

CANADA / JUDGMENT

R. v. Islam

2025 BCSC 2180

COURT

Supreme Court of British Columbia

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2025 BCSC 2180 R. v. Islam

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Islam,

2025 BCSC 2180

Date: 20251103

Docket: 33912

Registry: Vancouver

Rex

v.

MD Rafiqul Islam

Before: The Honourable Justice MacNaughton

Oral Reasons for Sentence

Counsel for the Crown:

T. Lattimer

Counsel for the Accused, MD Rafiqul Islam:

M. James

Place and Date of Trial:

Vancouver, B.C.

October 1, 2024

Place and Date of Judgment:

Vancouver, B.C.

November 3, 2025

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- [1] These reasons for Judgment are being delivered orally. They will be published after they are delivered.

Introduction

- [2] MD Rafiqul Islam is before me for sentencing with respect to his conviction of possession of cocaine for the purposes of trafficking, contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 [CDSA]. I convicted Mr. Islam on February 10, 2025, in reasons for judgment indexed at: 2025 BCSC 161 [Verdict Reasons].
- [3] Both the Crown and the defence agree that a jail sentence is appropriate in this case. The issue is whether his custodial sentence should be served in custody, or in the community, under a Conditional Sentence Order ("CSO").

Positions on Sentencing

- [4] The Crown contends that, in the circumstances of this case, a fit and appropriate sentence for Mr. Islam is 12 months' imprisonment. The Crown also seeks the following ancillary orders:
- a) forfeiture of non-chemical, offence-related items seized during Mr. Islam's arrest pursuant to s. 16(1) of the CDSA;
 - b) a discretionary DNA order pursuant to s. 487.051(3) of the Criminal Code, R.S.C., 1985 c. C-46 [Code];
 - c) a 10-year mandatory weapons prohibition pursuant to s. 109(2) of the Code; and
 - d) a victim fine surcharge of \$200 pursuant to s. 737 of the Code.
- [5] The Crown contends that although a CSO is available in this case, only a custodial sentence would meet the primary sentencing goals of denunciation and deterrence.
- [6] The defence contends that a fit and appropriate sentence for Mr. Islam is 16 months' imprisonment, to be served by means of a CSO in the community, with the first eight months under house arrest and the remaining eight months under a curfew. The defence also suggests that Mr. Islam be ordered to complete 100 hours of community work service hours. The defence submits that such a sentence would, in Mr. Islam's case, satisfy the applicable principles and objectives of sentencing and would constitute a fit and proportionate sentence, reflecting the primary objectives of deterrence and denunciation, and the further objectives of rehabilitation and restraint.

Circumstances of the Offence

- [7] The circumstances of the offence are set out in detail in the Verdict Reasons. I summarize my relevant findings with respect to sentencing:
- a) On June 24, 2021, the Vancouver Police Department began Project Tache, the investigation that led to Mr. Islam's arrest, after receiving a tip from a confidential informer that a Vancouver taxi was being used to distribute drugs around the Lower Mainland.
 - b) At the relevant time, Mr. Islam was a half owner of Vancouver Taxi V41 (the "taxi"). During Project Tache, Mr. Islam was the sole driver of the taxi.
 - c) During surveillance, Mr. Islam was observed routinely picking up and dropping off Charles Flynn, Jordan Trembley, and another unidentified male, who was never identified or charged (collectively, the "traffickers") at multi-residential buildings at 933 Hornby Street and 1283 Howe Street, in Vancouver's downtown core. Units in these addresses were stash sites connected to a dial-a-dope drug trafficking operation using Mr. Islam's taxi. Mr. Flynn and Mr. Trembley were charged, pled guilty, and sentenced for possession of fentanyl and cocaine for the purposes of trafficking. The evidence did not establish that Mr. Islam knew of the contents of the stash sites, and his only connection to the addresses was in respect of dropping off or picking up the individuals who were eventually arrested.
 - d) When the traffickers, or any of them, occupied the taxi, surveillance officers observed short-duration meetings, some involving exchanges, consistent with drug-trafficking, occurring inside the taxi. On other occasions, the taxi dropped off and picked up the traffickers at the stash sites.
 - e) At trial, Mr. Islam testified that he was unaware of the traffickers' activities inside the taxi, and characterized his relationship to the traffickers as an ordinary one between a taxi driver and his riders. This evidence was entirely unbelievable. It did not accord with the whole of the evidence, with common sense, or with human experience. The taxi was not operating normally, and the traffickers were not ordinary taxi riders.
 - f) The only reasonable inference to be drawn from the evidence was that Mr. Islam knew of the dial-a-dope trafficking operation occurring within and made possible through the taxi, and that he actively facilitated it by driving the traffickers to and from drug delivery locations.
 - g) Mr. Islam had both knowledge and control over the cocaine found in the taxi on Mr. Islam's and Mr. Flynn's arrests, on June 24, 2021.

