

CANADA / JUDGMENT

R. v. Magano

2020 BCSC 1947

COURT

Supreme Court of British Columbia

DECIDED

20 November 2020

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2020 BCSC 1947 R. v. Magano IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Magano, 2020 BCSC 1947 Date: 20201120 Docket: 30621 Registry: Vancouver Regina v. Marc Anthony Magano Before: The Honourable Mr. Justice Edelman Oral Reasons for Sentence Counsel for the Crown, appearing by teleconference: H. Russell Counsel for the Accused: C.S. Johnson, Q.C. Place and Date of Hearing: Vancouver, B.C. November 20, 2020 Place and Date of Judgment: Vancouver, B.C. November 20, 2020

- [1] THE COURT: Mr. Magano has pled guilty to two offences under the Controlled Drugs and Substances Act, S.C. 1996, c. 19 [CDSA]. The first offence relates to possession for the purpose of trafficking of some 3.5 kilograms of methamphetamine. The second is simple possession of two grams of cocaine. The matter arises out of Lake Louise, Alberta, and was waived into this court for disposition. Underlying Facts
- [2] The underlying facts are relatively straightforward. Mr. Magano was subject to a traffic stop while driving in the vicinity of Lake Louise, Alberta, for an impairment check due to swerving out of his lane. When he was approached, the officer became suspicious of drug trafficking based on a number of indicators. A police service dog was deployed and provided positive identification on the vehicle, resulting in Mr. Magano's arrest under the CDSA.
- [3] During the search of the vehicle, police located and seized approximately 3.5 kilograms of methamphetamine in four packages and two grams of cocaine. I am told that Mr. Magano was acting as a courier and was to be paid something in the range of \$2,000 for transporting the controlled substances. The value, I am told, would be approximately \$120,000 at the ounce level or \$350,000 at the gram level for that quantity of methamphetamine. At the time of the arrest, police also seized \$975 in currency and two cellular phones.
- [4] Mr. Magano was 22 years old at the time of the offence.
- [5] Some eight months after his arrest in this matter, Mr. Magano suffered an overdose of fentanyl, falling into a coma for several days. One of the reports before me describes the impacts on him in the following terms: Mr. Magano consequently acquired deficits which mainly manifest in memory impairment, and these are clearly documented through the reports of psychiatrists, rehabilitation doctors, as well as neuropsychology reports. His

major deficits are in memory performance and he is described as "quite low". Psychologists clearly indicate that Mr. Magano is going to experience future difficulties with attendance, punctuality, and productivity. He will have difficulty with initiating the tasks. Mr. Magano may have trouble foreseeing and practically preventing problems as well as responding appropriately to unexpected situations. Given the nature of his memory difficulties, the report indicates it will be hard for him to learn new job-specific information and track to-do's. Overall, the neuropsychological report indicates that sustainable employment will be very challenging. The memory deficits also focus around "misremembering events without realizing". The neuropsychological report indicates that extra support will be required in training these and effective use of external memory strategies would be beneficial. Joint Submission

- [6] The Crown and defence have presented a joint submission for a sentence of two years' imprisonment on the first count and a sentence of one-day imprisonment on the second count, to be served concurrently.
- [7] In *R. v. Anthony-Cook*, 2016 SCC 43, the Supreme Court of Canada set out that the legal test to be applied by a sentencing judge presented with a joint submission is "whether the proposed sentence would bring the administration of justice into disrepute, or would otherwise be contrary to the public interest". Principles of Sentencing
- [8] The principles of sentencing are set out in s. 718 of the Criminal Code, R.S.C., 1985 c, C-46. Both Crown and defence agree that the principles that are relevant in Mr. Magano's case are primarily those of denunciation and deterrence.
- [9] I have been referred to *R. v. Ruth*, 2007 ABCA 34 and *R. v. Figiel*, 2015 ABCA 19 from the Court of Appeal of Alberta in which the starting point is said to be three years for the nature of the substance in this case and for the quantity in question. Aggravating Factors
- [10] Crown and defence largely agree on the factors that are to be considered in this case. The aggravating factor primarily is the large quantity of methamphetamine and the nature of the substance itself. It is a Schedule I substance and this is a very significant quantity of that substance. In terms of Mr. Magano's role, he was a courier in the trafficking operation, and although that places him relatively low in the operation itself, it remains an important role within a trafficking organization and, in this case, it does appear that it was done for financial gain. Mitigating Factors
- [11] The mitigating factors, that a guilty plea was entered is clearly a mitigating factor. Mr. Magano has not only taken responsibility, but has also expressed remorse before the court, both through his counsel and personally. His relative youth, he was 22-years-old at the time of the offence. He is now 25 years old. He does not have a criminal record and I am told he has had no involvement or problems in terms of complying with what I assume have been conditions that he has been on during that period of time and has not come before the court with respect to any subsequent issues or offences.

