
CANADA / JUDGMENT

R. v. Homan

2017 BCSC 2503

COURT

Supreme Court of British Columbia

DECIDED

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2017 BCSC 2503 R. v. Homan

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Homan,

2017 BCSC 2503

Date: 20171212

Docket: 66286-2

Registry: Chilliwack

Regina

v.

Warren Maurice Homan

Before: The Honourable Mr. Justice N. Brown

Oral Reasons for Sentence

Counsel for the Crown:

C.S. Arnason

Counsel for the Accused:

P.R. Derksen

Place and Date of Trial/Hearing:

Chilliwack, B.C.

December 4, 2017

Place and Date of Judgment:

Chilliwack, B.C.

December 12, 2017

[1] THE COURT: Warren Maurice Homan is before the court today for sentencing. Count 1 is that "on or about the 9th day of August, 2016, at or near the City of Mission, in the Province of British Columbia, [he] 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 [S.C. 1996, c. 19]."

Circumstances of arrest

- [2] Briefly, these are the circumstances of Mr. Homan's arrest, on April 9, 2016. Two officers in plainclothes were conducting patrols. They noticed activities related to a Lincoln Town Car consistent with drug trafficking. They saw two hand-to-hand exchanges. The vehicle was seen attending a local location known for drug trafficking activities. The officers formed the opinion the occupants were engaged in drug trafficking. They pulled the vehicle over and arrested the driver.
- [3] A query of the licence plate registration particulars indicated Warren Homan was the driver. The Crown noted Mr. Homan had been arrested previously in April related to possession for the purposes of trafficking. He was released, however, without conditions. At the time of the offence, August 9, 2016, the charges related to the April 2016 matter were only in preparation.
- [4] Now turning to this offence, a search incidental to arrest found in Mr. Homan's possession \$305 in cash. Also found was a scoresheet. In Mr. Homan's left pocket, the officers found plastic sandwich bags containing 27 wrapped pieces of crack cocaine, a total of 4.5 grams. Also found were 18 individual tied bags of heroin, .25 grams per bag, equalling 2.7 grams in total.
- [5] The drugs were sent away for testing, which revealed the bags contained heroin and heroin laced with fentanyl. There was no information on the amounts of fentanyl present in the heroin.
- [6] A cellphone found in Mr. Homan's possession rang constantly after Mr. Homan's arrest but the officers did not enter into any conversation with any of the callers regarding purchase of drugs.
- [7] This was a dial-a-dope operation.
- [8] Mr. Homan has been in custody for five and one-half months since his arrest.

Crown's position on sentencing

- [9] Relying on *R. v. Smith*, 2017 BCCA 112 [Smith], a March 10, 2017 decision of the Court of Appeal, Crown submitted that because of the presence of fentanyl found in the drugs, a sentence in the range of 18 to 36 months' incarceration is called for, and in this case, he submitted 18 months plus an order for probation is a fit sentence.
- [10] I have to decide whether Mr. Homan should be sentenced to a further period of incarceration, as much as 18 months, as Crown counsel submitted, or whether a sentence of time served and probation is a fit sentence in this case. There was discussion during the sentencing submissions of a suspended sentence but the circumstances, which I will review, are not so exceptional as to warrant a suspended sentence, especially considering the presence of fentanyl found in the drugs seized. Nevertheless, while the circumstances fall short of exceptional for those purposes, the commendable progress Mr. Homan has made in his recovery and rehabilitation and his lack of a criminal record call for consideration of a sentence lower than what Crown has proposed as a fit sentence, although I note it does accord with Smith.

Defence position on sentencing

- [11] Defence counsel submitted a sentence of time served and a probation order was a fit sentence, considering Mr. Homan's lack of a prior conviction for trafficking in drugs, his rehabilitation, and recovery from drug addiction.

CASE LAW

General Principles of Sentencing

- [12] I will turn now to the general principles of sentencing as set out in s. 718 of the Criminal Code.
- [13] The fundamental purpose of a sentence is to contribute, along with crime prevention measures, to respect for the law and the maintenance of a just, peaceful, and safe society. That broad purpose is achieved when a sentence imposed contains just sanctions that reflect the sentencing objectives, as further set out in the section: denunciation, general and specific deterrence, separation of offenders where necessary for the protection of the community, rehabilitation, reparation, promotion of a sense of responsibility in the offender, and an acknowledgement of the harm caused to the victims.
- [14] Section 718.1 requires that the sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender, irrespective of how much weight the judge accords to the objectives I have just stated. The resulting sentence must respect that fundamental proportionality principle.

Mr. Homan's circumstances

- [15] Although Mr. Homan was likely engaged in drug trafficking activities in April 2016 and arrested, he was not charged or convicted for that offence, so he comes before this court now with no criminal record.

