

CANADA / JUDGMENT

R. v. Kim

2022 BCSC 518

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Supreme Court of British Columbia

DECIDED

29 March 2022

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2022 BCSC 518 R. v. Kim

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Kim,

2022 BCSC 518

Date: 20220329

Docket: 27841

Registry: Vancouver

Regina

v.

Billie Onare Kim

Before: The Honourable Madam Justice Devlin

Oral Reasons for Sentence

Counsel for the Crown:

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A. Djordjevic, Articled Student

Counsel for the Accused Kim:

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Place and Dates of Hearing:

Vancouver, B.C.

March 10, 11, 2022

Place and Date of Judgment:

Vancouver, B.C.

March 29, 2022

THE COURT: This decision was delivered in the form of Oral Reasons. The Reasons have since been edited for publication.

Introduction

- [1] The accused, Billie Onare Kim, is before the Court today to be sentenced in relation to his participation in a dial-a-dope operation. The operation in question, which was known as "Green Planet", involved the distribution of various drugs, including fentanyl and carfentanil.
- [2] On October 22, 2021, I convicted Mr. Kim on all counts on Indictment 27841-1, which included nine counts of possession of a controlled substance for the purpose of trafficking contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 [CDSA], namely heroin, fentanyl, an analogue of fentanyl (cyclopropyl fentanyl), a derivative of fentanyl (4-Anilino-N-phenethylpiperidine), carfentanil, cocaine, methamphetamine, alprazolam, and cannabis (marihuana) (Counts 1-9). In addition, Mr. Kim was convicted of five firearms offences under the Criminal Code, R.S.C. 1985, c. C-46 [Code], including possession of a loaded 9mm Smith and Wesson handgun and an unloaded 5.56mm Bushmaster semi-automatic rifle (Counts 10, 11, 13), and possession of an unloaded .22 caliber semi-automatic rifle and a .32 calibre handgun (Counts 12 and 14). The parties agree a conditional stay of proceedings should be entered on Count 11 pursuant to the principles set out in *R. v. Kienapple*, [1975] 1 S.C.R. 729, 1974 CanLII 14 (SCC).
- [3] As I will discuss in more detail, the Crown submits a global sentence of 12 years is a fit and proper sentence given Mr. Kim's role in the dial-a-dope operation. They submit the circumstances are particularly aggravating given the presence of both fentanyl and carfentanil, as well as several firearms.
- [4] Mr. Kim submits a sentence of 4-6 years is appropriate given his relatively minor role in the dial-a-dope scheme.

Circumstances of the Offences

- [5] In my Reasons for Judgment, indexed as *R. v. Kim*, 2021 BCSC 2017 (the "Trial Reasons"), I set out in detail the circumstances of the offences upon which I based my convictions. For the purposes of sentencing, I will summarize the circumstances.

- [6] On September 14, 2017, a search warrant was executed at unit 1204-5177 Brighthouse Way, Richmond, B.C. ("Unit 1204"). Unit 1204 was on the 12th floor of a 14-floor residential apartment complex ("Brighthouse Way"). Mr. Kim was arrested on the balcony of Unit 1204, and three other males (Mr. Latimer, Mr. Pereira, and Mr. Coddett) were arrested inside the unit. There was a large amount of drugs and drug paraphernalia located inside the unit, and I found that Unit 1204 was being used as a stash site to assemble and package a variety of drugs for street-level distribution. Most of the drugs were in plain view on the kitchen island and on the glass-top dining room table. There was an abundance of evidence that people had been weighing and packaging drugs. Various drugs were located on plates, in a Pyrex measuring cup, and on plates inside drawers or cupboards. Digital scales, various cell phones, empty Ziploc baggies, a money counter, piles of money, and score sheets were also located amongst the various drugs. In total, police seized 170.06 grams of opioids and opioid mixtures (heroin, carfentanil, fentanyl, fentanyl analogues, and fentanyl derivatives); 216.43 grams of cocaine (powder and rock); 81.49 grams of methamphetamine; 76.78 grams of oxycodone and acetaminophen; 109.97 grams of Alprazolam (pills and powder); 1,228.08 grams of cutting agents (caffeine and phenacetin); and a total of \$28,863.36 in Canadian currency. The value of the drugs seized was between \$55,815 and \$67,537.
- [7] The police found a black Swiss Gear duffle bag next to the drugs on the dining room table with several plastic bags of currency (one group of bags contained \$16,260 and another contained \$2,820). The plastic bags were connected with an elastic, with a score sheet sitting on top. There was a plastic bag containing \$1,300 that was marked "Jax Paid", and a sandwich bag marked "Gilly Paid". "Jax" and "Gilly" referred to Mr. Souliere and Mr. Pikientio, who were dialers in the dial-a-dope operation. Throughout the police surveillance operation, Mr. Kim was observed carrying a black Swiss duffle bag in and out of the stash site.
- [8] In addition to the drugs and paraphernalia, the police also seized two body armour vests from the living room. In the second bedroom, police found a gun case containing a Cobra Enterprises model 32 caliber automatic pistol. Inside the closet, there was a gun case containing two rifles: a Mossberg model semi-automatic rifle with a black 22 caliber cartridge magazine and seven rounds of ammunition, and a Bushmaster 223 Remington caliber semi-automatic rifle with a black cartridge magazine and no ammunition. In the corner of the closet, behind a folded black box, there was a bag of ammunition, a magazine feeder, and a backpack. In a plastic bag inside the backpack, there was a Smith and Wesson semi-automatic pistol with a cartridge magazine and 9mm rounds of ammunition. The backpack also contained a white plastic bag, which held two pairs of gloves, a black and red hoodie, two neoprene balaclava style face masks.
- [9] The search of Unit 1204 was the culmination of a Delta Police undercover investigation conducted between April to September 2017, which targeted "Green Planet", a dial-a-dope operation in Delta and Richmond. Police purchased a variety of controlled substances, including fentanyl and cocaine, from several street level traffickers, who they contacted by two phone numbers, one associated to Delta and one associated to Richmond. The drugs

purchased by the undercover officers were packaged consistently with the drugs seized from Unit 1204. The police employed a number of other investigative techniques in addition to the undercover operation, including installing a covert camera in the 12th floor hallway in Brighthouse Way.

