

CANADA / JUDGMENT

R. v. Grouhel

2021 BCSC 2527

COURT

Supreme Court of British Columbia

DECIDED

12 November 2021

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2021 BCSC 2527 R. v. Grouhel

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Grouhel,

2021 BCSC 2527

Date: 20211112

Docket: 39782-2

Registry: Duncan

Regina

v.

Darrin Robert Grouhel

Pandora Melanch Anastacia Hunter

Before: The Honourable Mr. Justice Steeves

Oral Reasons for Sentence

(Re Darrin Robert Grouhel)

Counsel for the Crown:

J. Rutherford

Counsel for the Accused:

J. Mills

Place and Date of Trial/Hearing:

Duncan, B.C.

November 12, 2021

Place and Date of Judgment:

Duncan, B.C.

November 12, 2021

[1] THE COURT: On May 21, 2021, I convicted the accused, Darrin Grouhel, of the following, and I set out Counts 1, 2, and 4 from the information:

Count 1/Chef 1

Darrin Robert GROUHEL and/et Pandora Melanch Anastacia HUNTER, on or about the 29th day of November, 2017, at or near the City of Cowichan Bay, in the Province of British Columbia, did unlawfully possess a controlled substance, to wit: Diacetylmorphine (heroin) and Fentanyl, for the purpose of trafficking, contrary to Section 5(2) of the Controlled Drugs and Substances Act.

Count 2/Chef 2

Darrin Robert GROUHEL and/et Pandora Melanch Anastacia HUNTER, on or about the 29th day of November, 2017, at or near the City of Cowichan Bay, in the Province of British Columbia, did unlawfully possess a controlled substance, to wit: Methamphetamine, for the purpose of trafficking, contrary to Section 5(2) of the Controlled Drugs and Substances Act.

Count 4/Chef 4

Darrin Robert GROUHEL and/et Pandora Melanch Anastacia HUNTER, on or about the 29th day of November, 2017, at or near the City of Cowichan Bay, in the Province of British Columbia, did unlawfully possess a controlled substance, to wit: N-methyl-3,4-methylenedioxyamphetamine (MDMA also known as Ecstasy), for the purpose of trafficking, contrary to Section 5(2) of the Controlled Drugs and Substances Act.

[2] This my decision on sentencing. The circumstances of the offence are that in late 2017, the police conducted surveillance of a house where Mr. Grouhel resided in Duncan. Also living there was a young woman called Panda who has a serious drug dependency and for a time had a romantic relationship with Mr. Grouhel. The surveillance indicated that people were arriving at the house at unpredictable times and there was activity back and forth at a mailbox in front of the house. A search warrant was executed by the police on November 29, 2017. In a previous decision, I denied Mr. Grouhel's challenge to the ATO supporting the warrant. The items seized under the search warrant included 19.8 grams of fentanyl or a fentanyl/heroin mix valued at \$3,165 to \$5,275, the potency was 2.6 percent to 5.6 percent; next, 9.2 grams of methamphetamine valued at \$262 to \$460; six grams of MDMA, ecstasy, valued at \$150 to \$330; cash of \$8,205 found in the residence; and \$890 found on the person

of Mr. Grouhel. Weapons were also seized including a .22 calibre modified F.A.I.R. gun and a crossbow. There were a number of text messages on a cellphone.

