

CANADA / JUDGMENT

R. v. Djafar-Zade

2020 BCSC 1800

COURT

Supreme Court of British Columbia

DECIDED

14 October 2020

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2020 BCSC 1800 R. v. Djafar-Zade IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Djafar-Zade, 2020 BCSC 1800 Date: 20201014 Docket: 168305-2 Registry: Victoria Regina v. Alexander Djafar-Zade Before: The Honourable Mr. Justice R. Johnston Oral Reasons for Sentence Counsel for the Crown: B.K. Girn Counsel for the Accused: D. Marshall Place and Date of Trial/Hearing: Victoria, B.C. February 27, 2019 Place and Date of Sentencing: Victoria, B.C. October 14, 2020

- [1] THE COURT: In situations of a joint submission with respect to sentence, the court is at the same time in a difficult and an easier position. The difficulty is the court must always consider whether or not the proposed joint sentence or the jointly proposed sentence is, and I will say, a fit sentence. So when I say, "a fit sentence," I say that bearing in mind what was said by the Supreme Court of Canada in Anthony-Cook, [2016] 2 S.C.R. 204, where the court considered various approaches to joint submissions and settled upon the following, and I take this from the headnote because it is an accurate summary of what the decision itself said, and that is this: a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.
- [2] In considering those things, courts quite often canvass various authorities, being sentencing decisions of similar persons, that is, persons in similar circumstances, charged with similar offences involving, in this case, similar drugs of similar quantities. All of that is instructive. It is instructive largely in order to assist the court in determining whether the proposed sentence is a fit sentence. That is, does it fall within the range of sentences that have previously been imposed on similar people for similar offences, and when I say, "similar people, similar offences," I have to recognize, as counsel have said, that sentencing is a particularly individualized process. That is, a sentence must take into account the crime committed, the person who committed the crime, and the circumstances surrounding both.

- [3] The Criminal Code starting at, I am going to say, s. 718. I hope they have not changed the section numbers recently with various amendments. The Criminal Code talks about the principles and objectives of sentencing and counsel for the Crown has quite fairly and properly, and I agree in accordance with the authorities, said that given the substance involved, cocaine, and the nature of the charge to which Mr. Djafar-Zade has pleaded guilty, the primary objectives, the primary considerations, are deterrence and denunciation.
- [4] There is no question that cocaine is a terrible substance, that it does very great damage both to individuals and to society generally. There is no question that this man had a surprisingly and eyebrow raising quantity of cocaine in his possession in August of 2016 and that quantity is clearly an aggravating circumstance. That the accused was also found in possession of a significant amount of cash and a press that can be used, and presumably was used, to process the cocaine is also an aggravating factor. Additionally, this is not the first time Mr. Djafar-Zade has been involved in offences involving controlled substances. He has a prior record for possession for the purpose of trafficking from 2008, he has a previous record previous to that for possession, and so I have to bear in mind as an aggravating circumstance that this man did not learn much from his previous sentences for similar or cognate offences.
- [5] There are mitigating circumstances. The guilty plea, although long after the arrest and charge, is a mitigating circumstance. Trial has been avoided. I am most impressed as a mitigating circumstance with the agreement, apparently, of counsel that Mr. Djafar-Zade had an arguable defence that he has given up by this guilty plea. The fact that he has lived with bail conditions, and I am not sure I know all of the conditions of bail, but one of them involved, I gather, a curfew, for four years without incident; although police have been quite properly and wisely, I think, checking up on him regularly, is also in his favour.
- [6] I have also looked at the various documents submitted by Mr. Djafar-Zade's supporters, friends, acquaintances, people who have known him for quite some time, and they are persuasive. I can say sir, that you are a lucky man that you have so many people who speak so highly of you. I can also say that you should probably get a smack on the back of the head because you betrayed that trust that those people put in you by this offence and, notwithstanding that, these people are sticking with you is something in your favour.
- [7] I am unable to say that this proposed sentence would bring the administration of justice into disrepute. The two years less a day proposed falls well within the range of sentences imposed by this court and other courts for similar offences on people roughly corresponding with Mr. Djafar-Zade's circumstances. Nor can I say that the proposed sentence is contrary to the public interest. In my view, a reasonable person informed of the circumstances, the complete circumstances, would not view the proposed sentence as a breakdown in the proper functioning of the justice system, the test proposed or suggested in the decision in Anthony-Cook.

- [8] In all of the circumstances, I conclude that the joint submission is an acceptable submission and that I will adopt it as the sentence.
- [9] Would you please stand, Mr. Djafar-Zade.
- [10] On the charge to which you have pleaded guilty, that is, possession of cocaine for the purpose of trafficking on August 11, 2016, I sentence you to two years less one day in prison or custody.
- [11] I also, under s. 109(2), impose a lifetime prohibition of possession of firearms. Under s. 487.051(3), you will submit the necessary or requested samples so that a DNA result can be obtained. I order forfeiture of the cash seized from you and of the hydraulic press found in the premises where you were living at the time.
- [12] Anything else?
- [13] MR. MARSHALL: My Lord, that just leaves -- with this information, Count 2, for my friend to deal with.
- [14] THE COURT: Oh, right.
- [15] MS. GIRN: Yes, My Lord, the Crown directs a stay of proceedings on Count Number 2. "R.T.C. Johnston, J" The Honourable Mr. Justice Johnston

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