- [10] The combination of physical surveillance, tracking data, and covert camera surveillance established Mr. Kim's connection to the stash site at Unit 1204 and the vicinity of Brighthouse Way. While Mr. Kim's co-accused (Mr. Latimer and Mr. Pereira) and others who dealt directly with the undercover police officers were observed attending the unit with Mr. Kim, only Mr. Kim and Mr. Pereira possessed keys. I found as a fact that Mr. Kim attended Unit 1204 more frequently than Mr. Pereira. Indeed, Mr. Kim was always the first person into the unit and the last person out. I also found as a fact that Mr. Kim had unrestricted access to the whole of Unit 1204, and he regulated who attended and what items were brought into and out of the unit. In addition to attending the stash site, Mr. Kim was observed meeting with various individuals who were "dialers" in the Green Planet operation, responsible for delivering the drugs to the undercover police officers. During his sentencing submissions, counsel for Mr. Kim conceded that on occasion, Mr. Kim delivered either money or drugs to these "dialers". In a letter written to the court for sentencing purposes, Mr. Kim explained as follows:

My main role was to package drugs in suit 1204. Sometimes I would deliver drugs to line bosses and I often would let people into suit 1204 to pick up or drop off drugs.

- [11] As I will discuss further, I do not accept that Mr. Kim's role was as limited as he suggests in his submissions.
- [12] A search warrant was also executed at Mr. Kim's residence at unit 309-9283 Government Street, Burnaby, B.C. I found as a fact that the items seized from Mr. Kim's residence demonstrated his active participation in the Green Planet drug trafficking operation. On the fireplace mantle, the police located the master phones for the Green Planet operation - one with the Delta phone number and the other with the Richmond phone number. The police also located a Busters invoice for the storage of a Ford Taurus that was used to deliver crack cocaine to an undercover officer on August 9, 2017. In addition, the police found a variety of drug paraphernalia, including two labelled Ziploc freezer bags, three bundles of Ziploc bags, and a sandwich bag box containing elastic bands, four drug testing kits, and a notebook. The notebook contained street drug jargon and the names Gilly and Jax.
- [13] It was evident from the items found in Brighthouse Way and Mr. Kim's personal residence that this was a sophisticated and high-volume drug trafficking operation. The drug packaging was meticulous, and the operation - which took place behind the closed doors of a residential apartment unit - was well protected, with an abundance of firearms at its ready disposal.
- [14] It was also readily apparent from the evidence that Mr. Kim's role in the Green Planet operation was a significant one. Mr. Kim spent a lot of time in Unit 1204; as noted, he was often the first person into the unit and the last person out. The master phones were located

at his residence. Additionally, as he concedes in his letter, Mr. Kim controlled access to the unit. In particular, he was responsible for letting people in and out of Unit 1204 for the purposes of picking up and dropping off drugs. While it is clear that Mr. Kim was not the directing mind of the operation, neither did he play a minor role.

Mr. Kim's Circumstances

- [15] In addition to the submissions made by his counsel, I have also been provided with letters from Mr. Kim, his wife, and his mother. Collectively, this provided me with Mr. Kim's family history and personal circumstances.
- [16] Mr. Kim is 37 years old. He was born in Korea and moved to Canada in 1994, when he was 10 years old. He moved with his mother and his sister. His father remained in Korea and Mr. Kim had no contact with him until 2009, when he returned to Korea to see his father who was dying. Upon arrival in Canada, Mr. Kim's family first settled in Calgary, where Mr. Kim entered grade 4, although he had no English language skills. Mr. Kim spent eight years in Calgary until his mother relocated them to Coquitlam, B.C. in 2003, when Mr. Kim was 18 years old. Mr. Kim's mother worked a variety of jobs to provide support for Mr. Kim and his sister.
- [17] When he was 17 years old, Mr. Kim started using marihuana and ecstasy, eventually becoming addicted to methamphetamine. He dropped out of school halfway through grade 12. With the assistance and support of his mother, he managed to stop using drugs.
- [18] The Green Planet dial-a-dope operation was not Mr. Kim's first involvement in criminal activity: After moving to British Columbia in 2003, Mr. Kim became involved with a group of young men who called themselves the Red Scorpions. He then became involved in the drug trade. According to Mr. Kim's criminal record, which was filed as Exhibit #1 at the sentencing hearing, Mr. Kim has one conviction for trafficking in a scheduled substance. In his letter, Mr. Kim explains that he was "caught driving for someone who sold drugs to an undercover police officer". I gather from this description that Mr. Kim was previously engaged in the distribution of drugs. On September 24, 2007, he received a sentence consisting of three months jail, 12 months probation, and a mandatory prohibition order pursuant to s. 109 of the Code. I note that Mr. Kim was bound by the s. 109 prohibition order at the time of these offences.
- [19] Following his release from custody, Mr. Kim obtained his high school diploma and entered Coquitlam College on a university transfer program. He enrolled in various business-related courses. At the time, Mr. Kim's intention was to eventually transfer to Simon Fraser University. While attending school, Mr. Kim was living at home with his mother who was supporting him, although he also had various part time jobs. In 2012, Mr. Kim and a friend developed a plan to produce a spice for pepper spray. Another friend invested \$100,000 to develop the plan. In 2017, after they forwarded \$50,000 to a contact in Africa to further their business plan, the money disappeared and the business venture was terminated. Despite

this unsuccessful business venture, it is evident that Mr. Kim has the skill and ability to obtain legitimate employment.

[20] In September 2016, Mr. Kim married. In early 2017, he and his wife were expecting their first child. In June 2017, his wife went on maternity leave in anticipation of their child's birth. Around this same time, Mr. Kim approached some of his former associates to obtain a loan as a result of his business venture losses. While he did not obtain a loan, he accepted a job to return to work in the drug trade. As noted, Mr. Kim submits his main role was to package the drugs and on occasion, he would deliver drugs to a line boss. He also acknowledges that he would let people into the unit for deliveries and shipments. I am advised by Mr. Kim's counsel that his first day on the job was in late June, and his intention was to raise some money and leave the job within five or six months. Mr. Kim usually received \$3,000 to \$4,000 weekly, but the amounts varied between \$1,500 to \$6,000 per week. All payments were in cash and the amount was based on the volume of sales; there was no agreement about the rate of payment.

