

CANADA / JUDGMENT

R. v. Hollaman

2024 BCSC 385

COURT

Supreme Court of British Columbia

DECIDED

23 February 2024

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2024 BCSC 385 R. v. Hollaman

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Hollaman,

2024 BCSC 385

Date: 20240223

Docket: 91727A

Registry: Kelowna

Rex

v.

Kyle Hollaman

Before: The Honourable Mr. Justice Wilson

Oral Reasons for Sentence

Counsel for the Crown:

J.M. Le Dressay

Counsel for the Accused Kyle Hollaman:

E. Holzman

Place and Date of Trial/Hearing:

Kelowna, B.C.

November 7, 2023

& February 23, 2024

Place and Date of Judgment:

Kelowna, B.C.

February 23, 2024

- [1] THE COURT: Mr. Hollaman was found guilty of four counts on the indictment relating to possession of controlled substances: fentanyl, heroin, cocaine, and methamphetamine. He was also found guilty of possessing a prohibited device, namely a taser.
- [2] The facts were that after conducting surveillance of Mr. Hollaman's home, the police obtained and executed a search warrant. In addition to methamphetamine having been found in the master bedroom, the ensuite bathroom contained a sink cabinet which contained 284 fentanyl pills, 8.1 grams of cocaine in a drawer, 2.1 grams of cocaine on a countertop, and a taser. There was also a safe in the sink cabinet which included 7.5 grams of fentanyl and heroin, 15.6 grams of cocaine, 13.1 grams of crack cocaine, 27.8 grams of methamphetamine, and \$8,000 in cash.
- [3] At the trial proper, the focus was on whether or not the drugs and the weapon were in Mr. Hollaman's possession. I found that the Crown had proven beyond a reasonable doubt Mr. Hollaman possessed the items, as the term "possession" is defined in the Criminal Code.
- [4] The most significant aspect of the circumstances of these offences is Mr. Holloman's possession of fentanyl for the purposes of trafficking. The fentanyl crisis is both well known and well documented in British Columbia. In 2023, there were over 2500 unregulated drug deaths in B.C. In November and December alone, there were 439, which averages over seven per day. The number of deaths in 2023 was seven-and-a-half times higher than it was 10 years before.
- [5] In terms of Mr. Hollaman, Mr. Hollaman is now 37 years of age. He was born in Winnipeg. His parents separated when he was only one year old. Although he lived with his mother, he described her as emotionally abusive and tried to turn him against his father.
- [6] Mr. Hollaman's background includes completing Grade 11 in school and completing his GED while serving a federal jail sentence for possession for the purposes of trafficking. That prior conviction, which led to a 30-month sentence, involved different drugs, but nonetheless is a prior offence very similar in nature.
- [7] Mr. Hollaman says that he has been addicted to methamphetamine since 2016. He has been diagnosed with ADHD in the past and also may suffer from depression.

- [8] I have reviewed the presentence report and there are a couple of things to note with regard to that report. Firstly, the number of convictions referred to in the report does not appear to align with the criminal record. There are less offences on the record than are referenced in the report. Secondly, Mr. Hollaman says that he has been addicted to methamphetamine and was at the time of this offence. His usage has since reduced.
- [9] While in Kelowna, Mr. Hollaman was operating his own tiling and flooring business, having served an apprenticeship in the Lower Mainland following his relocation from Manitoba.
- [10] The parties in this matter seek a four-year penitentiary sentence by way of joint submission. The principles of sentencing on matters of this nature are denunciation and deterrence. The most significant aggravating factor in this case, as it relates to Mr. Hollaman, is his prior conviction for possession for the purposes of trafficking.
- [11] As I say, this is a joint submission for a custodial sentence of four years. The quantities involved are not insignificant. The value of the drugs seized, the methamphetamine is in the \$1800 to \$2200 range, the fentanyl between \$5,000 and \$11,000, and the cocaine well over \$2400.
- [12] The significance of the presence of fentanyl has been discussed in sentencing cases both in this Court and others. In the Court of Appeal in *R. v. Smith*, 2017 BCCA 112, the Court of Appeal determined that 18 months was the minimum sentence for a first-time offender. Of course, Mr. Hollaman is not a first-time offender as it relates to possession for the purposes of trafficking narcotics, although his prior conviction did not involve fentanyl.
- [13] The Supreme Court of Canada in *R. v. Parranto*, 2021 SCC 46, held that trafficking of fentanyl and its analogues "has altered the landscape of the substance abuse crisis in Canada, revealing itself as public enemy number one."
- [14] In considering the joint submission, I have reviewed the decisions referred to by the Crown: *R. v. Mann*, 2018 BCCA 265; *R. v. Lee*, 2018 BCCA 428; and *R. v. Gill*, 2022 BCCA 127. No two cases are of course the same, but nonetheless I am satisfied that the range is appropriate.
- [15] In *R. v. Anthony-Cook*, 2016 SCC 43, the Supreme Court of Canada held the test for whether a trial judge should accept a joint submission on sentence is whether the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. This is a stringent test, which means a high threshold must be cleared before a trial judge departs from a joint submission on sentence. In other words, the question I must ask myself is not whether I would have come to the same outcome, but rather whether the sentence is appropriate. I conclude that it is, having regard to the caselaw, and I am satisfied that it falls within the range of reasonable outcomes, and therefore I am prepared to accede to the joint submission.

- [16] Mr. Hollaman, if you could please stand. I sentence you to four years of imprisonment. The sentence will be distributed as follows: there will be concurrent sentences of four years on Counts 3 and 4; concurrent sentences of three years on Counts 5 and 6; and a concurrent sentence of one year on Count 7, which is the taser, all of which sentences are to be served concurrently with one another. You may be seated.
- [17] I take it there is no credit? He has been out ever since he was charged?
- [18] CNSL E. HOLZMAN: No.
- [19] THE COURT: All right. In terms of ancillary orders, the Crown is seeking and it is not opposed that there will be a DNA order under s. 487.04 of the Code -- sorry, and under 487.051(3) of the Code.
- [20] There will also be a lifetime weapons ban under s. 109(3) of the Code.
- [21] Finally, there will be a forfeiture order with regard to the taser, score sheets, scales, and key to the safe in the ensuite bathroom, all pursuant to s. 16(1)(b) of the Controlled Drugs and Substances Act.
- [22] Is there anything else that we need to deal with?
- [23] CNSL J. LE DRESSAY: No, thank you, Justice.
- [24] CNSL E. HOLZMAN: That's it.
- [25] THE COURT: Thank you. All right, then we are concluded.
- "Wilson J."

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