
CANADA / JUDGMENT

R. v. Kang

2009 BCSC 1827

COURT

Supreme Court of British Columbia

DECIDED

8 December 2009

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2009 BCSC 1827 R. v. Kang

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Kang,

2009 BCSC 1827

Date: 20091208

Docket: X070480

Registry: New Westminster

Regina

v.

Ajmer Singh Kang

Before: The Honourable Mr. Justice Schultes

Oral Reasons for Sentence

Counsel for the Crown:

C. Hough

Counsel for the Defence:

D. Albert; M. Stern

Place and Date of Hearing:

New Westminster, B.C.

December 8, 2009

Place and Date of Judgment:

New Westminster, B.C.

December 8, 2009

- [1] THE COURT: On October 9th this year, following a trial, I found Mr. Kang guilty of importing cocaine into Canada and possession of cocaine for the purposes of trafficking, pursuant to ss. 6(1) and 5(2) respectively of the Controlled Drugs and Substances Act, S.C. 1996 c. 19.
- [2] My reasons for reaching that conclusion were set out in detail in the Reasons for Judgment of October 9th, but for the purpose of this sentencing, I will provide a very brief overview. On January 15, 2007, Mr. Kang was the operator of a truck-trailer unit which was re-entering Canada at Pacific Highway truck crossing. He was referred to a secondary inspection by Border Services officials, which resulted in his load being taken off and looked at. He had a quantity of produce picked up from various locations in California.
- [3] Included in that load were several pallets of lemons in cardboard boxes, and within the boxes on two of the pallets were a total of 100 individually wrapped brick-shaped packages of cocaine, each weighing approximately a kilogram, for a total of approximately 100 kilograms. There was evidence in the trial that, if sold at the multi-kilogram level, it would be worth in the range of \$2.5 to \$3 million. I infer that it would be greater if divided and sold in smaller amounts. The exact figure is not as important as saying that it is a significant amount.
- [4] The effect of this type of offence has been set out at great length in the cases, very eloquently, and I will not repeat that. I will just hit the key factors that arise from the importation of drugs like cocaine. The most obvious one is fuelling the cycle of addiction to those whose lives are affected by this drug, the violence and other criminal activity of the trade in the drug, and then, as Williams J. referred to in *R v. Sandhu*, 2003 BCSC 2033, the whole idea of border integrity, which is that commercial trucking needs to be able to go back and forth fairly efficiently, and if the only way that border integrity could be maintained was by secondary inspections of significant numbers of truckers, the effect would be disastrous to the economy.
- [5] It is clear that there is significant harm, both potentially and actually arising from this offence.
- [6] Mr. Kang's personal circumstances are quite sympathetic. He is 31 years old. He was born in India and was sent to Canada to live with his uncle at age six. In submissions, his counsel indicated that his parents hoped for better opportunities for him in Canada than he would have working on a subsistence farming endeavour in India. So he lived in Canada from the age of six to 16 when, unfortunately, he made an ill-considered decision to drop out of school and his uncle sent him back to India.

- [7] He was there for two years, and there he married his wife, Kulwinder, who is in the courtroom today and who has been attending with their son through much of the trial proceedings.
- [8] Mr. Kang is currently in a state of fairly significant social isolation, in that his parents are in India. His uncle is not having any further contact with him, as his uncle has his own life, according to the pre-sentence report, so Mr. Kang associates mainly with his wife and son. There is not the kind of support group that is found in so many of the cases, particularly where it is put forward as a mitigating circumstance that there is family or community support for an offender.
- [9] His financial circumstances are, as his counsel said, dire. He owned a house, but he had to deposit a very significant amount of bail and also fund counsel, and that resulted in him having to sell it. He and his family have been living in a basement suite since then.
- [10] He has worked as a trucker, including four years with the company that he was working at when this offence occurred, Amar Trucking, but he has changed employers from time to time. I do not draw a negative inference from that; these changes have mostly been due to a lack of work hours. He is capable of gainful employment, but the nature of the trucking business appears to be somewhat variable.
- [11] In addition to giving up their house, Mr. Kang and his wife have got a loan for the legal fees, a loan for the truck that he has bought, and credit card debts as well. He is the only income earner and his wife does not speak much English. I infer that he is the channel through which she accesses the world.
- [12] He has no previous criminal record, and I will say more about that when I get to the mitigating and aggravating factors, because there is a comment in Williams J.'s decision of Sandhu that requires some clarification.
- [13] There are no substance abuse issues for Mr. Kang.
- [14] In terms of his attitude towards the offence, I do not treat it as a negative factor that he recounts in the pre-sentence report the same description of events that he gave in his evidence. That was his evidence and he was entitled to have a trial in this matter. His counsel has said there was an issue that needed to be tested with respect to the ambit of expert evidence, and also there was a question of whether the collective inferences that could be drawn from the circumstantial evidence were capable of proving his guilt beyond a reasonable doubt, as I found they did. But it was reasonable to have a trial and argue that they did not, and so the fact that he maintains that position is neither here nor there in terms of my analysis.

