

CANADA / JUDGMENT

R. v. Herbert

2022 BCSC 967

COURT

Supreme Court of British Columbia

DECIDED

18 May 2022

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2022 BCSC 967 R. v. Herbert IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Herbert, 2022 BCSC 967 Date: 20220518 Docket: X083528 Registry: New Westminster Regina v. Milad Faud Herbert Restriction on Publication: A publication ban has been mandatorily imposed under s. 486.5(1) of the Criminal Code of Canada restricting the publication, broadcasting or transmission in any way of evidence that could identify a complainant or witness, referred to in this judgment. This publication ban applies indefinitely unless otherwise ordered. Before: The Honourable Mr. Justice Ball Oral Reasons for Sentence Counsel for the Crown: T.J. Lattimer Counsel for the Accused: M.S. Lowe Place and Date of Hearing: New Westminster, B.C. May 18, 2022 Place and Date of Judgment: New Westminster, B.C. May 18, 2022

- [1] THE COURT: Before the Court today is Milad Faud Herbert, who was convicted on one count of trafficking in fentanyl. Fentanyl has been described as a scourge on our civilization. One of the aggravating factors in this case was that apparently Mr. Herbert did not know what he was selling. This is because he was represented the substance he was selling as methamphetamine. If someone had used it as methamphetamine, they would likely be dead today, given that the ingestion of a very small amount of fentanyl can be fatal.
- [2] Counsel have presented the Court with a joint submission on sentence. The sentence proposed in this case is two years plus one day. That is clearly a sentence, dealing with fentanyl trafficking, that is within the range set out in R. v. Smith, 2017 BCCA 112. I have heard complete submissions from both Crown counsel and defence counsel supporting the joint submission. I am content, in these circumstances in this case, that a great deal of thought and discussion has obviously taken place by counsel. In this case, I am also satisfied that the two years plus one day is a fit and appropriate sentence.
- [3] There are ancillary orders that are required. In the first place, there is a mandatory 10-year firearms weapons ban imposed pursuant to s. 109(2) of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. In these circumstances, a DNA order is available and I am going to make that order, as well. Once Mr. Herbert is in custody, he will provide a sample of his DNA as required, pursuant to s. 487.051 of the Code as, in my view, the tests set out in R v. Lawson, 2019 BCCA 290, [2019] BCJ No. 1652, and R. v. Awasis, 2009 BCCA 134, [2009] BCJ No. 583, have been met.

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- [4] The joint submission here meets the principles of denunciation and deterrence. Given the nature of the transaction and there is, in the federal system, a heightened level of rehabilitative services; available to persons sentenced. Those services are appropriate in this case. Mr. Herbert has indicated an interest in those programs. He has taken some programming, a drug-and-alcohol module while he was in the provincial system, and has seen a psychiatrist. Hopefully with those beginnings, the rehabilitative process during the upcoming sentence will be a positive one.
- [5] Mr. Herbert does not need to be here again. There are all kinds of positive things he can do with his life and I hope he will do them.
- [6] So the joint submission is granted with the two ancillary orders which I have made, the mandatory weapons ban and the DNA order, which is not mandatory but is appropriate here. In these circumstances, the victim fine surcharge would certainly constitute a hardship. Particularly when Mr. Herbert gets out of jail at some point in the future, his resources are going to be very limited. I therefore waive the victim fine surcharge. "Ball J."
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