

CANADA / JUDGMENT

R. v. Matson

2023 BCSC 141

COURT

Supreme Court of British Columbia

DECIDED

13 January 2023

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

2023 BCSC 141 R. v. Matson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Matson,

2023 BCSC 141

Date: 20230113

Docket: 48872-2

Registry: Prince George

Rex

v.

Michael Kenneth Robert Matson

Before: The Honourable Mr. Justice Tindale

Oral Reasons for Sentence

Counsel for the Crown:

A.M. Murray

Counsel for the Accused:

S. Catona

Place and Date of Hearing:

Prince George, B.C.

December 9, 2022

Place and Date of Judgment:

Prince George, B.C.

January 13, 2023

[1] THE COURT: The accused, Michael Kenneth Robert Matson, was convicted of the following three counts on Court File Number 48872-2 out of the Prince George registry after a trial:

Count 1

... on or about the 25th day of October, 2019, at or near the City of Mackenzie, in the Province of British Columbia, did unlawfully possess a controlled substance, to wit: Methamphetamine, for the purpose of trafficking, contrary to Section 5(2) of the Controlled Drugs and Substances Act.

Count 2

... on or about the 25th day of October, 2019, at or near the City of Mackenzie, in the Province of British Columbia, did unlawfully possess a controlled substance, to wit: Heroin and Fentanyl, for the purpose of trafficking, contrary to Section 5(2) of the Controlled Drugs and Substances Act.

Count 3

... on or about the 25th day of October, 2019, at or near the City of Mackenzie, in the Province of British Columbia, did unlawfully possess a controlled substance, to wit: Cocaine, contrary to Section 4(1) of the Controlled Drugs and Substances Act.

Background

- [2] By way of background, on October 25, 2019, Constable Del Vecchio, a member of the RCMP stationed in Mackenzie, British Columbia, obtained a search warrant to search 221 Crysdale Drive in Mackenzie, British Columbia (the "Residence") for drugs and drug trafficking items pursuant to s. 11 of the Controlled Drugs and Substances Act ("CDSA").
- [3] The RCMP members attended the residence at 7:10 pm to execute the search warrant. In the basement bedroom of the Residence, the RCMP found a small plastic bag containing 8.3 grams of methamphetamine in a grey bag in the corner of that bedroom.
- [4] In addition, in the basement bedroom, a small wooden box was found on a shelf with two plastic baggies. One baggie contained 2.5 grams of cocaine and the other baggie contained 2.9 grams of heroin with fentanyl.
- [5] Sergeant Grierson observed the accused leaving a hidden room in the basement. The police found a small plastic bag packed between what appeared to be a vent and that contained two other bags. One of the bags contained 55.8 grams of methamphetamine and the other baggie contained 28 grams of heroin and fentanyl.

- [6] Exhibit 1 on the trial are Admissions of Fact made pursuant to s. 655 of the Criminal Code of Canada.
- [7] The accused admitted that the value of the methamphetamine, if sold at the street level, would be \$6,510 and if sold in large amounts its value would be roughly \$2,600 to \$3,200.
- [8] The accused further admitted that the value of the heroin and fentanyl, if sold at the ounce level, would be approximately \$3,000 to \$4,000. If sold at the street level, that is the .1-gram level, the value would be approximately \$6,180.
- [9] The accused admitted the value of the cocaine seized would be approximately \$200 if sold at the half-gram level.
- [10] Finally, in Exhibit 1, the accused admitted that the methamphetamine and the heroin and fentanyl were for the purpose of trafficking.
- [11] Exhibit 4 on this trial are further Admissions of Fact by the accused, pursuant to s. 655 of the Criminal Code. In these admissions, the accused admits that he possessed the above-noted drugs.

Accused

- [12] The accused is 35 years of age, having been born on August 14, 1986. He was born in Burnaby, British Columbia; however, moved with his family to Mackenzie when he was young. He has two younger siblings.
- [13] The accused has two children from a previous relationship.
- [14] The accused has a Grade 10 education and he has been employed in a variety of labour-type jobs.
- [15] The accused has a criminal record, which includes convictions for possession of controlled substances, as well as uttering threats. The accused also has seven previous convictions for failing to comply with undertakings and/or probation orders.
- [16] I have had the benefit of a pre-sentence report prepared by Probation Officer Paul Weisbrodt dated April 14, 2022.
- [17] Mr. Weisbrodt, under the heading "Behaviour, Emotional Status" writes the following:

The subject reported he was attacked by a dog when he was 6 years of age, where he suffered serious head wounds. The subject also recalled an incident from 2017, when he received another severe head wound, as he was ejected through a windshield during a motor vehicle accident. The subject indicated he still has glass embedded in his skull, but he does not believe he has suffered any brain injury due to the accident. The subject also recalled experiencing a drive-by shooting in 2016, where he has experienced some incidents of post-traumatic stress, which included him reacting to incidents of loud noises, screeching tires, and sometimes having nightmares.

The subject recalled being very depressed in February 2019, and not happy with his life due to the choices he had made. The subject reported he was going to drive his vehicle off a cliff and commit suicide, but the vehicle broke down, ending his attempt. The subject indicated this changed his life and he claims he has tried to make positive changes. The subject indicated he has dealt with most of his past issues and does not feel he requires counselling at this time. The subject indicated he has the support of his family and his girlfriend, and he is happy with his life at present.

