
CANADA / JUDGMENT

R. v. Davidson

2014 BCSC 269

COURT

Supreme Court of British Columbia

DECIDED

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2014 BCSC 269 R. v. Davidson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Davidson,

2014 BCSC 269

Date: 20140131

Docket: 74205-2

Registry: Nanaimo

Regina

v.

Joseph Donald Davidson

Before: The Honourable Mr. Justice Baird

Oral Reasons for Sentence

Counsel for Crown:

M.J.E. Wheeler

Counsel for Defence:

A.E. King, Q.C.

Place and Date of Trial:

Nanaimo, B.C.

December 10, 11, 12, 2013

January 28, 31, 2014

Place and Date of Judgment:

Nanaimo, B.C.

January 31, 2014

Introduction

[1] THE COURT: On December 10 and 11, 2013, I heard the Crown's evidence on the trial of an indictment preferred against the accused, Joseph Donald Davidson, alleging the following counts:

1. trafficking in cocaine on June 2, 2010;
2. trafficking in cocaine on June 7, 2010;
3. trafficking in cocaine on June 19, 2010;
4. possession of cocaine for the purpose of trafficking on June 19, 2010; and
5. possession of a prohibited weapon, a stun gun, on June 19, 2010.

[2] After the Crown closed its case on December 12, 2013, Mr. Davidson changed his plea to guilty on Counts 2, 3, 4, and 5 of this indictment. Although Mr. Davidson did not enter a guilty plea to Count 1, counsel invited me to accept the evidence taken concerning his drug-trafficking activities on June 2, 2010, and to consider them as relevant background information on his sentencing hearing, which took place on January 28, 2014. Today, January 31, 2014, is the date set aside for the imposition of sentence.

Facts

[3] In the spring of 2010, local drug enforcement authorities embarked on a special project in which undercover police officers, posing as street-level drug traffickers, were introduced to putative drug distributors in the Nanaimo area through the intermediacy of paid agents or informers. The accused, Mr. Davidson, has now acknowledged that, at the material time, he was a mid-level cocaine dealer operating out of his home on Jameson Road in Nanaimo. He claims that he was "mentored" into this trade by an old acquaintance with whom he had recently reconnected at a local gym. Unbeknownst to him, this acquaintance was an RCMP agent through whom, in due course, he was introduced to an undercover RCMP constable posing as a street-level cocaine dealer.

- [4] Mr. Davidson sold to this undercover policeman four ounces of cocaine on June 2, 2010, two ounces on June 7, 2010, and six ounces on June 19, 2010. Over this span of two and a half weeks, the undercover operator paid Mr. Davidson a total of \$19,000. Along the way, the undercover operator purported to be interested in acquiring a couple of all-terrain vehicles in Mr. Davidson's possession, and it was agreed that a portion of this money would be applied to the purchase of those vehicles.
- [5] As part of the June 7, 2010, transaction, Mr. Davidson gave the undercover operator two all-terrain vehicles and loaned him a trailer to tow them away from his house. Mr. Davidson told the undercover operator that the vehicles had been seized for nonpayment of drug debts. I accept this evidence, even though Mr. Davidson has told me through his counsel that the vehicles had been seized for debts unrelated to drugs.
- [6] During the final transaction on June 19, 2010, the undercover operator had \$8,000 with him, and he offered to buy three to four ounces of cocaine with it. Mr. Davidson tried to upsell him to eight ounces, and they eventually agreed on six ounces for a price of \$8,400. Using a calculator, Mr. Davidson advised the undercover operator that the combined total for his present cocaine purchases and the outstanding amount for the all-terrain vehicles would be \$19,500. I infer clearly from the evidence that Mr. Davidson expected to be paid the \$11,500 balance from the proceeds of future cocaine deals with the undercover operator.
- [7] Later on June 19, 2010, a team of police officers went to Mr. Davidson's place with a warrant. They found another twenty-six to twenty-eight ounces of cocaine neatly packaged for resale at the ounce level hidden in a toolbox in his laundry room. They also found over \$60,000 in various denominations stashed in his bedroom dresser and closet, and other accessories of the drug-trafficking business, including digital scales, baggies, and elastics. There was a stun gun in his bedroom dresser drawer, which is a prohibited weapon according to the laws of this country. Mr. Davidson was arrested the same day. He has spent no time in pre-trial custody. I note with chagrin that it will soon be four years since Mr. Davidson was arrested. The prodigious length of this delay was not explained to me.
- [8] The evidence makes it clear that by the time of his arrest, Mr. Davidson was well entrenched in the local drug trade and he knew what he was doing. He insisted, for example, that the agent and the undercover operator should remove the batteries from their cell phones whenever they approached his home so that they could not be traced. He asked the undercover operator if he was "under any heat" and said that the police were constantly watching him. At first he was reluctant to receive money directly from the undercover operator, but as his confidence in the undercover operator grew, he accepted payment hand to hand and also agreed to "front" drugs to the operator, another way of saying that he allowed the operator to purchase drugs on credit. Mr. Davidson, as I have said, has candidly admitted to being a mid-level drug dealer, although he claims not to have been in the game for long before he was caught.

