

CANADA / JUDGMENT

R. v. Dupray

2025 BCSC 1681

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1681 R. v. Dupray

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Dupray,

2025 BCSC 1681

Date: 20250814

Docket: 74074-2

Registry: Prince George

Rex

v.

Justin Dupray

Before: The Honourable Madam Justice Ker

Oral Reasons for Sentence

Counsel for the Crown:

M. LeDressay

Counsel for the Accused:

J. LeBlond, K.C.

Place and Date of Hearing:

Prince George, B.C.

July 29, 2025

Place and Date of Judgment:

Prince George, B.C.

August 14, 2025

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- [1] These reasons for judgment were delivered as oral reasons. They have since been edited for distribution.

Introduction

- [2] Justin David Dupray is before the Court for sentencing in respect of the charges for which I found him guilty on December 18, 2024. My reasons for judgment are indexed at neutral citation 2024 BCSC 2554 (the "Reasons"). Mr. Dupray was charged with the following offences:

Count 1: Justin David DUPRAY and / et Tor Liam GREEN, on or about the 6th day of February, 2021, at or near 203 McIntyre Crescent, in the City of Prince George, in the Province of British Columbia, did unlawfully possess a controlled substance, to wit: Cocaine, for the purpose of trafficking, contrary to Section 5(2) of the Controlled Drugs and Substances Act.

Count 2: Justin David DUPRAY, on or about the 6th day of February, 2021, at or near 199 McIntyre Crescent, in the City of Prince George, in the Province of British Columbia, did possess a loaded restricted firearm, without being the holder of an authorization or a licence under which he may possess the firearm in that place and a registration certificate for the firearm, contrary to Section 95(1) of the Criminal Code.

- [3] In the reasons, I explained why I found Mr. Dupray guilty of the first count on the indictment (the "PPT" count) and why I acquitted his co-accused, Tor Liam Green. Insofar as the second count is concerned, I found the Crown failed to prove beyond a reasonable doubt the full mens rea component of the charge. I acquitted Mr. Dupray of the s. 95(1) offence of possession of a loaded restricted firearm but convicted him of the lesser included offence of unauthorized possession of a restricted firearm contrary to s. 91(1) of the Code: Reasons at paras. 47-53, 181-192.
- [4] The Crown contends that the global sentence to be imposed for this case should be four years imprisonment with three years imprisonment on count #1 (the PPT cocaine offence) and one year consecutive on the lesser included offence in count #2 (the unauthorized possession of a restricted firearm offence). The Crown argues that consecutive sentences are warranted in light of the different societal interests that the two offences address. The Crown also seeks the following ancillary orders: forfeiture of the items seized, a DNA order, and a firearms prohibition order of 10 years duration.
- [5] The defence contends that a global sentence of two years less a day to be served by means of a conditional sentence order ("CSO") in the community followed by two years probation would, in all the circumstances of this case, satisfy the various principles and objectives of sentencing engaged and would constitute a fit and proportionate sentence that honours not only the primary objectives of deterrence and denunciation but also the objectives of rehabilitation and restraint.

- [6] The defence acknowledges that a consecutive sentence would be appropriate as between the two counts given the different legal interests and rights engaged. Accordingly, the defence suggests the allocation of time as between the counts to be (i) for count one, a 20 month sentence of imprisonment to be served by means of a CSO and followed by a two year period of probation, and (ii) on the lesser included offence for the firearm in count two, four months less one day imprisonment consecutive to count one and also served by means of a CSO.
- [7] In the alternative, with an eye to the totality principle, defence counsel submits that the sentence on the lesser included offence could be one year imprisonment concurrent to count one. The defence concedes the ancillary orders sought by the Crown ought to be imposed in this case.

Circumstances of the offences

- [8] The circumstances of the offences are set out in full in the Reasons as well as in an additional set of reasons delivered in the pre-trial application stage of this trial.[1] For convenience, the circumstances can be summarized as follows:
- a) In late January 2021, an investigation was commenced by the Prince George RCMP after it received information from a confidential informer ("CI") who disclosed that "cocaine is being sold out of the residence of 199 McIntyre Crescent" in Prince George. Other investigative steps led the officers to determine that 199 McIntyre Cres. was the residence of Mr. Dupray and his domestic partner, Shari Thomas.
 - b) 199 McIntyre Cres. is part of a duplex unit with the adjoining unit located at 203 McIntyre Cres. Further investigation revealed that Mr. Green had a connection to that unit.
 - c) After receiving the CI's tip, investigators began conducting non-continuous surveillance of Mr. Dupray's residence. By January 27, 2021, a formal investigation was commenced.
 - d) The surveillance period concluded on February 5, 2021. Officers observed two short duration stops ("SDS") at 199 McIntyre Cres. on January 22 and 26, 2021, prior to formally commencing the investigation. During the formal surveillance period, they observed a total of seven more SDS events at 199 McIntyre Cres. The surveillance officers also observed Mr. Dupray move back and forth between 199 and 203 McIntyre Cres. on a few occasions, including at times when the other man under surveillance (whom the investigators believed to be Mr. Green) was not present. In total, all nine SDS observations of activities appeared consistent with trafficking a controlled substance out of 199 McIntyre Cres.

- e) Based on the information received and the surveillance conducted in this case, investigators theorized that this was a "store-front operation". The investigators came to believe that the residence at 203 McIntyre was the location used to store the cocaine, proceeds, and packaging items, and that 199 McIntyre was the location where customers attended to purchase cocaine from Mr. Dupray.[2] The RCMP obtained two search warrants, one for each residence, that authorized a nighttime entry.
- f) In the early morning hours of February 6, 2021, the search warrants were executed simultaneously at each residence. Mr. Dupray and his partner were arrested inside 199 McIntyre Cres. Mr. Green was arrested inside 203 McIntyre Cres.
- g) Officers seized the following items from the 199 McIntyre Cres. residence:
 - i. 2.62 grams of 87 percent pure hard cocaine inside a distinctive dime bag that had an 8-ball logo;
 - ii. a total of \$7,490 in currency;
 - iii. inside a garbage bag, plastic packaging that included a Ziploc sandwich bag that contained residue of cocaine and levamisole (a cutting agent) and a Foodsaver bag that contained residue of phenacetin (a cutting agent) on the inside of the bag;
 - iv. a Foodsaver bag heat sealer on a work bench; and
 - v. a loaded 9 mm Glock handgun.
- h) The cocaine and currency were found in a woven storage box inside the drawer of a coffee table in the living room. The packaging and Foodsaver bag heat sealer were found in the unfinished basement area of the residence next to a furnished entertainment room.
- i) An officer clearing the lower floor of the residence observed the handgun in plain view partially stuffed between the armrest and the seat cushion of a sofa in the entertainment room adjacent to the unfinished basement area.
- j) Officers seized the following items from a shelving unit in an upstairs storage room in the 203 McIntyre Cres. residence:
 - i. Approximately 777 grams of cocaine packaged in a variety of ways. Samples from the packages were of varying degrees of purity, more specifically:
 - Three dime bags with an 8-ball logo and a zip-lock bag, all of which contained cocaine. The three dime bags contained 1.91 grams of 84 percent pure cocaine, 3.41 grams of cocaine and phenacetin, and 3.21 grams of cocaine. The Ziploc bag contained 7.31 grams of 83 percent pure cocaine.
 - Two clear plastic Tupperware-like containers, one contained 548.98 grams of 90 percent pure cocaine, and the other contained 111.38 grams of 65 percent pure cocaine.

- A Gucci shoe box that contained \$20,870 in cash bundled in a distinctive fashion with elastics and in groupings of about \$1,000 each. Also located in the shoebox was an extended magazine for a Glock pistol with 20 cartridges of 9 mm ammunition.
- a Triton digital scale and two more of the distinctive 8-ball logo dime bags. Residue from the Triton scale tested positive for cocaine and phenacetin.
- a plastic Foodsaver bag that contained 101.23 grams of 27 percent pure cocaine.
- Two other Foodsaver-style plastic bags located on the shelving unit contained residue on the inside of the bag. Testing confirmed the presence of cocaine, levamisole, and phenacetin from one bag, and cocaine and phenacetin in the other bag.
- Other drug trafficking paraphernalia, including:
 - a green reusable paper shopping bag that contained a number of items, including a box of unused Ziploc baggies and unused distinctive dime bags with an 8-ball logo similar to the dime bag found in Mr. Dupray's residence. Just hours before the search warrants were executed, Mr. Dupray was observed carrying a green reusable shopping bag from Unit 199 to Unit 203 at approximately 2105 hours on February 5, and it appeared to have items in it. Nearly six hours later, when the search warrants were executed, a green reusable shopping bag was found on the shelf of the storage unit in 203 McIntyre Cres.

[9] I found that Mr. Dupray possessed the items in both units. Given the failure to establish Mr. Green's identity beyond a reasonable doubt as the person the surveillance teams observed entering and exiting 203 McIntyre Cres. during the surveillance period, I acquitted him of possession for the purpose of trafficking. In the totality of the circumstances and given the sophistication of this enterprise, Mr. Dupray can be fairly described as a mid-level drug dealer operating a store-front business from the two residences. Unit 199 is where some customers attended to purchase drugs. Unit 203 is where he stored his drugs and other drug related paraphernalia as well as the proceeds from his sales of the drugs.

[10] The defence contends that I made no finding that the Glock firearm was connected to the drug trafficking operation, citing para. 183 of the Reasons. I must respectfully disagree with this point. When the Reasons are read as a whole, including reference to the expert evidence that firearms are often seen in drug investigations due to the danger of such enterprises and the threat of a drug line being taken over, it is clear that the Glock firearm found in Mr. Dupray's residence and the extended magazine found in the storage room in 203 McIntyre are connected to Mr. Dupray's drug trafficking operation. What I did not find was that the Crown had proved beyond a reasonable doubt the more serious offence contained within count #2 (the possession of a loaded restricted firearm contrary to s. 95(1) of the Code.

