CANADA / JUDGMENT

R. v. Kang

2024 BCSC 2507

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Supreme Court of British Columbia

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2024 BCSC 2507 R. v. Kang

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Kang,

2024 BCSC 2507

Date: 20241122

Docket: 32948-1

Registry: Vancouver

Rex

v.

Amandeep Singh Kang

Dylan Robert Ferris

Jannat Bibi Nadeem

Tanisha Bhatti

Before: The Honourable Justice Wedge

Oral Reasons for Sentence

Re Accused Jannat Bibi Nadeem

Counsel for the Crown:

I. Sattarzadeh

Counsel for the Accused Jannat Nadeem:

W. Jessop

No other appearances

Place and Date of Trial/Hearing:

Vancouver, B.C.

November 13, 2024

Place and Date of Judgment:

Vancouver, B.C.

November 22, 2024

[1] THE COURT: Jannat Nadeem is before the court for sentencing having pled to one count of unlawfully conspiring to traffic in fentanyl, heroin, methamphetamine, and/or cocaine with Amandeep Kang between October 1, 2019 and March 13, 2020, contrary to s. 5(1) of the Controlled Drugs and Substances Act, thereby committing an offence contrary to s. 465(1)(c) of the Criminal Code.

[2] Every sentencing contains unique facts, but it is fair to say that this case presents with highly unusual circumstances. Ms. Nadeem was 18 years of age when she began to work as a courier in Mr. Kang's drug operation together with her mother, Ms. Khan, and her boyfriend, Mr. Ferris, a drug dealer. She was 19 by March 2020 when the police investigation into their activities concluded and search warrants were issued. Ms. Nadeem had worked in tandem with her mother to deliver drugs in the Lower Mainland and the Okanagan. In most instances, Ms. Khan drove with Ms. Nadeem to various locations to meet with street-level dealers to reload their drug supplies. Ms. Nadeem began her work as a courier at the behest of her mother, who associated with users and traffickers of drugs in the family home while Ms. Nadeem was growing up.

[3] By the time of this sentencing hearing, four years had passed and Ms. Nadeem was 23 years of age. In the intervening four years, she had complied with strict bail conditions, worked full-time for two different insurance companies, and completed her training as a licensed practical nurse. She is currently completing her LPN preceptorship at a Lower Mainland hospital in its emergency department. She hopes to go on to obtain her registered nurse's degree. Nursing has become her passion.

[4] The Crown seeks a sentence of six years' incarceration. The defence seeks a sentence of two years less a day, a conditional sentence order, followed by three years' probation.

[5] The defence concedes that the sentence proposed may not only be at the lower end of the range, but even outside the range. However, the Supreme Court of Canada in R. v. Lacasse, 2015 SCC 64 at para. 58 noted that there can be circumstances which occasionally warrant such a sentence:

[58] . . . The determination of a just and appropriate sentence is a highly individualized exercise that goes beyond a purely mathematical calculation. It involves a variety of factors that are difficult to define with precision. This is why it may happen that a sentence that, on its face, falls outside a particular range, and that may never have been imposed in the past for a similar crime, is not demonstrably unfit. Once again, everything depends on the gravity of the offence, the offender's degree of responsibility and the specific circumstances of each case.

[6] And as stated by the Court in the leading case of R. v. Parranto, 2021 SCC 46 at para. 40, irrespective of the modality used, as a trial judge sentencing an accused, my reasons "and the record must demonstrate why the sentence is proportionate to the moral blameworthiness of the offender and the gravity of the offence."

[7] The Court in Parranto said at para. 38, sentencing is an individualized process, and departures from the starting point or sentences above or below the range are to be expected:

Even significant departures are not to be treated as a prima facie indication of an error or demonstrable unfitness. Fitness is assessed with reference to the principles and objectives of sentencing in the Code, not with reference to how far the sentence departs from quantitative appellate guidance.

[8] The circumstances of the offence have been outlined in a comprehensive agreed statement of facts which has been marked as an exhibit on this sentencing hearing and should be read in conjunction with these reasons. The defence does not dispute that Ms. Nadeem was engaged as a courier in a relatively sophisticated drug-trafficking operation run by Mr. Kang, who had others working for him in the operation dealing drugs, including Ms. Nadeem's boyfriend, Mr. Ferris, who ran a street-level operation in Nanaimo, B.C., and surrounding area.

[9] From July 2019 to February 2020, Mr. Kang directed Ms. Nadeem with respect to her job transporting drugs to destinations and persons. Directed by him, she supplied drugs to traffickers in the Greater Vancouver area, as well as Kamloops and Kelowna in the Interior of B.C. She worked directly with Ms. Khan, as they both travelled in Ms. Nadeem's Chevrolet Cruze; alternatively, on some occasions, Ms. Nadeem instructed Ms. Khan, according to Kang's direction, and Ms. Khan delivered the drugs on her own.