Aggravating and mitigating factors

- [16] Section 718.2 of the Criminal Code sets out a non-exhaustive list of aggravating and mitigating circumstances, which are facts that call for greater or lesser sentences, as the case may be.

Aggravating factors

- [17] Aggravating factors in this case include:
- a) Mr. Homan's engagement in a dial-a-dope street trafficking operation, a particularly insidious form of drug trafficking as it makes drugs easily available throughout a community, exposing young and other vulnerable people to potent drugs and the risk of their becoming addicted.
 - b) Evidence Mr. Homan had been engaged in trafficking activities several months before this offence. I note again, however, he was never charged for that offence and has no prior record of conviction for drug trafficking. Therefore, I give that only modest weight.
 - c) The presence of fentanyl in the heroin, although I note he did not have personal knowledge fentanyl was present.

Mitigating factors

- [18] Mitigating factors in this case include:
- a) Mr. Homan's guilty plea.
 - b) The lack of a prior criminal record.
 - c) I hear and see Mr. Homan's statement to the court, his genuine remorse, not just regret he has been found out and convicted, and I find he recognizes the harm his activities have caused the community. He himself recognized the benefit he received from a period of incarceration prior to today, as he believes that was what basically saved his life and retrieved him from of a life of addiction, or at least contributed to it.
 - d) His addiction to the substances and selling them to sustain his habit, not out of greed.
 - e) The source of his addiction, first from opiates prescribed by a physician to him to control pain he experienced from back injuries, and his then turning to street drugs to control pain when he could not renew his prescription. Second, from depression he suffered instigated by his lay-off from employment he had held for a long time and in which he expected to continue for the rest of his career as a welder, and his resulting inability to support his

family as he could before. This, in combination with the pain he experienced, contributed to the development of a deep depression. In other words, he became addicted as a result of circumstances over which he did not have control at the time, not out of experimentation or out of greed to make a lot of money.

- f) His consistently hard work since his release from remand and while incarcerated and recovering from drug addiction, his seeking counselling, and his resulting rehabilitation.
- g) The help he has given to others suffering from addiction since his release.
- h) His having cut off contact with drug users or sellers, deleting them from his cellphone, etc.
- i) His contributions made to the community before his injuries and addictions.
- j) His history of steady employment prior to his lay-off, not for cause, but this then leading to a depression.
- k) His reconnection with his family and the support given to them and his in-laws since his release, including repairs of housing that needed to be done, maintenance, etc.
- l) His recognition of the harms caused to the community by his activities, as I have mentioned.
- m) He has not consumed any controlled substances since his release from remand.
- n) He has found some employment and has maintained it. He is supporting his family financially and has been a responsible parent, since being able to have contact with his family again.

Voong

- [19] R. v. Voong, 2015 BCCA 285 [Voong], is the most recent and the foundational decision on the availability of suspended sentences in cases such as this. Although the case deals primarily with suspended sentences, its contents are relevant to imposition of a sentence outside of the accepted range of sentence, which is what defence counsel is seeking.
- [20] In Voong, Justice Bennett speaking for the court, at para. 18 noted the court's repeated statement in various decisions that "general deterrence and denunciation are the main principles to consider when sentencing drug traffickers."
- [21] Before a suspended sentence may be imposed, exceptional circumstances must be present. The court noted at para. 22 that:
- [22] Where a suspended sentence was imposed in drug trafficking offences prior to the availability of a [Conditional Sentence Order], there was always an indication of exceptional mitigating circumstances.

- [22] Similarly, absent exceptional circumstances, a sentence for a first offence or with a minimal criminal record for a dial-a-dope seller will be in the range of six to 18 months' imprisonment, depending on the aggravating circumstances.
- [23] I bear in mind, as Justice Johnston noted in *R. v. Wong*, 2016 BCSC 1568, at para. 32, that each sentence must be fit, reflect the circumstances of the offence and the individual before the court.
- [24] Indeed, all the circumstances must be taken into account. Further, as noted at para. 32, a sentence range is a guide and not mandatory. Each sentence depends on all of the individual circumstances of the offence, as I mentioned, and of the individual offender.
- [25] Referring to *R. v. Proulx*, 2000 SCC 5, Justice Bennett noted at para. 24 of Voong that "the penalty for breach of a probation order could be even more severe than a breach of a [Conditional Sentence Order] [because] in the case of a breach of probation, the suspended sentence can be revoked and the offender may be sentenced for the original offence."
- [26] Justice Bennett further noted that "By contrast, in the case of a breach of conditional sentence, the maximum punishment available is incarceration for the time remaining in the original sentence" (para. 24).
- [27] I note in passing that where the sentence is not suspended, a breach of probation is addressed independently and the person in breach of their probation will be sentenced individually based on the circumstances surrounding the breach of that probation.

What are exceptional circumstances?