- [3] The Crown says all of this material and things like trafficking items from the house meant that Mr. Grouhel was supplying customers with thousands of dollars worth of drugs. Of course, that cannot be known. I did find earlier that the house was an active and popular place for drug transactions and as a centre for a dial-a-dope operation. Mr. Grouhel says he was purchasing drugs, but for his efforts to wean Panda off her drug dependency. In my decision of May 21, 2021, I concluded that there was an element of this in the defendant's activities, but I also disagreed that Mr. Grouhel had no knowledge of what has to be described as drug trafficking in his house. For example, he had electronic surveillance of the outside mailbox where drugs and money were dropped off and retrieved.
- [4] Mr. Grouhel is 47 years old and has spent his life in the Duncan area. He has a heart condition for which he takes medication. A letter from his family doctor was provided dated October 22, 2021. It describes complications from this medication including an allergic reaction. Stress and changes to his lifestyle were not recommended. There was also a letter from Mr. Grouhel's 76-year-old mother. She is a widow on very limited means and with limited mobility. Since his arrest, Mr. Grouhel has lived with his mother and he assists her in most daily activities. She is concerned that, if he goes to jail, she may not be able to live on her own. She would like her son to continue living with her. There is a letter from Panda explaining the changes she has gone through and the accomplishments she has made being drug-free.
- [5] Mr. Grouhel has a criminal record. The convictions are quite dated. The last one was in 2011. In 2019, after the offence dates here, he was convicted for wearing hand jewellery that apparently meets the definition of "brass knuckles." He paid a fine of \$200. Of significance in the record is that there is no convictions of any previous drug offences, trafficking or possession.
- [6] In his address to the court, Mr. Grouhel stated he was apologizing to the community. He did what he did for someone he cares about, Panda. He continues to have a relationship with her and she continues to recover and continue her education. He says he has lost everything and he fears for his mother.
- [7] The Crown's position is that the danger of trafficking in fentanyl must be emphasized and a sentence of three to five years is sought plus some ancillary orders. Mr. Grouhel says he accepts that what he did was wrong. He was doing it to help someone he loves and he needs to look after his mother. He accepts some incarceration is justified and he says the range should be 18 to 24 months. A conditional sentencing order is also sought, perhaps two years with strict conditions, then three years' probation.
- [8] The leading legal principles in a case of drug trafficking are well-established. They are deterrence and denunciation; that is *R. v. Smith*, 2017 BCCA 112, at para. 45. In some cases, rehabilitation is also a consideration. Section 718.1 of the Criminal Code states that a

sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Other principles and aggravating circumstances are set out in s. 718.2. In Smith, the Court of Appeal set out the so-called range of sentence for possession for the purpose of trafficking in fentanyl as 18 to 36 months. Individual circumstances can result in a sentence of a lesser or greater amount. This is because ranges are guidelines and not straightjackets; that is paras. 35 and 48.

- [9] In this case, the aggravating factors are that, first of all, Mr. Grouhel did not plead guilty. Indeed, he filed a number of applications and this matter has taken considerable time to reach this stage. The amount of fentanyl was not insignificant and there were the other drugs, as well. As I see it, the operation run by Mr. Grouhel was a low to mid -- a low level of the midlevel of an operation. There were systems in place including surveillance of, for examples, the mailboxes. Mr. Grouhel says that he was dealing in drugs to help his girlfriend, but he was doing it without any medical knowledge. It is hard to find a wholly compassionate explanation for the situation here. As well, Mr. Grouhel was not driven by any addiction on his part. He was driven by profit and, for the reasons given in Smith, the moral culpability of trafficking for profit in fentanyl is high.
- [10] Mitigating circumstances include a dated and minimal criminal record, in particular without any previous convictions for drugs. There was the -- he has been offence-free during his time at large, except for the conviction of the hand jewellery. He has health issues and he has a mother to look after.
- [11] There is no escaping the very serious consequences of fentanyl and trafficking in it. In Smith, the Court of Appeal described it as a "scourge" and it has been the primary cause of four to five deaths per day in British Columbia as a result of overdoses. It poses intolerable risks of accidental overdosing and this must surely inform the degree of moral culpability of offenders who sell fentanyl on the street. Mr. Grouhel was selling fentanyl as well as MDMA and methamphetamine. The amounts were not insignificant. From the evidence, including text messages, he was selling to others who were also dealing. He was therefore something more than a street dealer. He had systems in place such as surveillance to protect his drugs, money, and presumably himself, and he had weapons on site, although nothing extreme.
- [12] Mr. Grouhel's health problems are noted, but it is relatively rare for the health of an offender to be taken into account in sentencing. That is R. v. Lucas, B.C. Provincial Court, Campbell River, May 27, 2020, File 36380-3-C, para. 45. On the other hand, justice can be tempered in some cases by mercy or certain serious conditions. The situation with Mr. Grouhel's mother is similarly of concern. I have to weigh these matters and his health and the very serious nature of the charges against him. I do not put great weight on the efforts taken by Mr. Grouhel and Panda to get her off drugs. To their credit, that appears to be working. I have already ruled that the drug business going on in Mr. Grouhel's house was a business. There was some intention to help Panda, but the evidence of the trafficking is more compelling and Mr. Grouhel was not motivated by his own addiction to drugs.