Background of the Offender

- [9] Mr. Davidson is 42 years old. His only involvement with the criminal law appears to have been a conviction for failing to provide a breath sample many years ago. He has no previous history in the narcotics trade. He was 38 years old at the time of the commission of these offences.
- [10] Although his parents separated when he was young and he has never had a relationship to speak of with his father, he was raised by a loving and capable mother who, during the course of his childhood, took in over 100 foster children to be cared for and raised. He had a happy upbringing, his lawyer has told me. He has two older siblings, both of whom have been present throughout his sentencing hearing.
- [11] Mr. Davidson has a grade 10 education. He was schooled in Nanaimo where he struggled academically but excelled in sports. He was an accomplished BMX cyclist and, in his youth, spent many hours at the local BMX track at Beban Park. This track was built through the hard work and advocacy of his mother, Marie Davidson, and in fact, the facility in question now bears her name. It is called the Marie Davidson Track.
- [12] As a youth, Mr. Davidson raced BMX bikes competitively and was a national champion. Since leaving school he has been a fisherman, he has worked in the concrete business, and at the age of 30, he established and ran an automotive shop on Fitzwilliam Street in the old part of Nanaimo called Davidson Xtreme Cycle and Automotive.
- [13] When the present offences were committed, Mr. Davidson's mother, Marie Davidson, was terminally ill with cancer, and she died in December of 2010. A short time before his involvement with the police, in addition, one of Mr. Davidson's employees, a person named Guff Tanti, also died, and he died on the shop floor of Mr. Davidson's business.
- [14] Through his counsel, Mr. Davidson has told me that at the material time, his automotive business was failing and he was under financial pressures. To alleviate these pressures, he became involved in the illicit drug trade. He now realizes that this was a major mistake. He claims that he was involved in the narcotics trade for a short period of time but acknowledges, as I have said, that he had joined the ranks of mid-level cocaine dealers. He stressed that he has been on bail for three and a half years since his arrest and has not violated any condition of his recognizance. He has been involved in no further criminal offending. I was advised, as well, that since his arrest, he has forfeited all of the money seized by the police on June 19, 2010, some of which he claims was derived from legitimate sources, and he has forfeited all the equity that he had in his home on Jameson Road, where two of the drug transactions took place, and where the police found the large quantity of additional cocaine and money on June 19, 2010.
- [15] The accused is unmarried and has no dependants to whom he owes any legal obligation of financial support. However, he has been involved in common-law relationships in his past, and he plays a supporting role in the life of one of his ex-common-law's children.