Impact of Drug Trafficking on the Community

- [8] For many years, Canadian courts have repeatedly outlined the horrific, insidious, and deleterious effects of drug trafficking in Canada. In *Pushpanathan v. The Queen (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982, 1998 CanLII 778, the Supreme Court remarked on the staggering societal cost of substance abuse and trafficking in illicit drugs. Those costs include direct health care and law enforcement costs, and indirect costs of lost productivity.
- [9] Since *Pushpanathan*, courts have commented on the increasing mortality rates attributable to illicit drugs, including cocaine. While other more dangerous drugs have entered the drug trafficking world, cocaine continues to have a pernicious effect on Canadian communities. In *R. v. Hamilton*, 72 O.R. (3d) 1, 2004 CanLII 5549 (C.A.), Justice Doherty commented:
- [104] The importation of dangerous drugs like cocaine and others found in Schedule I of the Controlled Drugs and Substances Act has always been considered among the most serious crimes known to Canadian law. The immense direct and indirect social and economic harm done throughout the Canadian community by cocaine is well known ... 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.

[Citations omitted.]

- [10] Although Justice Doherty's comments were made in the context of a sentence appeal for the offence of importing cocaine, they are just as applicable to cases involving possession of cocaine for the purpose of trafficking.
- [11] The insidious community threat posed by dial-a-dope drug trafficking operations has also been recognized in a number of cases. As explained in *R. v. Gill*, 2013 BCCA 320 at para. 22; and *R. v. Garie*, 2022 BCCA 382 at para. 25, such operations enable pervasive and rapid community distribution of illicit narcotics, and the proliferation of these operations has significantly increased accessibility to drugs and, as a result, their harmful effects in the community: See also *R. v. Voong*, 2015 BCCA 285 at paras. 16-18.
- [12] That said, while these impacts on the community are factors that I consider, the concept of proportionality in sentencing requires that Mr. Islam be sentenced individually, in a fit and appropriate way, for his conduct, and not for the ills visited on society by drug trafficking more generally: *R. v. Bissonette*, 2022 SCC 23 at para. 51.

Circumstances of the Offender

- [13] Mr. Islam is currently 56 years old. He was 52 at the time of the offence. He was born in Bangladesh. Although his family was poor, he completed high school and obtained a college degree in history. He would have continued his studies, and hoped to become a teacher, but could not afford to do so. He met his first wife, Nezma Syeda, in Bangladesh. She lived in

Canada. After they married, she sponsored Mr. Islam's immigration to Canada. He immigrated in 1996 and is a Canadian citizen. Mr. Islam and Ms. Syeda are the parents of a 28-year-old daughter. Although they are divorced, Ms. Syeda attended the sentencing hearing to provide support to Mr. Islam.