Impact on the Community

- [11] As far back as 1998, and no doubt earlier, the courts of this country have repeatedly outlined the horrific, insidious, poisonous and deleterious nature of the drug trafficking trade in Canada.
- [12] In *Pushpanathan v. The Queen*, [1998] 1 S.C.R. 982, the Supreme Court of Canada remarked upon the staggering cost to society of substance abuse and trafficking in illicit drugs--both direct costs such as health care and law enforcement, and indirect costs of lost productivity.
- [13] More to the point is the seemingly unending and increasing mortality rate attributable to illicit drugs, including cocaine. In the years since the decision in *Pushpanathan* was issued, numerous courts have decried the senseless waste and shocking cost that continues to escalate each year, including in this province: see *R. v. Davidson*, 2014 BCSC 269 at para. 29; *R. v. Uy*, 2016 BCSC 823 at para. 30; *R. v. Mackay*, 2019 BCSC 1112 at paras. 25-28.
- [14] Included in the commentary on the pernicious evil of the cocaine drug trade on Canadian communities are Justice Doherty's observations in *R. v. Hamilton*, [2004] O. J. No. 3252 (C.A.). Although *Hamilton* was a sentence appeal for a case involving the importation of cocaine, the comments of Doherty J.A. remain apposite for the circumstances of trafficking in cocaine and possessing it for the purpose of trafficking:
- [104] The importation of dangerous drugs like cocaine and others found in Schedule I of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 has always been considered among the most serious crimes known to Canadian law: "Sentencing Reform: A Canadian Approach", Report of the Canadian Sentencing Commission (Ottawa: Ministry of Supply and Services, 1987), p. 205. The immense direct and indirect social and economic harm done throughout the Canadian community by cocaine is well known: *Pushpanathan v. Canada* (Minister of Citizenship and Immigration), 1998 CanLII 778 (SCC), [1998] 1 S.C.R. 982, 160 D.L.R. (4th) 193, at pp. 1036-40 S.C.R., pp. 235-37 D.L.R., per Cory J., in dissent on another issue; *R. v. Smith*, 1987 CanLII 64 (SCC), [1987] 1 S.C.R. 1045, 34 C.C.C. (3d) 97, at pp. 1053-54 S.C.R., pp. 123-24 C.C.C. The use and sale of cocaine kills and harms both directly and indirectly. The direct adverse health effects on those who use the drug are enormous and disastrous. Cocaine sale and use is closely and strongly associated with violent crime. Cocaine importation begets a multiplicity of violent acts. Viewed in isolation from the conduct which inevitably follows the importation of cocaine, the act itself is not a violent one in the strict sense. It cannot, however, be disassociated from its inevitable consequences. Unlike the trial judge (para. 224), I characterize cocaine importation as both a violent and serious offence: see *R. v. Pearson*, 1992 CanLII 52 (SCC), [1992] 3 S.C.R. 665, 77 C.C.C. (3d) 124, at pp. 693-96 S.C.R., pp. 143-44 C.C.C.

[Emphasis added.]

- [15] Ex. #3 filed at this sentencing hearing is the BC Coroners Service April 2025 Drug Toxicity Deaths Report entitled Unregulated Drug Deaths - Summary (the "Report"). It confirms the lethal nature of cocaine. The Report covers the time period of 2014 through April 2025. While fentanyl clearly is the largest contributor to unregulated drug deaths in British Columbia (BC) since 2016, cocaine runs a not too distant second.
- [16] Indeed, the Report establishes that cocaine appears to have a stable rate of contribution to unregulated drug deaths in BC that has fluctuated between a high of 52.2% in 2014 and a low of 40.7% in 2022. In the years since 2022 cocaine related deaths have started to creep back up with 2024 showing it at 48.3%. At Appendix A to these Reasons, I have included the two tables from Ex. #3 found at page 11 of the Report. They provide a graphic picture of unregulated drug deaths by drug type involved over the past decade. While fentanyl is clearly the most significant illicit drug, cocaine is no less harmful and lethal.
- [17] And so, as Justice Fitzpatrick noted in Mackay at paras. 25 and 27, the suffering and misery caused by drug use in our communities has been repeatedly recognized and acknowledged in the jurisprudence. As Ex. #3 so poignantly demonstrates, the scourge of illicit drugs upon communities across the province of British Columbia has continued and only escalated in the past decade. And as the Supreme Court noted in Pushpanathan, and was reiterated in Mackay, drug trafficking has other significant direct and collateral consequences to the health system, the fabric and safety of our communities, as well as families and loved ones.
- [18] I endorse and adopt the observations made in the jurisprudence about the scourge of illicit drugs, including cocaine, and it informs my assessment of the seriousness of this offence and what should be an appropriate and fit sentence in this case. I also pause to note that Mr. Dupray is not single-handedly responsible for all the ills of the drug trade, no matter how odious his behaviour in contributing to the scourge of cocaine trafficking in Prince George might be. He is not to be sentenced for the sins of all drug traffickers or the continuing escalation of deaths related to cocaine overdoses across this great province. He is to be sentenced for his role in this offence; this is what the proportionality principle demands: it has a restraining function that serves to guarantee that a sentence is individualized, just and appropriate: *R. v. Bissonnette*, 2022 SCC 23 at para. 51.
- [19] Also of significance, in terms of impact on the community in this case, is the presence of a restricted firearm in the basement of Mr. Dupray's residence, near the area where some drug paraphernalia was located. It was a 9 mm Glock handgun. It was loaded but the Crown failed to prove beyond a reasonable doubt that Mr. Dupray knew it was loaded at the time of the offence.

[20] The presence of an illegal firearm, particularly one as dangerous as a 9 mm Glock handgun, is alarming, but not surprising given the violent and dangerous nature of the drug trade. More specifically, however, the presence of a firearm in the context of drug offences is a serious feature in this case and an aggravating circumstance. I adopt the succinct observations of Justice Verhoeven in *R. v. Lafleur*, 2018 BCSC 1454 at para. 14, where he noted the following about handguns and the drug trade:

Illegal firearms, and especially handguns, particularly when associated to other criminal activities such as the illicit drug trade, are a "scourge on society:" *R. v. Zhu*, 2013 BCCA 416, at para. 21. They pose a grave threat to public safety and security. They directly destroy the "just, peaceful, and safe society" that the criminal law seeks to maintain and which is referred to in s. 718 of the Criminal Code.

[21] Our Court of Appeal has made similar observations about the presence of handguns linked to the drug trade. In *R. v. Ghua*, 2012 BCCA 423, Madam Justice D. Smith outlined at para. 28 the dangerous nature of the interplay between firearms and the drug trade. In *R. v. Holt*, 2015 BCCA 302, the Court of Appeal reiterated those observations:

[14] The Crown also referred us to this court's decision in *R v. Guha* 2012 BCCA 423, in which the Crown appealed a three-year "global" sentence for possession of a loaded prohibited weapon contrary to s. 95(1), possession of a prohibited device contrary to s. 92(2), and carrying a concealed weapon contrary to s. 90(1). The Crown sought a global sentence of 5½ years; this court allowed the appeal and increased the aggregate sentence to four years, which included four years on the count under s. 95(1), all before credit for time served. This was Mr. Guha's first firearms offence and like Mr. Holt, he had been carrying the weapon in his car. He was 27 years old at the time of trial and had one conviction for trafficking and one for possession for the purpose of trafficking. Madam Justice D. Smith, for the Court, noted at para. 28 that the "serious and inherently dangerous circumstances associated with firearm-related offences have been forcefully underscored by front-line trial judges" and that this court has also indicated that sentences for such offences must reflect "their very serious and dangerous nature." (At paras. 28-9.) In short, she said, firearms and in particular handguns are extremely dangerous when possessed for an illicit purpose, which can only be to threaten or inflict serious bodily harm or death; sentences for these types of offences should reflect "society's absolute rejection of such unacceptable conduct". (See also *R. v. Chin* 2009 ABCA 226; *R. v. Nguyen* 2005 BCCA 115, per Southin J.A.).

[Emphasis added.]

[22] I acknowledge that Holt and Guha involve the more serious offence of possession of a loaded restricted weapon contrary to s. 95(1) of the Code and that Mr. Dupray has been acquitted of that offence. Nevertheless, in the totality of the circumstances of this particular case, the concerns noted above remain as salutary for the lesser included offence of unauthorized possession of a restricted weapon contrary to s. 91(1) of the Code, of which Mr. Dupray has been convicted.

Circumstances of the offender

- [23] I have had the benefit of reading the Pre-Sentence Report (PSR) filed February 27, 2025, prepared by Ms. Destiny Arnault. The PSR outlines the personal circumstances of Mr. Dupray. No other people were interviewed by Ms. Arnault. However, in addition to the PSR, three character reference letters were filed in support of Mr. Dupray. Importantly, one character reference, Mr. Simoes, attended the sentencing hearing, as did Mr. Dupray's wife, his mother, and other friends. It is clear that Mr. Dupray has the support of these individuals.
- [24] Mr. Dupray is currently 29 years old. He was 25 years old at the time of the offence. He has no prior convictions and is, ostensibly, a first offender.[3]
- [25] Mr. Dupray was born in New Westminster. His childhood was marred by instability, substance abuse issues, placement in foster care and group homes at a young age, and difficulties at school, including being bullied in high school. Mr. Dupray has two half siblings and is close to one of them. He is also close to his mother. Both his mother and father had addiction issues while Mr. Dupray was growing up. Although he did not see them consuming the substances, Mr. Dupray was aware when they had consumed them. Mr. Dupray's mother has not been a substance user for fourteen years now and remains supportive of her son.
- [26] Mr. Dupray has a grade 10 education and advised the author of the PSR that he was uncertain as to which high school he attended, since he was enrolled in about 38 different schools across BC and Ontario. In 2013, Mr. Dupray moved from Ontario to Prince George to live with his mother and has been here ever since.
- [27] The PSR notes that at some point in his group home history Mr. Dupray was diagnosed with both Fetal Alcohol Spectrum Disorder (FASD) and attention deficit hyperactivity disorder (ADHD). Given his young age at the time, he did not follow up on these diagnoses. Although prescribed medication for his ADHD, Mr. Dupray stopped taking it in high school as he did not like the "zombie-like" effect that it had on him.
- [28] Ms. Arnault outlined in the PSR that Mr. Dupray advised that he has had trouble with depression in the past, that he had suicidal ideations as a child and teen, but has never made any attempt on his life. He still experiences bouts of depression and also situational anxiety, where he is unable to sleep and becomes physically ill. He experienced an acute episode of anxiety awaiting the sentencing hearing. I have no doubt he has experienced it again in the days leading up to this decision as well.
- [29] The contents of the PSR and the submissions of counsel establish that Mr. Dupray, by his own admission, has a great deal of reticence in opening up to others about his personal circumstances and past trauma, particularly in a group setting. He acknowledges that he has issues with controlling his anger and can snap and act impulsively. His manner of dealing with conflict, stress, anxiety and rising anger is to be physically active, remove himself from

the situation, and control his breathing. As an aside, I note those are all laudable methods of controlling mood, emotional status, and behaviour. One-on-one counselling with a trusted professional would no doubt assist further, but Mr. Dupray has to take that step himself in order to get there. This is not a criticism of what he has not done, rather it is a suggestion that might actually help him in his path forward, and also help take some of the load off his wife.