- [15] The pre-sentence report basically just talks about his life and then summarizes it. I cannot really say there are any opinions stated by the probation officer, other than describing what is available in the Corrections Services of Canada through a federal sentence. I infer that the probation officer has realized that the range of sentence here invariably includes a substantial federal sentence of some kind.
- [16] With respect to the applicable sentencing authorities, Crown counsel put together what is effectively a joint book of authorities, because counsel for Mr. Kang recognized that it fairly captures the relevant cases. The question is which factors are to be emphasized in arriving at a fit sentence for Mr. Kang, sentencing being of course an individualized process.
- [17] I will start by setting out the positions of the parties. Crown counsel says that in all the circumstances, looking at the authorities particularly, and the range that has been established, a sentence of 12 years is appropriate.
- [18] Counsel for Mr. Kang, as I say, acknowledges the general appropriateness of the authorities, but says that in terms of the individualization of the sentence, Mr. Kang himself could well receive a sentence at the lower end of that range, seven to eight years, without doing any harm to the paramount consideration of general deterrence.
- [19] The most important decision to deal with at the outset is *R. v. Epp*, 2006 BCCA 570, because a key portion of Crown counsel's submission is that *Epp* establishes a benchmark for offences of this kind, that is, relatively large-scale importation of serious controlled drugs such as cocaine - border smuggling of large amounts of drugs, essentially - with respect to the transporter of the drugs.
- [20] The issue is whether or not a range was really established by Low J.A., speaking for the court. I think it is clear that Low J.A. explicitly refrained from creating a range, and I will just read the passage that matters here:

I do not agree with the conclusion of the trial judge that the range of sentence for offenders such as Mr. Epp is 12 to 16 years. There is no group of comparable cases that would suggest such a range. Nor will I attempt to create a range.

I think it is sufficient to say that the degree of culpability of anybody who conducts himself as Mr. Epp did, while being very great and requiring a sentence designed to have a general effect, is somewhat less egregious than that of high-level importers and traffickers such as Mr. Vukelich. In the present case, I think the sentencing judge saw Mr. Epp's conduct as being more like such traffickers than it was.

[Emphasis added.]

- [21] I appreciate it is an important, well-reasoned and helpful case, and I will be receiving assistance from it. But it was an appeal from a 14-year-sentence, reduced to ten, as Low J.A. says at paragraph 24:

Having regard to the circumstances of the offence and the need for general deterrence, the age of the offender, his family obligations, the continuing support of his family and church, the lack of a criminal record, the offender's co-operation with the police and his early guilty plea, I think that a sentence of imprisonment for ten years is appropriate.

[22] So that is what the Court of Appeal decided in relation to the reduction of that particular sentence, based on the individualized factors of the case. It may be that these factors are similar in some respects to Mr. Kang's, as I go through my analysis, but I would not accept that Epp sets a benchmark of ten years in all situations. I think what it stands for, overall, is that it is difficult to create a range of sentence for people who act solely as transporters of drugs, that their degree of culpability is less than high-level importers, but there still needs to be significant general deterrence involved.

[23] The cases have been reviewed through the very capable submissions of both counsel. The sentences imposed or upheld in them are in the nine and ten-year range. I accept that these fairly represent the kinds of sentences that are regularly imposed by the courts in generally similar circumstances. To that extent, they are of assistance.