[10] Tracking data from the Cruze disclosed at least 27 short-duration trips to the Interior between July 12, 2019 and February 24, 2020. Deliveries in the Lower Mainland were less quantifiable as they were identified only by direct surveillance.

[11] Ms. Nadeem and Ms. Khan would receive between $500 and $800 per trip to the Interior. They received smaller amounts for local deliveries and pickups. The two women collaborated on the storage of drugs at Ms. Khan's residence.

[12] The police made two interceptions during the time they were performing surveillance. On July 31, 2019, police observed Ms. Nadeem meet a male at the Costco parking lot in Burnaby. The male got into the Cruze and then exited with a backpack. Police later seized two identical backpacks from his vehicle: one contained two kilograms of cocaine, the other $44,000 in cash. Ms. Nadeem had delivered either the cash or the cocaine.

[13] On November 14, 2019, Ms. Nadeem stopped her car in an alley in Surrey. A few minutes later, a male approached her vehicle and handed her a small package. Ms. Nadeem drove to the ferry terminal in Tsawwassen. A second male, carrying a Nike backpack, got into the Cruze for four minutes then boarded the ferry. Surveillance continued to Victoria where the male was stopped in his car at the ferry terminal. He had his backpack with him. It contained approximately five ounces of methamphetamine, one ounce of fentanyl, and two and a half ounces of crack cocaine.

[14] In February 2020, one month from the search warrant being issued, Ms. Nadeem had a conversation with Mr. Ferris about his Nanaimo operation. She asked him specifically how he made money in his arrangement with Kang regarding the drug line Ferris was running in Nanaimo. He described how he made a significant percentage from each drug deal. She asked how profits were split. He detailed a 40/40/20 split between Kang, another dealer, and himself. He knew how much he made at the end of each shift.

[15] In February 2020, Mr. Ferris told Ms. Nadeem, in an intercepted phone conversation, he had recruited a 15-year-old to do some street deliveries. He was drying fentanyl in his room, which he was also doing when the warrant was executed in March of 2020. In February, he was arrested in Nanaimo. He tried to dispose of drugs he was carrying, but police found baggies of fentanyl totalling 5.6 grams, three baggies of methamphetamine totalling five grams, and three baggies of crack cocaine totalling 4.5 grams.

[16] When the warrant was executed on Ms. Khan's residence, most of the drugs were in a hockey bag in a bedroom closet. There were 1.5 ounces of cocaine, 3.4 grams of methamphetamine, and 7.2 kilograms of fentanyl substances. The fentanyl was in the form of various mixtures, mostly packaged in smaller quantities, but also some large bags. There were three quantitative analyses of the fentanyl substances, a sample of over 330 grams of sludge in a tray tested as 0.2% fentanyl; from a one-ounce bag, 5.6%; and from a 9.3-gram bag, 6.6%. Much of the 7.2 kilograms was not considered saleable by the Kang organization and thus was not worth a great deal.

[17] The comprehensive agreed statement of facts to which I referred earlier forms part of these reasons. It includes excerpts of intercepted communications between Ms. Nadeem and her mother, Ms. Khan, as well as Ms. Nadeem and Mr. Ferris. The defence concedes that Ms. Khan and Ms. Nadeem were trusted members of the Kang organization; however, the evidence discloses that their roles were limited and clearly defined. The participation was strictly limited to couriers driving deliveries to locations specified by Kang. As noted earlier, they were paid $500 to $800 per trip to the Interior, less for drops in the Lower Mainland,

and they received a monthly payment of $400 per month to store drugs at their residence. This was used to pay half the rent of Ms. Khan's subsidized housing which had a monthly rent of $800. Ms. Nadeem moved out of the house in January of 2020 to live with her grandparents and Ms. Khan continued to receive the $400.

[18] It is apparent from the intercepted conversations that these deliveries were often poorly organized and scheduled. Ms. Nadeem was often not paid for trips and had to ask Kang for gas money and outstanding payments for the trips. She was not a sophisticated or integral player in the operation, nor was she sharing in the profits. From the intercepts, it is obvious that neither Ms. Khan nor Ms. Nadeem was anything other than a driver paid strictly a sum for each delivery, unlike Mr. Ferris, a street dealer who shared in the profits and had considerable independence and decision-making authority.

[19] The Crown has labelled Ms. Nadeem as a mid-level courier. I am not sure what that means precisely. Ms. Nadeem was a driver, a transporter of the drugs from Kang to dealers. There is no evidence that she knew what drugs she was delivering or in what amounts. As a simple driver, she could be replaced by others in the way, for example, that Mr. Ferris, who ran the Nanaimo operation, could not. The defence says, and I agree, that Ms. Nadeem's limited role is a mitigating factor. Her moral culpability as a courier is attenuated in comparison to those who possessed specific knowledge of the trafficking operation and were integral to it, such as Mr. Ferris.