- [28] Justice Bennett, at para. 59 of Voong, set out a non-exclusive listing of what could constitute an exceptional circumstance:
- a) the lack of a criminal record;
 - b) significant and objectively identifiable steps towards rehabilitation for a drug addict;
 - c) gainful employment; and
 - d) remorse and acknowledgement of the harm done to society as a result of the offences.
- [29] At para. 59, Justice Bennett further stated:
- [59] There must be something that would lead a sentencing judge to conclude that the offender had truly turned [their] life around, and that the protection of the public was subsequently better served by a non-custodial sentence.
- [30] The subtext of that logic is that a person who has achieved recovery from their addiction and disassociated themselves from that lifestyle would be at risk of re-entering into it. There is that risk if incarcerated, so accomplishing no gain, a zero gain, for either the community and for the offender.

[31] Bennett J.A. (at para. 59) further stated:

Thus, it will be the rare case where the standard of exceptional circumstances is met.

[32] I will discuss some case law principles regarding suspended sentence, which also applies to a departure from the accepted range. The logic, in other words, applicable to suspended sentences is relevant and applicable to a departure from the accepted range, to make the point clear.

[33] In *R. v. Pettigrew* (1990), 56 C.C.C. (3d) 390 (B.C.C.A.), Mr. Justice Taylor, writing for the majority, commented on the public interest aspect of the sentencing process:

Yet even where, as here, the crime involved is regarded as one of particular gravity - the careless taking of a life - the extent to which it should be considered morally reprehensible, so as to call for "denunciatory" punishment, can still be assessed only on the basis of the circumstances of the particular case and offender. In the absence of any prescribed minimum penalty, imprisonment can be imposed on this ground only if the circumstances of the case and of the offender call for such a response. In weighing the matter the court must consider, among other things, whether any adverse effects which a denunciatory punishment would have on the rehabilitation of the offender can be justified in the overall interests of the protection and advancement of society.

[34] That case was a homicide case, and so the offence was the careless taking of a life.

[35] An offender's demonstrated presentence commitment to their recovery is a relevant sentencing consideration. A failure to give it sufficient weight in accord with the principle of rehabilitation is a sentencing error: *R. v. Datt*, [2014] B.C.J. No. 3067 (C.A.).

[36] In *R. v. Preston*, [1990] B.C.J. No. 2886 (C.A.), Justice Wood noted at para. 71 that:

The object of the entire criminal justice system is the protection of society, [and that] where the danger to society results from the potential of the addict to commit offences to support [their] habit, and it appears to the court that there is a reasonable chance that [they] may succeed in an attempt to control [their] addiction, then it becomes necessary to consider the ultimate benefit to society if that chance becomes a reality.

[37] He noted at para. 71 that, practically speaking, if the chance for rehabilitation becomes a reality, society will be permanently protected from the danger which they otherwise present - and the cost of incarceration, and the costs associated with there being incarceration avoided.

CIRCUMSTANCES OF THE OFFENDER

Probation Report

[38] The court was provided with a Pre-Sentence Report dated November 14, 2017.

- [39] Mr. Homan was born and raised in Kamloops, B.C. He has never met his biological father and is unsure of his name. He has two half-brothers and two half-sisters. Mr. Homan advised the probation officer his relationship with his mother has improved, as he had forgiven her for her substance abuse during his childhood, which evidently had a significant impact on him. He speaks with her approximately once a month now.
- [40] He was raised by his mother and several various stepfathers who reportedly struggled with alcohol abuse more than did his mother, but all of them seem to have fallen into that pattern.
- [41] He and his siblings were provided with basic necessities, but this was against a background of the stepfathers and his mother struggling with addiction.
- [42] He reportedly was subjected to physical and verbal abuse from his stepfathers when he was younger. He was also sexually abused by a babysitter when he was approximately three years of age. He has sought counselling for that.
- [43] He witnessed his mother being physically abused by his stepfathers.
- [44] He advised the probation officer he did not get a lot of love or affection from his mother as he was left to fend for himself. His mother advises that Mr. Homan was subjected to verbal abuse, but did not recall him being physically abused by his stepfathers. She confirmed he did witness his stepfathers physically abusing her and that he was sexually abused by his babysitter when he was younger.
- [45] I note in passing, as counsel are well aware, difficult circumstances in childhood do not excuse an offender from their commission of the offence. Rather, it is important background information to give the court some sense of the circumstances in which the offender grew up. If they have had every benefit, everything they could possibly need or want in childhood, then that is a different offender than one who has struggled through their childhood, did not receive love and affection, and so on. Their conduct afterwards may be explicable not so much by the development of the criminal mind, to no respect for the law, and so on, but from some other personal circumstances that made it very difficult for them to emotionally develop into adult from childhood in a healthy way. That is just a circumstance the court may take into account, not as an excuse but as an explanation to some extent and sometimes entirely.
- [46] When Mr. Homan was 17 years of age, his mother asked him to leave the family home because he had assaulted his stepfather. She asked him to leave even though he was defending her from being abused.