[21] In his letter, Mr. Kim wrote that in the months prior to his son's birth, he was in debt and his business was about to go under. He was also drinking and using methamphetamine. He acknowledged he was not addicted, but at the time, he was not thinking clearly. In his letter, he explained:

I had other choices but I thought this choice was fastest and most effective to get out of the hole but soon find out that this was very much a wrong choice since it got me deeper into a hole which I don't see an exit.

[22] Approximately two weeks after Mr. Kim's arrest, his son was born and spent five days in intensive care due to breathing issues. I am advised that as a result of his struggle with his son's health condition, Mr. Kim promised his wife and family that he would not engage in any further criminal activity. Mr. Kim later had a second child, who is now one-and-a-half years old.

[23] Over the last few years, Mr. Kim has traded cryptocurrency and stocks; until the recent economic downturn, he had significant success with these investments. More recently, he took up various part time jobs. His goal in life is to be a proud father, husband, and son.

[24] In his letter, Mr. Kim said he was ashamed that he was involved in a crime that profited by providing deadly drugs. He also acknowledged the pain and suffering felt by parents who lose their children to drug overdoses. I accept that Mr. Kim's expression of remorse is genuine. So too is his desire to make a positive change in his life for the benefit of his young children, his wife, and himself.

[25] As set out in their letters, Mr. Kim's wife and mother continue to support him and his commitment to maintain a positive, healthy lifestyle moving forward. Mr. Kim is fortunate to have their continued support and this will no doubt assist in his efforts to rehabilitate himself.

Impact on the Community

- [26] As I proceed with these Reasons, it is important to consider the broader societal context within which these offences occurred: The trafficking in hard drugs is not a victimless crime. Indeed, as I will discuss, the consequences of trafficking in drugs extends far beyond the harms caused to purchasers. As recently discussed by the Supreme Court of Canada in *R. v. Parranto*, 2021 SCC 46 [Parranto], the dangers of trafficking in hard drugs, such as heroin and cocaine, have long been recognized in Canada (at para. 87).
- [27] Trafficking in such substances causes both direct and indirect harm to society. Distribution results directly in addiction and debilitating health effects. Increasingly, it also leads to death by overdose. Trafficking also leads indirectly to increased crime, both from those seeking to finance their addiction and those seeking to maintain control over the lucrative drug trade. Trafficking in drugs also impacts the families of those with drug addictions, and it has serious societal costs in terms of health care and law enforcement.
- [28] While the harms caused by trafficking in heroin, cocaine, and methamphetamine pose a grave threat to the community, "that threat pales in comparison to the one posed by fentanyl and its analogues" (Parranto at para. 93). As Justice Moldaver (concurring) observed, "fentanyl has altered the landscape of the substance abuse crisis in Canada, revealing itself as public enemy number one" (at para. 93). As noted by the majority at para. 70 of Parranto, "the offender's willingness to exploit at-risk populations and communities" is a factor that may inform the court's assessment of the gravity of the offence in sentencing; "choices which demonstrate a reckless disregard for human life increase not only the gravity of the offence but the moral culpability of the offender" (Parranto at para. 70).
- [29] The observations in Parranto reiterate those made in various decisions in British Columbia in recent years. In *R. v. Smith*, 2017 BCCA 112 [Smith], Madam Justice Newbury, dissenting (not on this point), recognized that British Columbia has "one of the worst, if not the worst, problems of Fentanyl abuse in Canada" (para. 44). This is demonstrated by the fact that since April 14, 2016, B.C. has been in a public state of emergency because of the opioid pandemic and the resulting surge in overdose-related deaths: see *R. v. Niederhumer*, 2022 BCCA 88 [Niederhumer] at para. 36; *R. v. Toth*, 2017 BCSC 501 [Toth] at para. 37. As noted by our Court of Appeal, the staggering numbers of overdose deaths in this province are "largely attributable to fentanyl": Niederhumer at para. 36.
- [30] Despite the ongoing public awareness campaign, the fentanyl scourge - as it was described in Smith - continues to destroy lives and wreak social havoc. According to the B.C. Coroners Service report filed as Exhibit 2 on this hearing, *Illicit Drug Toxicity Deaths in BC: January 1, 2011 - December 31, 2021* (British Columbia: Ministry of Public Safety & Solicitor General, 2022), over 80% of the drug toxicity deaths in 2017 were due to fentanyl. In 2017, the year Mr. Kim was arrested for these offences, there were a total of 1,495 illicit drug toxicity deaths, 63% of which occurred in the Fraser and Vancouver Coastal health regions.

- [31] As noted by the majority in Parranto, "[l]ocal conditions may enter into the assessment of the gravity of the offence" (at para. 59). Accordingly, a fit and proper sentence should be reflective of and responsive to the local conditions in this province. In particular, it must respond to B.C.'s severe and ongoing opioid epidemic.

