Cross. I sentence you to 36 months in jail, less nine months on account of time spent in custody, for a net sentence of 27 months in jail. You can have a seat Ms. Cross.
- [23] It is necessary to impose a discrete sentence for each count. So, the sentence on count 1 will be 36 months, less 9 months credit for time spent in custody, for a net sentence of 27 months on that count. The sentence on count 4 will be one month concurrent.
- [24] With respect to ancillary sentencing orders:
- (a) I order forfeiture of the funds seized and other items of offence-related property seized during the execution of the search warrant, specifically the items marked for forfeiture on the exhibit flow chart. That order is made under s. 16 of the Controlled Drugs and Substances Act, S.C. 1996, c. 19.
 - (b) I impose a lifetime firearms prohibition under s. 109 of the Code.
 - (c) I order the taking of a DNA sample under s. 487.051 of the Code. To the extent that it is necessary, I delegate to the clerk of the court the responsibility for setting a time and date for the taking of the DNA sample.
- [25] Ms. Cross, the message I hope that you will take from this sentence is twofold. First, you cannot continue on the path that you were on when you committed these offences. Your conduct was not only self-destructive, but also extremely dangerous and harmful to others in the community. That is why you are going to have to serve a further 27 months in jail. That is deterrence. Second, and this is just as important, your counsel has submitted, and I accept, that there is reason to be hopeful about your future. You should be looking forward

to moving in a positive direction. That is rehabilitation. In this regard I would urge you to take advantage of whatever programming is made available to you, to put yourself in the best position possible upon your release from custody.

"Riley J."

Source & reproduction note

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

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/09/2020BCSC0939.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-cross-2020>

Prepared on 28 October 2026 · Esheria