- [14] After his divorce, Mr. Islam remarried. His wife and three daughters, all under the age of 10, live in Bangladesh. He supports them financially and visits them when he can. They are not financially able to visit him in Canada.
- [15] Since coming to Canada, Mr. Islam has primarily worked as a taxi driver. As a result of his conviction on February 10, 2025, his chauffeur permit was revoked and was not reinstated. He will not qualify to reapply for a permit for 10 years. When he learned of the revocation, he was depressed, which affected his ability to search for new employment. In July 2025, he obtained employment with a friend, and one of his community supporters, as an Airbnb service contractor. His counsel filed a letter from the friend confirming that employment.
- [16] Mr. Islam has a significant medical history. Following a heart attack in 2020, in 2021 he had triple bypass surgery. He has also been diagnosed with diabetes.
- [17] As a result of his medical condition, he left another job that he had started in July 2025, working in Vancouver Taxi's garage. The heavy lifting was too much for him. He is currently actively seeking a second job.
- [18] On Mr. Islam's behalf, his family doctor, Dr. Bing Q. Gore, filed a letter which sets out Mr. Islam's medical history and purports to be an expert report. Dr. Gore describes Mr. Islam as a "very high risk for recurrent coronary event" because of his diabetes, family history of coronary disease (both his parents and two brothers died of heart attacks), and his own 2020 heart attack. I accept that these are facts that Dr. Gore can provide to the court. However, Dr. Gore goes on provide the following opinion:

My research of literature reveals little about the impact of incarceration on [Coronary Artery Disease] but a BMJ article from Oct/2020 concludes that incarceration worsens BMI (i.e. weight gain).

My opinion would be that incarceration would increase the chances of recurrent cardiac event due to:

possible worsened Diabetes control (poor diet/less activity)

probable higher stress levels

probable increased exposure to tobacco, substance abuse

Obviously, Mr. Islam would be better supported by his community, his family, and his current Medical Care.

- [19] Dr. Gore is not qualified to give that opinion. He is a family doctor, not an expert on the effects of incarceration on individuals. He does not explain what he knows of conditions in Canada's prisons. Further, he purports to comment on the very issue I have to decide: whether a CSO is appropriate in the circumstances of this case. I give his opinion no weight.
- [20] Mr. Islam does not have a criminal record.
- [21] After his arrest in 2021, Mr. Islam continued to operate his taxi until his conviction on February 10, 2025. As stated earlier, his chauffeur permit was revoked shortly thereafter, on February 17, 2025.

Governing Legal Principles

General Principles and Objectives of Sentencing

- [22] Determining a just and appropriate sentence is a highly individualized process and one of the most challenging judicial responsibilities. It involves 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.
- [23] The balancing occurs within the legislative framework set out in s. 718-718.2 of the Code, and, in offences involving controlled substances, in s. 10 of the CDSA. Section 5 of the CDSA provides that the maximum sentence for the offence for which Mr. Islam was convicted is life imprisonment. There is no minimum sentence.
- [24] A CSO is available for this offence under s. 742.1 of the Code. However, before considering whether a CSO is appropriate in this case, I must first assess the appropriate range of sentence and exclude either probation or a penitentiary term of imprisonment (i.e., two or more years): R. v. Sewell, 2025 BCCA 348 at para. 84. I must do so with reference to the fundamental principles and purposes of sentencing, to which I now turn.
- [25] Section 10(1) of the CDSA sets out that the fundamental purpose of a sentence for an offence under Part 1 is to promote respect for the law and to maintain a just, peaceful, and safe society while encouraging rehabilitation and, in appropriate circumstances, treatment of offenders and acknowledging the harm done to victims and the community.
- [26] This purpose is achieved by referring to the objectives of sentencing set out in s. 718 of the Code, including those of: denouncing unlawful conduct; deterring the offender and others from committing offences; separating offenders from society when necessary; assisting in rehabilitating offenders; providing reparation for harm caused to victims or the community; promoting responsibility in offenders; and recognising the harm inflicted on victims or the community.
- [27] In sentencing for possession of cocaine for the purpose of trafficking, the primary emphasis is on denunciation and deterrence.