[20] Turning to general principles of sentencing, proportionality is determined on an individual basis and in relation to the offence committed. It is assessed according to the moral blameworthiness of the offender and the gravity of the offence. Section 718.2 of the Criminal Code sets out additional principles for determining a fit and proper sentence, including:

1) assessing any aggravating and/or mitigating circumstances;

2) parity;

3) totality;

4) restraint; and

5) consideration of all available sanctions other than imprisonment that are reasonable in the circumstances.

[21] In B.C., the caselaw does not yet establish a clear sentencing range for couriers possessing a wholesale volume of fentanyl for the purposes of trafficking. The Manitoba Court of Appeal reviewed the jurisprudence recently on the issue of quantum of sentence for trafficking amounts of fentanyl described as mid-level in R. v. McLean, 2022 MBCA 60. The accused McLean acted as a mere courier possessing 220 grams of fentanyl, and a 981-gram brick of cocaine for the purposes of trafficking. The Court appears to define mid-level as a multi-ounce amount. The Court of Appeal established a range of sentencing for a courier trafficking fentanyl at the mid-level at six to eight years of imprisonment, stating at para.

118:

The range of sentence for someone minimally involved in mid-level fentanyl trafficking, such as a courier or custodian without . . . decision-making authority or responsibility in the trafficking activity, is six to eight years' imprisonment (leaving aside the effect of the aggravating and mitigating factors . . .

[22] Further in R. v. Deol, 2024 MBCA 84 at paras. 65-69, the Court noted reduced moral blameworthiness as compared to individuals with decision-making power, but does not detract from the importance of general deterrence and denunciation, saying that acting as a courier is a deliberate offence involving "serious intentional risk taking".

[23] In our Court recently, Justice Weatherill in R. v. Dinh, 2024 BCSC 109, discussed the importance of couriers in the drug-trafficking organization. At para. 23, he quotes R. v. Nishikawa, 2011 ABCA 39 at para. 9:

The reality of the drug trade is that the supply chain depends on a wide variety of individuals, all of whom are indeed vital to the criminal enterprise as a whole.

[24] He went on to say that couriers are integral to the drug-trafficking trade as they are an indispensable part of the distribution and sale of drugs. I accept that the role of a courier can be integral to a drug-trafficking operation. However, within that role, there are surely differing situations which bear on the moral culpability of the courier.

[25] The principle of parity assists in determining ranges by guiding judges to cases involving similar offenders committing similar offences in similar circumstances. However, the principle of parity is secondary to proportionality, which remains the fundamental principle in sentencing.

[26] Proportionality is determined on an individual basis and in relation to the offence committed. As the Supreme Court of Canada in Lacasse at para. 53 noted:

[53] . . . Proportionality is determined both on an individual basis, that is, in relation to the accused him or herself and to the offence committed by the accused, and by comparison with sentences imposed for similar offences committed in similar circumstances. Individualization and parity of sentences must be reconciled for a sentence to be proportionate: s. 718.2(a) and (b) of the Criminal Code.

[27] The Court in Lacasse referred to the oft-quoted decision of the Court in R. v. M.(C.A.), [1996] 1 S.C.R. 500:

[92] . . . there is no such thing as a uniform sentence for a particular crime. . . . Sentencing is an inherently individualized process, and the search for . . . [an] appropriate sentence for a similar offender and a similar crime will frequently be a fruitless exercise of academic abstraction.

[28] The Court in Lacasse went on to say at para. 58 that there would always be situations that call for a sentence outside of a particular range.

[29] In the present case, Ms. Nadeem asked the Court to place considerable emphasis on the individualized nature of sentencing in crafting a sentence fit and proper in her specific circumstances. As a youthful first offender, this Court must consider the overarching principles of rehabilitation and restraint. The principle of parity is prominent, given the sentence imposed on her mother, Ms. Khan, and I will return to this in due course. Suffice to say at this point that Ms. Khan was given a conditional sentence of two years less a day for her role in the Kang operation.

[30] Turning to the personal circumstances of Ms. Nadeem, she is currently 24 years of age. She is of Fijian background and is now a practising Muslim. Ms. Nadeem's grandparents, mother, and aunt immigrated to Canada from Fiji. Around the same time, her father fled from Pakistan to Canada. Ms. Nadeem's parents met in Canada, married, and eventually had her as their only child. Her father spent much of his life moving between Canada and other areas of southeast Asia, only visiting Ms. Nadeem rarely and for brief periods of time.

[31] Both Ms. Nadeem's parents were alcoholic. Her father's health deteriorated as a result of his drinking and he died when she was nine years of age. Shortly thereafter, she and her mother moved into her grandparents' home.

[32] Ms. Nadeem was raised in what she describes as a dysfunctional and often chaotic household. At age nine, she witnessed the sexual assault of her mother by her cousin's husband. A police investigation and prosecution ensued. Ms. Nadeem was called as a witness and testified at trial. Her understanding of the situation, given her age and sophistication, resulted in evidence that was not of great assistance to the prosecution. She states she felt as though her mother relied on her to obtain a conviction and yet the accused was acquitted. Ms. Nadeem said she was criticized by her mother for not being of greater assistance during these proceedings.