- [30] Mr. Dupray has been in a committed relationship for eight years now. The relationship was initially common law, but in May 2024, Ms. Thomas and Mr. Dupray were married. Ms. Thomas is probably Mr. Dupray's rock. She has supported him financially and emotionally throughout these proceedings. They have a close relationship. Ms. Thomas is employed and for the past few years has been the primary source of income for the couple.
- [31] Insofar as substance use is concerned, it would be fair to say that this is not a major issue in Mr. Dupray's life at this juncture. Although he started consuming alcohol and marijuana in his formative years he advised Ms. Arnault that he stopped consuming marijuana about five years ago as he did not like how he felt. Apparently, Mr. Dupray tried MDMA and cocaine on a couple of occasions, several years ago, but has not used these substances since.
- [32] One area that Mr. Dupray may have an issue with in terms of substance misuse is alcohol, especially in light of the comments on the topic in the PSR. Mr. Dupray reported that he has consumed alcohol to the point of blacking out in the past but now only consumes it a couple of times a month, perhaps more in the summer. Mr. Dupray advised Ms. Arnault that his wife is concerned when he drinks too much and that his wife does not drink. Mr. Dupray, at this juncture, does not want to cease his alcohol consumption as he wants to be able to drink socially with his friends, advising that he does not want to be a "sober friend".
- [33] Mr. Dupray has had a variety of intermittent employment over the years. The PSR, prepared at the beginning of this year, noted Mr. Dupray had been employed off and on with a construction company over the last four years but was out of work at the time of the PSR interview. On a more positive note, as of March 10, 2025, Mr. Dupray has been employed full time, working as an assistant to the senior mechanic specializing in motorcycles and small engines at a business in Prince George. In a letter from the shop supervisor at Mr. Dupray's employment, he is described as having "a good work ethic, willing to learn and is a team player" who "shows promise to be a good apprentice in the future". This is a very positive development for not only Mr. Dupray and for his family, but also the community in which he lives. It is indicative of his efforts to turn to leading a more pro-social lifestyle and is therefore a marker of his potential for rehabilitation.
- [34] Through his counsel, and in his own words, Mr. Dupray addressed the Court and apologized for his role in this offence, and for letting his wife, family, and community down. Although Mr. Dupray is seemingly a man of few words who does not like expressing himself in a public forum, he did so, which takes courage. I accept his expression of remorse as genuine.

Governing legal principles

General principles and objectives of sentencing

- [35] The determination of a just and appropriate sentence is a highly-individualized exercise that goes beyond any mathematical calculation. Many courts have recognized that imposing a just and proportionate sentence in serious cases like this one is one of the most challenging responsibilities that judges must exercise. It involves the careful balancing of a variety of factors in the context of a particular set of circumstances in respect of a particular individual: *Bissonnette* at para. 49.
- [36] The balancing process occurs within the legislative framework that is informed by common law principles. The legislative framework is set out in s. 718 through s. 718.2 of the Code and, for offences involving controlled substances, s. 10 of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 [CDSA]. Both statutes set out the purpose and principles of sentencing with the fundamental purpose of sentencing being to contribute to respect for the law and the maintenance of a just, peaceful and safe society. This is achieved by reference to the following objectives: denunciation of unlawful conduct; deterring the offender and others from committing offences; separating offenders from society where necessary; assisting in rehabilitating offenders; providing reparations for harm done to victims or to the community; and promoting a sense of responsibility in offenders and acknowledging the harm done to the victims or to the community.
- [37] The objectives to be given primary emphasis in sentencing for possession for the purpose of trafficking cocaine offences are deterrence and denunciation. Insofar as possession of a restricted firearm is concerned the objectives that receive primary emphasis are deterrence and denunciation and also public safety: *R. v. Lafleur*, 2018 BCSC 2454 at para. 28, citing *R. v. Endean*, 2017 BCCA 125 at para. 32; *R. v. Zhu*, 2013 BCCA 416 at para. 6.
- [38] In *Bissonnette*, Chief Justice Wagner addressed the meaning of deterrence and denunciation:
- [46] First of all, the penological objective of denunciation requires that a sentence express society's condemnation of the offence that was committed. The sentence is the means by which society communicates its moral values (*R. v. M. (C.A.)*, 1996 CanLII 230 (SCC), [1996] 1 S.C.R. 500, at para. 81). This objective must be weighed carefully, as it could, on its own, be used to justify sentences of unlimited severity (C. C. Ruby, *Sentencing* (10th ed. 2020), at §1.22).
- [47] As for the objective of deterrence, it has two forms. The first, specific deterrence, is meant to discourage the offender before the court from reoffending. The second, general deterrence, is intended to discourage members of the public who might be tempted to engage in the criminal activity for which the offender has been convicted (*R. v. B.W.P.*, 2006 SCC 27, [2006] 1 S.C.R. 941, at para. 2). When this objective is being pursued, the offender is punished more harshly in order to send a message to the public or, in other words, to serve as an example.

General deterrence is an objective that must be weighed by a court, but the effectiveness of which has often been questioned. These legitimate reservations notwithstanding, the fact remains that the certainty of punishment, together with the entire range of criminal sanctions, does produce a certain deterrent effect, albeit one that is difficult to evaluate, on possible offenders (Ruby, at §1.31; Canadian Sentencing Commission, *Sentencing Reform: A Canadian Approach* (1987), at pp. 136-38).

- [39] Section 718 of the Code sets out the proportionality principle, which directs that a sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the offender. The proportionality principle is fundamental to Canadian law. Thus, whatever weight a judge may wish to accord to the objectives listed in s. 718, "the resulting sentence must respect the fundamental principle of proportionality": *R. v. Nasogaluak*, 2010 SCC 6 at para. 40; see also *R. v. Parranto*, 2021 SCC 46 at paras. 11-12; *R. v. Friesen*, 2020 SCC 9 at para. 30.
- [40] Chief Justice Wagner explained what the proportionality principle means in *Bissonnette*, writing:
- [50] But sentencing must in all circumstances be guided by the cardinal principle of proportionality. The sentence must be severe enough to denounce the offence but must not exceed "what is just and appropriate, given the moral blameworthiness of the offender and the gravity of the offence" (*R. v. Nasogaluak*, 2010 SCC 6, [2010] 1 S.C.R. 206, at para. 42; see also *R. v. Ipeelee*, 2012 SCC 13, [2012] 1 S.C.R. 433, at para. 37). Proportionality in sentencing is considered to be an essential factor in maintaining public confidence in the fairness and rationality of the criminal justice system. The application of this principle assures the public that the offender deserves the punishment received (*Re B.C. Motor Vehicle Act*, 1985 CanLII 81 (SCC), [1985] 2 S.C.R. 486, at p. 533, per Wilson J., concurring).
- [51] It follows that "a person cannot be made to suffer a grossly disproportionate punishment simply to send a message to discourage others from offending" (*Nur*, at para. 45). In a similar vein, *Vauclair J.A.* aptly stated that [translation] "striving for exemplarity to the detriment of evidence of the merit of rehabilitation objectives is incompatible with the principle of individualization" (*Lacelle Belec v. R.*, 2019 QCCA 711, at para. 30 (CanLII), citing *R. v. Paré*, 2011 QCCA 2047, at para. 48 (CanLII), per Doyon J.A.). Proportionality has a restraining function, and in this sense serves to guarantee that a sentence is individualized, just and appropriate.
- [41] The proportionality principle requires a sentencing judge to fashion a fit sentence that properly reflects (i) the gravity of the offence and (ii) the moral blameworthiness of the offender. These two concepts have distinct considerations that do not fully cross-pollinate each other. The gravity of the offence is reflected by the potential penalty imposed by Parliament and any specific features of the commission of the offence which may tend to increase or decrease the harm or risk of harm to the community occasioned by the offence. It is not informed by the offender's background or other social context evidence: *R. v. Ellis*,

2022 BCCA 278 at paras. 82-85.

- [42] The moral blameworthiness of an offender is informed by an offender's background, lived experiences, and broader social context. It has long been the case that an offender's background may properly affect a sentencing court's assessment of moral blameworthiness: Ellis at para. 76.
- [43] In *R. v. C.K.*, 2023 BCCA 468, DeWitt-Van Oosten J.A. provided a succinct summary of the relevant factors that are engaged in the assessment of an offender's moral blameworthiness. I acknowledge that *C.K.* is a sentence appeal decision in respect of the sentencing of an offender who committed sexual offences against children. Nevertheless, in my view, the relevant factors enumerated therein for the assessment of moral blameworthiness apply across all criminal offences because they relate to the offender-focused branch of the proportionality analysis.
- [44] Justice DeWitt-Van Oosten noted in *C.K.*:
- [71] Assessing an offender's personal responsibility for a crime must consider the offender's state of mind and acts at the time of the offence: *R. v. M.* (C.A.), [1996] 1 S.C.R. 500 at para. 79, 1996 CanLII 230. Relevant factors include: the level of planning and/or intentionality brought to the crime; the degree, nature and extent of the offender's personal participation in the offence; the means or method by which the crime was committed; the motive or reasons for the offender's participation; the offender's awareness of the legal and moral wrongfulness of their conduct; their awareness of the actual or reasonably foreseeable harms flowing from their conduct (immediate and long-term); and their persistence in perpetrating the offence despite that awareness. See, for example, *R. v. Okimaw*, 2016 ABCA 246 at para. 85 and *R. v. Vader*, 2019 ABCA 488 at para. 16.

See also *R. v. Maslehati*, 2024 BCCA 207 at para. 103.

- [45] Section 718.2 of the Code enumerates in a non-exhaustive list a number of other sentencing principles. Pursuant to s. 718.2(a), sentences are to be increased or reduced to account for any aggravating or mitigating circumstances and enumerates some specific statutory aggravating factors, none of which are engaged by this case. Section 10(2) of the CDSA also enumerates a number of statutory aggravating factors that are not directly engaged in this case. I pause at this point to note that s. 10(2)(a)(i) makes it an aggravating factor if the person in committing the offence "carried, used or threatened to use a weapon". I have found that Mr. Dupray had the Glock firearm for protection purposes given the dangerous nature of his enterprise which can be considered an aggravating factor under the common law. However, the evidence does not go so far as to establish this statutory aggravating factor is engaged in this case, nor has the Crown relied upon it.
- [46] Section 718.2(b) sets out the parity principle which requires that sentences should be similar for similar offences committed by similar offenders in similar circumstances.