- [47] After leaving his mother's home, he moved around a lot within a two-year period as he tried to find a place to settle. On October 20, 2002, Mr. Homan married. He and his wife had two children. Their marriage and family life was reportedly a positive one until approximately five years ago. That was when Mr. Homan became addicted to opiates. He and his wife eventually separated due to his addiction.
- [48] Currently he sees his children approximately three or four times a week. Though presently separated, he and his wife are working towards resuming their marriage if he continues to lead a drug-free lifestyle, which he has achieved to this point. His wife and children currently live in their family home in Mission, B.C., where they have lived the past 20 years.
- [49] This information was confirmed by his wife, who also confirmed Mr. Homan continues to be in a drug-free state. She wants him to continue with his alcohol and drug counselling and deal with court matters before they completely reconcile their marriage and he returns home.
- [50] Mr. Homan reported to the probation officer that when he separated from his wife approximately five years ago, he lived in their family home initially before moving around to various residences in Mission. At the time of the offence, he lived with three other roommates in a Mission basement suite.
- [51] He was released on remand in March 2017 and since then has been living at Options Recovery. The director of Options Recovery, John Murphy, advised Mr. Homan had been residing there since March 24, 2017, and that he is doing well there. He has no concerns about Mr. Homan, nothing negative to say.
- [52] Mr. Homan advised he does not presently have many friends, mostly spending time with his wife and children. He reported that when he was using drugs, he would associate with others with substance misuse issues. He no longer associates with those negative peers, he reported, and as I have mentioned earlier.
- [53] He graduated from Hatzic High School in Mission.
- [54] He completed a course in a form of therapy, "Bowen Therapy", which taught people how to be a proper practitioner of that type of therapy. I gather it is a form of physiotherapy of some kind. I do not have the details but it is not necessary to have them. In any case, he was certified to be a practitioner in "active release therapy". He worked as a therapist part-time to supplement his income, but since health benefits did not cover that form of therapy, he was unable to achieve enough full-time hours to generate enough clientele.

Employment

- [55] As for his employment history, he worked as a welder for about 22 years, from 1996 to 2009, and worked full-time at Steel Head Marine. He was laid off in 2009, then found employment at Accent Stainless Steel until around 2013 or 2014. In 2013/2014, he was employed at TD Precision Steel for about a year.
- [56] His wife informed the probation officer that he had a high-paying job at Steel Head Marine, and became depressed when he was laid off.
- [57] After he was laid off from TD Precision Steel, Mr. Homan was self-employed doing drywall work. In June 2016, he was injured doing that work, fell through a crawl space, broke his shoulder, and damaged some tendons. He was collecting Workers' Compensation benefits before going into remand. His benefits then ceased. Currently he is collecting income assistance benefits, \$95 monthly, and the amount remaining paid to Options Recovery.
- [58] His debt load includes \$20,000 on a line of credit and approximately \$27,000 in credit cards.

Emotional status

- [59] As mentioned, in 2010, he was diagnosed with depression. He currently takes the antidepressant Zoloft daily. His symptoms from his depression reportedly include listlessness and isolation. He confirmed his wife's information that he began to experience depression in 2010 when he was laid off from Steel Head Marine. He had expected to work for the employer for his entire career, as I mentioned earlier. His wages were significantly reduced after he was laid off. This caused him to feel depressed, as he could no longer provide the same way for his family as he could before.

Substance Abuse

- [60] Turning now to his history of substance abuse. Mr. Homan reported that for about a year he was prescribed opiates, Percocet and Dilaudid, for back pain related to multiple herniated discs. As mentioned earlier, when his prescription ended, he started to buy OxyContin on the streets, eventually starting to snort heroin before using it intravenously. He reported heroin was his drug of choice. He was using it daily until he entered remand December 2016. He reported he had been clean since December 2016. His wife confirmed he continues to stay clean from drugs.
- [61] Before he entered into the cycle five years ago, he only smoked marihuana. He reported to the probation officer that "he did not struggle with an alcohol abuse problem, was against painkillers, and led a healthy life being with his family and participating in all types of sports."
- [62] His wife confirmed his drug addiction started when a family physician prescribed him opiates for his back pain.