[24] Dealing with the aggravating and mitigating factors, the aggravating ones scarcely need repetition. Obviously this is an importation and possession of a very significant quantity of cocaine, very valuable, and very likely to go into the distribution chain and be the source of criminal activities of various kinds, and ultimately fuel the addiction of many damaged individuals who are in the throes of addiction. It is a very significant aggravating feature, both the scale and the inherent harm.

[25] I am mindful, again, of Epp, paragraph 18, which reads:

I have difficulty with the implied proposition at para. 15 of the reasons of the sentencing judge in the present case that double the quantity of cocaine should result in a much higher sentence for Mr. Epp. In my opinion, the quantity of the drug involved particularly when tens of kilograms are involved, although a factor in sentencing, should not be over-emphasized.

[Emphasis added.]

[26] And then Low J.A. refers to the Sandhu decision:

Mr. Epp and Mr. Sandhu both committed very serious offences deserving of substantial penitentiary time and there is not much to differentiate their criminality.

[27] I am aware that a large amount was involved here, and that makes the offence serious and it is an aggravating factor. But, as counsel for Mr. Kang pointed out, we do not operate under a strict tariff system where certain quantities yield certain sentences. It is a factor, it should be taken into account, but it should not be over-emphasized.

[28] With respect to mitigating factors, there is the absence of a criminal record. I think Williams J.'s comments in Sandhu are more in the nature of saying that anyone who would be looked to by a criminal organization to transport cocaine would be someone who would be unlikely

to have a criminal record. So it is not unusual, I read it as saying, in these circumstances, to have a person with no criminal record before the court for an importing offence. I do not understand Williams J. to say that the lack of a criminal record is not a mitigating factor. I think it would always be. First-time offenders, in law, are entitled to certain considerations and I cannot agree that Williams J. would consider otherwise.

- [29] I think that it is fair to characterize Mr. Kang's role as being solely involved in the transportation. I heard Mr. Kang's evidence obviously, and I did not accept it on the trial, and I would say that I found him to be an unsophisticated person, fairly guileless and, in fact, part of my reason for rejecting his evidence was the manner in which he attempted to cover up for things he could not explain. It was fairly inept and led me to have concerns about his credibility, as set out in my reasons. By that, I do not mean he is unintelligent; I just mean that he is not a sophisticated person who had a ready explanation for things that seemed to implicate him, and hence the difficulties with his evidence. I cannot accept that he is a person who played a role in any importation beyond being the driver.
- [30] I do not think the oft-quoted reasoning in *R. v. To* (1992), 16 B.C.A.C. 223 is applicable in that regard. I did not rely on it to convict him. In other words, I did not make part of my reasons that I could not believe anyone would be entrusted with this amount of cocaine without knowing it. The reasons speak for themselves, but I did not engage in that reasoning and I do not find it appropriate here. In other words, the scale of this importation does not necessarily indicate that Mr. Kang had an enhanced role, beyond driving the truck. In addition, whether or not Mr. Kang did this on other occasions is not before me. If it were to be before me, it would have to be proven as a fact on sentencing beyond a reasonable doubt. So I treat this offence as a one-off, because that is what is before me.
- [31] In addition, I would say it is a mitigating factor that Mr. Kang is almost completely without external supports for himself and his family, and I infer that the consequences of his incarceration, which is inevitable, will fall more harshly on his wife and six-year-old son because of that lack of external social support and lack of financial resources. The effect of any amount of incarceration is going to be magnified by his particular circumstances.
- [32] With respect to the principles of sentencing, the cases establish beyond any question that the number one consideration in cases of this kind is general deterrence. Those who would seek to make some quick money by including drugs in their commercial loads must know that the consequences are relatively severe sentences of penitentiary time. I just do not think there is any way around that.
- [33] In terms of specific deterrence, I do not think that Mr. Kang requires that. He has lost a great deal simply by being charged, and now by being convicted. I have already described some of the consequences. I should say as well that his future as a truck driver anywhere else within Canada is probably gone, given this conviction. I do not know if one could even work within Canada, given the level of trust that has to be placed in a commercial truck driver. I am satisfied he does not require specific deterrence.