- [47] Subsection 718.2(c) through (e) promote restraint in sentencing. Sections 718.2(d) and (e) emphasize the need for restraint in resort to imprisonment. These provisions require that an offender not be deprived of liberty if less restrictive sanctions are appropriate in the circumstances. Resort to a sentence of imprisonment in the community under supervision instead of incarceration is also a feature of the principle of restraint in s. 718.2(e) of the Code: *R. v. R.N.C.*, 2000 SCC 7.
- [48] Courts must consider all available sanctions other than imprisonment that are reasonable in the circumstances and consistent with the harm done to victims or to the community, with particular attention to the circumstances of Indigenous offenders.
- [49] Section 718.2(b) of the Code addresses the parity principle, as I have already noted. While I am mindful of it, I must also not lose sight of the individualized nature of sentencing in the assessment of the current case, an assessment that requires me to weigh the objectives of sentencing in a manner that best reflects the circumstances of this case and of this offender: *Nasogaluak* at para. 43.
- [50] As I have noted, the principles or objectives of sentencing that are of primary importance in PPT and firearms cases are clearly denunciation, deterrence, and public safety.
- [51] Of course, while deterrence, denunciation, and public safety are the objectives of primary importance, they do not eclipse or extinguish the objective of rehabilitation, no matter the type of offence. One need only look to the decision in *Bissonnette*, a case involving the murder of six worshippers in the Great Mosque in Québec City, to be reminded of this point. In *Bissonnette*, Wagner C.J.C. made this observation about rehabilitation:
- [48] Lastly, the objective of rehabilitation is designed to reform offenders with a view to their reintegration into society so that they can become law-abiding citizens. This penological objective presupposes that offenders are capable of gaining control over their lives and improving themselves, which ultimately leads to a better protection of society. M. Manning and P. Sankoff note that rehabilitation "is probably the most economical in the long run and the most humanitarian objective of punishment" (Manning, Mewett & Sankoff: *Criminal Law* (5th ed. 2015), at ¶1.155). Along the same lines, I would reiterate my comment in *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089, that "[r]ehabilitation is one of the fundamental moral values that distinguish Canadian society from the societies of many other nations in the world" (para. 4).
- [52] And so, rehabilitation is also an objective to be considered and ought not to be discounted, especially particularly given Mr. Dupray's relative youth, lack of a criminal record, and his recent efforts to turn his life around and lead a pro-social lifestyle. The fact that Mr. Dupray's wife, family and friends are supportive of him and have noticed a change in his attitude and maturity since this offence offers positive support for the conclusion that Mr. Dupray's rehabilitation is well under way.

- [53] No one sentencing objective trumps the others. It remains the sentencing judge's responsibility to weigh and determine which objective or objectives warrant the greatest emphasis given the particulars of the case before them: Nasogaluak at para. 43; Ellis at para. 82.

The organizing principle of the range of sentence

- [54] Sentencing judges are afforded a wide discretion in the sentence they craft and impose. However, judicial discretion is not unfettered. Rather, it is informed by the caselaw and general ranges of sentences for particular offences. And yet, while the courts must consider ranges, the jurisprudence from the Supreme Court of Canada is clear that sentencing ranges are guidelines "not hard and fast rules" or "straitjackets": Friesen at paras. 37, 108. Ranges have been referred to as more in the realm of navigational buoys or places where judges can begin their thinking: Parranto at paras. 16, 205.
- [55] In Ellis at paras. 126-131, DeWitt-Van Oosten J.A. confirmed that sentencing ranges reflect the gravity of the offence and offence-based considerations, not the type of offender before the court. And so, the assessment of gravity of the offence is based on the normative wrongfulness of the conduct and the harm posed by it. To be sure, possessing cocaine for the purpose of trafficking is a very serious offence, as reflected in the maximum penalty available and some of the sentences imposed in the cases that counsel reviewed.
- [56] It would be fair to say, however, that there is a wide range of sentence established in the cases provided to the Court. What the jurisprudence also make clear is that the previous doctrine requiring an offender to establish "exceptional circumstances" in order to receive a sentence below the usual range of sentence has largely been extinguished. Indeed, our Court of Appeal has eschewed the requirement that an offender must establish exceptional circumstances in order to justify a sentence outside an articulated range. The issue is whether the sentence is proportionate to the offence committed and the moral blameworthiness of the offender: R. v. Choi, 2022 BCCA 90 at paras. 22-24; Ellis at paras. 117-119; R. v. Armstrong, 2023 BCCA 50 at para. 31.
- [57] So long as the sentence imposed is in accordance with the principles and objectives of sentencing and is proportionate to the gravity of the offence and the degree of responsibility of the offender, imposing a sentence outside the range is not an error in principle: Nasogaluak at para. 44; Lacasse, 2015 SCC 64 at paras. 56-72; Friesen at paras. 37-38, 108; and Parranto at paras. 40-54, 205.
- [58] In R. v. Kehoe, 2023 BCCA 2, Justice Marchand, as he then was, sagely noted:

[45] Sentencing is a difficult process that often requires balancing competing principles and objectives. Will protection of the public be best achieved by a deterrent sentence or one focused on rehabilitating the offender? Where in the sentencing range does a particular offender belong when they have committed a serious offence but have a reduced level of moral blameworthiness? To what degree are aggravating features of the offence offset by mitigating circumstances?

[59] These are but some of the questions engaged in sentencing Mr. Dupray.

Relevant authorities relied upon by counsel

Crown authorities

[60] In support of the Crown's submission that a global sentence of four years imprisonment be imposed, counsel provided the Court with three sentencing decisions that support their position that such a sentence is within the range of sentence for these offences:

[61] In *R. v. Davidson*, 2014 BCSC 269, Justice Baird imposed a 36-month sentence of imprisonment for three counts of trafficking in cocaine, one count of possession of cocaine for the purpose of trafficking and one count of possession of a prohibited weapon being a stun gun. Davidson changed his plea to guilty after the Crown closed its case. In total, there was about 34 ounces of cocaine (which is approximately 964 grams) that was either trafficked to an undercover operator or found in the offender's home "neatly packaged for resale" at the ounce level when a search warrant was executed. In addition, \$60,000 in cash, the stun gun and the usual drug paraphernalia were located in the search of the offender's home. The offender was 42 years old with a dated, unrelated criminal record. He admitted he was a mid-level dealer operating out of his home.

[62] In reviewing the authorities (at paras. 29-48), Baird J. determined that they established a range of sentence of between three and six years imprisonment. Having determined that the sentence sought by the Crown was appropriate (four years imprisonment), Baird J. reduced it by one year in recognition of the offender's guilty plea, his previous good behaviour, his remorse and in light of the four-year delay between the offence and the imposition of sentence (at paras. 48-50). A six-month sentence was imposed for the possession of the prohibited firearm and ordered to be served concurrently to the other offences. The defence had sought the imposition of a CSO with probation but the determination that three years was the appropriate length of sentence negated the ability to impose a CSO.

[63] In *R. v. Mackay*, 2019 BCSC 1112, following a trial, Justice Fitzpatrick imposed a 32-month sentence of imprisonment for one count of trafficking in cocaine and one count of possession of cocaine for the purpose of trafficking. In total, there was about 26 ounces of cocaine (which is approximately 737 grams) that was either trafficked (two ounces) to an undercover operator or possessed (24 ounces) and delivered to another drug dealer. Approximately \$16,000 in cash was found on Ms. Mackay when she was arrested and a further \$19,000 in a residence the offender was connected to. The offender was 33 years old

at the time of sentencing, 29 when the offence was committed, and had no criminal record.

- [64] In reviewing the authorities (at paras. 37-45), Fitzpatrick J. determined that they established a range of sentence of between 15 and 36 months of imprisonment for a first offender involved in the mid-level distribution of significant quantities of cocaine (at the ounce level). The defence in Mackay agreed with the range of sentence but sought a 90-day intermittent jail sentence based on exceptional circumstances. The sentencing judge found the offender failed to discharge her burden of establishing "exceptional circumstances" such that a sentence well below the range should be imposed (paras. 50-68). This case fell into the period of time where s. 742.1(c) of the Code excluded the possibility of a CSO: *R. v. Sharma*, 2022 SCC 39 at para. 12. And so, the defence would not have been able to seek a CSO for Ms. Mackay. Two weeks after the decision in *Sharma*, Parliament amended s. 742.1 of the Code by repealing subsection (c) so that CSOs are once again available for drug offences, provided the statutory pre-requisites are satisfied.
- [65] And so, on the authorities provided by the Crown and the decisions therein reviewed by Justices Baird and Fitzpatrick, the range of sentence for possession of cocaine for the purpose of trafficking for mid-level distribution is fairly wide: 15 months to six years of incarceration.
- [66] The Crown relies on *R. v. Lafleur*, 2018 BCSC 1454, a case where Justice Verhoeven thoroughly reviewed the seriousness of firearms offences and the sentencing jurisprudence for s. 95(1) offences which established the range for those offences to be between 30 months and seven and a half years imprisonment (paras. 16-42). Of course, Mr. Dupray has not been convicted of a s. 95(1) offence. Rather he has been convicted of the lesser included offence in s. 91(1). As such, the Crown has moderated the range downwards and suggest that one year imprisonment is within the range for that type of offence but urges that the sentence be consecutive to the offence in count #1.

Defence authorities

- [67] The defence provided a number of authorities to support its position that a global sentence of two years less a day imprisonment served in the community by means of a CSO followed by a period of probation would be a fit sentence in the circumstances of this case.
- [68] The authorities were divided into three categories: (i) cases where a CSO was imposed for offenders who possessed fentanyl or carfentanil and / or heroin for the purpose of trafficking; (ii) cases where the offenders either trafficked or possessed cocaine for the purpose of trafficking coupled with a firearms offence and a CSO was imposed; and (iii) cases where CSOs were imposed for s. 95 offences. The defence acknowledged that many of the cases were provided as examples of how the courts have dealt with issues such as a long delay between the offence and the imposition of sentence and the concern that a sentence of incarceration would upset established periods of stability and be counterproductive to the efforts towards rehabilitation.

[69] I propose only to list the first group of cases but see no need to review them further than counsel has already done. They are largely distinguishable on the basis of involving different substances and lesser amounts of that substance. I do acknowledge however that this group of cases supports the long-established proposition that CSOs with punitive conditions can sufficiently address the objectives of deterrence and denunciation. This group of cases includes:

- R. v. Jesswein, 2025 BCSC 1104
- R. v. Nguyen, 2023 BCPC 276
- R. v. Coppick, 2023 BCPC 71
- R. v. Sangster, 2024 ONCJ 549
- R. v. Shearer, 2022 ONCJ 288

[70] The second group of cases involves offenders who either trafficked or possessed cocaine for the purpose of trafficking. In one of the cases there was a firearm found in the search of the residence, but no charge laid in respect of it. The amounts of cocaine in these cases ranged from a ¼ pound to one kilo of cocaine. I will address these cases briefly:

[71] In R. v. Ellrodt, 1999 BCCA 57, the Court of Appeal allowed a sentence appeal and imposed a CSO on appeal. The offender had been convicted following a trial of possessing a ¼ pound of cocaine (approximately 114 grams) that he was transporting in his vehicle when he was stopped on his way to Campbell River. Essentially, he was a courier. No firearm was involved in this case. A sentence of two years less a day imprisonment was imposed by the trial judge. The conditional sentence regime came into effect after the sentence was imposed in this case.

[72] Justices Southin and Mackenzie allowed the appeal in Ellrodt and substituted a CSO for the balance of the sentence. The fact that the appellant had become a father and that his wife and baby lived in an isolated community on Vancouver Island was the basis for allowing the appeal. Justice Hall dissented, in part, on the basis of the appellant's history and concluded that a CSO was not appropriate. However, Hall J.A. would have reduced the sentence to one year imprisonment in light of the appellant's family situation.