- [63] He has attended alcohol and drug counselling with Cathy Wilder at Surrey Substance Abuse Services for the past four months. He sees her on a weekly basis for individual counselling sessions. She confirmed he attends for alcohol and drug counselling sessions on a regular basis and told the probation officer that Mr. Homan is one of her more consistent and diligent clients, that he keeps her up to date, and seems to have learned from his experience.
- [64] Mr. Homan takes part in Narcotics Anonymous meetings approximately three times weekly. He attended the mandatory counselling at Options Recovery but advised that since he has been residing there for a long period of time and engaging in the counselling while there, he is no longer required to attend counselling at the recovery house.
- [65] His bail supervision records show he has reported on time and as directed during his bail supervision.
- [66] Mr. Homan indicated he planned to stay at Options Recovery, hoping eventually to get back together with his wife and return to his family home in Mission.
- [67] As for his attitude and understanding regarding the offence, Mr. Gill, the probation officer, noted as follows:

[Mr. Homan] takes responsibility for the present offence. He attributes the present offences to his addiction and depression at that time. He indicates he was heavily addicted to drugs at the time of the offence. He also states the drugs were for his friends and his "personal use" as they purchased the drugs in bulk quantity to get the drugs cheaper. He states he was not planning to make money from the drugs. [Mr. Homan] recognizes the impact of his behaviour on his life and on the community. [Mr. Homan] states "being jailed was [a] saving grace" as he was able to get clean and address his addiction. He states going to jail "helped me detox and get my head together again."

- [68] The probation officer thought Mr. Homan may benefit from continuing to attend Surrey Substance Use Services for ongoing alcohol and drug counselling and thought he might also benefit from attending the Creekside Detox Program in Surrey.
- [69] The probation officer noted as well that the Fraser Health Authority, Creekside Withdrawal Management Centre, offered a group-based day program, offering withdrawal management for individuals who do not require an intensive residential alcohol and drug treatment program.

DEFENCE COUNSEL

- [70] The Creekside Detox Program is a six-week structured program with a commitment of 10 hours per week.

- [71] Defence counsel stressed Mr. Homan had been leading a normal life, supporting his family with good employment and long-term prospects when his injuries sent his life spiralling out of control, triggered by OxyContin for pain control after his prescription ran out, leading him into the grip of heroin.
- [72] He pointed out his life bridges, meaning those piers beneath our bridge of years that support us, have not been burned, as confirmed by letters from his wife and mother. They see a marked change in him, as I will note in further detail, and he has done so voluntarily. He has been with Options Recovery now for seven months.
- [73] Counsel stressed Mr. Homan stands before the court with no criminal record and that he has taken identifiable, objective steps towards rehabilitation.
- [74] Counsel noted, as I just did, but stressed Mr. Homan has been living with Options Recovery for so long now that he no longer requires the counselling offered there. He has been attending AA and NA regularly and has accomplished a significant change. He is clean and has recovered from his addiction, although he continues to attend counselling.
- [75] Counsel submitted, rightly I think, that you cannot fake a recovery from addiction.
- [76] As for the April arrest, counsel pointed out that involved a brief surveillance and the exchange of drugs between the driver and another person. The vehicle did not belong to Mr. Homan and the evidence did not clearly show his being engaged in the actual trafficking activity when surveilled or that he was in possession of drugs. The matter never proceeded to trial.
- [77] Counsel stated he was not trying to say, in pointing those things out, that Mr. Homan was leading a blameless life at the time simply that there is no dependable evidence he was engaged in possession for the purposes of trafficking on April 2. In any event, as I have noted, he was not formally charged and certainly not convicted. It is fair to say, however, particularly considering his addiction, that he was likely engaged in a drug-addiction lifestyle at that time.
- [78] Counsel advised Mr. Homan coached soccer, boys aged five to 15, including his own son, until the players reached a higher level of play, after which he became an assistant to the coach.

MR. HOMAN SPEAKING TO THE COURT

- [79] Mr. Homan addressed the court, and I note just in preface to what I am going to comment on here, that a further document was handed up by defence counsel that I have read it. Crown counsel has not opposed it coming before to the court consider further - I should not consider further, but to consider in addition to what Mr. Homan said in court. I think Mr. Homan may not have realized he said more in court than what he recalled. He covered quite a bit of ground. He is not a talker so to speak, but he did make a lot of points when he spoke to the court. He was very nervous at the time, as offenders often are in such circumstances

and it was obviously very important to him.