[33] When Ms. Nadeem was in Grade 7, she and her mother moved out of her grandparents' residence and into social housing on Ravine Road in Surrey. Ms. Nadeem's mother was diagnosed with lupus disease. She stopped working and went on full-time disability. She drank heavily and began a relationship with a man who was addicted to crack cocaine. She was introduced to crack cocaine and became an addict herself. Her personal struggles with lupus, mental health, and addiction escalated by the time Ms. Nadeem had entered high school. Ms. Nadeem recalls numerous instances where her mother did not pay for utilities such as hot water, heat, or cable/internet. There was often very little food in the house. She learned that her mother began selling household items to local pawn shops and obtained cash loans.

[34] During this time, Ms. Nadeem's mother began associating with younger men engaged in criminal activities. These individuals utilized her mother for transportation, errands, and a host of other activities in the drug trade. All of these individuals had close ties to the drug

trade and were closely related to the activities of Kang and other members of the Brother's Keepers gang. Ms. Nadeem recalled her mother describing these activities as opportunities. It was Ms. Khan who introduced her daughter to the drug trade. Ms. Khan encouraged her daughter to engage with these individuals as a means to make money to support the household.

[35] In high school, Ms. Nadeem sought and maintained employment to pay for bills and contribute to the rent. Despite her age, Ms. Nadeem acted as her mother's caretaker, ensuring the bills were paid, buying groceries, cooking meals, and ensuring her mother took medication.

[36] Ms. Nadeem began to socialize with some of the individuals that her mother brought around the home. She was only 15 at the time, but many of these individuals were also young. She soon met Dylan Ferris and they began dating. He provided Ms. Nadeem with a sense of financial security and protection.

[37] In late 2019 and early 2020 during the investigation, Ms. Nadeem's relationship with her mother took a turn for the worse when Ms. Khan began dating an individual named Neil. Ms. Nadeem disapproved of this relationship, considering him to be the next in line in a string of unhealthy partners.

[38] In January 2020, Ms. Nadeem moved out of the Ravine Road residence and back into her grandmother's home. Intercepted phone calls between Ms. Nadeem, her mother, and friends revealed the extent of her frustrations with her mother and the toll it took on her personally.

[39] Despite all of the dysfunctions at home, Ms. Nadeem has remained free from addiction and has done her best to try to maintain employment, even from a young age. Since her arrest on these matters, Ms. Nadeem has taken significant steps towards rehabilitation and made positive changes in her life. She enrolled in Stenberg College and completed her licensed practical nursing program. She is presently in her preceptorship wherein she shadows a nurse at Surrey Memorial Hospital. Ms. Nadeem has specifically requested to work in the ER department. She advises that she has found purpose and passion in this line of work and would like to continue to complete her RN program.

[40] She has also maintained employment throughout the period of time on bail. She has been employed at Westland Insurance, Strata Insurance, and for a brief period of time, the Cactus Club as a second job. She has, throughout the course of these proceedings, often worked two jobs and attended school full-time. She advises that she has begun to take her faith seriously and regularly prays and abides by the traditions of the Muslim religion. She has completed a number of certificates which can be used to increase her employability in the community, and those certificates have been provided to the Court.

[41] Ms. Nadeem has at all times complied with the terms of her bail, including a curfew for a significant period of time. She has cut ties with all negative associates in the community and has developed a new social circle through school and employment.

[42] I turn then to the mitigating factors and they are as follows:

1) Ms. Nadeem is a youthful offender, 18 and 19 at the time of the offences;

2) she is a first-time offender;

3) she has had a difficult and unstable upbringing;

4) she has taken significant rehabilitative steps from March of 2020, and she has expressed remorse.

[43] Turning first to the youthfulness and first-time offender. Ms. Nadeem was 18 when she first began delivering drugs with her mother. She was introduced to Kang's organization by her boyfriend, Dylan Ferris.

[44] In R. v. Priest, 1996 CanLII 1381 (ONCA), the Ontario Court of Appeal noted that in sentencing a youthful first-time offender, "The primary objectives . . . are individual deterrence and rehabilitation." Citing an earlier decision of R. v. Stein, 1974 CanLII 1615 (ONCA):

. . . Martin J.A. made it clear that in the case of a first offender, the court should explore all other dispositions before imposing a custodial sentence . . .

[45] The Court in Priest also said:

The duty to explore other dispositions for a first offender before imposing a custodial sentence is not an empty formalism which can be avoided merely by invoking the objective of general deterrence.