- [16] The accused was employed until December 2013. He has employment opportunities arranged after this proceeding is completed, and he claims to be committed to a law-abiding life from now on.
- [17] On this sentencing hearing, the gallery of my courtroom has been full of Mr. Davidson's family, friends, and supporters. I have read and re-read a number of letters written on behalf of Mr. Davidson, all of them emphasizing his good nature, his laudable work ethic, his constancy, devotion, and his unrelenting remorse for the disastrous wrong-turning that he has taken in life.
- [18] Mr. Davidson has emphasized his unenviable personal circumstances at the time of these offences, including the illness of his mother and the financial distress of his business. He has referred to other mitigating factors, including his guilty plea and his remorse. He says he is not a danger to the community, he does not pose a risk to reoffend, and he is not a flight risk.
- [19] With respect to the stun gun that forms the subject of Count 5, he says that he has been a hunter all his life. He emphasized that the stun gun was not stored with his drug supply but kept in a dresser drawer in his bedroom. He uses it, he told me through his counsel, when hunting bears, and he did not have it to defend himself or to harm or intimidate others in the pursuit of his drug-dealing business.
- [20] Mr. Davidson is a member of the Métis Nation of British Columbia. His father, I was told, is a member of the same nation. His mother was not. He was not raised in Métis traditions, a fact that he now regrets but which has caused him to waive the compilation of the sort of report into his cultural background referred to in the decisions of our Supreme Court in *Gladue* [1999] SCJ 19 and *Ipeelee* [2012] SCJ 13.

General Observations

- [21] Included in the book of authorities relied upon by Crown counsel is a case called *Pushpanathan* [1998] SCJ 46, which contains some pertinent observations about the poisonous and deleterious nature of the drug trafficking trade in this country. In sentencing Mr. Davidson, I consider this to be a useful starting point, and for emphasis, I propose to read directly from this judgment the following passages, starting at paragraph 83:

83 Illicit drug use and trafficking is a serious problem in Canada and those that traffic in dangerous drugs must be a very real concern for all Canadians. . . .

84 . . . At the end of 1996 [which is getting to be a long time ago, I say parenthetically], there were 2,899 drug offenders incarcerated in federal institutions, constituting 21.3 percent of the federal prison population . . .

85 Drug offences such as possession and trafficking are only part of the link between the drug trade and criminality. There is an established connection between heavy drug use and crimes motivated by the need to finance a drug habit . . . A Canadian survey of federal inmates showed that 40 percent of men were drug users and half of those had engaged in criminal activity to get drugs. For women, the ratio is even greater: 25 percent of female inmates in Canada committed their crimes solely to obtain drugs . . .

86 In addition, the illegal drug trade is known to involve violence as a means of resolving disputes and maintaining discipline . . . In 1996, 56 homicides, that is to say one in ten, were reported by police to be drug-related . . .

87 . . . it is well established that the consumption of licit and illicit drugs increases the rate of criminality generally, not just offences directly related to drugs. Among a sample of federal male inmates, over half were under the influence of alcohol or other drugs when they committed at least one of their crimes . . . Seventy-one percent of those of those who had consumed drugs said they would not have committed the crime if they had not taken the drugs . . . Thus, as might be expected, U.S. research indicates that drug abusers are more likely to be re-arrested than non-abusers . . . Furthermore, research indicates that from 30 to 50 percent of those convicted of drug offences re-offend . . .

88 . . . it is impossible to underestimate the harm that is done to Canadian society in the form of criminal activity, often violent, by the trafficking of illicit drugs. Unfortunately, there are also other costs associated with illicit drug trafficking and use, which reflect the widespread harm caused by these activities.

89 The costs to society of drug abuse and trafficking in illicit drugs are at least significant if not staggering. They include direct costs such as health care and law enforcement, and indirect costs of lost productivity.

90 In Canada, the total cost to society of substance abuse has been estimated to be \$18.45 billion annually . . . Of this amount, the cost flowing from illicit drugs is \$1.4 billion . . . In 1992 [which again is a long time ago] there were 732 deaths, 7,095 hospitalizations and 58,571 hospital days in Canada attributable to illicit drugs . . . Mortality from illicit drugs is less than for alcohol and tobacco, but tends to involve younger victims . . .