Position of the Parties

- [32] The Crown seeks a global sentence of 16 years, reduced to 12 years considering the totality principle. The Crown's sentencing position is as follows:
- a. Ten years' jail in connection with possession of fentanyl, cyclopropyl fentanyl, 4-Anilino-Nphenethylpiperidine, and carfentanil for the purposes of trafficking (for each of Counts 2, 7, 8, and 9);
 - b. Six years' jail in connection with possession of heroin, cocaine, and methamphetamine for the purposes of trafficking (for each of Counts 1, 3, and 4);
 - c. Two years' jail in connection with possession of alprazolam and cannabis (marihuana) for the purposes of trafficking (for each of Counts 5 and 6);
 - d. Six years' jail in connection with possession of a loaded 9mm Smith and Wesson handgun and an unloaded 5.56mm Bushmaster semi-automatic rifle (for each of Counts 10 and 13); and
 - e. Four years' jail in connection with possession of an unloaded .22 caliber semiautomatic rifle and an unloaded .32 calibre handgun (for each of Counts 12 and 14).
- [33] Further, the Crown submits the sentences for the drug offences should be served concurrently to each other and the firearm offences should be served concurrently to each other but consecutively to the drug offences.
- [34] The Crown also seeks a mandatory lifetime weapons prohibition pursuant to s. 109(3) of the Code and a DNA order pursuant to s. 487.051 of the Code. The Crown also seeks a forfeiture order for the offence-related property seized during the investigation. Counsel for Mr. Kim is not opposed to these ancillary orders.
- [35] The Crown submits there are a number of aggravating circumstances that justify the sentence they are seeking, including the fact that this was a sophisticated, well-resourced, and profitable dial-a-dope operation. Green Planet was responsible for the distribution of fentanyl, carfentanil, and other drugs throughout Richmond and Delta in the midst of an opioid crisis. In addition, the four firearms at the stash site, which was located in a densely populated residential apartment building, posed an unacceptable risk to public safety. As I discuss below, the Crown relies on a number of sentencing decisions that deal specifically with trafficking in fentanyl and other controlled substances, some also involve firearms. They also submit that the Supreme Court of Canada in Parranto has recognized that courts must consider a new direction when sentencing those involved in the trafficking of fentanyl.

However, as I noted earlier, the courts in British Columbia have had to deal with an ongoing opioid crisis for several years.

- [36] Counsel for Mr. Kim submits a global sentence in the range of four to six years is appropriate in this particular case. He submits Mr. Kim's role was at the lower end of a mid-level trafficking operation, as opposed to the elevated role suggested by the Crown. He acknowledged that Mr. Kim was a reliable participant in the operation but argues that his role was limited to preparing the drugs at the stash site for distribution. In doing so, he submits Mr. Kim was not insulated from detection like others involved in the operation. Further, he submits Mr. Kim never handled the firearms located at the stash site. While he acknowledges a period of incarceration is appropriate in these circumstances, he submits the prospect of rehabilitation is also an important principle of sentencing that should be considered in Mr. Kim's particular circumstances. In support of his position, counsel relies on *R. v. Chan*, 2021 BCSC 1607 (leave to appeal dismissed as abated: 2021 BCCA 467) where a sentence of four years was imposed for Mr. Chan's role in a mid-level trafficking operation dealing with various controlled substances including fentanyl, heroin, and cocaine. However, I do not consider Mr. Chan's circumstances to be analogous: Mr. Chan was a first-time offender who did not have access to any firearms.
- [37] The parties provided me with a joint book of authorities. A number of the decisions deal with sentencing individuals involved at various levels of drug trafficking, and some cases involved both guns and drugs. During submissions, counsel took me through some of these cases and drew my attention to both the similarities and distinguishing features of those cases when compared to this one. I do not consider it necessary to discuss each of these authorities at length in these Reasons, as ranges of sentence are guidelines and not rules: see *R. v. Lacasse*, 2015 SCC 64 [Lacasse] at para. 60; Smith at para. 35; Parranto at para. 36. However, I will discuss a few of the cases I found the most informative and of assistance in my task to craft the appropriate sentence.
- [38] I found the sentencing decisions of Mr. Kim's co-accused (Mr. Latimer and Mr. Pereira) as well as others who were engaged in the Green Planet operation to be particularly instructive. I recognize that those matters were disposed of by way of joint submissions, however, they do assist me in determining Mr. Kim's place in the drug trafficking hierarchy, which in turn informs my application of the parity principle. In addition to these cases, I have the benefit of the recent decision of Parranto, where the Supreme Court of Canada provided guidance in sentencing those involved in the large-scale trafficking in fentanyl.
- [39] In Parranto, the Supreme Court considered the appropriate sentence for fentanyl traffickers. In doing so, the Court canvassed the basic principles that a judge must consider to craft an appropriate sentence. As the Court stated earlier in *R. v. Friesen*, 2020 SCC 9 [Friesen], all sentencing starts with the principle that sentences must be proportionate to the gravity of the offence and the degree of responsibility of the offender (para. 30). In Parranto, the Court emphasized that individualization is central to the proportionality assessment; therefore, in each case "the question is always whether the sentence reflects the gravity of the offence,

the offender's degree of responsibility and the unique circumstances of each case" (para. 12). In *Parranto*, two accused, Mr. Parranto and Mr. Felix, pled guilty to various offences arising out of unrelated drug trafficking operations, including trafficking in fentanyl at the wholesale commercial level. Mr. Felix received a global sentence of seven years and Mr. Parranto received a global sentence of 11 years. On appeal, the Alberta Court of Appeal set a starting point sentence of nine years for wholesale fentanyl trafficking. The Court of Appeal increased Mr. Felix's sentence to 10 years and Mr. Parranto's sentence to 14 years.

- [40] The Supreme Court discussed the role of starting points and ranges of sentence, emphasizing that neither relieves the sentencing judge from conducting an individualized analysis. As the majority noted, "[r]anges and starting points are simply different paths to the same destination: a proportionate sentence" (at para. 25). The Court held that the Court of Appeal did not err in setting a starting point for wholesale fentanyl trafficking, stating "appellate courts must sometimes 'set a new direction' that reflects a contemporary understanding of the gravity of the offence" (para. 56, citing to *Friesen* at para. 35). The Court stressed that a just and appropriate sentence must take into consideration "the needs and current conditions of and in the community" (para. 59): Local conditions may factor into the assessment of the gravity of the offence and militate in favour of prioritizing certain sentencing principles (*Parranto* at para. 59; *Lacasse* at paras. 13, 89). While other jurisdictions are not bound by the range or starting point in Alberta, sentencing guidance must strive to reflect and respond to the local conditions in each jurisdiction (*Parranto* at para. 59).
- [41] While the circumstances of Mr. Felix and Mr. Parranto differ from that of Mr. Kim, as both were characterized as the directing mind of a drug operation, the Court's consideration of the nature of fentanyl and the harms caused by the substance is instructive. Justice Moldaver (writing for himself and Justice Côté) agreed with the majority that the gravity of large-scale fentanyl trafficking has increased and accordingly so too must the sentences imposed. Moldaver J. described the dangers posed by largescale fentanyl trafficking as follows at para. 93:

As grave a threat as drugs such as heroin and cocaine pose, that threat pales in comparison to the one posed by fentanyl and its analogues. Indeed, over the past decade, fentanyl has altered the landscape of the substance abuse crisis in Canada, revealing itself as public enemy number one.