[73] In R. v. Kreutziger, 2005 BCCA 231, the appellant was sentenced to three years imprisonment for possession for the purpose of trafficking one kilogram of cocaine that was located in the vehicle the appellant was driving with one other person. There was no firearm involved with this offence. Three years elapsed between the offence and the conviction and a further four years had elapsed by the time the sentence appeal was heard. The appellant had no criminal record, was 39 years of age and steadily employed in the fishing industry and the construction industry. He had a problem with alcohol when he was younger but by the time he was sentenced he had stopped drinking.

- [74] The trial judge in *Kreutziger* found that the appellant was not likely to re-offend but rejected the possibility of a CSO seemingly because the accused had taken the matter to trial. The trial judges' treatment of the appellant's not guilty plea and other post-offence conduct as aggravating factors was found to be an error in law that warranted appellate intervention. In light of the overall delay of seven years between the commission of the offence and the hearing of the appeal, all members of the division agreed that it would be counterproductive to send the appellant to prison. The sentence appeal was allowed and a sentence of two years less a day imprisonment to be served by means of a CSO was imposed.
- [75] In *R. v. Nesbitt*, 2012 BCCA 243, the Court of Appeal dismissed a Crown appeal seeking to have a CSO of two years less a day imposed by the sentencing judge raised to a penitentiary term in the four-to-12-year range. The respondent was 20 years old and had no criminal record. The facts establish that the respondent was encouraged by others to assist in the delivery of 17 kilograms of cocaine. The delivery was intercepted and the respondent was arrested and charged with possession of cocaine for the purpose of trafficking. The respondent co-operated with the police and that endangered him while he was detained in custody pending his bail hearing. Approximately six years elapsed between the offence and the sentencing of the respondent. The sentencing judge found the respondent had been completely rehabilitated by the time of the sentencing hearing and that a CSO would not create a risk to public safety in the circumstances.
- [76] In dismissing the Crown's sentence appeal in *Nesbitt*, Justice Chiasson noted that the case was unique in that the respondent's foray into the drug world was stopped with his arrest for the offence. He had rehabilitated himself by the time he was sentenced. Like the circumstances in *Kreutziger* the long period of time that had elapsed between the offence and the sentencing (and the further appeal) coupled with the respondent's full rehabilitation made it questionable as to whether incarceration was required to fulfill the purposes and principles of sentencing. The Court of Appeal concluded it was not.
- [77] In separate concurring reasons in *Nesbitt*, Justice Levine succinctly observed that the sentencing judge had minimized the respondent's responsibility for the offence and that ordinarily a significant penitentiary term would be required. However, she went on to note the following:
- [42] Were it not for the fact that the respondent completely rehabilitated himself in the six years following the offence, a sentence of less than two years in jail could not be justified. On the weight of the authorities, only a penitentiary sentence would meet all of the principles and purposes of sentencing, primarily denunciation and general deterrence. The only question for the sentencing judge and for this Court is whether, given the delay and his rehabilitation, the purposes and principles of sentencing require the respondent to now spend time in jail.
- [43] The case relied on by the sentencing judge, *R. v. Kreutziger*, 2005 BCCA 231, was similar. There, the offender had rehabilitated himself after sentencing and this Court was faced with whether to send him to jail seven years after the offence. The reasons to require Mr.

Kreutziger, or the respondent, to be incarcerated would be to satisfy the principles of denunciation and general deterrence. It seems to me that as time passes after an offence is committed, the denunciatory and deterrent impact of an individual sentence on the community recedes, and the outcome of the intercession of the justice system on the individual offender takes on primary importance. Where, as here, an offender has, over a period of time after committing an offence, become a fully rehabilitated, productive member of society, sending that person to jail seems, as was said in Kreutziger, counterproductive.

- [78] In *R. v. DiBase*, 2014 BCPC 30, Judge St. Pierre imposed a CSO of two years less a day followed by two years probation for one count of possession of cocaine for the purpose of trafficking. The total amount of cocaine involved was 913.8 grams of powder cocaine and 3.5 grams of rock cocaine found in the accused's residence when a search warrant was executed following a large-scale investigation. Also found in the accused's residence was \$80,000 in cash and other drug paraphernalia. A 9 mm handgun was found in another part of the residence but no charge was laid with respect to it. Three years elapsed between the offence and the accused's guilty plea and sentencing. The delay was an important consideration for the sentencing judge, who found the 36-year-old first offender had embarked upon a path of rehabilitation and changed his behaviour. He concluded that in the circumstances, it would be counterproductive and not serve society or the accused to incarcerate him.
- [79] In *R. v. Lam*, 2007 BCPC 43 Judge Gallati imposed a CSO of two years less a day followed by two years probation for one count of possession of cocaine for the purpose of trafficking. The total amount of cocaine involved was a kilogram of cocaine produced to an undercover operator. A search of the accused's residence revealed a loaded 9 mm handgun in a couch in the basement living area and also \$14,000 in cash in two locations. No charge was laid in respect of the handgun but the fact was before the sentencing judge. Approximately three years elapsed between the offence, the accused's guilty plea and his eventual sentencing. The accused was 23 years old at the time of sentencing and had no criminal record. It appears he had been briefly involved in drug trafficking at the street level but by the time of the offence had moved up to the ounce level of distribution. Judge Gallati accepted counsel's characterization of the accused's role as being the middleman retailer in the distribution chain. By the time the matter was before the court for sentencing, the accused had returned to school, was working on obtaining his real estate license and had been working at an import / export business for some time.
- [80] In the end, Judge Gallati was satisfied that notwithstanding the offender's mid-level involvement in the drug trafficking hierarchy and his knowledge of the handgun in the location where the trafficking was occurring (an aggravating factor), the combination of the offender's youth, his self-rehabilitation, his guilty plea and evident remorse, and two and half years in the community without incident militated in favour of the imposition of a CSO that, with punitive conditions, would fulfill all the principles and purposes of sentencing, notably deterrence, denunciation, and rehabilitation: *Lam* at paras. 26-29.

- [81] Two other provincial court authorities were provided by the defence. Each involved a large amount of cocaine (at the kilogram level) where the offender was either the courier (*R. v. Duong*, 2006 BCPC 156) or watching over the drugs in an informal security guard capacity (*R. v. Do*, 2000 YKTC 15). Both offenders were youthful first offenders. In both cases the maximum sentence for a CSO was imposed. In *Do*, the sentence was the product of a joint submission.
- [82] Of all the authorities reviewed, *Lam* is closest to the circumstances of the current case in amount, lack of record, level of involvement, the youthful first offender, the presence of a firearm, and the delay between charge and sentencing. The distinguishing features are of course the guilty plea and a more robust demonstration of rehabilitative steps in *Lam*.
- [83] The final tranche of cases relied upon by the defence relates to CSOs imposed for s. 95 offences. All three cases are from Ontario: *R. v. Leclair*, 2025 ONCJ 174; *R. v. Assefa*, 2025 ONSC 3747; and *R. v. Iqbal*, 2025 ONSC 3222.
- [84] The circumstances surrounding the offences in all three Ontario decisions are varied, but the following points can be distilled from the decisions:
- All three accused were in possession of a loaded restricted firearm (a more serious offence than what Mr. Dupray has been convicted of).
 - All three accused were youthful first offenders.
 - All three accused had made substantial changes to their lives by the time they were sentenced.
 - The principles of deterrence, denunciation and public safety were of primary importance in all three cases.
 - In light of the demonstrated efforts at rehabilitation made by all three offenders and considering the principle of restraint in resort to incarceration the sentencing judges were satisfied that the duration of the sentence could be a provincial length term, served in the community by means of a CSO.
- [85] I pause to note that the Ontario decisions are not binding upon this court. They are, however, illustrative of the varied circumstances in which a CSO has been imposed for the more serious offence under s. 95(1) of the Code. To that end, they are informative.
- [86] I conclude this review of the governing legal principles and the authorities that counsel have relied upon by returning to the principle of proportionality. The decision in *Parranto* reminds us that proportionality is the primary animating principle. Because sentencing remains an individualized process, parity is secondary to proportionality: *Parranto* at paras. 9-12, 38, 205. Thus, the question in sentencing remains this: does the sentence imposed reflect the gravity of the offence, the degree of responsibility of the offender and the unique circumstances of the case before the court?

Analysis

[87] In determining what constitutes an appropriate sentence for this case, I will first identify the aggravating and mitigating factors.

Aggravating and mitigating circumstances

[88] The sentencing calculus requires an assessment of the aggravating and mitigating circumstances. Section 718.2(a) of the Code directs that when imposing a sentence, the court shall take into consideration the aggravating and mitigating circumstances that relate both to the offence and to the offender.

[89] Counsel have fairly summarized the aggravating and mitigating factors in this case. I find the aggravating factors in respect of this offence to include:

- a) The nature of the controlled substance involved--cocaine is a very addictive and dangerous drug that can have lethal consequences.
- b) Mr. Dupray possessed the restricted firearm that is the subject of count #2 in connection with his illicit drug enterprise that he was operating from his home and a neighbouring residence.
- c) Mr. Dupray had a fairly sophisticated enterprise which demonstrates he was not a low-level trafficker--he was a mid-level trafficker.
- d) Mr. Dupray engaged in this offence to make money owing to his financial circumstances at the time.

[90] I find the mitigating factors in respect of this offence to include:

- a) Mr. Dupray is ostensibly a first offender.
- b) Mr. Dupray is a youthful offender.
- c) Mr. Dupray has the support of his wife, mother, and friends as evidenced by their attendance at the sentencing hearing and in the reference letters filed at the sentencing hearing.
- d) Mr. Dupray has taken steps towards leading a pro-social life--he now has full time employment in a position he appears to enjoy, with an employer who values him as an employee. This development is a positive indicator that rehabilitation is a realistic objective in this case and it is already underway.
- e) Approximately four and a half years have elapsed since the commission of this offence. Although not released on a stringent form of bail, Mr. Dupray has remained in the community without any sort of incidents or regression. He appears to have turned his life around.

- f) Mr. Dupray's remorse, as evidenced in his comments to the Court at the sentencing hearing both through his counsel and in his own words. I accept that Mr. Dupray finds it very difficult to express himself in public and though his own expression of remorse may have been cryptic, it was genuine.

