

CANADA / JUDGMENT

R. v. Lindsay

2020 BCSC 1815

COURT

Supreme Court of British Columbia

DECIDED

20 July 2020

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2020 BCSC 1815 R. v. Lindsay IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Lindsay, 2020 BCSC 1815 Date: 20200720 Docket: 68912-2 Registry: Chilliwack Regina v. Sarah Magan Lindsay Before: The Honourable Mr. Justice Armstrong Oral Reasons for Sentence Counsel for the Crown: S.J.K. Gill Counsel for the Accused: C.R. Terepocki Place and Date of Hearing: Chilliwack, B.C. July 20, 2020 Place and Date of Judgment: Chilliwack, B.C. July 20, 2020

- [1] THE COURT: Ms. Lindsay is a first-time offender who is to be sentenced for possession of drugs for the purposes of trafficking. She is 36 years of age and was found to be in possession of drugs in circumstances which clearly indicated that she was in the process of trafficking in those drugs, in and around November of 2017 and in and around Mission, British Columbia.
- [2] The circumstances of the offence are not outstanding or remarkable. She was seen to be driving a car at times when she came into contact with people for very short periods of time and after the last of those people left, her vehicle was stopped. She was searched. Three bags of drugs were found on the seat. Some of it was fentanyl, some of it was crack cocaine, and the total value of all three bags was approximately \$1,400. She also had \$315 in her wallet. She had a cell phone that was found on the driver's seat near to the crack cocaine and fentanyl.
- [3] The Crown recognizes that she is a first time offender. She is 36 years of age, not a young person but not an older person. She does not have a lengthy criminal history, but she has a very sad and tragic personal background. Going back to early days, when she had no connection at all with her natural father, she lived with her mother and a stepfather. She was abused. At that time her mother was an alcoholic or had substance abuse issues, and at age 12 she left home and lived on the street.
- [4] The trauma of her early years and upbringing is truly sad and difficult to comprehend how a person of her age and vulnerabilities would have slipped through the cracks as has happened to her. She has a child, a 12-year-old, who she now cares for and who is dependent on her.

- [5] She is residing in a stable relationship on a farm property on 264th Street in Langley, where she tells me that there is a farm operation. They have acquired some 40 sheep and are looking into the prospect of boarding horses. She has professed a sincere and intense desire to deal with her vulnerability and her proclivity to find income from criminal behaviour and in particular the sale of fentanyl.
- [6] The Crown did draw my attention to the decision of R. v. Smith, 2017 BCCA 112 in which the Crown suggests that the range of offences for a first-time offender for the trafficking or possession for the purpose of trafficking in fentanyl is between 18 months and three years, save and except in special circumstances.
- [7] It goes without saying, I think, that fentanyl is a dangerous substance that has taken the lives of many people every year for several years now, and in particular, reading the newspaper the number of overdose deaths to fentanyl and like drugs during the COVID crisis has been catastrophic. Handling the drug and selling the drug, has fed into the tragedy and the catastrophic loss of life that has happened in that community of users.
- [8] It seems to me those factors are what have animated the Court of Appeal in saying that 18 months to three years is the appropriate sentence even for a first-time offender. I have to take into account the denunciation and deterrence, particularly of people who traffic in fentanyl because of its insidious and lethal impact on society.
- [9] Weighing against those features are the fact that this is the accused's first offence. She has pled guilty early in the process and that she has significant medical issues, not the least of which is a diagnosis of multiple sclerosis. That alone would be a devastating diagnosis, with very long-term consequences.
- [10] I am sure that Ms. Lindsay recognizes that it is entirely up to her whether she has a productive and a useful and a happy life for herself, and more importantly for her child, that she makes the dramatic U-turn in her behaviours that is called upon.
- [11] These are significant mitigating factors and features that I should take into account. Part of the tragedy of her life was, of course, compounded by a sexual assault in 2017, that left her with an unmanageable pregnancy which was terminated. She was at that time in a period of crisis and facing homelessness with her son, and that was the underlying feature that motivated her to assist the people in trafficking in these pernicious drugs at the time.
- [12] The Crown seeks a suspended sentence with a series of conditions and Crown suggests that the suspended sentence should be for a period of three years; that it have significant conditions, including firearms prohibitions under s. 109, a DNA order, and forfeiture of the items that were found in her possession at the time.
- [13] The Crown referred to those conditions, which are set out in 732.1 of the Code, and I will just go through those conditions. They say that the order should be:
1. that she keep the peace and be of good behaviour,