- [42] With respect to analogues or derivatives of fentanyl, Moldaver J. stated at para. 95:

Analogues or derivatives of fentanyl further exacerbate the risks, as these substances can be far more potent than even fentanyl itself, with some estimated to be as much as 100 times more potent than fentanyl. One such analogue, carfentanil, is so toxic that it "has no safe or beneficial human use, even within the medical community in highly controlled environments" (A. Sabbadini and A. Boni, *Sentencing Drug Offenders* (loose-leaf), at s. 2:1600.10).

- [43] In Parranto, Moldaver J. described those who traffic in fentanyl, and in particular large-scale trafficking, as "a source of unspeakable harm", noting that the directing minds of such operations should receive significant sentences (at para. 101). While I am mindful that Mr. Kim is not the directing mind of the Green Planet operation, I find Moldaver J.'s concluding comments instructive:
- [101] Ultimately, largescale trafficking in fentanyl is a crime that preys disproportionately on the misery of others -- the marginalized and those whose lives are marked by hopelessness and despair. It is a crime motivated by greed and by a callous disregard for the untold grief and suffering it leaves in its wake. Above all, it is a crime that kills -- often and indiscriminately. It follows, in my view, that what matters most is that those individuals who choose to prey on the vulnerable and profit from the misery of the Canadian public for personal gain are sentenced in accordance with the severity of the harms they have caused. Fentanyl trafficking, and largescale trafficking in particular, are a source of unspeakable harm. Accordingly, while the range of sentences currently imposed for the directing minds of largescale fentanyl operations straddles the upper single digits and lower double digits, sentencing judges should feel justified, where circumstances warrant, in applying a higher range, consisting of mid-level double digit sentences and, in particularly aggravating circumstances, potential sentences of life imprisonment.
- [44] As Newbury J.A. observed at para. 44 of Smith, "[f]entanyl abuse continues to claim lives every day in our communities". In finding that the appropriate range of sentence for street level trafficking begins at 18 months imprisonment, Harris J.A. (writing for the majority) stated:
- [48] I agree that it would [be] helpful for this Court to identify a sentencing range for street-level dealing in fentanyl as a result of the public health crisis caused by unintentional overdosing by people who use drugs, particularly since typically they do not know that the drugs they are consuming contain fentanyl. As my colleague has clearly explained, fentanyl is a scourge. It poses intolerable risks of accidental overdosing because it is so much more powerful than morphine. Illegally manufactured fentanyl can be particularly and unpredictably potent, even tiny amounts of fentanyl mixed into other drugs such as cocaine or heroin may be fatal; often street drugs have fentanyl cut into them, and it is practically impossible for drug users to recognize whether the drugs they buy contain fentanyl
- [45] Indeed, the comments in Parranto and Smith echo the early comments of our Court of Appeal in R. v. Tam, [1994] B.C.J. No. 3097, 1994 CanLII 2181 (BCCA) [Tam]. In this case, the Court of Appeal adopted the trial judge's apt characterization of heroin traffickers as "merchants of misery" who view their customers' addictions as a "road to riches" (at para. 5). These comments apply with even more force today, where the compounds involved--including fentanyl and carfentanil--are tenfolds more potent and more dangerous than heroin, and the opioid crisis has escalated to new and more deadly heights as a result. As Moldaver J. explained in Parranto, fentanyl is "estimated to be 80-100 times more potent than morphine and 25-50 times more potent than pharmaceutical grade heroin" and

analogues like carfentanil are "estimated to be as much as 100 times more potent than fentanyl" (at paras. 94-95). Even more so than the sale of heroin in the 1990s, the trafficking of fentanyl and its analogues during the current public health crisis is "a crime that preys disproportionately on the misery of others" (Parranto at para. 101).

- [46] I turn now to consider the sentences imposed on Mr. Kim's co-accused. In *R. v. Latimer*, 2021 BCSC 1443 [Latimer], Mr. Latimer received a global sentence of 17 years with respect to charges arising from two indictments. With respect to the Green Planet charges, Mr. Latimer entered a plea to possession of fentanyl for the purpose of trafficking (Count 2) and was sentenced to eight years. He also entered a plea to unlawful possession of a loaded prohibited or restricted firearm (Count 10) and received a five year sentence. Those sentences were to run concurrent to each other and to the sentences imposed on the other indictment, which included directing an offence for the benefit of a criminal organization; conspiracy to traffic drugs; possession of various drugs, including 10.8 kilograms of substances containing fentanyl, 11.9 kilograms of methamphetamine, and 9.3 kilograms of cocaine; as well as possession of about 20 prohibited firearms together with readily accessible ammunition. At the time of the offence, he was subject to a weapons prohibition. Mr. Latimer was clearly the directing mind of the drug trafficking network, including the dial-a-dope operation in which Mr. Kim was involved.
- [47] In *R. v. Pereira*, 2020 BCSC 1664 [Pereira], Mr. Pereira received a global sentence of nine years with respect to charges arising from two indictments. With respect to the Green Planet charges, Mr. Pereira entered a plea to possession of fentanyl for the purpose of trafficking and received six years, which would run concurrent to the nine year sentence imposed on the charge of possession for the purpose of trafficking of fentanyl, cocaine, methamphetamine, and heroin on the other indictment. Mr. Pereira was 25 years old at the time and has no prior convictions. He was not at the top of the hierarchy, nor the second in command, although he was well-informed about the details of the drug operation, including purchase decisions. His motivation was money.
- [48] In addition to Mr. Latimer and Mr. Pereira, Mr. Coddett was also arrested inside Unit 1204; however, he disposed of his charges in Provincial Court by a plea to possession of fentanyl, carfentanil, methamphetamine and alprazolam for the purpose of trafficking and possession of a loaded firearm (*R. v. Coddett* (June 28, 2019), Richmond Registry 62066-1 (BCPC) [Coddett]). Mr. Coddett was 25 years old at the time of the offences, with a prior related criminal record. The sentencing judge found that Mr. Coddett was engaged in mid-level trafficking out of the stash site in Unit 1204. He was involved in preparing, packaging, and distributing the drugs to the dialers; however, he had no role in the decision making, planning, directing, or controlling of any of the other players. Mr. Coddett was sentenced to four years on the drug charge and a consecutive three-and-a-half years on the firearm charge for a global sentence of seven-and-a-half years less time served. The Court held that the 10 year sentence sought by the Crown did not account for the guilty plea as a mitigating circumstance. Although the fentanyl involved, the duration and nature of the operation, the