- [28] Denunciation is important because of the damage that drug trafficking causes to: the health of others; the emotional and financial integrity of drug users' families; and the safety and security of our communities. Denunciation requires that a sentence express society's condemnation of the offence; It is the means by which society communicates its moral values: Bissonette at para. 46.
- [29] Deterrence has two aspects--specific deterrence, as it relates to the offender before the court, and general deterrence, as it relates to others who might consider becoming involved in the offence: Bissonette at para. 47.
- [30] Trafficking is not an impulsive offence; It involves planning. The financial rewards from selling illicit drugs are counterbalanced by the risks of apprehension and punishment.
- [31] Section 718.1 of the Code sets out the proportionality principle, directing that a sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the offender. Regardless of the weight a judge accords to the objectives listed in s. 718, "the resulting sentence must respect the fundamental principle of proportionality"(emphasis in original): 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.
- [32] In terms of the seriousness of the offence for which Mr. Islam has been convicted, courts have consistently held that trafficking in hard drugs is a very serious offence. In Voong the Court wrote at para. 1, "Those who embark in drug trafficking engage in serious criminal conduct they should expect to be sent to prison."
- [33] In Parranto, Justice Moldaver (concurring) reiterated the dangerous and insidious nature of drug trafficking in hard drugs: at paras. 87-92. These pronouncements were also restated recently by the BC Court of Appeal in R. v. Otchere, 2025 BCCA 98: at paras. 75-76.
- [34] The seriousness or gravity of an offence is reflected by the possible penalty imposed by Parliament and any specific features of the offender's commission of the offence tending to increase or decrease the harm, or risk of harm, to the community arising from 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. As I have said, the maximum penalty for drug trafficking in hard drugs is life imprisonment.
- [35] However, an offender's responsibility or moral blameworthiness is informed by their background, lived experiences, and broader social context: Ellis at para. 76. As Justice DeWitt-Van Oosten explained in R. v. C.K., 2023 BCCA 468 (at para. 71), factors relevant to assessing moral blameworthiness 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.

- [36] Section 718.2 of the Code contains a non-exhaustive list of additional sentencing principles. In particular, pursuant to s. 718.2(a), sentences are to be increased or reduced to account for aggravating or mitigating circumstances.
- [37] 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.
- [38] Subsections 718.2(c)-(e) promote restraint in sentencing. Subsection 718.2(d)-(e) emphasizes 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 at para. 21.
- [39] 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.
- [40] As I have said, in cases involving the trafficking of hard drugs, the primary objectives of sentencing are denunciation and deterrence. The BC Court of Appeal has repeatedly emphasized the importance of general deterrence and denunciation as considerations when sentencing drug traffickers. In *Voong*, the court wrote (at para. 18):

While no one principle "trumps" the other, there are offences and circumstances where one or more principles come to the forefront and generally will be given more weight than others.

- [41] However, those objectives do not override the overall objective of rehabilitation, regardless of the nature of the offence. As Chief Justice Wagner wrote in *Bissonnette* (at para. 48), the objective of rehabilitation is designed to reform offenders with a view to reintegrating them into society. Society is better protected by offenders improving themselves and gaining control over their lives. In addition, in *R. v. Lacasse*, 2015 SCC 64, Wagner J. (as he then was) wrote that "[r]ehabilitation is one of the fundamental moral values that distinguish Canadian society from the societies of many other nations in the world": at para. 4.

The Organizing Principle of the Range of Sentence

- [42] Sentencing judges have wide, but not unfettered, discretion in the sentence they craft and impose. Discretion is informed by the caselaw and general ranges of sentences for particular offences. While sentencing judges must consider ranges, the Supreme Court of Canada has made clear that sentencing ranges are guidelines, "not hard and fast rules" or "straitjackets": *Friesen* at paras. 37, 108. Ranges have been referred to as "navigational buoys", or places where judges can begin their thinking: *Parranto* at paras. 16, 205.

- [43] 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; Therefore, the assessment of gravity of the offence is based on the normative wrongfulness of the conduct and the harm posed by it.
- [44] So long as the imposed sentence 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* at paras. 56-72; *Friesen* at paras. 37-38, 108; and *Parranto* at paras. 40-54, 205.
- [45] In British Columbia, the sentencing range for a first-time offender convicted of dial-a-dope trafficking is between six to 18 months in jail: *Voong* at para. 59. That range has been reaffirmed in *R. v. Rutter*, 2017 BCCA 193 at para. 2; and in *Otchere* at para. 77.

