

CANADA / JUDGMENT

R. v. De Castro

2025 BCSC 1858

COURT

Supreme Court of British Columbia

DECIDED

5 September 2025

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2025 BCSC 1858 R. v. De Castro

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. De Castro,

2025 BCSC 1858

Date: 20250905

Docket: 94011-2

Registry: Kelowna

Rex

v.

Roberto De Castro

Before: The Honourable Justice Hewson

Oral Reasons for Sentence

Counsel for the Crown:

J.M. Le Dressay

Counsel for the Accused:

W. Jenson

Place and Date of Trial/Hearing:

Kelowna, B.C.

September 3, 2025

Place and Date of Judgment:

Kelowna, B.C.

September 5, 2025

- [1] THE COURT: These are reasons for sentence with respect to indictment 94011-2 in the Kelowna Registry. Mr. Roberto De Castro has pleaded guilty to three offences on that indictment. The three offences were for possession of psilocybin for the purpose of trafficking, contrary to s. 5(2) of the Controlled Drugs and Substances Act; possession of LSD for the purpose of trafficking, contrary to s. 5(2) of the CDSA; and possession of cannabis for the purpose of distribution, contrary to s. 9(1) and 9(2) of the Cannabis Act.
- [2] The Crown seeks a custodial sentence of 18 months' imprisonment. Defence counsel submits that a fit disposition would be a conditional sentence order to be served in the community under strict terms of house arrest and curfew.
- [3] LSD, psilocybin and cannabis are mind-altering substances. They alter perception, mood and cognition. LSD and psilocybin have little risk of physical dependence and cannabis has a moderate risk of dependence in heavy users. They differ from stimulants like methamphetamine and cocaine or from synthetic opioids like fentanyl. Meth, cocaine and fentanyl all carry a higher potential for addiction and physical harm. The risks of harm of the drugs are reflected in the sentences prescribed in the CDSA and the Cannabis Act.
- [4] Psilocybin and LSD are listed under Schedule III of the CDSA. On indictment, the maximum sentence for possession of a Schedule III substance for the purpose of trafficking is 10 years' imprisonment.
- [5] Until 2018, cannabis was listed under Schedule II of the CDSA. Following the amendment of the CDSA in 2018, the use of cannabis generally is regulated under the Cannabis Act, S.C. 2018, c. 16. Section 9(1)(a)(ii) of the Cannabis Act makes it an indictable offence for an individual who is 18 years of age or older to distribute cannabis to an individual who is under 18 years of age. Under s. 9(2) of the Cannabis Act, cannabis distribution carries a maximum sentence of 14 years' imprisonment.
- [6] In comparison to those sentences, the maximum penalty for trafficking Schedule I drugs like methamphetamine, fentanyl or cocaine is life. The maximum penalties for trafficking LSD, psilocybin or cannabis are thus somewhat lower.
- [7] There are no mandatory minimum sentences prescribed for any of the three offences committed by Mr. De Castro.

Circumstances

- [8] Mr. De Castro is 41 years of age. He was born and raised in Montréal, where he continues to reside. He has close family ties. Two of his sisters are in court with him today in Kelowna and have provided letters of support. He resides near his mother and works at a restaurant in Montréal where he enjoys the support of his employers and patrons. He has \$30,000 in savings, \$7,000 in credit card debt and no criminal record. He has no mental health concerns, drinks rarely and no longer uses cannabis or other substances.
- [9] Mr. De Castro came to the attention of the RCMP following a complaint from the parent of a 14-year-old boy who had purchased LSD from someone driving a Tesla. Surveillance subsequently tied Mr. De Castro to the Tesla and to drug trafficking activities around Kelowna in November and December 2021. He was observed conducting hand-to-hand transactions with adolescents and he sold psilocybin and LSD directly to undercover police officers. They purchased small amounts of drugs from Mr. De Castro on four occasions, paying him with marked bills. Mr. De Castro responded to purchase orders sent by text message. He was operating from his vehicle and from an apartment where an undercover operator saw large quantities of drugs packaged for sale.
- [10] The search of his residence on December 9, 2021 revealed a sophisticated trafficking operation that included vacuum-sealed quantities of psilocybin, LSD tabs and cannabis. Many of the drugs were already packaged in bags mimicking consumer snack products and candy. The packages were brightly coloured and carried names like "Oreo Cookies", "Doritos" and "Kraft Peanut Butter". The police found business cards in the name of "High Supply", as well as a stamp used to impress Mr. De Castro's business name and logo on the paper delivery bags. Mr. De Castro's operation was well organized. Upon request, he would send by text message a menu setting out the drugs for sale, the price for each and the hours within which he would deliver.
- [11] During the search of his residence, police seized 16.9 kilograms of cannabis, 1.8 kilograms of psilocybin, 1,332 LSD tabs and \$10,026 in cash, including the marked bills from the undercover transactions. The cannabis had a street value of between \$57,464 and \$80,450. The psilocybin had a street value between \$80,925 and \$35,704. The LSD had a value of between \$6,660 and \$26,640. At the low end of the range of values, the value of the drugs seized from Mr. De Castro's apartment was \$144,989.