presence of firearms, and his prior record militated in favour of a sentence that denounced the harm caused and deterred him and others from similar crimes, Mr. Coddett's role in the operation did not invite a sentence in the higher range sought by the Crown.

[49] The Crown also referred to *R. v. Pikientio*, 2020 BCSC 1693. As noted, Mr. Pikientio, otherwise referred to as "Jax", was a dialer in the dial-a-dope operation. Mr. Pikientio pled guilty to trafficking a controlled substance, namely cocaine, heroin, fentanyl, and cyclopropyl fentanyl, charges arising on an indictment related to the Green Planet operation. On a separate indictment, he also pled guilty to two charges of possessing various substances (including fentanyl, cocaine, methamphetamine, and heroin) for the purposes of trafficking. With respect to the Green Planet dial-a-dope operation, Justice Ball characterized Mr. Pikientio's involvement as being "at best in the mid-level or the lower aspects of the organization" (at para. 21). Mr. Pikientio was 21-22 years old at the time of the offences, and he was a first-time offender. Ball J. imposed a global sentence of seven years less time served, with three years attributable to the Green Planet charges and served concurrently to the other sentences.

[50] With respect to the range of sentence for firearms offences, counsel refer to a number of cases:

- *R. v. Borecky*, 2013 BCCA 163 [Borecky] (global sentence of 7 years for drug and firearm offences, with 4 years served concurrently for firearms and 1 year consecutive for breach of a firearm prohibition);
- *R. v. Kachuol*, 2017 BCCA 292 (3 years for firearm offence);
- *R. v. Perkins*, 2018 BCSC 1055 (12 years less time served for drug and firearm offences);
- *R. v. Lee*, 2018 BCCA 428 (global sentence of 7 years, with 3 years consecutive for firearm offences);
- *R. v. Zhu*, 2013 BCCA 416 [Zhu] (7 years for various firearm offences, concurrent to each other but consecutive to drug offence); and
- *R. v. Swales*, 2016 BCCA 502 [Swales] (15 year aggregate sentence, with 9 years for firearm offences).

[51] As these cases discuss, the presence of guns and drugs pose a serious threat to public safety and the welfare of the community. In *Zhu*, our Court of Appeal described firearms as a "scourge in our society", which pose unacceptable risks to the public and the police (at para. 21). In *Borecky*, drugs and firearms are described as a "toxic combination" (at para. 74); the court emphasized that the principles of deterrence and denunciation are paramount when determining a fit sentence. *Swales* and *Borecky* affirm the long-standing principle that whether to order sentences to be served consecutive or concurrent is a matter within a sentencing judge's discretion (*Swales* at para. 14; *Borecky* at paras. 19-31). However, when consecutive sentences are imposed, the judge must have regard to the totality principle, to

ensure that the aggregate sentence is commensurate with the offender's overall culpability.

The Governing Legal Principles

- [52] Sections 718 to 718.2 of the Code set out the fundamental principles and purposes to be considered by the courts in sentencing. Section 10 of the CDSA provides additional principles of sentencing in relation to drug offences.
- [53] Section 718 of the Code provides that the fundamental purpose of sentencing is "to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions" with reference to six objectives. These objectives include: denunciation of unlawful conduct; deterring the offender and other persons from committing offences; separating offenders from society where necessary; assisting to rehabilitate offenders; providing reparations for harm done to victims or to the community; and promoting a sense of responsibility in offenders and acknowledging the harm done to victims or to the community. These objectives are echoed in s. 10 of the CDSA.
- [54] Pursuant to s. 718.1, a sentence must also be proportionate to the gravity of the offence and the degree of responsibility of the offender: see also *Parranto* at para. 11.
- [55] Section 718.2 sets out a number of specific principles that a court must take into consideration in sentencing. An important principle is that a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender (s. 718.2(a)).
- [56] Another important principle is parity of sentence, which requires the sentence imposed to be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances (s. 718.2(b)). I am mindful that I am not to lose sight of the individualized nature of the assessment before me, an assessment that requires me to weigh the objectives of sentencing in a manner that best reflects the circumstances of this case and of this offender: *Parranto* at paras. 11-12; *R. v. Nasogaluak*, 2010 SCC 6 at para. 43.
- [57] Subsection 718.2(c) outlines what is referred to as the totality principle, which requires that where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh.

Application of the Sentencing Principles to the Present Case

- [58] I turn now to an application of the relevant legal principles to the particulars of this case. I begin with a consideration of the mitigating and aggravating factors.

Mitigating Factors

- [59] Given the nature of the circumstances and Mr. Kim's role, there are few mitigating factors that I can identify. While Mr. Kim does have one prior conviction for a drug offence in 2007, it is somewhat dated. Certainly, Mr. Kim is not a naïve, youthful offender; but prior to his arrest on these matters, he had not had any involvement with the courts for 10 years. I am also aware that he has been compliant with all of the conditions of his judicial interim release. Mr. Kim has expressed a sincere apology for the harms his actions have caused others. As I will discuss, the prospects for rehabilitation are good.