- [12] I have reviewed a number of letters from friends and family and I heard from one of his friends in person today. It is clear that Mr. Magano has a supportive and caring family and is well supported within the community. He has a long history of involvement in wrestling, and I understand that he has become involved again in coaching in the wrestling community. He is quite broadly described as a person of good character, but easily influenced, and that that may well be what led to his commission of the offence in this case.
- The Sentence
- [13] In terms of the sentence to be imposed today, I am satisfied in the circumstances that a departure from the range suggested in the cases cited above would not bring the administration of justice into disrepute and is not contrary to the public interest. I, therefore, will impose the sentence of two years imprisonment that is being requested. In my view, it meets the goals of denunciation and deterrence, given the quantity of drugs that were at issue in this case and the impact that those drugs would have had within the communities within which they would have been distributed had they not been intercepted by the police.
- [14] So, Mr. Magano, if you could please stand.
- [15] I sentence you to two years of imprisonment with respect to Count 1 and one day of imprisonment with respect to Count 2, to be served concurrently.
- [16] You can be seated. I am just going to address the ancillary orders. Ancillary Orders
- [17] There were three ancillary orders that have been sought by the Crown. The first order is for forfeiture under s. 16 of the CDSA of two cellular phones and a quantity of cash seized at the time of the arrest and, given the position of defence, I will make that order as set out by the Crown.
- [18] The second order sought is a firearms ban under s. 109(2) of the Criminal Code. Given that I am convicting Mr. Magano for an offence under s. 5(1) of the CDSA, an order under s. 109(2) is mandatory and I will therefore impose that order.
- [19] The Crown has requested an order for DNA collection under 487.051(3)(b) of the Criminal Code. As this is a secondary designated offence and given the overall circumstances, both with respect to Mr. Magano's past conduct, that he does not have a record and given the circumstances of this offence, I decline to impose the order requested by Crown.
- [20] Is there anything further from either party with respect to the sentencing?
- [21] MR. JOHNSON: There is one last thing that I would request, and I did reference in my submissions, and I realize that Your Lordship does not have the power to direct Corrections, but it may be of assistance if you were prepared to recommend that he be referred to appropriate services to manage his mental and physical health difficulties.

- [22] THE COURT: Given the materials that I have reviewed, both in terms of the psychiatric reports, to the extent that Corrections are able to take this into consideration, I would recommend Mr. Magano be referred to appropriate services to manage his mental and physical health difficulties within the correctional system.
- [23] MR. JOHNSON: Thank you, My Lord.
- [24] THE CLERK: Do you want to make that an order, My Lord?
- [25] THE COURT: I will not make that an order. I will make that a recommendation to Corrections. One would hope that is something that Corrections would be doing in any event. I expect that that is the case, but I will leave it within the discretion of the appropriate authorities in Corrections to consider how it is to best be implemented.
- [26] MR. JOHNSON: Yes, My Lord, and nothing further, My Lord.
- [27] THE COURT: Anything further from Crown, Ms. Russell?
- [28] MS. RUSSELL: No, thank you, My Lord.
- [29] THE COURT: So thank you, and Mr. Magano, I know that it is not going to be an easy path forward, but I do wish you the best. "Edelmann J."

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