Authorities Relied on by Counsel

- [46] Both the Crown and the defence have provided a number of authorities that they submit support the sentences they contend are appropriate for Mr. Islam.

Crown Authorities

- [47] In *R. v. Davidson*, 2014 BCSC 269, a 36-month sentence of imprisonment was imposed for three counts of trafficking in cocaine, one count of possession of cocaine for trafficking and one count of possession of a prohibited weapon (a stun gun). Mr. Davidson changed his plea to guilty after the Crown closed its case. In total, 36 to 38 ounces of cocaine (approximately 1 kilogram) were either trafficked to an undercover operator or found in the offender's home "neatly packaged for resale". The offender was 42 years old, with a dated, unrelated criminal record. The judge reviewed the authorities and determined that they established a range of between three to six years' imprisonment. He concluded that a four-year sentence was appropriate, but in recognition of the offender's guilty plea, his previous good behaviour, and his remorse, he reduced the sentence to 36 months.
- [48] In *R. v. Mackay*, 2019 BCSC 1112, following a trial, the judge 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, about 26 ounces of cocaine (approximately 737 grams) was either trafficked to an undercover operator or possessed and delivered to another drug dealer. Approximately \$16,000 in cash was found when the offender was arrested, and a further \$19,000 was found in a residence connected to her. The offender was 33 years old at the time of sentencing, 29 when the offence was committed, and had no criminal record.
- [49] At paras. 37-45 of her reasons, the judge reviewed a number of authorities, establishing a range of sentence of between 15 and 36 months' imprisonment for a first-time offender involved in the mid-level distribution of significant quantities of cocaine (at the ounce level).

The defence 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). I note that Mackay was decided when s. 742.1(c) of the Code excluded the possibility of a CSO, so it was not available for consideration.

- [50] Finally, in *R. v. Dupray*, 2025 BCSC 1681, the sentencing judge concluded that the range of sentence for possession of cocaine, for the purpose of trafficking for mid-level distribution is fairly wide: between 15 months to six years of incarceration: at para. 65.

Defence Authorities

- [51] Mr. Islam relies on a number of cases in support of his contention that a CSO is an appropriate sentence in this case. I have considered them all.
- [52] Many of the cases relied on by Mr. Islam involved offenders who were much younger than Mr. Islam, either at the time of their offending or sentencing. These included: *R. v. Lawson*, 2022 BCSC 2035 (24 years old); *R. v. Gibb*, 2022 BCSC 1853 (26 years old); *R. v. Maki*, 2023 BCSC 2470 (30 years old); and *R. v. Kang*, 2024 BCSC 2507 (24 years old).
- [53] Some of these cases, and others relied on by Mr. Islam, involved individuals who trafficked to support their own addictions and had difficult life experiences that served to reduce their moral blameworthiness. These included: *Lawson*; *Gibb*; *Maki*; *Kang*; *R. v. Jesswein*; 2025 BCSC 1104; *R. v. Kirk*, 2023 BCSC 301; and *R. v. Hussein*, 2016 ONSC 1421.
- [54] Some involved trafficking in fentanyl or carfentil, more dangerous drugs than cocaine. Some involved guilty pleas. Some involved a level of involvement in the drug trafficking operation that is greater than Mr. Islam's involvement.
- [55] These cases support the long-established proposition that CSOs, with punitive conditions, can sufficiently address the objectives of deterrence and denunciation.

Analysis

- [56] In determining an appropriate sentence for Mr. Islam, I will first identify the aggravating and mitigating circumstances as required by s. 718.2(a) of the Code.
- [57] No statutorily aggravating factors under the Code or the CDSA are applicable in this case.