Objectives of Sentencing

- [12] The fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[13] Section 718 of the Criminal Code says that the fundamental purpose of sentencing is to contribute 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 stated objectives. The objectives that are important in this case are:

1. Denunciation. This is the condemnation of conduct that has encroached on our community's basic code of values and for that reason should be punished.
2. Deterrence. This is an attempt to discourage Mr. De Castro and other potential offenders from committing these sorts of offences in the future and to educate the general public.

Other Sentencing Principles

[14] There are other sentencing principles at play. One is proportionality. The sentence I must impose must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Another is restraint. Mr. De Castro should not be deprived of liberty if less restrictive sanctions may be appropriate and reasonable in the circumstances. A third is parity. The sentence imposed on this offender should be similar to the sentences imposed on similar offenders in similar circumstances where those offenders and circumstances can be identified. However, parity of sentence is secondary to a fit sentence and a uniform approach to sentencing.

Sentences in Similar Cases

[15] Most cases considering the offence of possession of controlled substances for the purpose of trafficking are concerned about trafficking in Schedule I drugs. It is important to keep that in mind, when considering other sentences imposed by the courts. Cases dealing only with cannabis and Schedule III drugs are relatively rare and often dated.

[16] In *R. v. Presidente*, 2012 BCSC 1636, the court dealt with an offender who pleaded guilty to one count of possession of cocaine for the purpose of trafficking and one count of possession of ecstasy for the purpose of trafficking, as well as four counts of simple possession of other drugs. Cocaine and ecstasy are listed in Schedule I of the CDSA. The total value of the cocaine and ecstasy was about \$3,400 and it was not a dial-a-dope operation. The offender was 37 years old and, by the time of sentencing, was living an active and prosocial lifestyle. He had no criminal record. For the offences of possession of cocaine and ecstasy for the purpose of trafficking, the court imposed a 12-month conditional sentence order on each count, concurrent, plus 60 hours of community work service.

[17] Mr. Presidente's circumstances are similar to Mr. De Castro's, but the nature of the substances, the nature and size of the drug-trafficking operation and the absence of any indication that he was selling to adolescents distinguishes his case from the one at bar.

[18] Another case brought to my attention by Mr. De Castro was the case of *R. v. Xu*, 2022 BCPC 83. In that decision, the court said at para. 29:

- [29] In *R. v. Strong*, 2019 ONCA 15 (CanLII), the Ontario Court of Appeal was asked to consider whether society's more tolerant views toward marihuana warranted a reduction in the range of sentence for this type of offence. It concluded that since the penalties under the Cannabis Act are essentially the same, the offence is to be treated as serious. Respectfully, in my view, this conclusion requires a broader analysis than only society's views toward marihuana. It should include detailed evidence, if any, of the impact of such offending on the community in light of the permissive regulatory regime that currently exists. In its absence the long-held orthodox view of societal harms for this offence should not be treated as sacrosanct.
- [19] Mr. Xu had been convicted of production of marihuana and possession of marihuana for the purpose of trafficking. There is no indication that he was trafficking to children, as Mr. De Castro was. The law will always be evolving to reflect developing social standards, but in a case involving the trafficking of mind-altering drugs to teenagers, I do not see a need for detailed evidence of the impact of the crimes on the community.
- [20] In *R. v. Tran*, 2025 BCSC 781, the court considered the appropriate sentence for six counts of trafficking and possession for the purpose of trafficking. The substances involved included cocaine, ecstasy, MDA, ketamine and benzodiazepine. All of the substances were listed in Schedule I, except benzodiazepine which is listed in Schedule IV. Mr. Tran was trafficking to adolescents in the community of Port Alberni. The nature of the substances clearly distinguishes that decision from the case at bar, although the court addressed the need for denunciation in cases of trafficking to young people. The court imposed a three-year jail sentence on all but one of the counts on the indictment.