91 These significant and often tragic consequences serve to emphasize that the harm caused by trafficking in illicit drugs is very properly a matter of grave concern in Canada, as it is throughout the world.

[22] I want you to know, Mr. Davidson, that I agree with and endorse every single syllable of the passage that I have just read, and I have read it here to you today to emphasize that this sentencing is not exclusively about you. In an important way, it is about all of us.

[23] The principles of sentencing to be applied in this case are well known and are now codified in ss. 718, 718.1, and 718.2 of our country's Criminal Code. Counsel can probably recite these sections by memory, but they are probably news to you, Mr. Davidson, and I think you should hear what these principles are, so I am going to read them to you now.

[24] Section 718 says:

718. The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

[25] Section 718.1 contains the overarching goal of sentencing, which is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[26] The other sentencing principles set out in s. 718.2 that I have borne in mind during my deliberations are that:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender . . .
- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
- (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
- (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

- [27] Mr. King made the point, with which I agree, that sentencing is an individualized process and that no two cases, no two offenders, are exactly alike. Nevertheless, when it comes to sentencing of hard-drug traffickers, our courts have made it clear that the preeminent applicable principles are those of denunciation and deterrence, as well as the related principles of the promotion of a sense of responsibility in offenders, and an acknowledgement of the harm they have done, harm to their victims and to our community.
- [28] I have no hesitation in saying that the offences before me on which Mr. Davidson has pleaded guilty are most grave and serious, and his degree of moral responsibility or culpability in committing them was high. His departure from the civilized, normative, law-abiding standards of behaviour in our community was pronounced. Rehabilitation ranks low in priority in this case, in my view. Mr. Davidson himself is not an addict. He did not become involved in the illicit narcotics trade to feed a habit. He is not physically or mentally ill. He is fit and able-bodied. He has always been fully employed. He does not lack social or life skills. He has a loving and supportive family and many friends. I conclude that he became involved in the drug trade quite simply to make money, to earn a profit.

Case Law

- [29] In support of their submission that a sentence of four years in a penitentiary would be a fit and appropriate sentence for Mr. Davidson, the Crown have referred me to a number of cases including *R. v. Lising and Pires*; [2001] BCSC 1891; *R. v. Masse*; [1990] BCJ 746; *R. v. Murray* [2009] BCCA 426; *R. v. Russell* [2009] BCSC 1955; *R. v. Way* January 14, 2010 Kamloops Docket 86555-2 (BCSC); *R. v. Kydd* September 23, 2009, Kamloops Docket 86555-2 (BCSC); and *R. v. Couture* [2005] BCPC 0373.
- [30] Having considered these authorities, I have determined that the Crown's position on sentencing in this case is in order and well supported in law. In *Lising and Pires*, for example, the offenders were both 38 years old, the same age as Mr. Davidson when he committed these offences. Like Mr. Davidson, neither of them had any criminal record. Each came from a good family and enjoyed substantial support from friends and relatives. There were thirty-six deliveries of cocaine over a number of months involving approximately thirty-six ounces of cocaine. It is true that the business model of Messrs. *Lising and Pires* was arguably more sophisticated. It involved more people, and it carried on for longer than Mr. Davidson's, but the amount of cocaine involved was similar to the total amount of cocaine involved in this case. As was the case with Mr. Davidson, neither of these offenders was addicted to cocaine. They were both in it for the money.
- [31] On these facts, the court found that the appropriate range of sentence was between three and six years, and imposed a penitentiary sentence of four and one-half years on each accused. The court confirmed that deterrence and denunciation were the preeminent sentencing factors in cases involving trafficking in large quantities of hard drugs, even after the 1996 amendments to the sentencing provisions of the Criminal Code which, generally speaking, encouraged restraint in the imposition of jail sentences, and after the landmark

decision of the Supreme Court of Canada in *R. v. Proulx* [2000] 1 SCR 61.