- [80] So I will first, just, address what my notes indicate he said to the court, when I asked him several questions. I found him to be sincere in attitude and in his responses.
- [81] It is noteworthy that he has erased his contact information for all of his former acquaintances involved in the drug lifestyle. That is a very important step for any person who has been addicted to drugs.
- [82] He referred to his period of incarceration as a divine intervention because it was the only way for him to get clear of his addiction at that time. He confirmed he has been drug-free for over 12 months and continues to attend counselling.
- [83] Mr. Homan was highly advanced in the welding trade, particularly the welding of aluminum and the use of advanced techniques for challenging projects. His wife commented on this, as well, in her letter to the court.
- [84] Ms. Homan wrote a detailed, impassioned well-written letter. In it, she conveyed her life experiences with Mr. Homan, the nature of their relationship since their marriage, the changes in her husband she observed when he became addicted, and the marked changes after he stopped using drugs.
- [85] She stated, "It is a difficult task at best to put in words a relationship that has lasted, with its extreme conditions, 22+ years in order to inspire a stranger ", in this case referring to me, as judge, " to see the best in someone regardless of the mistakes he has made arriving at this very point."
- [86] She met Mr. Homan when she was 23, he had just turned 22. She described him as, "the most amazing man I had ever had the privilege of knowing (along with my son and father)". She set out many items of information to buttress that observation. She stated they "were made for each other" and found him "brilliant in every way imaginable." She put it this way in her letter, "His beauty was evident in all aspects of his life and character: looks, intellect, ability, honor, kindness, loyalty, honesty, etc." She said, among other things, referring to many other positive traits she saw in him, such as being "ambitious, creative, and hard-working". To her, she thought him "a perfect man".
- [87] She noted his tough childhood, which I have already discussed, starting with the fact his mother was just 16 years old when he was born. That information did not come out, except through that letter. She was obviously very young at the time as a mother. She stated, "he was tireless in his pursuit to protect and love his 4 siblings; becoming their main male role model" absent a father. From the age of 11, he worked to provide for himself things he wanted. He maintained "an 'A' average in his studies always landing on the top of the honor roll", she stated, "even while caring for his mother during her frequent late night binges and, therefore, taking responsibility for the care of his siblings."

- [88] She noted, "[t]his took its toll on him", forcing him "to leave grade 12 due to his attendance [record] even though he had honor roll standing." She stated his "original goal in life was to be a medical doctor". [I realize this is hearsay evidence, these are the kinds of things couples may talk about.]
- [89] She noted he attended college and found work in another field, presumably referring to his work as a welder. He became very accomplished, particularly in aluminum-related welding.
- [90] As far as his parenting is concerned, she stated she saw him as "the most amazing, wonderful, and capable father", and "kind, gentle, nurturing, dedicated and loving to his son." She noted that other people admired his ability as a father.
- [91] She recalled they had continued in an era of success and happiness that included their marriage and a second child, their daughter. She noted he was very involved in sports in the community and that he lived his life as an example for his family and those nearby surrounding him. She saw he was respected and liked by all that knew him, and that her parents, confident in everything he stood for, loved and trusted him as a son, and during the time he "left us", felt the pain of losing a child to his addiction.
- [92] She filled in details of other aspects of his career. Mr. Homan touched on them and expanded on them further in his letter, but I will note her comment that he was the only person in North America certified to work on various projects, developed programs for robotic welding, and held and created teaching and governing procedures for aluminum welding over an inch thick.
- [93] She said that after he lost his welding position, he revisited his youthful desire to help people medically by becoming a Bowen therapist, referring to a kind of healing technique in him on an occasion. She had observed children and animals have always been drawn to him and that he always had a way of comforting or calming those who are in need, spending endless hours helping individuals with their pain and ailments.
- [94] She noted that after her physician had prescribed painkillers with no limitations to treat his painful spinal condition, it became apparent to her something extreme was happening with her husband, seeing he had withdrawn from everything that had meant everything to him: soccer, martial arts, friends, family, etc.
- [95] It was clear from his wife's comments that Mr. Homan was drifting away into addiction and that this has had a profound effect on her and on the family. She stated she felt her life being torn away, felt helpless for months, searching for answers and evidence, explaining that choosing to ask him to leave was the hardest thing that she had ever done. Noting the lives of her family were turned upside down.
- [96] After Mr. Homan's arrest and incarceration, his wife stated that she listened to him transition from a weak to a focused and strong-willed person, stating, "In prison he found God and sobriety which brought his strength of character forward."

- [97] She stated that when she saw him after six months, the sickly, deteriorating man she had last seen was all but eradicated and that he stood before her as a strong, much heavier and healthier changed man.
- [98] I am not going to go into details, but Ms. Homan described the challenging health problems in her family she has had to contend with alone, involving one of the children and her parents. She has had to spend all her time caring for or assisting them. I will not delve into details on that. What is significant here is that Mr. Homan has thrown himself back into his family life, reconnecting with the children, supporting his wife, helping her parents, carrying out repairs on their property and the family home, including in the case of the in-laws, a new roof on the father's shop roof, repairing vehicles, and so on.
- [99] Ms. Homan's parents were too ill to write a letter expressing what Mr. Homan meant to them but asked Ms. Homan to express how they saw Mr. Homan, which she did. Her parents then co-signed Ms. Homan's letter, which is satisfactory in the circumstances.
- [100] After Mr. Homan joined the family, her mother expressed that:
- [W]e watched him grow into the most amazing man, son, husband, and father; all of which he did with joy, love and commitment. After believing he had failed by losing his job, and through enduring the pain of his spinal condition, Warren found he could do more, work more, and feel less with the help of a [doctor] and a pill.
- [101] In other words, she is describing her observation that to keep working and so on, he kept taking more medications to control his pain. I think that is what she is attempting to say.
- He became lost and because of that, we lost him. [We are] very grateful to have him back, focused, strong, and working daily on recovery.
- [102] I note in *R. v. Shoker*, 2006 SCC 44 at para. 13, what is required for the imposition of an optional condition in a probation order is a "nexus between the offender, the protection of the community and his reintegration into the community."
- [103] I also note the contents of Mr. Homan's mother's letter, written November 16, 2017. In essence, she is noting the complete turnaround in her son, becoming what he was before, a new person, a completely different person, and she sees him resuming his life as a good citizen, husband, and father. Noted she has observed his reconnection with his wife and two children, becoming involved with the family, who are fully supportive of his recovery. She stated, "We have all noticed a significant change in the past number of months and continue to do so."