[46] The emphasis on individual deterrence rather than general deterrence is particularly applicable in the case of a youthful offender. The B.C. Court of Appeal adopted the general rule from the Priest decision in R. v. Mercer, 2015 BCCA 330. Further, Justice DeWitt-Van Oosten, as she then was, endorsed the principles from Priest in R. v. Ferguson, 2018 BCSC 1523, when sentencing an accused for a brazen attempted murder at the Vancouver International Airport:

[144] For first time offenders who are facing imprisonment, it is generally understood that the term of imprisonment "should be as short as possible and tailored to the individual circumstances of the [offender] rather than solely for the purpose of general deterrence": R. v. Priest . . .

[145] There is a presumption that a first time offender is capable of rehabilitation: R. v. Sidhu, 2011 BCCA 246 at para. 26. In R. v. Lacasse, the Supreme Court described rehabilitation as "one of the fundamental moral values that distinguish Canadian society from the societies of many other nations in the world, and it helps the courts impose sentences that are just and appropriate" . . .

[47] The intercepted conversations of Ms. Nadeem and Ms. Khan and those of Mr. Ferris do not paint a picture of a calculated, sophisticated drug trafficker speaking in code, but a young woman upset about not getting paid for her work and expressing frustration with her mother and boyfriend. Both Crown and defence commented on the disconnect apparent in Ms. Nadeem's conversations between her activities transporting drugs and the dangers that drugs pose to end users.

[48] The gravity of the offence and their consequences do not appear to have been adequately understood by Ms. Nadeem at the time. Her lack of insight may be attributed to her young age. The level at which she had become entrenched in Kang's operation appears not to have been fully appreciated by her. That is not to suggest that her offending was done without intent. Clearly, it was intentional. However, her overall moral culpability must be viewed in the context of someone in her teenage years working alongside her mother who approved of the activities.

[49] While it is true that Ms. Nadeem was the one who regularly obtained instructions from Mr. Kang and then relayed those instructions to her mother, that is consistent with her having been her mother's caretaker from a young age. That these offences were committed alongside her mother speaks to the complete absence of adequate parental supervision or guidance in her formative years. She was raised in an environment which fostered negative associations in criminal activity.

[50] Given that the offences occurred while Ms. Nadeem was still living under her mother's care and with her mother's participation as a partner, there can be little doubt that her socialization at home played a significant role in her motivation to engage in criminal activity. This must attenuate her moral culpability overall.

[51] This kind of background is distinguishable from those that fall prey to the influences of her peer group. Ms. Nadeem was subjected to negative influences at home which tended to normalize criminal behaviour as a means to an end. In one lengthy intercepted conversation between Ms. Nadeem and her mother, Ms. Nadeem indicated a desire to extricate herself from the drug trafficking, while her mother indicated her preference that she remain involved.

[52] I turn now to the issue of rehabilitation. Even prior to the execution of the search warrant in March of 2020, the intercepts indicate Ms. Nadeem's desire to extricate herself from the Kang organization. In February, she began declining courier runs. She obtained steady employment and wanted to continue pursuing it. In one intercept, she says to Ms. Khan that she cares about her new lawful job more than working for Kang.

[53] The steps Ms. Nadeem has taken since March 2020 are not pro forma actions taken to mitigate her sentence. They are sincere and genuine steps, in my view, taken towards achieving a life that contributes positively in her community and society. These are changes she made aside from intervention by the criminal justice system.

[54] She has strictly adhered to her bail conditions. She has worked two jobs while going to school, after working hours for many months to obtain her LPN certification. These are the kinds of steps referred to by Justice Bennett in R. v. Voong, 2015 BCCA 285, where she stated at para. 59:

There must be something that would lead a sentencing judge to conclude that the offender had truly turned his or her life around, and that the protection of the public was subsequently better served by a non-custodial sentence.

[55] Justice Bennett referred with approval to the sentencing judge's conclusion that the accused had "so consolidated a path of rehabilitation that . . . it would not serve society or the public at all to take him off that path and to send him to jail for a period of time," notwithstanding that he had committed very serious offences deserving a serious response by the Court.

[56] The accused in that case had been operating a dial-a-dope operation. At that time, the normal range of sentence for a first-offence dial-a-dope trafficker was between six- and nine-months' incarceration and upwards of 18 months in some cases, absent exceptional circumstances. In Voong, the trial judge imposed a suspended sentence and 30 months' probation, which was upheld on appeal.

[57] In R. v. Bissonnette, 2022 SCC 23, Chief Justice Wagner said the following about the importance of rehabilitation as a sentencing principle (para. 48):

. . . the objective of rehabilitation is designed to reform offenders with a view to their reintegration into society so that they can become law-abiding citizens.

[58] In R. v. Flintroy, 2021 BCSC 1187, the offender possessed, for purposes of trafficking, exceedingly large amounts of fentanyl, cocaine, methamphetamine, and heroin. She and her co-accused, Mak, were directed by those higher up in the drug organization to repackage and distribute the drugs to others, who in turn distributed the drugs to street-level dealers. The co-accused Mak received a seven-year jail sentence pursuant to a joint submission. With respect to Ms. Flintroy, the Crown submitted that a 30-month period of incarceration was appropriate, while the defence argued for a suspended sentence in the exceptional circumstances of the case.