Aggravating Factors

- [58] The aggravating factors in this case include:

- a) The controlled substance involved was cocaine, a very addictive and dangerous substance that can have lethal consequences. It is listed as a Schedule 1 substance in the CDSA. The caselaw establishes that the sale of a Schedule 1 substance is considered an aggravating factor in sentencing: Otchere at para. 16;
- b) This was not street-level or low-level trafficking. Mr. Islam was involved in a sophisticated enterprise involving the sale of drugs to mid-level traffickers. Although his role was more akin to that of a courier of drugs or of people involved in the sale of drugs, without him and his taxi, the dial-a-dope operation would not have been possible;
- c) The fact that the method used to traffic the cocaine was a dial-a-dope operation is aggravating;
- d) The dial-a-dope operation was ongoing in nature. It was not an isolated act of trafficking based on a single bad decision or a lapse of judgment. Instead, Mr. Islam was involved during the entirety of Project Tache;
- e) Mr. Islam engaged in the dial-a-dope operation for a financial motive. He had suffered financially from the effects of Covid-19 on the taxi business, but he resorted to crime to ameliorate those effects. He was not an addict trafficking to support an addiction; and
- f) There is nothing to suggest Mr. Islam did not understand that what he was doing was legally and morally wrong. As a result, his moral blameworthiness is elevated.

Mitigating Factors

[59] The mitigating factors in this case include:

- a) Mr. Islam is a first-time offender.
- b) Mr. Islam has the support of his family and from the community as evidenced by the letters filed in his support, and the attendance of members of the community at this sentencing hearing. This support included:
 - i. letters from his step-daughter, granddaughter, former son-in-law, and an elderly individual (who may be related, albeit indirectly). The authors write of Mr. Islam's kindness, generosity, and care for those around him;
 - ii. the attendance of his ex-wife at the hearing and on the delivery of these reasons;
 - iii. a letter from the President of the Greater Vancouver Bangladesh Cultural Association in which he wrote about Mr. Islam's commitment to community service and his helpful, reliable, and responsible nature. He also attended the hearing;

- iv. a letter from the General Manager of Vancouver Taxi Ltd., in which she wrote about how Mr. Islam's situation was completely out of character. She described him as hardworking, humble and reliable. She wrote about his commitment to improve himself, support his family, and contribute positively to the community. Vancouver Taxi was willing to offer him a job in their garage despite knowing of his conviction;
- v. a letter from a friend, in which he wrote about how he had recently hired Mr. Islam as his Airbnb services contractor, responsible for managing all aspects of his Airbnb operation.
- c) Approximately four years have passed since the commission of this offence, and, although not released on a stringent form of bail, Mr. Islam has remained in the community without any other known incidents. He has complied with the conditions of his release.
- d) After his arrest in June 2021, Mr. Islam continued to drive his taxi until his chauffeur permit was revoked in February 2025. During this time there is no allegation of further offending.
- e) Although Mr. Islam has faced financial hardship since his chauffeur's licence was revoked, he has not engaged in further criminal activity to support himself or his family. Rather, he tried working in Vancouver Taxi's garage and has now found work as a services contractor for his friend's Airbnb operation.

[60] I recognize that these last two factors may perhaps be described as the absence of aggravating factors. Nonetheless, they are relevant to crafting a fit and appropriate sentence for Mr. Islam.

Application of Parity

- [61] The other individuals convicted for their involvement in the dial-a-dope drug operation in which Mr. Islam was involved were Mr. Flynn, Mr. Trembley, and Quinton Anthony (who was specifically tied to the stash site at 933 Hornby Street). All were arrested during Project Tache and pled guilty to possession of various controlled substances for the purposes of trafficking. Pursuant to joint sentencing submissions, Mr. Flynn was sentenced to a five-year prison sentence, Mr. Anthony to an eight-year sentence, and Mr. Trembley to a four-year sentence.
- [62] I am not satisfied that these are appropriate sentences against which to measure parity. The others involved in Project Tache had different roles within the broader dial-a-dope operation and presented different aggravating and mitigating circumstances. I have, however, considered the sentences in the other cases relied on by the defence and the Crown.

Application of Proportionality

- [63] A sentencing decision always comes down to what sentence is appropriate for this offender, in these circumstances, taking into account all the principles and objectives of sentencing, such that the sentence imposed reflects the proportionality principle. It involves a balance of the gravity of the offence with the personal responsibility of the offender.
- [64] In the end, I am satisfied, based on the authorities provided and the circumstances, that a custodial sentence at the lower end of the range is appropriate, given the totality of the circumstances. Specifically, a sentence of 20 months' imprisonment is appropriate in all the circumstances.