Aggravating and Mitigating Circumstances

- [21] It is a principle of sentencing that a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender. The aggravating features of this case are obvious. This was a commercial, organized and sophisticated trafficking enterprise conducted for profit. It included the branding and packaging of drugs in a manner calculated to appeal to youthful customers. Most concerning, adolescents were among the people Mr. De Castro was selling drugs to.
- [22] There are also mitigating features. Mr. De Castro has no prior record. He entered guilty pleas, thereby accepting responsibility and probably avoiding a lengthy trial. He has strong family and community support and stable employment. He has re-established himself in Montréal, has ceased all drug use and by all accounts is living a stable, prosocial life.

Analysis

- [23] I am satisfied that rehabilitation is not a central objective in this case. Unlike many offenders who come before the court on drug charges, Mr. De Castro is not an addict. He does not require treatment for substance abuse. He has the benefit of strong family support and meaningful employment. He professes remorse. The circumstances suggest that he is unlikely to reoffend. The objectives of rehabilitation and specific deterrence are not major factors in this decision.
- [24] On behalf of Mr. De Castro, Mr. Jenson submits that a lengthy period of house arrest, together with curfews and strict supervision, would be a sufficient punishment for this offender and this offence. I have determined that the appropriate range of sentence for Mr. De Castro is less than two years and that a conditional sentence is not, for that reason, statutorily barred. There is no minimum sentence and Mr. De Castro is the sort of offender who can serve a sentence in the community without endangering the safety of the community.
- [25] The real question in this case is whether a conditional sentence order would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2 of the Criminal Code.
- [26] In the case of *R. v. Proulx*, [2000] 1 S.C.R. 61 at para. 105, a decision referred to by Mr. Justice Blok in his decision in the case of *R. v. Presidente*, the Supreme Court of Canada observed:
- 105 The stigma of a conditional sentence with house arrest should not be underestimated. Living in the community under strict conditions where fellow residents are well aware of the offender's criminal misconduct can provide ample denunciation in many cases.
- [27] There are four prominent aspects to Mr. De Castro's case. First, he is an offender with no record and, it appears from what I have been told here in court, good prospects for the future. Second, the drugs he was distributing and trafficking are regulated under the Cannabis Act and Schedule III of the Controlled Drugs and Substances Act. The risk of harm from those drugs is lower than Schedule I drugs like methamphetamine, cocaine and fentanyl. Third, Mr. De Castro was clearly in the business of distributing and trafficking drugs on a very large scale, for profit. Fourth, a significant number of the drug users he was supplying were adolescents. Being a teenager is hard at the best of times. It is even harder when traffickers are providing you with mind-altering drugs packaged like candy, delivered on demand.
- [28] The mitigating features I have identified prevent this case from attracting the lengthy penitentiary terms that are imposed for Schedule I drugs like cocaine, fentanyl or methamphetamine. However, they do not displace the pressing need for general deterrence and a custodial sentence.

- [29] In the circumstances, I cannot accept that a conditional sentence order would be sufficient. While s. 742.1 of the Criminal Code permits conditional sentences for offences where a fit sentence is under two years, the court must be satisfied that the serving 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. In this case, the scale and sophistication of the trafficking operation and the involvement of youth require denunciation and general deterrence. The public must see and understand that those who operate drug-trafficking businesses--particularly those who sell drugs to adolescents--will face jail time. A sentence of house arrest would not be adequate to deter others tempted to start trafficking businesses like Mr. De Castro's, nor would it provide the necessary denunciatory effect.
- [30] Mr. De Castro, would you please stand, sir.
- [31] Pursuant to s. 109 of the Criminal Code, you are prohibited from possessing firearms and other regulated weapons for 10 years.
- [32] You must pay a victim surcharge in the amount and at the time set out in the applicable regulation.
- [33] The offence-related property, including the cash and marked bills that were seized from you, are forfeited to His Majesty under s. 16 of the CDSA and s. 490.1 of the Criminal Code.
- [34] These offences are primary designated offences and I am going to order that you provide a sample of your DNA for registration in the National DNA Data Bank.
- [35] Having considered your circumstances and the seriousness of the crimes you committed, the case authorities provided and the principles of sentencing, I am satisfied that a fit sentence is 12 months' imprisonment on each count concurrent. There will be no probation order.
- [36] Madam Clerk, would you please ensure that the letters from people who spoke to Mr. De Castro's character are marked as Exhibit 2 on the sentence hearing.
- [37] Mr. Le Dressay, is there anything further?
- [38] CNSL M. LE DRESSAY: No, thank you, Justice.
- [39] THE COURT: Mr. Jenson?
- [40] CNSL W. JENSON: No, Justice, thank you.
- [41] THE COURT: Good luck, Mr. De Castro.
- "Hewson J."

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