Proportionality in practice

- [91] As I mentioned previously, the overall animating principle of sentencing is that the sentence must be proportionate to the gravity of the offence and degree of responsibility of the offender.
- [92] In terms of gravity of the offence, Mr. Dupray has been convicted of very serious offences and the manner in which the offences were committed, insofar as the objectively dangerous nature of his conduct is concerned, place them at the serious end of the spectrum. Possession of cocaine for the purpose of trafficking is a very serious offence with increasing lethal consequences as outlined in the tragic statistics contained within Ex. #3 - the BC Coroner's latest report.
- [93] This was not a situation of street-level dealing or low-level trafficking. Mr. Dupray had a mid-level drug trafficking operation. To have the amount and purity of cocaine that Mr. Dupray had, stored in an adjacent residence which he accessed independently and exercised control over the items found in the room, establishes that Mr. Dupray's enterprise was a more sophisticated operation that had elements of planning, foresight, and trust garnered from others. The presence of a dangerous firearm in his own residence, no doubt to be used for protection of either the occupants of the residence or the commercial enterprise at the very least, adds a further level of seriousness, complexity, sophistication and awareness of the dangerous nature of his enterprise. The gravity of these offences is significant and they are very serious.
- [94] Assessing moral blameworthiness requires a consideration of the offender's state of mind and acts at the time of the offence, the level of planning and/or intentionality brought to the crime; the degree, nature and extent of the offender's personal participation in the offence; the means or method by which the crime was committed; the motive or reasons for the offender's participation; the offender's awareness of the legal and moral wrongfulness of their conduct; their awareness of the actual or reasonably foreseeable harms flowing from their conduct (immediate and long-term); and their persistence in perpetrating the offence despite that awareness.
- [95] On this branch of the proportionality analysis, Mr. Dupray's moral blameworthiness is quite high. He personally participated in this conduct and did so for financial gain. The operation was relatively sophisticated in that it was conducted from two adjoining units: one place where the bulk drugs, paraphernalia, and proceeds were stored and then his own residence where the drugs were presumably cut, packaged, and sold. The conduct occurred over a period of time and was not a one-off situation. There is nothing to suggest Mr. Dupray did

not understand that the enterprise he was engaged in was legally or morally wrong. Indeed, the presence of a firearm would suggest he was very much aware of the dangers of the enterprise and that he might have to take matters into his own hands. And, given his life experience of seeing the harms caused by his parents' difficulties with drugs while he was growing up, he would presumably have an informed understanding of the harms flowing from his conduct. Yet, such an understanding did not dissuade him from engaging in this conduct. Accordingly, Mr. Dupray's moral blameworthiness is quite elevated in the circumstances. It is tempered only somewhat by his difficult upbringing and his lack of criminal record.

- [96] The first question I must determine is what is a fit and appropriate sentence for these two offences.
- [97] The overall effect of the cases provided by counsel, coupled with the authorities reviewed therein, establish that for possession of cocaine for the purpose of trafficking where there is in excess of 500 grams of cocaine involved, the range of sentence appears to be between 15 months imprisonment and six years imprisonment.
- [98] In addition to the cases provided by counsel, I am aware that in an attempted importing case from Ontario, referred to below, a CSO was imposed where the first offender endeavoured to import a kilo of cocaine. And recently in *R. v. Reinders*, 2025 BCSC 1480, a suspended sentence with one year of probation was imposed for possession of cocaine and other controlled substances for the purposes of trafficking (15 grams of cocaine, 50 grams of methamphetamine and 25 grams of heroin/fentanyl, admittedly a considerably smaller amount of drugs than in the case at bar) as well as possession of three restricted firearms, two of which were loaded. The offender in that case had a criminal record including prior drug convictions. Significantly, the offender in *Reinders* had made a remarkable transformation over the three years between the commission of the offence and his sentencing. The evidence of rehabilitation in that case was remarkable.
- [99] The authorities support the notion that CSOs have been imposed for amounts of cocaine similar to what Mr. Dupray possessed where the accused was a youthful first offender who had made significant efforts at rehabilitation and who experienced lengthy delays between the commission of the offence and the final disposition. While Mr. Dupray's efforts at rehabilitation are more modest when compared to someone like Mr. Lam, they nevertheless are important and significant for him, particularly in light of the challenging circumstances he faced in his formative years. In short, Mr. Dupray is working to turn his life around and lead a pro-social lifestyle. He is working full time at a position he enjoys and he has the support of his employer. He also has the support of his family and friends. He is a youthful first offender who has had no issues while released in the community for the past four and a half years.

- [100] Insofar as the unauthorized possession of the firearm is concerned, the Crown seeks a sentence of one year imprisonment consecutive and the defence contends that either a consecutive sentence of four months less a day or a concurrent sentence of one year be imposed.
- [101] The question always comes down to what is appropriate for this offender in these circumstances and that pays heed to all the principles and objectives of sentencing such that the sentence imposed honours the proportionality principle.
- [102] In the end, I am satisfied, based on the authorities and the circumstances that a sentence at the lower end of the range is not inappropriate given the totality of the circumstances. The maximum period of imprisonment in a provincial institution, being two years less a day followed by three years probation would be a sentence within the range outlined.
- [103] The next issue to resolve is the allocation of time as between the two counts, i.e. whether the two sentences should be consecutive or concurrent.

Concurrent vs. consecutive sentences and totality

- [104] The Crown argues that the sentences for these two offences ought to be consecutive to each other. It cited the decisions in *R. v. Li*, 2009 BCCA 85, *R. v. Crevier*, 2015 ONCA 619, *R. v. Radjenovic*, 2013 BCCA 522, and *R. v. Lee*, 2018 BCCA 428 in support of its position that because different societal or legally protected interests are engaged by the two offences for which Mr. Dupray has been convicted, a consecutive sentence is appropriate for this case.

- [105] As Madam Justice D. Smith noted in *Li* at para. 42:

The test for the imposition of a consecutive or concurrent sentence is "whether the acts constituting the offence were part of a linked series of acts within a single endeavour": *R. v. G.P.W* (1998), 106 B.C.A.C. 239 at para. 35.

- [106] In *R. v. Borecky*, 2013 BCCA 163, Justice Hinkson (as he then was) dismissed a Crown sentence appeal where the offender had been convicted of three counts of possession of controlled substances for the purpose of trafficking in heroin, cocaine and methamphetamine respectively, contrary to s. 5(2) of the CDSA and 13 counts relating to the possession of firearms, ammunition and a restricted device, contrary to various provisions of the Code. The trial judge imposed concurrent sentences on all offences, save one that had to be consecutive (possession of a firearm while prohibited by a court order, contrary to s. 117.01 of the Code). The offender possessed 169.53 grams of heroin, 418.8 grams of cocaine, and 261.01 grams of methamphetamine.
- [107] The offender in *Borecky* was 44 years old when he was sentenced and had a not insignificant criminal record with 37 convictions including seven convictions for simple possession, PPT and production of controlled substances. The trial judge imposed concurrent sentences of three years imprisonment on the three PPT counts and concurrent sentences of four years imprisonment on the 12 firearms offences. A consecutive sentence

of one year imprisonment was imposed on the possession of a firearm while prohibited by a court order. The global sentence was reduced by 17 months to reflect credit for pre-trial custody with the net sentence imposed being three years and seven months.

- [108] The Crown appealed the sentence imposed, arguing the trial judge erred in failing to impose consecutive sentences as between the drug and firearms offences (Borecky at para. 16).
- [109] In dismissing the Crown's sentence appeal, the Court of Appeal found no error in the approach the trial judge took in Borecky in imposing concurrent sentences in the circumstances. First, the trial judge averred to the jurisprudence on the point and noted the discretion sentencing judges have in determining whether to impose concurrent or consecutive sentences. Second, instead of imposing a consecutive sentence for the firearms offences, the trial judge treated them as an aggravating factor in respect of the drug offences. Significantly, the Court of Appeal rejected the submission that sentences must be consecutive where an offender is convicted of both drug and weapons offences: Borecky at paras. 25, 27. Having found the drug and firearms offence to be part of a linked series of acts within a single endeavour, the trial judge committed no error in imposing concurrent sentences.
- [110] In *R. v. Mann*, 2018 BCCA 265, Justice Fitch, writing for the Court, dismissed sentence appeals by two brothers who were involved in a dial-a-dope operation trafficking in fentanyl and its analogues. One of the appellants also received a consecutive sentence for possession of a loaded .38 calibre handgun. On appeal, the appellant argued the sentencing judge erred in imposing consecutive sentences as between the drug offences and the firearms offence and relied upon Borecky to support his point. Justice Fitch disagreed, writing:
- [82] The decision to order concurrent or consecutive sentences is an exercise of discretion and must be treated with the same deference owed by appellate courts to sentencing judges concerning the length of the sentence imposed: *R. v. McDonnell*, 1997 CanLII 389 (SCC), [1997] 1 S.C.R. 948 at para. 46. The judge did not err in principle in his approach to this issue and I do not understand the appellants to suggest otherwise.
- [83] Instead, the appellants rely on the result in Borecky. In that case, concurrent sentences were imposed for drug and firearms-related offences linked in time. The Crown appealed, arguing that the sentences for these two sets of offences ought to have been consecutive. In dismissing the appeal, the Court refused to accept the proposition that sentences must be consecutive in all cases where an offender is convicted of both drug and weapons charges (at para. 25).

- [84] In my view, Borecky does not assist the appellants. It is simply an illustration of the long-standing principle that whether to order consecutive or concurrent sentences is a matter within the judge's discretion that attracts appellate deference. This Court has, in a number of cases, affirmed consecutive sentences imposed in circumstances similar to the case at bar: see, for example, *R. v. Swales*, 2016 BCCA 502.
- [111] As can be seen from *Mann* and its reference to *Swales*, Borecky stands only for the proposition that a sentencing judge is not required to impose consecutive sentences in all cases in which an offender is convicted of both drug and weapons offences. Borecky also affirms the long-standing principle that whether to order sentences to be served consecutive or concurrent is a matter within a sentencing judge's discretion. However, when imposing consecutive sentences, the sentencing judge must have regard to the totality principle, to ensure that the aggregate sentence is commensurate with the offender's overall culpability.
- [112] Furthermore, in *Lee*, Justice Dickson, writing for the Court, upheld a global sentence of seven years imprisonment imposed for two offences: one count of PPT cocaine, fentanyl, heroin, methamphetamine and GHB and one count of possession of a prohibited .45 calibre handgun with readily accessible ammunition. The allocation of time as between the counts was four years for the PPT count and three years consecutive for the firearms offence. The appellant, who was 27 years old at the time of sentencing, had a prior criminal record including seven convictions for PPT all within the preceding four years. At the time of the index offence, the appellant was also subject to three different firearms prohibition orders and was on probation.
- [113] In finding no error in the imposition of consecutive sentences, Dickson J.A. concluded that the decision in *Mann* was dispositive of the issue. The sentencing judge concluded in *Lee* that although the offences were connected, they were not part of a series of acts within a single endeavour and that they addressed different societal interests. Dickson J.A. saw no error in principle in the sentencing judge's analysis on this point (at paras. 17-19). In addition, the sentencing judge elected to impose consecutive sentences instead of treating the firearms offence as an aggravating circumstance for the drug offence and so committed no error in punishing the appellant twice for the firearms offence (at para. 20). Finally, in addition to acknowledging the different societal interests the two offences addressed, the sentencing judge in *Lee* was clear that the fact that the appellant was the subject of three separate mandatory firearms prohibition orders figured significantly in her factorial analysis for imposing consecutive sentences in that case (at para. 11, quoting paras. 70-74 of the sentencing decision indexed at 2018 BCPC 84).
- [114] The preceding appellate authorities establish that a sentencing judge has the discretion to impose concurrent or consecutive sentences, provided the court considers the principles of totality and proportionality, and whether or not the offences are connected or amount to an attack on different legally protected rights which affect the community.