2. that she be required to appear before the court as and when required,
 3. that she is to notify her probation officer or the court in advance of any change of her name, of her address, and
 4. promptly notify the court or probation officer of any change in employment or occupation.
- [14] Those conditions seem to me to be reasonable and necessary in the circumstances.
- [15] The Code ss. (3) suggests that the court can impose other conditions, one of which is that she report to a probation officer within two working days after making the order, and I would make that order today, that she report to a probation officer, and I am told that that would be at Abbotsford, British Columbia -- can the address of that place be given and included in the order?
- [16] MS. GILL: Yes, the address --
- [17] MR. TEREPOCKI: I know it's Cruickshank Street.
- [18] MS. GILL: Yes.
- [19] MR. TEREPOCKI: Yes. It's 2865 Cruickshank Street, Abbotsford, B.C.
- [20] THE COURT: -- within two business days of the making of this order, so that would be by the close of business I would say by 4:00 p.m. on Thursday, July 23rd.
- [21] She is to remain within the jurisdiction of this court, unless written permission to go outside of the jurisdiction is obtained from the court or the probation officer. She is to abstain from the consumption of drugs, except in accordance with medical prescriptions and of alcohol or any other intoxicating substances.
- [22] She is to provide -- the Crown does not ask for an order under (c)(1) or (2) and under s. 109 she is prohibited from possessing firearms and that -- the full list of firearms in 109 is -- is somewhat lengthy. Do we have a pick list?
- [23] She must not possess, directly or indirectly, any weapon as defined by the Criminal Code, including firearms and ammunition, crossbows, prohibited or restricted weapons or devices or explosive substances, anything used, designed to be used or intended for use in causing death or injury to any person, or to threaten or intimidate any person; any imitation firearm or weapon, including compressed air guns or BB pellet guns, or any related authorizations, licences and registration certificates must not be obtained by her.
- [24] Ms. Gill, was there anything else you wanted in the order?
- [25] MS. GILL: Yes, in terms of the conditions, there was also community work service hours.
- [26] THE COURT: Oh, right.

- [27] MS. GILL: I was asking for 50, my friend said 40, but we should have an end period within that condition. I was suggesting 18 months, if Your Lordship agrees, for a three-year probation order and Crown is also seeking a curfew.
- [28] THE COURT: Right, a curfew, yes. And that was a 10:00 p.m. to 6:00 a.m. curfew?
- [29] MS. GILL: Yes, for the first two years of the order, if Your Lordship agrees to a three-year order.
- [30] THE COURT: The defence suggests that the length of the suspended sentence at three years is excessive and that the conditional -- sorry, the suspended sentence and probation order could be reduced to 18 months, and that the whole concept of denunciation and deterrence can be or is met by the fact that she has precluded herself from many careers or occupations that she was previously suited to and trained for, that will be foreclosed to her because of her criminal record and that contrasted with the lifestyle she had before 2017, or up to 2017, she is now in a stable relationship and is unlikely to descend to criminal behaviour again.
- [31] I am satisfied and I think it is important that she is in receipt of an income, that is a result of her disability, that will enable her to meet some of her most basic expenses and will not be forced or driven to the temptation of drug sales in order to support herself or her son.
- [32] In view of the decision of the Court of Appeal that trafficking in fentanyl warrants a range of sentencing of 18 to 36 months for first-time offenders, I am of the view that in the circumstances that the suspended sentence should be for two years less a day, so that if she was in breach it would still fall within the provincial system, and I think two years probation will allow for monitoring her and her behaviour for a sufficient length of time for her to correct and re-establish her life in her new relationship on a farm.
- [33] I think a period of 50 hours of community work service is appropriate, given particularly the importance of denunciation and deterrence for these offences and the lethal nature of fentanyl, and so I think what I will order is that her community work service be completed within 50 hours, be completed within 18 months.
- [34] Now, in terms of the curfew, I am satisfied that a curfew of 10:00 p.m. to 6:00 a.m. is appropriate in the circumstances, and the curfew should end after 18 months. It seems to me that again the curfew is a significant incursion into her liberty, is just consistent with the importance of denunciation and deterrence in the circumstances, while recognizing how important it is for her to be given a fulsome opportunity to rehabilitate herself and form a new lifestyle for herself in the hopes that she will truly be separated from those bad choices that she has made.
- [35] MS. GILL: And My Lord, I did miss when you asked me any additional conditions. Crown did ask for counselling just to assist in her rehabilitation. That is mentioned on page 4 of the presentence report, and given the difficult upbringing and the issue in 2017, the sexual assault, I don't know if counselling is something that --

- [36] THE COURT: I am not satisfied that that is a --
- [37] MS. GILL: Okay. That's fine.
- [38] THE COURT: -- a term that the court should impose. I think --
- [39] MS. GILL: Sure. Certainly.
- [40] THE COURT: -- if she is going to turn her life around and keep on going, I think she will know what she has to do. I would suspect that the probation officer can make suggestions. I would not impose that, but it just seems --
- [41] MS. GILL: Yes.
- [42] THE COURT: -- to me that moving -- now that the focus has dealt with denunciation and deterrence, I think the focus should be on sort of rehabilitation and having her back into society. [DISCUSSION AMONGST COUNSEL AND THE COURT]
- [43] MS. GILL: I think, My Lord, on the DNA, I know my friend is opposed. I asked for an order, your ruling on that.
- [44] THE COURT: I am sorry, that is -- you know, I missed -- I did not deal with that. Again, I am not satisfied that the circumstances warrant a DNA order at the present. I appreciate, in some general senses, the public has an interest in having that tool at their command to deal with the behaviours, but it just seems to me that in the circumstances of this case it is not warranted.
- [45] MS. GILL: Yes. Thank you.
- [46] THE COURT: Thank you.
- [47] MS. GILL: And the Crown will prepare a forfeiture order.
- [48] THE COURT: Thank you, yes.
- [49] MS. GILL: And we'll file that. Thank you.
- [50] THE COURT: Okay, that is good.
- [51] MS. GILL: Thank you.
- [52] THE COURT: Thank you.
- [53] MS. GILL: Crown is --
- [54] THE CLERK: Order in court. All rise.
- [55] MS. GILL: Yes -- I direct a stay of proceedings on Count 2.
- [56] THE CLERK: Yes. Thank you. "Armstrong J."

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Prepared on 25 October 2026 · Esheria