- [32] In *Russell*, the accused pled guilty to trafficking cocaine on two separate occasions, once involving seven ounces of cocaine, the second time involving eleven ounces of cocaine, and to possession of cocaine for the purpose of trafficking when, subsequently, the accused was arrested with a kilogram of cocaine in his possession. The accused in that case was sentenced to a cumulative total of five and one-half years.
- [33] I pause to note that it was an aggravating feature of the *Russell* case that when the accused committed the offences in question, he was awaiting sentence for trafficking in a kilo of cocaine. This latter offence was the accused's first, and subsequently he was sentenced to two years for it. *R. v. Huber* [2004] BCSC 1421 is another case where an accused with no record was sentenced to a period of two years in jail for trafficking in a kilo of cocaine. The accused in that case was a hardworking 52-year-old family man. The offence was a one-time error of judgment and an aberration, and the trial judge specifically found that he was not a drug dealer. Seven years had elapsed between Huber's arrest and his guilty plea, much longer than the delay in this case. Nevertheless, Huber received two years in jail. My point in mentioning this case is, of course, to stress that even first-timers receive heavy sentences for trafficking in large amounts of hard drugs.
- [34] In *Way*, the accused was a subordinate to Mr. *Russell*, whose case I have just talked about, and with whom he shared criminal responsibility for the same offences, that is, trafficking in quantities of seven and eleven ounces of cocaine and joint possession of another kilo on arrest. Mr. *Way*'s role in the operation appears to have been that of a delivery man. As with Mr. *Davidson*, he had no record and claimed that he had been driven to his drug-trafficking activities, in part, from economic necessity because he had lost his job. The sentence in that case was three and a half years.
- [35] In *R. v. Kydd*, the accused was a young man who was also in business with the same Mr. *Russell*. He had a supportive family and no record. He received a two-and-a-half-year sentence for trafficking on two separate occasions in amounts of three ounces and seven ounces of cocaine respectively.
- [36] In *Couture*, the 28 year old accused, a young man with no record, entered a guilty plea to trafficking in twenty-one ounces of cocaine to an undercover police officer over an approximately four month period. There was discussion between the accused and the undercover operator about the purchase of a further two kilos of cocaine, though this transaction did not occur. During a search of the accused's home after his arrest a further two ounces of cocaine were seized plus some ecstasy pills and over \$60,000 in cash. Emphasising the principles of denunciation and deterrence, the court rejected the offender's argument in favour of a conditional sentence and imposed a three and a half year penitentiary term after deducting ten months of pre-trial incarceration.

[37] On these authorities, Mr. Davidson - and there are plenty of others - I think it is safe to say that absent unusually compelling personal circumstances, in trafficking or possession for the purpose of trafficking cases involving mid-level distribution of significant quantities of hard drugs such as cocaine, an offender may confidently expect a penitentiary term even for a first offence. This is as it should be. When a person like you, Mr. Davidson, makes the fateful decision to become involved in this dangerous, pernicious, and highly illegal activity, he should know that the penalty on detection will be severe and life-changing.

[38] Mr. Davidson has sought a conditional sentence of two years less one day in this case. In June of 2010, s. 742.1 of the Criminal Code, which gives the court the discretionary authority to impose such a sentence, read as follows:

742.1 If a person is convicted of an offence, other than a serious personal injury offence as defined in section 752, a terrorism offence or a criminal organization offence prosecuted by way of indictment for which the maximum term of imprisonment is ten years or more or an offence punishable by a minimum term of imprisonment, and the court imposes a sentence of imprisonment of less than two years and is satisfied that the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2, the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the offender's compliance with the conditions imposed [in a conditional sentence order].

In support of this position, Mr. Davidson relies on the following authorities: *R. v. Kreutziger* [2005] BCCA 231; *R. v. Bui* 1997 BCCA 3394; *R. v. Ellrodt* 1999 BCCA 0057; *R. v. Kozma* 2000 BCCA 440; *R. v. Clough* 2001 BCCA 613; and *R. v. Telford* 2006 BCPC 0552. In my respectful view, however, these cases are distinguishable.