Aggravating Factors

- [60] I find that there are several aggravating factors that must be considered when determining a fit sentence.
- [61] I have considered the nature and scope of the drug trafficking operation. Mr. Kim and others were engaged in a mid-level dial-a-dope operation that distributed an array of harmful controlled substances, including "public enemy number one"--fentanyl--and the even more lethal analogue, carfentanil. This was a sophisticated, well-organized, ongoing enterprise that provided drug delivery services throughout Delta and Richmond, B.C. The operation had dedicated phone numbers for the business, which were coordinated through a master phone to ensure that the business could continue even if an employee's phone was seized. The master phones were located inside Mr. Kim's own residence.
- [62] The stash site was located in a densely populated residential building, operating under the guise of legitimacy. Unbeknownst to the other residents in the high-rise building, Unit 1204 housed a toxic combination of drugs and guns. The firearms together with the body armour were at Mr. Kim's disposal inside the stash site. While there is no evidence that Mr. Kim had handled these firearms, they were available to him if needed for his own protection. This situation posed an unacceptable risk to the safety of other residents, their visitors, and the police.
- [63] I have also considered Mr. Kim's motivation and role. In his letter, Mr. Kim admits he chose to engage in this activity for financial gain after a business endeavour failed. Although he was capable of obtaining legitimate employment and had been raised seeing his mother work multiple jobs to support him, he opted for quick, easy money. While I am told his intention was to work for up to six months in order to make some money and leave, I do not view that as in any way mitigating. Mr. Kim, who himself had experience with methamphetamine use, made an informed choice to engage in the distribution of devastatingly harmful drugs for pure profit. I find it particularly aggravating that profit was generated by preying on the vulnerable and addicted.
- [64] While Mr. Kim's role was something less than that of Mr. Latimer, who was the directing mind of the operation, I do not agree that Mr. Kim's role was relatively minor as suggested by his counsel. In my view, mixing and packaging the drugs within the confines of a secure

stash site is pivotal to the overall success of the operation. Someone in Mr. Kim's position - responsible for maintaining the covert stash site and insulating it from detection while mixing and packaging the product for distribution - cannot be viewed as having a minor role. By his own admission he not only prepared the drugs for distribution, but he provided them to those who distributed them to the customers.

- [65] Given the importance of his role, there is no merit to the suggestion that Mr. Kim was at the bottom end of the criminal hierarchy. Unlike Mr. Pikientio, the other "dialers" who were out on the street delivering the drugs, or Mr. Coddett, Mr. Kim fulfilled a pivotal role in the overall distribution process. While Mr. Pikientio and Mr. Coddett were described as being at the lower end of the mid-level organization, with no controlling role or decision-making authority, I found that Mr. Kim had control over who and what entered the stash site. The evidence established he was usually the first person to enter the stash site and the last to leave. His attendance was not fleeting.
- [66] Clearly, Mr. Kim was a trusted, reliable member of the criminal enterprise who ensured that the drugs stashed at the unit were prepared and distributed to the lower level dialers, to be delivered to the customers that called the drug lines. Mr. Kim had control over and ready access to the drugs, the money, and the firearms, each of which was crucial to the running of the operation. He possessed the master phones, which ensured the operation's continued viability in the event that a dialer's phone was seized. He controlled access to the stash site; it was him who let people in and out, facilitating the exchange of drugs and cash. He admits in his letter that he was in contact with the line bosses. I agree with the Crown that Mr. Kim was a decision maker in the Green Planet operation and that, in effect, he held a middle management position in the criminal enterprise. This is a higher role than Mr. Pereira, Mr. Pikientio or Mr. Coddett.
- [67] The mixing and packaging of the drugs for distribution was crucial to the success of the operation. As discussed in the Trial Reasons, located inside the stash site were a plethora of individually packaged drugs ready to be distributed onto the street. These drugs were labelled and organized into different packages and some were in what the expert described as "dialer bags" - a larger Ziploc bag containing a variety of street level amounts of various drugs, which the dialer would take with him on his deliveries.
- [68] The nature of the substances involved is also an aggravating factor. While there were a variety of drugs seized that can have devastating consequences and are highly addictive - including heroin, cocaine, and methamphetamine - the main commodity was "public enemy number one", fentanyl. This is particularly aggravating. The presence of carfentanil, an even more dangerous analogue, further exacerbates this aggravating factor. I have also considered that Mr. Kim possessed all of these dangerous drugs for distribution in the midst of a public health crisis where there is an increasing number of overdose deaths every day due to opioids.

- [69] The devastating impact of these drugs on the community, particularly in the midst of a public health crisis, is an aggravating factor. Mr. Kim's participation in the distribution of these array of devastatingly harmful substances contributed to the grim death toll described by Justice Ker in *Toth*. As noted by Moldaver J. at para. 97 of *Parranto*, "those individuals responsible for the largescale distribution of fentanyl within our communities are a source of far greater harm than even those responsible for the most violent of crimes." It is "almost the equivalent of putting multiple bullets in the chambers of a revolver and playing Russian roulette. It is the most efficient killer of drug users on the market today" (*R. v. Frazer*, 2017 ABPC 116 at para. 11, cited at para. 98 of *Parranto*).
- [70] As already mentioned, another aggravating factor is the presence of the various firearms within the stash site. Applying logic and common sense, I find that these firearms were intended to be used by those associated to the stash site, including Mr. Kim, for illicit purposes and in furtherance of the criminal enterprise: The weapons were at Mr. Kim's disposal to use in the event he needed to protect the valuable commodities he possessed inside the stash site. At trial, the expert noted that firearms may be kept at a stash site for dual purposes - offensive and defensive (*Trial Reasons* at para. 12). The presence of the body armour in the midst of the drug assembly area inside the stash site further supports this finding. I have also considered that Mr. Kim was in possession of these firearms even though he was subject to a court-ordered prohibition resulting from his conviction in 2007. In my view, the sentence I impose must reflect society's rejection of such unacceptable conduct (see *Borecky* at para. 72; *Zhu*; *R. v. Guha*, 2012 BCCA 423 at paras. 37-38).