[59] Ms. Flintroy had suffered many years of serious addiction. The events leading to her arrest occurred in 2014/2015. She pled guilty ultimately, but waited five years to get before a sentencing judge. In that time, she completely turned her life around. Justice Crossin was satisfied she had finally found the path forward with the appropriate support and treatment for the childhood trauma she had suffered, and had achieved a significant long-term sobriety. Citing the principles of rehabilitation and satisfied of her genuine remorse, he imposed a 20-month conditional sentence and 12 months' probation.

[60] In R. v. Nesbitt, 2012 BCCA 243, our Court of Appeal considered an appeal by the Crown from a conditional sentence imposed by the trial judge for an offender who had pled guilty of 17 kilograms of cocaine. On the information available to the sentencing judge, the accused was rehabilitated by the time of sentence, which took place six years after the accused's arrest. The Crown had sought a sentence of six years, submitting that the range of sentence for multi-kilogram trafficking of cocaine was four to 12 years. The Crown contended that the sentencing judge had placed undue emphasis on rehabilitation and failed to give any weight to the principles of general deterrence and denunciation.

[61] In Nesbitt, the Court of Appeal cited R. v. Proulx, [2000] 1 S.C.R. 61, in which Chief Justice Lamer made clear that, absent statutorily-mandated offences, "no crime is beyond the reach of a conditional sentence". The Court of Appeal noted that the sentencing judge referred to Proulx at para. 99, where the Supreme Court of Canada noted that a conditional sentence "affords the sentencing judge the opportunity to craft a sentence with appropriate conditions that can lead to the rehabilitation of the offender, reparations to the community, and the promotion of a sense of responsibility in ways that jail cannot", yet emphasized that it is inappropriate for an appellate court to require exceptional circumstances when departing from a range. Rather, departing from a range is appropriate where required to achieve proportionality.

[62] The Court also noted that in Proulx, the chief justice stated that a conditional sentence could be imposed even in circumstances where there are aggravating factors relating to the offence or the offender. Each case must be considered individually.

[63] Upholding the conditional sentence, the Court of Appeal in Nesbitt stated that it was a unique case. By the time of sentencing, the offender was rehabilitated. He had no criminal record, and was involved in criminal activity for a fairly short period of time. The Court reiterated that sentencing ranges are not absolute.

[64] In concurring reasons in Nesbitt, Justice Levine cited an earlier decision in R. v. Kreutziger, 2005 BCCA 231, where the offender had rehabilitated himself after sentence and the Court of Appeal was faced with whether to send him to jail seven years after the offence. To require Mr. Nesbitt to be incarcerated would be to satisfy the principles of deterrence and denunciation. With that sort of passage of time after an offence has been committed, the deterrent and denunciatory aspects on the community recedes, said the Court, and "the outcome of the intercession of the justice system on the . . . offender takes on primary

importance." (para. 43).

[65] Justice Levine observed at para. 43 that where, as in Mr. Nesbitt's case:

. . . an offender has, over a period of time . . . become a fully rehabilitated, productive member of society, sending that person to jail seems, as was said in Kreutziger, counterproductive.

[66] In R. v. Schneider, 2019 BCCA 310, the appellant pled guilty to trafficking in a controlled substance when he sold $20 worth of heroin containing fentanyl to an undercover police officer. He was sentenced to 20 months' incarceration and two years' probation. He appealed. The Court substituted a three-year suspended sentence. The Court found the sentencing judge had erred in concluding that a conditional sentence was not available because the drug included fentanyl, despite an exceptional rehabilitation on the part of the appellant.

[67] In R. v. Bridgen, 2023 BCCA 229, the Court of Appeal cited the Parranto decision and its emphasis on individualization in sentencing as central to the analysis of proportionality. The Court of Appeal also cited the decision of Justices Brown and Martin in Parranto, where they emphasized that it is inappropriate for an appellate court to artificially constrain sentencing judges' ability to impose a proportionate sentence by requiring exceptional circumstances when departing from a range. Rather, departing from a range is appropriate where required to achieve proportionality.

[68] I turn then to the principle of remorse. Ms. Nadeem was subject to a presentence report and a psychological assessment in May of 2024. In both cases, the writer cited Ms. Nadeem's expressions of genuine remorse. Ms. Nadeem also expressed deep remorse with insight into her offending in her lengthy letter to the Court. She is remorseful at her having contributed to the same drug epidemic that caused so much harm within her own family.

[69] In her meeting leading to the presentence report, she was asked about the details surrounding the offence. She stated she "wished I could go back in time, every piece of drug I touched could have a life or death impact on another person." The writer noted that Ms. Nadeem's version of the offence was consistent with the police report and that she took responsibility for her behaviour.