The Availability of a CSO

- [65] A CSO is available if the court imposes a sentence of less than two years' imprisonment and if the two statutory conditions set out in s. 742.1(a) of the Code are met. That requires consideration of whether a CSO would endanger the safety of the community and be consistent with the fundamental purpose and principles of sentencing.
- [66] Insofar as endangering the safety of the community is concerned, I conclude that Mr. Islam serving a sentence of imprisonment by means of a CSO in the community would not endanger community safety. Mr. Islam is a mature first-time offender. Since being charged, he has been on release in the community for four years with no issues, and has not run into any other trouble since his arrest in June 2021.
- [67] On the record before me, he led a pro-social life in Canada prior to the events for which he was arrested. He has strong community-based support and a job.
- [68] The more challenging question, as in most cases where a CSO is considered, is whether a conditional sentence would be consistent with the fundamental purpose and principles of sentencing set out in the Code.
- [69] As the BC Court of Appeal accepted in *R. v. Schneider*, 2019 BCCA 310 at paras. 24, 29, and 34, sentences with a community-based component that focus on rehabilitation can also address deterrence and denunciation.
- [70] A CSO is a jail sentence, but rather than being served in an institution, it is served in the community. A CSO can advance the goals of deterrence and denunciation. In fact, a CSO may impose a greater burden on an offender than a custodial sentence: *R. v. Proulx*, 2000 SCC 5 at paras. 40-41, 67, and 102; *R. v. Kelly*, 2022 ONSC 5500 at para. 42, 44.
- [71] Proulx distinguished a CSO from probationary measures, and observed that Parliament intended CSOs to include both punitive and rehabilitative aspects. As a result, the Court suggested that a CSO should generally include punitive conditions that are restrictive of the offender's liberty.

- [72] I also note that imposing a CSO can be consistent with the principle of restraint outlined in the Code. Restraint operates in determining whether a prison sentence is required and in determining whether the sentence should be conditional. If it is consistent with the proportionality principle, a conditional sentence may be preferable to a sentence of incarceration.
- [73] 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 a number of decisions, including Proulx.
- [74] In *R. v. R.N.S.*, 2000 SCC 7 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 said that this conclusion flows from the direction in s. 718.2(e) of the Code.
- [75] In this case, the defence has proposed a CSO that takes into account not only Mr. Islam's circumstances, but which also includes conditions that address the objectives of deterrence, denunciation, as well as rehabilitation. The defence suggested that a CSO of 16 months is appropriate.
- [76] 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 Mr. Islam's offence and his moral blameworthiness, Mr. Islam's performance in the community in the four years since his arrest, the fact that he is a first-time offender, and that he appears to have found replacement work, demonstrating his potential for rehabilitation, factor heavily in my assessment. To incarcerate Mr. Islam in a correctional facility would risk derailing the progress he has made.
- [77] 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 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 would be consistent with the purposes and principles of sentencing enumerated in s. 718-718.2 of the Code and s. 10 of the CDSA.

Disposition

- [78] Mr. Islam, please stand.
- [79] The offence you committed, and your decision to engage in the drug trade by using your taxi to distribute drugs for a significant drug-trafficking operation, is a very serious offence that has elements of sophistication. Cocaine may not be fentanyl, but it is still a deadly serious, lethal drug. The sale of it continues to wreak havoc across our community in the Lower Mainland, this province, and our country--not only in lives wasted and lost but indirectly through the commission of offences to support drug habits to pay for the sorts of drugs that

you assisted in distributing.

- [80] 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 counsel's thorough submissions, I have concluded as follows.
- [81] For the offence of possession of cocaine for the purpose of trafficking, contrary to s. 5(2) of the CDSA, I sentence you to 20 months' imprisonment to be served in the community by means of a CSO. The conditions that I am including in the CSO are onerous, in order to honour and achieve the sentencing objectives of denunciation and deterrence.
- [82] Namely, the first 12 months of the CSO shall be served in the form of house arrest, on the terms described below. The balance of the CSO shall be served in the form of a strict curfew, again on terms that I will describe shortly. For the latter portion of the CSO, I will apply the credit that you are owed for the time you spent in pretrial custody (i.e., two days, which at a rate of 1.5:1 amounts to three days of credit). Accordingly, the period of curfew, following your 12-month term of house arrest, shall last for seven months and 27 days.
- [83] You may have a seat, Mr. Islam, while I go through the terms of the CSO.