DISCUSSION

- [104] The comments of the family that I refer to are significant of course because it is important for the court to have some confidence that when the offender has fully reintegrated into the community that they have supports that are going to help them continue in the

rehabilitation path that they are on. If they do not have outside support, that is a significant concern to the court. That is why I took some time going over the aforesaid information: If you the offender is surround by a loving and supporting family, it gives the court some assurance they are going to continue on the path they are now on, having overcome their addiction.

- [105] There is a tension in the sentencing facts in this case. First, the Court of Appeal in Smith has set out sentencing guidelines for cases in which fentanyl is present in the drugs seized and where the person being sentenced is a first-time offender. Crown's proposed 18-month sentence falls within the range set out in Smith. I am fully mindful of the concern across Canada of the devastating effects of fentanyl and the lives that have been lost to that insidious drug and trafficking in it.
- [106] At the same time, Smith does not prohibit consideration of the unique individual circumstances of an offender where the drugs seized were laced with fentanyl. I am also mindful of Justice Harris's reminder that heroin, in and of itself, is a very dangerous Schedule I substance. I am also mindful that only exceptional circumstances can warrant departure from an accepted range of circumstances but also that the Court of Appeal's sentencing guidelines are not absolute, never to be departed from.
- [107] The facts of Mr. Homan's recovery from addiction, rehabilitation, and reintegration into the community approach the threshold for a suspended sentence but in my view the presence of fentanyl in the heroin prevents the imposition of a suspended sentence and therefore, in this case, I would suspend the sentence.
- [108] That said, Mr. Homan's lack of a criminal record, his rehabilitation, reconnection with his family, and reintegration into the community must be given substantial weight. The evidence in this case converges to the conclusion that Mr. Homan no longer constitutes a danger to the community. It is highly unlikely he will reoffend, he has overcome his addiction, albeit he will have to continue with AA, NA, and other counselling to solidify his accomplishment. He has the support of his family, his wife and two children who have suffered a great deal from losing Mr. Homan to addiction. An 18-month sentence, which I acknowledge is not an unreasonable submission in the circumstances, is not necessary to deter Mr. Homan from reoffending. Further, a conviction inheres a stigma, as the Supreme Court of Canada has reminded us several times. Entry to the United States or other overseas locations will be restricted, if allowed at all, and he will suffer other losses as a result of the conviction.
- [109] The sentence imposed should be no more than necessary to accomplish the objectives of sentencing. Mr. Homan has already served a five-and-a-half-month sentence, close to the bottom of the sentencing range previously existing for first-time offenders, although not for dial-a-dope traffickers.

- [110] Mr. Homan was at the very bottom of the trafficking operation, so far as the evidence shows, becoming involved in it through his addiction, not for greed, and his sentence could fall in the six-month range and still respect the sentencing range and reflect the serious nature of the offence.
- [111] I have considered an additional sentence of one year, but do not find that a fit sentence because Mr. Homan's circumstances are sufficiently exceptional to justify a departure from the six- to 12-month range and from the guidelines set out in Smith. In my opinion, his serving an additional year would not accomplish a deterrence objective sufficiently weighty to justify sending him back to jail, in the process depriving his children of a father for another year and his wife of the support she desperately needs and has gone without. He has overcome his addiction and become a different person. From what he has experienced, he cannot help but know his activities have caused his family much suffering, probably the strongest deterrent to Mr. Homan's ever re-offending, knowing the consequences of his actions and the hurt and harm it has caused, not just to the community from the drugs sold, but to his wife, children, in-laws, and parents.
- [112] I do not find it in the interests of the community to send Mr. Homan back to jail. I find the circumstances in this case are sufficiently exceptional to deviate from the typical range and from the range set out in Smith, warranting a sentence of time for time served- , five-and-a-half months, and probation of one year. I will turn to the conditions shortly.

Probation order

- [113] At para. 37 of Voong, Justice Bennett discussed the purpose of a probation order. She noted:
- [37] A probation order has primarily a rehabilitative objective, however, as the statutory terms refer to the purposes of "protecting society" and "reintegration into the community", it is not limited to this objective.
- [114] I think reintegration into the community is one of the important sentencing objectives here. As for f protecting society, there is very little risk Mr. Homan will ever reoffend. Nonetheless, a sentence of probation is called for in this case to keep Mr. Homan on the path he is on, not in a punitive way, but in a supportive way, and also to reinforce the objective of protecting society.