[39] In *R. v. Kreutziger*, for example, the accused was found on a single occasion to have been in joint possession of a kilo of cocaine. The Crown's case on possession was circumstantial. There appears to have been no evidence that the accused had set himself up in business as a drug dealer. He had no record. Seven years had elapsed between the accused's arrest and the appeal, during which I infer that the accused had been on appeal bail without any breaches or further criminal wrongdoing. The Court of Appeal substituted a conditional sentence order in that case for the three-year jail sentence that had been imposed by the trial judge, saying that it made no sense at that stage to send the accused to prison.

[40] In *Bui*, the amount of cocaine involved was significantly less than that which was sold or possessed by Mr. Davidson. Furthermore, the court found that the accused in that case was a subordinate to his brother-in-law, who was the principal organizer and director of their drug retailing activities. Another distinguishing feature was that by the time the appeal was heard, the accused had already successfully served one year of his conditional jail sentence, and the appeal court determined that it would be unfair and counterproductive in those peculiar circumstances to send the accused to prison.

- [41] The Eldrodt case is also distinguishable, in my view. While the accused there had a criminal record, an aggravating feature not present in this case, the amount of cocaine involved was far less than we are dealing with here, an amount of four ounces compared to the thirty-six to thirty-eight ounces sold or possessed by Mr. Davidson. Also, the accused was a user himself, which is often taken to be a mitigating circumstance in cases of this type, distinguishing the weak, the sick, the unfortunate addict from people like Mr. Davidson, who are hale and hearty non-users involved in the trafficking business purely for profit. As well, the accused in that case had some unusual family circumstances that the court took into account and which do not obtain in Mr. Davidson's case.
- [42] In the Kozma case, similarly, there was far less cocaine involved than here. The defendant was an addict himself. He was involved in the drug trade in part to feed his habit. He was not a pure predator or profiteer like Mr. Davidson. In the run-up to his sentencing, he had overcome his addiction and revived his marriage. The Court of Appeal decided that "rehabilitation was at least as important as deterrence in this case." In Mr. Davidson's case, however, as I have said, rehabilitation does not factor significantly. I will say it again for emphasis: Mr. Davidson is not an addict. He is not physically or mentally ill. He does not lack life skills. He is not competitively unemployable. He comes from a loving and supportive family. He is a perfectly capable person of ordinary intelligence and background who became involved in the drug trade for selfish reasons of pecuniary gain. He does not need to be rehabilitated. He needs to be punished and deterred, and the message must go out to others in his position that the same treatment awaits them.
- [43] R. v. Clough involved a very young female offender who was an addict herself who became involved in the trade to support her habit. She trafficked in nine ounces of cocaine. The defendant before me sold or was poised to sell four times that amount. Also, in the interval between arrest and sentencing the accused had got clean and turned her life around, a factor which inclined the court to leniency, the sort of leniency that traffickers motivated purely by profit have no right to ask for or to expect. In my respectful view, there is no similarity between this case and Mr. Davidson's case.
- [44] The Telford case is distinguishable because, although the amount involved was a kilogram of cocaine, the court found as a fact that the accused's only involvement was to agree to transport the cocaine from a well-known drug dealer in Surrey to one of his associates in return for the payment of \$300. That is a far different thing from setting oneself up as a mid-level cocaine dealer and making large illicit gains by repeatedly selling multiple ounces of cocaine to be distributed by others on the street.
- [45] Mr. Davidson's personal circumstances at the time of the commission of these offences do not strike me as being particularly compelling mitigating factors. His mother was terminally ill which is, of course, most unfortunate. But it is something which, sadly, comes to us all and which does not in any way explain his drug-trafficking involvement, in my opinion. If his business was in trouble, I sympathize, but in a free market economy, business adversity is common enough, and generally speaking, people do not turn to the distribution of

poisonous and illegal substances when economic times are tough.