- [34] Denunciation is also important, society's collective condemnation of this type of conduct. We all talk about the consequences of drugs every day, and as the cases mention, without someone to bring them into the country - albeit perhaps not the mastermind, but still an essential part of the importation - trafficking in drugs like cocaine would not be possible. Society, I think, wants the courts to send a denunciatory message.
- [35] However, I also think that rehabilitation is important here. In my assessment, Mr. Kang is anything but a hard-core member of the criminal world. He has obviously made an incredibly bad decision here and he is going to pay for it very, very severely. But it is not the case that he cannot contribute to society and the upkeep of his family in the future. Indeed that possibility should not be foreclosed by the length of any sentence that I impose here.
- [36] Another sentencing principle that is important is that contained in s. 718.2(b), which is that the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.
- [37] I will pause there to say there is this tension in the cases because that section talks about similarity of sentence among similar cases, and yet the Court of Appeal has emphasized repeatedly, that while ranges are a useful guide in reaching sentences that are similar for similar offences and offenders, at the end of the day it always has to be the circumstances of the offence, the circumstances of the offender and the applicable sentencing principles that determine a fit sentence.
- [38] In summary, I accept - and there is no question about it on both counsel's submissions - that a significant sentence of penitentiary time needs to be imposed here. The cases show that nothing less will meet the needs, particularly of general deterrence and denunciation. However, I do find that, firstly, the amount of drugs involved here, while a factor and certainly an aggravating factor, does not govern in such a way as to operate as a tariff, thereby lifting the sentence from what it might otherwise be solely on the amount that this load of cocaine exceeds loads in otherwise similar cases.
- [39] Secondly, I think that Mr. Kang's extreme degree of social isolation, the precarious situation of his family and his financial circumstances are relevant. Obviously everyone will have sympathetic stories in these cases, and some of the cases show that. But given his circumstances, I think that the sentence I must impose will fall far more harshly on him and his family than it would otherwise, and I would also say that his apparent lack of sophistication or criminal savvy means that this sentence will be hard time for him.
- [40] General deterrence is very important but I think that a sentence falling anywhere within the general range that has been set out would have sufficient general deterrent effect. In other words, whether I give Mr. Kang ten years or twelve years or eight years, no one looking at this case would be saying that it is now worth the risk, that I should definitely now agree to take cocaine into Canada in my truck, because any of those sentences would have a very significant effect on an offender's life.

- [41] That is not to make light of the distinctions between the cases. They are there and I will be guided by them. It just means that any of the sentences possible here will have a very significant deterrent effect.
- [42] The case that I find of greatest assistance is Williams J.'s case of Sandhu. I appreciate there are some factual differences and more aggravated features there, but that is the one that struck me as being most like this one. However, in the circumstances, I am going to give some further credit for the particular personal circumstances of this accused and find that a sentence slightly lower than what was imposed in that case will not do violence to the principle of general deterrence.
- [43] Mr. Kang, would you stand, please? I am going to impose a sentence on you which will still be a very significant one, but I hope it will not be so significant that it puts beyond your ability the chance to get back with your family and working and doing productive things. That is my goal here. I am going to sentence you to eight years imprisonment, concurrently on each count, and I am also going to impose an order for a DNA sample, pursuant to s. 487.051.
- [44] I am sorry, Mr. Hough, was there a firearms prohibition sought in this case?
- [45] MR. HOUGH: Yes. There is a ten-year mandatory firearms prohibition under s. 109.
- [46] THE COURT: Pursuant to s. 109 of the Criminal Code, Mr. Kang, I will prohibit you from possessing any firearm, prohibited firearm, restricted firearm, crossbow, restricted weapon, ammunition or explosive substance, including any prohibited device and prohibited ammunition for ten years from your release from custody.
- [47] I wish you the best of luck. I am sorry that the cases require this type of sentence, but I am satisfied that they do.
- [48] I could not let the case conclude without complimenting counsel on the way they have conducted all aspects of the case, and particularly the sentencing proceedings. Thank you.

"Schultes J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/09/18/2009BCSC1827.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-kang-2009>

Prepared on 28 October 2026 · Esheria