- [115] In my view, in this case the two offences were clearly committed at the same time. While the possession of drugs and possession of firearms are obviously different offences that protect different societal interests, in the circumstances of this case I do not think they are so unrelated as to require the imposition of consecutive sentences.
- [116] Given the context of where the firearm was located and the loaded extended magazine was found, I am satisfied that the very purpose for which the firearm was possessed was to provide Mr. Dupray with some measure of defence or security in relation to his drug trafficking enterprise. While a consecutive sentence for the firearms offence would not be out of the ordinary, the principle of proportionality can still be addressed in this case with a concurrent sentence.
- [117] Like the trial judge in Borecky, I conclude that the Glock 9 mm handgun found in Mr. Dupray's residence formed part of his operating equipment and defensive gear for his drug enterprise. In my view, the gravamen of both offences was the unlawful possession of prescribed items one being to provide a measure of defence to the operation of the overall illicit enterprise and so they are inextricably connected.
- [118] I acknowledge that the offences are serious, and Mr. Dupray's moral culpability is fairly elevated, but Mr. Dupray does not have the added extremely aggravating facts like those in Lee where the offender had a criminal record for similar offences, was prohibited from possessing firearms pursuant to three different court orders, and was on probation at the time of the index offence. Instead, Mr. Dupray is a youthful first offender for the purposes of this sentencing. I have elected to treat the possession of the restricted firearm as an aggravating circumstance to the PPT offence. In my view, imposing a consecutive sentence for it would amount to double counting for the firearms offence. Accordingly, I am satisfied that the imposition of concurrent sentences in this case is not an inappropriate approach in the circumstances.
- [119] In my view, a sentence of two years less a day imprisonment on count #1 followed by three years probation and a concurrent sentence of one year imprisonment on the lesser included offence of unauthorized possession of restricted weapon for count #2 adequately addresses all the principles and objectives of sentencing in this case.
- [120] The final issue to determine is whether the sentence should be a sentence of incarceration, colloquially referred to as real jail, or a sentence of imprisonment served by means of a CSO in the community.

The availability of a CSO followed by probation

- [121] In light of the defence position that a CSO should be imposed in this case and my conclusion that a sentence of two years less a day imprisonment followed by a period of probation would, in the circumstances of this case, adequately address all the principles and objectives of sentencing and falls within the range for this offence, it is necessary to review the principles that govern the imposition of a CSO. They are found in s. 742.1 of the

Code as well as the jurisprudence interpreting this provision. A CSO is available if the court imposes a sentence of less than two years imprisonment and if the conditions set out in s. 742.1 are met. That section of the Code directs:

742.1 If a person is convicted of an offence and the court imposes a sentence of imprisonment of less than two years, 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 conditions imposed under section 742.3, if

- (a) the court 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;

[122] The first statutory precondition has been satisfied, as I have determined that a sentence of less than two years imprisonment can be imposed in the circumstances of this case. As I have determined the first precondition has been met, I will go on to consider the two other statutory pre-requisites: would a CSO endanger the safety of the community and would a CSO be consistent with the fundamental purpose and principles of sentencing.

[123] Insofar as endangering the safety of the community is concerned, I have no difficulty concluding that Mr. Dupray's serving a sentence of imprisonment by means of a CSO in the community would not endanger the safety of the community. Mr. Dupray is a youthful first offender. Since being charged, he has been on release in the community for four and ½ years with no issues, and has not run into any other trouble since his arrest in February 2021. He has a stable supportive relationship and he is employed full-time.

[124] The more challenging question, as it is in most cases where a CSO is under consideration, is whether a conditional sentence in this case would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2 of the Criminal Code.

[125] There can be no doubt that a CSO is a jail sentence, but it is served in the community. And, a CSO can advance the goals of deterrence and denunciation. In fact, when combined with terms of probation, it may impose a greater burden on an offender than a custodial sentence: *R. v. Proulx*, 2000 SCC 5 at paras. 40-41, 67; *R. v. Kelly*, 2022 ONSC 5500 at para. 42. Indeed, the decision in *Proulx* distinguished a CSO from probationary measures, and observed that Parliament intended conditional sentences to include both punitive and rehabilitative aspects. The court suggested that for this reason a CSO should generally include punitive conditions that are restrictive of the offender's liberty. The court also found that a CSO fashioned in this way can provide significant denunciation and deterrence, while at the same time achieving the restorative objective of rehabilitation.

[126] I also note that imposing a CSO would also be consistent with the principle of restraint outlined in the Code. In *Kelly*, Justice Woolcombe made this observation about the principle of restraint in the context of a CSO for a woman convicted of attempted importing and possession for the purpose of trafficking one kilo of cocaine:

- [52] In *Morris*, para. 125, the Court of Appeal reminded sentencing courts that the principle of restraint is operative not only in determining whether a sentence of imprisonment is required, but also when consideration is given to whether the sentence imposed should be conditional. This principle means that a conditional sentence is to be preferred over a sentence of incarceration if it is consistent with the proportionality principle.
- [127] Over a quarter of a century ago, the Supreme Court of Canada addressed the restraint principle in the context of assessing the merits of actual incarceration compared to a sentence of imprisonment served in the community by means of a CSO in its quintet of decisions that included *Proulx*.
- [128] In *R.N.S.* at para. 21, Chief Justice Lamer held that in circumstances where either a sentence of incarceration or a conditional sentence would be appropriate, a conditional sentence should generally be imposed. The Chief Justice noted that this conclusion flows from the direction in s. 718.2(e) of the Code.
- [129] In the case at bar, the defence has proposed a CSO that takes into account not only Mr. Dupray's circumstances, but which also includes conditions that address the objectives of deterrence, denunciation, as well as rehabilitation, including through the ongoing supervision of Mr. Dupray for a period of four years, bringing his overall supervision in the community to eight and a half years once his period of time on release in the community pre-trial is considered.
- [130] The Crown's position was that a sentence much in excess of two years was necessary to address the proportionality principle and the parity principle. Although the Crown acknowledged that in theory a CSO might be possible if the sentence was less than two years imprisonment, it would be fair to say that the Crown's position was that a CSO does not adequately address the proportionality principle in this case and that it would be inconsistent with the other principles and objectives of sentencing contained in ss. 718 through 718.2 of the Code.
- [131] While a CSO may appear more lenient than a sentence of incarceration, a CSO can still satisfy the objectives of deterrence and denunciation, particularly where the terms and conditions imposed are onerous and the duration of the sentence is longer than a jail sentence would ordinarily have been: *Proulx* at para. 102; *Kelly* at para. 54.
- [132] To that end, the ability to couple a CSO with a period of probation of up to three years length provides the Court with significant latitude to impose a long sentence with onerous conditions designed to have a denunciatory and deterrent effect. Sentences with a community-based component that focus on rehabilitation can still also address deterrence and denunciation. The Court of Appeal accepted and endorsed this proposition in *R. v. Schneider*, 2019 BCCA 310 at paras. 24, 29, and 34.

- [133] While the primary purpose of a probation order is to facilitate rehabilitation, the jurisprudence recognizes that probation orders, through the terms imposed and the length of the supervision, can also have a denunciatory and deterrent effect, particularly because the supervision requirement and some of the conditions imposed (curfews, travel restrictions, etc.) significantly curtail an offender's liberty interest: *Ellis* at paras. 176-177.
- [134] And, in *Schneider*, the Court of Appeal noted at para. 24 that one of the ways a probation order can have a deterrent and denunciatory effect is that it may provide a longer period of supervision than an appropriate term of incarceration.
- [135] The potential effect of the sentence proposed by the defence in this case will, if imposed, mean that by the time Mr. Dupray finishes his sentence he will have been under supervision in the community for in excess of eight years when his time on bail in the community is factored into the equation. This is a substantial period of time for curtailment of liberty interests for this offence.
- [136] These are serious offences and the sentence I intend to impose ought not to be construed as diminishing the importance of deterrence and denunciation. However, despite the gravity of the offences and Mr. Dupray's moral blameworthiness, Mr. Dupray's positive performance in the community since his arrest, the fact that he is ostensibly a youthful first offender, that he appears to have turned his life around, demonstrating his potential for rehabilitation, also factor heavily in the calculus. To incarcerate Mr. Dupray in a correctional facility would risk derailing the progress he has made. Indeed, it is my view that in the circumstances it would be counterproductive.
- [137] Having considered the aggravating and mitigating factors in this case and balancing the relevant principles and objectives of sentencing, I am satisfied that punitive conditions attached to a CSO followed by the maximum period of probation will provide a sufficient level of denunciation and deterrence with respect to this offence and this offender. Thus I am satisfied that the imposition of a CSO in the circumstances of this case would be consistent with the purposes and principles of sentencing enumerated in ss. 718 through 718.2 of the Code and s. 10 of the CDSA.

Disposition

- [138] Mr. Dupray, would you stand up, please.
- [139] The offences you committed and your decision to engage in the drug trade selling cocaine from your home and storing it in an adjacent unit is a very serious offence that has elements of sophistication. The decision to have a 9 mm Glock handgun in your home elevates the overall seriousness of the offence even further. You not only compromised your own safety, more importantly your enterprise and the fact that you had a firearm compromised the safety of your wife and contributed to undermining the health and safety of your community. Cocaine may not be fentanyl but it still is a deadly serious, lethal drug. The sale of it continues to wreak havoc across your community, this province and our

country--not only in lives wasted and lost but indirectly too through the commission of offences to support drug habits to pay for the poison that you peddled so blithely from your home.

[140] Having considered the circumstances of this offence, the gravity of it, your role in it, your personal circumstances, the applicable principles of sentencing, the authorities provided, and the careful and comprehensive submissions of counsel, I have concluded as follows:

[141] On count #1, for the offence of possession of cocaine for the purpose of trafficking contrary to s. 5(2) of the CDSA, I sentence you to two years less a day imprisonment to be served in the community by means of a CSO followed by a probation order of three years duration.

[142] For the lesser included offence in count #2 being possession of a restricted firearm without a valid authorization, I sentence you to one year imprisonment to be served concurrent to the sentence on count #1, it too is to be served in the community by means of a CSO.

[143] You may have a seat, Mr. Dupray, while I go through the terms of the CSO and the probation order.

[144] Before doing so, however, I will simply note that the sentence I am imposing is, overall, five years less a day in length--two years less a day imprisonment to be served in the community by means of a CSO followed by three years probation. It is designed to keep Mr. Dupray under surveillance and supervision in the community for a good long time, continuing to assist Mr. Dupray in his rehabilitation and path to a pro-social lifestyle. But the conditions that I am including in the CSO are also onerous in order to honour and achieve the sentencing objectives of denunciation and deterrence. To be frank, the CSO is not going to be an easy ride, Mr. Dupray.