[70] But it is Ms. Nadeem's actions since March of 2020 that speaks to her remorse more than her words. She has been exemplary in her behaviour, working full-time, completing the heavy coursework towards achieving her LPN certification. She has thrown herself into her work and her studies. She has complied with all bail conditions. She does not associate with any individuals involved in any criminal activity.

[71] Turning to the principle of parity, I accept the submission of defence that the sentence received by Ms. Nadeem's mother, Ms. Khan, plays an important role in determining a fit sentence for Ms. Nadeem.

[72] In R. v. Bingley, 2021 BCCA 444, our Court of Appeal observed that:

[11] Where there are other offenders who participated in the criminal activity at issue, the sentencing judge should consider the sentences of the other offenders . . .

[73] The Crown advises that Ms. Khan pled guilty to a single count as part of a plea agreement. The charge to which she pled was, also as part of the plea agreement, to trafficking in cocaine, not fentanyl. She was subject to a PSR and a mental health and cognitive functioning assessment by a psychologist through the Forensic Psychiatric Services Commission. She was sentenced in Provincial Court and the judge referred to Ms. Khan's very difficult personal circumstances, including a history of abusive relationships. She had been diagnosed with lupus some years earlier and was on disability at the time of the offences. The Court cited the psychological report which found that Ms. Khan suffered from addictions to alcohol, stimulants, and cannabis, had PTSD, and depression. The psychologist found that Ms. Khan presented with borderline intellectual functioning, at the lower level of functioning, but indicated that this likely underestimated her true level of functioning due to certain circumstances surrounding the testing.

[74] Ms. Kahn appeared for sentencing with injuries to her face which counsel said were as a result of a domestic assault. The Court concluded that Ms. Khan's immaturity and mental health challenges led her to being manipulated by others, that significant intervention was necessary for her to get help, and that a CSO was the best way for her to get help and was not contrary to the public interest.

[75] The agreed statement of facts filed on Ms. Nadeem's sentencing contain lengthy and numerous intercepted conversations between Ms. Nadeem and Ms. Khan. It is true that Ms. Nadeem was the point of contact with Kang. She received instructions directly from him and conveyed them to her mother. Ms. Khan could not operate a BlackBerry, or manage conversations with Kang, and suffered from extreme anxiety. However, it is not accurate to say that Ms. Nadeem was Ms. Khan's boss of her mother and her criminal conduct. Friends of the family to whom the writer of the PSR spoke confirmed that Ms. Nadeem and Ms. Khan had a complicated relationship, that Ms. Nadeem was constantly trying to please her mother and had been negatively influenced by her as she was growing up.

[76] In the intercepted conversations, it appears that Ms. Khan is functioning fairly well. She often made deliveries in the Lower Mainland on her own. The two women acted in concert and were essentially partners in their activities as drug couriers.

[77] In one intercepted conversation, Ms. Khan insisted that she receive the $400 per month for drug-sitting the drug stash at the house, particularly as Ms. Nadeem, at the time, had moved out and was living with her grandparents.

[78] Further, any increase in Ms. Nadeem's moral culpability in the assessment of parity is offset by her compelling mitigating factors and significant rehabilitative steps which were not present in Ms. Khan's case. To incarcerate Ms. Nadeem for a lengthy federal sentence would be a very disparate sentence when compared to that received by Ms. Khan, who encouraged her 18-year-old daughter to engage in the criminal activity.

[79] What then is a fit and proper sentence for Ms. Nadeem? The Supreme Court of Canada has moved away from the exceptional circumstances test as it was outlined in the Voong case, but the comments of Justice Bennett remain relevant. They are simply "case specific considerations that could conceivably justify a departure from a conventional sentencing range in order to craft a proportional sentence." These circumstances, as noted by Justice Bennett at para. 59, may include no criminal record, significant steps towards rehabilitation, gainful employment, remorse, and acknowledgment of the harm done to society as a result of the offence. All of those factors are present in this case, and a significant addition to this list is the youthfulness of Ms. Nadeem at the time of the offence.

[80] Ms. Nadeem, please stand. I sentence you to two years less one day in the form of a conditional sentence order and a three-year term of probation.

[81] Madam Registrar, if you could pass out the terms of the conditional sentence order. You may be seated while I --

[82] THE CLERK: This one [inaudible] --

[83] THE COURT: Yes.

1) You must keep the peace and be of good behaviour.

2) You must appear before the court when required to do so by the court.

3) You must report by telephone to a conditional sentence supervisor at Surrey South Community Corrections at 102, 14245 56th Avenue, Surrey, B.C., by 4:00 p.m. today, November 22nd.

4) After that, you must report to a conditional sentence supervisor at whichever Corrections location directed by Surrey South Community Corrections. Thereafter, you must report as directed by your supervisor.

5) You must remain in British Columbia unless you have prior written permission from the court or your conditional sentence supervisor to leave the province.

6) You must notify the court or your conditional sentence supervisor in advance of any change of address.

7) For the first 15 months of this order, you must obey a curfew by being inside your residence between 10:30 p.m. and 6:00 a.m. every day, and 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.