- [13] Turning to what is a fit sentence here, again, the Crown seeks three to five years in jail and Mr. Grouhel says an appropriate sentence would be 18 to 24 months. He also says a conditional sentencing order is appropriate. It is agreed that a CSO is not available if the underlying sentence is two years or more.
- [14] According to the Crown, a case with some similarities here is *R. v. Salvati*, 2021 ONSC 1284. The accused was given a five-year sentence for trafficking in nine grams of fentanyl, 85 grams of cocaine, and other drugs. Rehabilitation potential was limited, para. 24, and the accused had an extensive record unlike Mr. Grouhel in this case.
- [15] Mr. Grouhel relies on *R. v. Campbell*, 2021 BCSC 853. The drugs in that case included 627 grams of fentanyl and large amounts of cocaine and methamphetamine. The exceptional circumstances included no record. Twenty six- years old -- the accused was 26 years old. There was a longstanding drug addiction. Considerable efforts had been made to stay clean. The accused had made a guilty plea and had had significant steps towards rehabilitation. The sentence was two years' imprisonment plus three years' probation. Another decision relied on by Mr. Grouhel is *R. v. Schneider*, 2019 BCCA 310. There, the facts involved the sale by the accused of \$20 of heroin to an undercover police officer. At trial, a significant incarceration sentence was imposed and, on appeal, a suspended sentence was substituted. It was noted that sentencing ranges are not rigid and a lengthy jail sentence is also not predetermined, para. 23. In light of the small amount of drugs involved in *Schneider*, I find the case of limited assistance.
- [16] Turning once more to the circumstances of Mr. Grouhel, I do not agree he was a low-level street dealer. He was operating a drug trafficking business out of his house. The fact of the 18.9 grams of fentanyl alone requires a very serious denunciation and very serious deterrent. Two years was the sentence in *Campbell* and with significant amounts of drugs. The court was obviously very impressed by the accused's rehabilitation efforts and he had pled guilty which Mr. Grouhel has not. Further, Mr. Campbell's illegal activity was driven by his addiction. These are not factors here and I conclude that a sentence of two years or less is not a fit sentence. This means that I am unable to assist Mr. Grouhel's mother or accommodate his health issues by consideration of a CSO.
- [17] Overall, I conclude that a sentence of 30 months is an appropriate sentence here. It reflects the seriousness of trafficking in fentanyl and the level of Mr. Grouhel's operation. It also recognizes his minimal criminal record. In that regard, in *Salvati*, an extensive record was part of the reasoning for a five-year sentence. The 30 months includes 20 months for Count 1, the fentanyl; five months each for Counts 2 and 4, methamphetamine and MDMA. Mr. Grouhel has served 89 days in pretrial custody. Using a 1.5 multiplier, that is 4.5 months or 135 days. It is assigned as 80 days to Count 1, 35 days to Count 2, and 20 days to Count 3.
- [18] The Crown also seeks ancillary orders and they are generally not disputed by Mr. Grouhel. A discretionary DNA order will go forward under s. 487.04(b) of the Criminal Code as will a firearms order under s. 109.

- [19] A forfeiture order will also be granted and I believe the Crown is going to provide that either today or at another time.
- [20] CNSL J. MILLS: Thank you, My Lord, and may I inquire with respect to the credit for time served. I did not catch whether Your Lordship had already factored that into the sentences or whether, for instance, the 20 months on Count 1 was to be reduced by the days?
- [21] THE COURT: It is 30 months less the time served.
- [22] CNSL J. MILLS: Thank you, My Lord.
- [23] THE COURT: Ms. Rutherford?
- [24] CNSL J. RUTHERFORD: My Lord, it is possible as I was making notes I just did not hear Your Lordship, did you address the victim fine surcharge?
- [25] THE COURT: Sorry?
- [26] CNSL J. RUTHERFORD: The victim fine surcharge, My Lord, I wonder did --
- [27] THE COURT: Ah.
- [28] CNSL J. RUTHERFORD: -- you address it?
- [29] THE COURT: The victim surcharge is -- I do not know what the word is.
- [30] CNSL J. RUTHERFORD: Waived would be --
- [31] THE COURT: Waived. Thank you.

"J. J. Steeves, J."

The Honourable Mr. Justice Steeves

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