Terms of the CSO

[145] The duration of the CSO is the maximum time permitted, two years less a day. The terms of the CSO will be as follows:

Compulsory conditions:

- i. You must keep the peace and be of good behaviour.
- ii. You must appear before the court when required to do so by the court.
- iii. You must notify the court or your conditional sentence supervisor in advance of any change of name or address and promptly notify the court or supervisor of any change in employment or occupation.
- iv. You must remain in British Columbia unless you have prior written permission from the court or your conditional sentence supervisor to leave the province.

Additional conditions:

- v. You must report in person to a conditional sentence supervisor at Prince George Community Corrections, 201-250 Prince George St., Prince George, BC, no later than 3:00 p.m. PDST Friday August 15, 2025, and after that, you must report as directed by your supervisor. If the office is closed or you are unable to reach a conditional sentence supervisor, you must continue calling during regular business hours until you have spoken to a conditional sentence supervisor and received a further direction to report.
- vi. When first reporting to your conditional sentence supervisor, you must provide them your phone number. You must not change your phone number without prior written permission from your supervisor.
- vii. You must live at 133 Moffat St. South, Prince George, BC ("Your Residence"), and you must not change your address without prior written permission from your supervisor.
- viii. For the duration of this order, you must remain inside your residence at 133 Moffat St., or on its lot, 24 hours a day, every day, except as otherwise provided for in this order.
- ix. You must present yourself immediately at the door to your residence or answer the phone when any peace officer or conditional sentence supervisor attends or calls to check on you during the house arrest.
- x. For the first 12 months of this order, the house arrest condition is to be electronically supervised.
- xi. You must report by August 15, 2025, to Prince George Community Corrections, 201-250 George St., Prince George, BC, where the electronic supervision equipment will be installed. You must comply with the electronic supervision agreement, including the wearing of and care for the electronic supervision equipment.
- xii. You may be away from your residence during the house arrest with the written permission of your conditional sentence supervisor. Such permission is to be given only for employment, counselling / medical appointments, narcotics anonymous and / or alcoholics anonymous meetings and for other necessary and compelling reasons.
- xiii. You may also be away from your residence during the house arrest hours:
 - a. While at, or going directly to, or returning directly from a healthcare facility because of a medical emergency in respect of yourself or your wife. If asked, you must provide your conditional sentence supervisor with proof of your attendance at the facility.
 - b. One four-hour block per week to be scheduled between the hours of 10:00 a.m. and 4:00 p.m. on a day of the week approved by your conditional sentence supervisor to attend to grocery shopping, the pharmacy, the bank, or other essential personal business that requires in-person attendance.

xiv. If you are given permission by your conditional sentence supervisor to be away from your residence, you must carry the permission with you in paper or electronic format at all times when you are away from your residence. If a peace officer finds you away from your residence during the duration of this order and requests to see the permission, you must show it to the officer.

xv. You must not possess or consume alcohol, controlled substances as defined in the Controlled Drugs and Substances Act or any other intoxicating substances, except with a medical prescription.

xvi. You must attend, participate in, and complete any intake, assessment, counselling or education program directed by your conditional sentence supervisor. This may include, but is not limited to, programming or treatment for substance use and alcohol use and / or mental health.

xvii. You must not possess, directly or indirectly, any weapon as defined by the Criminal Code, including:

- a. firearms and ammunition;
- b. cross-bows, prohibited or restricted weapons or devices, or explosive substances;
- c. anything used, designed to be used, or intended for use in causing death or injury to any person, or to threaten or intimidate any person;
- d. any imitation of all of the above, including any compressed air guns or BB/pellet guns; or
- e. any related authorizations, licenses and registration certificates, and you must not apply for any of these.

xviii. If you possess any of the items prohibited by this order, you must immediately go to the Prince George RCMP Detachment at 455 Victoria St., Prince George, BC, V2L 0B7, provide a peace officer with a copy of this order and arrange to go with the officer to the location(s) where all the items are and surrender them to the officer.

Terms of the Probation order

[146] Once you have completed your conditional sentence order, you must comply with the probation order. It too will be for the maximum duration authorized: 36 months. The conditions are as follows:

Compulsory conditions:

- i. You must keep the peace and be of good behaviour
- ii. You must appear before the court when required to do so by the court
- iii. You must notify the court or probation officer in advance of any change of name or address and promptly notify the court or probation officer of any change in employment or occupation.

Optional conditions:

- iv. You must report in person to a probation officer at Prince George Community Corrections, 201-250 Prince George St., Prince George, BC, within two business days after your completion of your conditional sentence unless you have obtained, before your completion of your conditional sentence, written permission from the probation officer to report elsewhere or within a different time frame. After that, you must report as directed by your probation officer.
- v. When first reporting to your probation officer, you must provide them with the address where you live and your phone number. You must not change your address or phone number without notifying your probation officer in writing (at least 14 days) in advance of any change.
- vi. You must not leave British Columbia unless you have the prior written permission of your probation officer. You must carry the written permission, which can be in electronic format, with you at all times if you are outside the province.
- vii. For the first 12 months of the probation order, you must obey a curfew by being inside your residence located at 133 Moffat St. South, Prince George, BC, or on its lot, between 9:00 p.m. and 7:00 a.m. every day.
- viii. You must present yourself immediately at the door to your residence or answer the phone when any peace officer or probation officer attends or calls to check on you during the curfew.
- ix. You may be away from your residence during the curfew with the prior written permission of your probation officer. Such permission is to be given only for employment or other compelling reasons. You must carry the permission with you when you are outside your residence. If a peace officer finds you away from your Residence during the curfew hours and requests to see permission, you must show it to the officer.
- x. You may also be away from your residence during the curfew hours:
 - a. While at, or going directly to, or returning directly from a healthcare facility because of a medical emergency. If asked, you must provide your probation officer with proof of your attendance at the facility.
 - b. In the immediate presence of your wife, Shari Thomas, but only with the prior written permission of your probation officer. You must carry the permission with you when you are outside your residence. If a peace officer finds you away from your Residence during the curfew hours and requests to see permission, you must show it to the officer.
- xi. You must provide your probation officer with details of your employment status. You must inform your probation officer within two business days of any change in your employment status.
- xii. You must not possess or consume alcohol, controlled substances as defined in the Controlled Drugs and Substances Act or any other intoxicating substances, except with a medical prescription.

- xiii. You must attend, participate in, and complete any intake, assessment, counselling or education program directed by your probation officer. This may include, but is not limited to, programming or treatment for substance use and alcohol use and / or mental health.
- xiv. You must complete 120 hours of community work under the direction of your probation officer. Your community work service must be completed within the first 18 months of the probation order.
- xv. You must not possess, directly or indirectly, any weapon as defined by the Criminal Code, including:
- a. firearms and ammunition;
 - b. cross-bows, prohibited or restricted weapons or devices, or explosive substances
 - c. anything used, designed to be used, or intended for use in causing death or injury to any person, or to threaten or intimidate any person;
 - d. any imitation of all of the above, including any compressed air guns or BB/pellet guns; or
 - e. any related authorizations, licenses and registration certificates, and you must not apply for any of these.

Ancillary orders

[147] The Crown seeks three ancillary orders in this case: a forfeiture order pursuant to s. 16(1) of the CDSA, a firearms prohibition order pursuant to s. 109 of the Code, and a DNA order pursuant to s. 487.051(3)(b) of the Code. These orders were not opposed by the defence.

[148] Pursuant to s. 16 of the CDSA, I am satisfied on a balance of probabilities that the cash and handgun seized in this case are non-chemical offence-related property in relation to the designated substance offence of which you have been convicted and I order that they be forfeited to His Majesty in Right of Canada to be disposed of or otherwise dealt with by the designated member of the Queen's Privy Council for Canada.

[149] As this is a first conviction where a firearms order is to be imposed, pursuant to section 109(2) of the Code, you are prohibited from possessing:

any firearm, other than a prohibited firearm or restricted firearm, and any crossbow, restricted weapon, ammunition and explosive substance for a period of 10 years; and

any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.

- [150] Insofar as the DNA order is concerned: possession for the purpose of trafficking is a secondary designated offence and so the order is discretionary pursuant to s. 457.051(3)(b) of the Code. The defence acknowledge that this order was appropriate in light of the weapons offence conviction. Where a discretionary DNA order is sought for a secondary designated offence, the Court is obliged to consider a number of factors and give reasons for its decision.
- [151] In *R. v. Awasis*, 2009 BCCA 134, the Court of Appeal examined the issue in detail. Two principles emerged from that discussion. First is that the actual purposes of taking the sample are multifaceted: *Awasis* at paras. 40, 52. The second is that an offender post-conviction has a lesser expectation of privacy: *Awasis* at paras. 42-43.
- [152] With that authority in mind and in view of the circumstances of this case, including Mr. Dupray's lack of position on the order, and after considering the factors set out in s. 487.051(3) of the Code, I am satisfied that it is in the best interests of the administration of justice to make an order in Form 5.04 authorizing the taking of samples of bodily substances from you for the purpose of registration in the DNA national databank. The DNA order attaches to count #1 on the indictment.
- [153] You must attend at the Prince George RCMP detachment at 455 Victoria St., Prince George, BC, V2L 0B7 no later than September 30, 2025 and submit to the taking of the samples. This order is valid until executed.
- [154] The Crown asks that the victim surcharge under s. 737 be waived and so there will be no victim surcharge under s. 737 of the Code imposed in this case.
- [155] The Court is indebted to counsel for their helpful and thoughtful submissions in this case.
- "Ker J."

Appendix 'A'

Source: BC Coroners Service Report April 2025 Drug Toxicity Deaths

- [1] Challenges to the validity of the search warrants issued in the investigations were dismissed but the Crown conceded that Mr. Dupray's s. 10(b) Charter rights were breached when he was arrested. Written reasons for Judgment indexed at 2025 BCSC 300 address the s. 24(2) of the Charter admissibility issue for the evidence obtained in breach of Mr. Dupray's right to counsel.
- [2] In some respects, a reverse dial-a-dope where the customer attended upon the dealer rather than the other way around.
- [3] The PSR referenced two findings that are now 12 years old. They are unrelated matters to the offences before the Court. Mr. Dupray was a youth at the time. Those matters would and should have been sealed pursuant to ss. 119(2), 128-129 of the Youth Criminal Justice Act. Therefore, they ought not to have been included in the PSR. A third matter, again unrelated,

from 2019 resulted in the entry of a conditional discharge which would have become absolute once the probation order was completed. This matter should also not have been included in the PSR. The Crown fairly conceded that Mr. Dupray be treated effectively as a first offender and that is how I have proceeded. I have not considered these prior findings and have elected to treat Mr. Dupray as a first offender for the purposes of this sentencing.

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