8) You may be away from your residence during the curfew with prior written permission of your conditional sentence supervisor. Such permission is to be given only for employment or other compelling reasons. You must carry the permission, which can be in electronic format, with you when you are outside your residence. You must show this permission, along with a copy of this order, to a peace officer who:

a) requests to see it, or

b) who stops you for any reason.

9) You may also be away from your residence during the curfew hours while at or going directly to or returning directly from a healthcare facility because of a medical emergency, to attend regular doctor appointments, and other health-related appointments with the permission of your conditional sentence supervisor. If asked, you must provide your conditional sentence supervisor with proof of your attendance at the facility or a doctor's office.

10) You must provide your conditional sentence supervisor with the details of your employment. You must inform your supervisor at least two days prior to any change in your employment status.

11) You must attend, participate in, and complete any intake, assessment, counselling, or educational program directed by your conditional sentence supervisor.

12) You must not possess or use any mobile communication device. The exceptions are as follows:

a) you may possess one cell phone that has only one phone number that is provided to your conditional sentence supervisor;

b) you must not use or possess more than one SIM card for the phone as referenced above;

c) you must provide your conditional sentence supervisor with your cell phone number and service provider, and not change it without the prior written permission of your conditional sentence supervisor; and

d) you must keep a history of and not delete your call and text usage and, upon the request of your conditional sentence supervisor, you must give them access to your cell phone so they can verify compliance with this condition.

[84] Secondly, with respect to the probation, the terms of the three-year probation orders to follow the conditional sentence shall be determined by your probation officer who will be provided with this conditional sentence order.

[85] And finally, there are, I believe, two ancillary orders requested by the Crown. I believe the first was the mandatory weapons prohibition and is that the lifetime?

[86] CNSL I. SATTARZADEH: It's -- on a first offence, it's a 10-year --

[87] THE COURT: Ten-year.

[88] CNSL I. SATTARZADEH: -- mandatory weapons prohibition under s. 109 of the Criminal Code, Justice.

[89] THE COURT: Sorry, section?

[90] CNSL I. SATTARZADEH: 109.

[91] THE COURT: Right, all right. Thank you.

[92] CNSL I. SATTARZADEH: First offence is a minimum of 10 years.

[93] THE COURT: Yes, yes, thank you, for a period of 10 years, and --

[94] CNSL I. SATTARZADEH: The Crown has also sought -- seeking an additional order authorizing the taking of a sample of DNA.

[95] THE COURT: Yes, DNA in accordance with the protocol set out as a result of the secondary --

[96] CNSL I. SATTARZADEH: Yes, a secondary designated offence under s. 487.04(b)(i).

[97] THE COURT: Yes.

[98] CNSL I. SATTARZADEH: As well as (e)(i), and it's a secondary discretionary order that I understand that my friend is not opposed, and the order may be made under s. 487.051(3)(b), if the court is satisfied it is in the best interests of the administration of justice to do so. And the Crown also seeks a forfeiture order that my friend and I have both signed.

[99] THE COURT: Very good.

[100] CNSL I. SATTARZADEH: And I can hand a copy of that up.

[101] THE COURT: Yes.

[102] CNSL I. SATTARZADEH: I have two signed copies. I'm not sure if the court requires both, but they are there.

[103] THE COURT: I will hand those back. All right. Those conclude my reasons, counsel. Is there anything further?

[104] CNSL I. SATTARZADEH: I just wanted to clarify that all three of those ancillary orders then were ordered?

[105] THE COURT: Yes.

[106] CNSL I. SATTARZADEH: Yes, thank you.

[107] THE COURT: Yes.

[108] CNSL I. SATTARZADEH: And I will leave that with Madam Registrar. The Crown obtains a final stamped copy later from the registry. Thank you. And I believe the next order of business then is the remainder of the counts, Justice.

[109] THE COURT: Yes.

[110] CNSL I. SATTARZADEH: So there remains outstanding --

[111] THE COURT: Three counts, I believe.

[112] CNSL I. SATTARZADEH: Count 9 --

[113] THE COURT: Yes.

[114] CNSL I. SATTARZADEH: -- the Crown directs a stay of proceedings as they pertain to Ms. Nadeem on Counts 9 --

[115] THE COURT: Yes.

[116] CNSL I. SATTARZADEH: -- 10, and 12, please.

[117] THE COURT: Twelve.

[118] THE CLERK: Justice, on the system, I also see Count 8. May I know of the disposition of that?

[119] CNSL I. SATTARZADEH: Count 8? Let me just --

[120] THE CLERK: Yes.

[121] CNSL I. SATTARZADEH: -- grab my indictment. Yes, if that count remains outstanding, then the Crown enters a stay of proceedings on that as well. Thank you.

[122] THE COURT: So counts 8, 9, 10, and 12 are stayed; thank you, Madam Registrar.

"Wedge J."

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