Terms of the CSO

The duration of the CSO is 20 months on the following terms.

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 the Community Corrections office 275 E. Cordova St, Vancouver, no later than 3:00 p.m. PDST on Wednesday, November 4, 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 5405 Culloden St., Vancouver ("Your Residence"), and you must not change Your Residence without prior written permission from your supervisor. For the duration of this order, you must remain inside Your Residence or on its lot, 24 hours a day, every day, except as otherwise provided for in this order.
- viii. If you are evicted or expelled from Your Residence, you must tell your conditional sentence supervisor immediately. If the office is closed, you must contact your conditional sentence supervisor immediately when the office opens on the next business day.
- ix. You must present yourself immediately at the door of 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. You may be away from Your Residence during the house arrest with the prior written permission of your conditional sentence supervisor. Such permission is to be given only for employment, community services work hours, medical appointments, and for other necessary and compelling reasons.
- xi. 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. 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.
- xii. 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.
- xiii. After the end of the twelfth month of this order, and continuing until the order expires, you must obey a curfew by being inside Your Residence, or on its lot, between 8:00 p.m. and 5:00 a.m. every day.
- xiv. You must present yourself immediately at the door of Your Residence or answer the phone when any peace officer or conditional sentence supervisor attends or calls to check on you during the curfew.

- xv. You may be away from Your Residence during the curfew with the written permission of your conditional sentence supervisor. Such permission is to be given only for employment, medical appointments, and for other necessary and compelling reasons.
- xvi. You may also be away from Your Residence during the curfew while at, or going directly to, or returning directly from a healthcare facility because of a medical emergency. If asked, you must provide your conditional sentence supervisor with proof of your attendance at the facility.
- xvii. 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.
- xviii. 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.
- xix. 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.
- xx. If you possess any of the items prohibited by this order, you must immediately go to Sout Vancouver Policing Services at 4830 Nanaimo St., Vancouver, 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.
- xxi. You must not possess any knife outside Your Residence, except for the immediate preparation or eating of food. The exceptions are as follows:
- a. while on your property;
 - b. while at work, or going directly to and from work. If asked you must provide your conditional sentences supervisor with the details of your location and hours of employment;
 - c. with the prior written permission of your conditional sentence supervisor. 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.

xxii. You must complete 100 hours of community service work by May 31, 2027.

Ancillary Orders

[84] I am now going to address the ancillary orders sought by the Crown. The Crown seeks three ancillary orders in this case: a forfeiture and return 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.

Forfeiture

[85] A forfeiture and return order has already been signed.

Firearm

[86] 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:

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

DNA

[87] Insofar as the DNA order is concerned, possession for the purpose of trafficking is a secondary designated offence, and an order is discretionary pursuant to s. 487.051(3)(b) of the Code. Where a discretionary DNA order is sought for a secondary designated offence, the court must consider a number of factors and give reasons for its decision: *R. v. Awasis*, 2009 BCCA 134.

[88] Two principles emerge from *Awasis*. First, the actual purposes of taking a DNA sample are multifaceted: *Awasis* at paras. 40, 52. Second, an offender post-conviction has a lesser expectation of privacy: *Awasis* at paras. 42-43.

[89] With that authority in mind, and in view of the circumstances of this case, including Mr. Islam'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.

[90] You must attend at the Vancouver Police Department at 2120 Cambie Street, Vancouver no later than December 5, 2025, and submit to the taking of the samples. This order is valid until executed.

[91] The Crown asks for a victim surcharge of \$200 under s. 737 of the Code. Having heard your counsel's submissions, you will have six months to pay this amount.

[92] I thank both the Crown and the defence for their helpful and thoughtful submissions.

"MacNaughton J."

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