[DISTILLED DISCUSSION REGARDING MR HOMAN'S REMORSE]

- [115] Having read your last letter and seeing how strong your feelings of remorse are and their emotional impact on you, it occurred to me you might find a movie called "The Mission" helpful to help deal with your feelings of remorse. The movie is about Jesuits trying to protect Indigenous people from the predations of Portuguese slave traders, one of them a character played by Robert DeNiro; not only a slave trader; worse, through a misunderstanding, killing his brother in a sword fight. He was so full of remorse he could hardly function. Look for the scene where he eventually comes before the Indigenous people he terrorized. The narrative speaks for itself. The point is, a person can change,

redeem themselves, atone for and be forgiven for their wrongdoing. Turn your remorse into a positive motivator.

SENTENCE AND A PERIOD OF PROBATION OF 12 MONTHS

[116] Accordingly, I am imposing a sentence of 5.5 months, time served.

PAROLE CONDITIONS TWELVE MONTHS

[117] You shall keep the peace and be of good behaviour.

[118] You shall report in person to your probation officer no later than 72 hours at the probation office at 45960 Wellington Avenue in Chilliwack, B.C. You do not have to memorize this, this will be put in writing, but it needs to be stated for the record.

[119] You shall thereafter report as and when directed by your probation officer and in the manner directed by them.

[120] After your first reporting, your further reporting may include reporting by telephone with the consent of your probation officer.

[121] You shall inform your probation officer of your present residential address and phone number and not change your address or phone number without prior written notice to your probation officer.

[122] You shall reside at a residence approved by your probation officer.

[123] You must remain in the Province of British Columbia, unless you have the prior written permission of your probation officer to be outside of British Columbia.

[124] You shall attend counselling sessions relating to drug addiction as directed by your probation officer and shall continue to attend NA and AA as directed by your probation officer to the extent and with the regularity they find necessary.

[125] You shall seek and maintain employment and further education relating to employment as directed by your probation officer.

[126] You shall not consume or possess any controlled substance and if you are prescribed any pain medication by a physician, you must bring that to the attention of your probation officer, who shall have permission to speak to your physician and ensure they are aware of your past history. This also is for your own good; it is not intended to be punitive.

[127] You shall not consume alcohol during the period of your probation.

[128] I am not going to impose a curfew. I am satisfied that you are going to do very well on probation and these probation conditions are really intended to support you and keep you on the path you are on. Nevertheless, they have to be obeyed. A breach of a parole order is an offence, in which case, you would have to come back before the court. In that unlikely event, I will hear the matter, assuming scheduling can accommodate that.

[129] Is there anything further? I am not going to add a lot of conditions. I do not think they are too necessary.

[130] MR. ARNASON: Your Honour, just on - or My Lord, just on the term involving controlled substances, you said you should not - you shall not consume. I wonder if it should be you shall not possess or consume any controlled substance?

[131] THE COURT: That is actually the new - that is the proper way to do it, so that is going to be amended, Madam Registrar. You shall not have in your possession any controlled substance and you shall not consume same.

[132] MR. ARNASON: Yes. And just one further matter, on the ancillary orders, the DNA order, he should be reporting to Mission RCMP for the purpose of taking that DNA, and I am going to suggest just a term that he reports to the Mission RCMP by 4:30 p.m. of December 22, 2017, for the purposes of giving a sample of bodily substances.

[133] THE COURT: Yes. We need to do that, so Mr. Homan, by December 22, 2017, you are to report to the Mission RCMP and provide a DNA sample, and that was 4:30 p.m., actually counsel suggested, which is better to have a time, so 4:30 p.m., they are only available to do that certain times, December 22, 2017. That is a mandatory order in the circumstances.

[134] THE COURT: The \$305 cash found in Mr. Homan's possession, is forfeit, as are the drugs seized. Any paraphernalia seized is also forfeit.

[135] MR. ARNASON: Yes. I am -

[136] MR. ARNASON: And just to clarify, the s. 109 order is for 10 years, and finally, My Lord, there is a victim surcharge as well.

[137] THE COURT: Yes.

[138] MR. ARNASON: That would apply.

[139] THE COURT: That is \$400 now, is it?

[140] There is a victim surcharge of \$200 with six months to pay, as Mr. Homan does not have employment income.

[141] Additional ancillary relief to be included is a DNA order pursuant to s. 487.051 of the Criminal Code, a primary designation 10-year firearms prohibition pursuant to s. 109 of the Criminal Code, and forfeiture of the cash and drugs found in Mr. Homan's possession.

"N. Brown J."

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