Deterrence, Denunciation, and Public Protection

- [71] The principles of deterrence and denunciation along with the need for public protection are of paramount importance in this particular case.
- [72] It is important for this Court, through the sentencing process, to denounce this conduct. The sentence I impose today must serve to communicate society's condemnation of this despicable crime, which was motivated by profit. Mr. Kim and his associates proceeded with utter disregard to the abhorrent and devastating harm caused in the community. As Moldaver J. explained at para. 101 of *Parranto*, largescale fentanyl trafficking is a "crime motivated by greed and by a callous disregard for the untold grief and suffering it leaves in its wake" and a "source of unspeakable harm".
- [73] In terms of general deterrence, those like Mr. Kim who engage in this type of predatory behaviour - with utter disregard for the impact on those with addictions, their families, and the broader community - must understand that this type of behaviour will not be tolerated. They must understand that the penalties for such egregious behaviour will be severe.

[74] This is a case in which there is a demonstrated need to separate Mr. Kim from society in order to protect the public. Mr. Kim's actions revealed an utter disregard for the lives and safety of others. In my view, the particularly aggravating features of this case speak to Mr. Kim's moral blameworthiness as an offender, and the risk he presents to the public.

Proportionality and Parity of Sentence

[75] As stated earlier, the fundamental principle of sentencing - proportionality - requires Mr. Kim's sentence to be proportionate to the gravity of the offence and his degree of responsibility (Code, s. 718.1). Additionally, pursuant to the principle of parity, the sentence imposed should be similar to sentences imposed on similar offenders for similar offences in similar circumstances (Code, s. 718.2(b)). As discussed in Parranto, I am mindful that sentencing ranges are merely suggestions or guidelines, and my task as a sentencing judge is to craft an appropriate sentence for this particular offender with regard to the circumstances both of the offender and the offence, together with the principles of sentencing I referred to earlier (see also Lacasse at para. 58).

[76] As discussed earlier, in determining the appropriate sentence, I have found the sentencing decisions of Latimer, Pereira, Coddett and Pikientio of particular assistance in determining Mr. Kim's role within the organization. I have also considered the developments in the jurisprudence related to the sentencing of fentanyl traffickers, the guidance from the Supreme Court of Canada in Parranto, and the guidance of our Court of Appeal in Smith and subsequent cases. The prevailing message from all of these cases is that those who engage in the distribution of "public enemy number one" will be subject to severe sanctions.

Rehabilitation

[77] While deterrence and denunciation are of paramount importance, I must also consider the principle of rehabilitation. The prospect of rehabilitation cannot be overlooked when crafting an appropriate sentence, but it is of secondary importance when dealing with the type of case before me.

[78] Mr. Kim has expressed a sincere apology for his actions and a heartfelt desire to change moving forward. I accept that Mr. Kim's incarceration will have an impact on his young family. However, those are the consequences of his poor choices. Returning to the comments at para. 5 of Tam, although Mr. Kim asks for mercy on account of the collateral consequences his family will suffer, I must consider the collateral consequences that society as a whole will suffer:

I am asked to treat the accused with mercy but the mercy the court must exercise is the mercy of society and not that which an individual judge might desire to exercise because of the sympathy he feels for the family of the accused and for the innocent baby who will be yet one more of the social victims of what has occurred.

[79] Mr. Kim, you are no doubt aware that your actions have jeopardized the opportunity you may have to become involved in your young children's lives. You have stated in your letter and I accept that you are motivated to make the necessary changes in your lifestyle going forward. You are fortunate to have the unrelenting support of your wife and mother. I sincerely hope you can make the changes needed to support your family in the future.

Disposition

[80] As stated earlier, crafting the appropriate sentence in this particular case is a difficult exercise. It involves a careful examination of the circumstances of the offence and the nature and severity of the offender's conduct, together with his personal aspects.

[81] Balancing all of the relevant factors, I am of the view that a global sentence of 10 years is a proportionate, fit, and proper sentence. This sentence serves to denounce Mr. Kim's conduct and to deter him and others from engaging in such pernicious conduct in the future. The sentence imposed is as follows:

- I sentence you to 10 years for possession of fentanyl (Count 2) for the purpose of trafficking;
- I sentence you to 10 years for possession of an analogue of fentanyl (cyclopropyl fentanyl) (Count 7), a derivative of fentanyl (4-Anilino-Nphenethylpiperidine) (Count 8), and carfentanil (Count 9) for the purpose of trafficking, to be served concurrent to Count 2 and to each other;
- I sentence you to 6 years for possession of heroin (Count 1), cocaine (Count 3), and methamphetamine (Count 4) for the purpose of trafficking, to be served concurrent to each other and to the sentence imposed on Count 2;
- I sentence you to 2 years for possession of alprazolam (Count 5) and cannabis marihuana (Count 6) for the purpose of trafficking, to be served concurrent to each other and to the sentence imposed on Count 2;
- I sentence you to 5 years for possession of a loaded 9mm Smith and Wesson handgun (Count 10) and possession of an unloaded 5.56 Bushmaster semi-automatic rifle (Count 13), to be served concurrent to each other and to the sentence imposed on Count 2; and
- I sentence you to 3 years for possession of an unloaded .22 caliber semi-automatic rifle (Count 12) and possession of an unloaded .32 calibre Cobra ENT Utah Inc. (Count 14), to be served concurrent to each other and to the sentence imposed on Count 2.
- I enter a conditional stay of proceedings on Count 11..

[82] Therefore, the total global sentence imposed is 10 years incarceration.

[83] In addition, there will be the following ancillary orders:

- a) pursuant to s. 487.051(1) of the Code, I make an order authorizing the taking of a sample of bodily substance from you, for the purpose of forensic DNA analysis and inclusion in the national DNA databank;
 - b) pursuant to s. 109(3) of the Code, you are prohibited from possessing any firearm, cross-bow, restricted weapon, ammunition, or explosive substance for life; and
- [84] I also grant the Crown's request for a Forfeiture Order pursuant to s. 16 of the CDSA.
- [85] Finally, pursuant to s. 743.2 of the Code, I order that a copy of these Reasons for Sentence together with a copy of the Trial Reasons be forwarded to the Correctional Service of Canada.

"Devlin J."

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Prepared on 29 October 2026 · Esheria