- [46] Mr. Davidson, unlike many people I deal with in this court, is surrounded by supporters, any one of whom, I have no doubt, would have leaped voluntarily to his assistance if the chips were down. I reject the notion that he committed these crimes out of economic necessity, and that is without considering the photographs filed in evidence depicting Mr. Davidson's new-looking, attractive house on a large piece of property in a desirable area of Nanaimo, or the various expensive looking motorcycles in his garage, or the ATVs that Mr. Davidson had on hand to sell for the asking, or the fact that two of the impugned drug transactions took place on weekday afternoons when the sort of businessman that Mr. Davidson claimed to be would be busy at work.
- [47] This is another way of saying that there are no unusually compelling reasons to impose a lesser sentence upon Mr. Davidson than that which is customarily meted out to other drug dealers of similar backgrounds who commit like offences in like circumstances.
- [48] In my view, the Crown's sentencing position is in accordance with the authorities that bind and guide me. However, I am going to give Mr. Davidson a substantial discount for his guilty plea, his previous good behaviour, his strongly expressed sense of remorse for his wrongdoing, and in light of the very long time that he has been on bail with this case hanging over his head.
- [49] Stand up, please, Mr. Davidson.
- [50] It is the judgment of this court that on Count 2, you should serve twelve months in jail; on Count 3, twenty months in jail; on Count 4, 36 months in jail. All of those sentences, due regard had to the principle of totality, are to be served concurrently, for a total of thirty-six months.
- [51] On Count 5, I have reservations about the accused's explanation for having the stun gun. If it was for hunting bears, I cannot think why it was in his bedroom dresser. I am much more inclined to think that it was a form of equalizer to be used defensively if predators showed up to steal his drugs or money, which makes his possession a more serious offence than the accused would have me think. Mr. Davidson has denied this, however, and I will sentence him merely for having a prohibited weapon stored in an unusual place in dangerous circumstances, and by that I mean in proximity to large amounts of illegal contraband and significant sums of money. A fair sentence on this count, in my respectful view, would be one of six months which I am going to order you to serve concurrently with the others.
- [52] The total sentence of incarceration, therefore, is thirty-six months in a penitentiary. I am ordering you to provide a sample of your DNA forthwith by the least intrusive means possible, and I am also prohibiting you for life from possessing any of the items described in s. 109 of our Criminal Code.

- [53] Counsel, is there anything that I have omitted or that you would like to say? Have a seat, Mr. Davidson.
- [54] MR. WHEELER: My Lord, just with respect to Count Number 1, the Crown wishes to direct a stay of proceedings.
- [55] THE COURT: All right. A stay of proceedings will be entered on Count 1.
- [56] MR. WHEELER: Thank you.
- [57] THE COURT: Anything else, folks?
- [58] MR. KING: My friend has a major incident flowchart, and I think we are going to have to deal with -- maybe I can talk to my friend about --
- [59] THE COURT: All right.
- [60] MR. KING: -- forfeiture.
- [61] THE COURT: Okay. Mr. Davidson, in parting, I want to say again that it gives me no pleasure or satisfaction whatsoever to impose a sentence like this on you. I have only done what the law requires. When you sat down with this police agent, this old acquaintance of yours, whoever he was, and he told you what a great idea it would be for you to get involved in cocaine trafficking, this is exactly the kind of result that you should have thought of. When you put together your business plan, a reckoning such as this was one of the risks you should have weighed. It is a risk that all like-minded persons must weigh, too. People have got to know that if they get involved in trafficking hard drugs, they are going to be dealt with severely in the end. This is the way it is for everybody in your circumstances.
- [62] I want you to serve your time quietly and without incident. If you are of good behaviour, you will be released early. When you get out, I want you to come back to this community and live amongst us. I want you to show everybody here today, including me, that you meant what you said, that you are going to keep on the straight and narrow from now on, and that you are going to return to life as a solid citizen. You had a long history, before now, of doing just that. In the meantime, you will pay the penalty that the law requires for what you have done, the penalty that I have just imposed. And to the members of the Davidson family, I sympathize, I really do, but this is the way it has to be.

"Baird J."

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