[18] Mr. Weisbrodt also reported that the accused has had difficulty complying with community supervision. He indicated that the accused's "reporting habits were sporadic and this limited the effectiveness of community supervision".

[19] The accused did, however, complete the CORE-Essential Skills for Success for substance abuse (three modules) prior to his release in January 2019, and the accused also completed the Core-Respectful Relationship program in October 2019 while on probation.

Position of the Parties

Crown

[20] The Crown says that a fit global sentence would be 34 months in jail. That would consist of 18 months in jail on Count 1, 34 months in jail on Count 2, and 12 months in jail on Count 3, all served concurrently.

[21] The Crown notes that the accused has a previous criminal record, though most of those offences occurred after 2019.

[22] The Crown relies on the following cases to establish the range for a fit sentence:

- i. R. v. Smith, 2017 BCCA 112;
- ii. R. v. Mann 2018 BCCA 265;
- iii. R. v. Aeichele 2022 BCSC 195;
- iv. R. v. Grouhel 2021 BCSC 2527;
- v. R. v. Emery 2019 BCSC 1789;
- vi. R. v. Lucas 2020 BCPC 106;
- vii. R. v. Gill 2021 BCSC 2269;
- viii. R. v. Kirton 2018 BCPC 11; and
- ix. R. v. Adamu 2020 BCSC 98

[23] In Smith, the court stated the following with regard to the range of sentence for trafficking in fentanyl and other serious drugs at para. 45:

I agree with the many judges who have stated that denunciation and deterrence must generally be given primacy in sentencing in cases involving Fentanyl. To this end, I would suggest a normal range beginning at 18 months' imprisonment, as the Crown suggests. I would place Mr. Smith's offences at the bottom of this range, in light of the mitigating factors discussed by the court below. I do not believe it is necessary for us to specify the top of the range, although I would suggest it might well exceed 36 months, especially where the offender has a substantial record involving the sale of Fentanyl or otherwise demonstrates an indifference to the human lives he or she is putting at risk. . . .

- [24] The Crown notes that the accused has a number of aggravating factors. These include the fact that he was on probation at the time of these offences and the amount of fentanyl that he had in his possession. The accused also has a criminal record which includes a previous conviction for possession of narcotics.
- [25] The Crown argues that based on the case law, the starting point for a fit sentence for the accused would be 30 months. However, given the amount of drugs he had in his possession, 34 months is the appropriate sentence.
- [26] The Crown argues that a Conditional Sentence Order is not available to the accused because a fit sentence would require more than two years in custody. Also, the accused has not established any exceptional circumstances which would allow for a reduced sentence for the accused.
- [27] The Crown also seeks a forfeiture order pursuant to s. 16 of the Controlled Drugs and Substances Act, a DNA order, and a firearms prohibition pursuant to s. 109 of the Criminal Code.

Accused

- [28] The accused argues that a fit sentence would be a Conditional Sentence. It would address the principles of denunciation and deterrence, as well as rehabilitation.
- [29] The accused notes that Bill C-5 has been given Royal assent and a Conditional Sentence Order is available to the accused.
- [30] The accused lives in a basement suite in Mackenzie, British Columbia. Exhibit 4 on this sentencing hearing is a letter from a Mr. Goodwin, which indicates that the accused has been working for him for the past five months.
- [31] The accused argues that he has suffered from depression as a result of the breakdown of the relationship he had with the mother of his children in 2018, and that he started using and selling drugs then to support his habit.
- [32] The accused disagrees with the comments in the pre-sentence report that he was not addicted to drugs at the time of these offences. He said this has been a lifelong struggle for him.

- [33] The accused notes that he has done a lot of work to assist in his rehabilitation and has taken a number of courses, as indicated by the certificates which have been marked as Exhibit 6 on this proceeding.
- [34] The accused argues that he had to drop out of school when his father left his family, and he began to work to support his family at a young age.
- [35] The accused notes that he has suffered many traumas throughout his life, as documented in the pre-sentence report.
- [36] In addition, this morning I heard from one of his counsellors or facilitators in his rehabilitation who indicates that for the past five months, he has been doing well in recovery, attending NA meetings regularly, and is an inspiration to other people in their recovery. I accept that.
- [37] The accused argues that he is by no means a prolific offender. He is not a danger to the public, and a Conditional Sentence Order can meet the requirements for deterrence and denunciation.
- [38] The accused relies on the following cases to establish a fit sentence:
- i. R. v. Flintroy 2021 BCSC 1187;
 - ii. R. v. Voong, 2015 BCCA 285;
 - iii. R. v. Proulx 2000 SCC 5;
 - iv. R. v. Ali 2022 BCPC 35; and
 - v. R. v. Howard 2021 BCPC 167
- [39] Mr. Justice Crossin in Flintroy, in referring to the decision of Voong, stated the following at para. 45:

In circumstances of far less sophistication and seriousness than the case at bar, the courts have recognized that deterrence and denunciation can be met without conventional incarceration in certain particular and special circumstances. This is achieved by suspending the passing of sentencing in ordering a term of probation. The court in R. v. Voong, 2015 BCCA 285, stated at para. 59:

In summary, absent exceptional circumstances, the sentence for a first offence or with a minimal criminal record, dial-a-dope drug seller will be in the range of six to eighteen months imprisonment, depending on the aggravating circumstances. Exceptional circumstances may include a combination of no criminal record, significant and objectively identifiable steps towards rehabilitation for the drug addict, gainful employment, remorse and acknowledgement of the harm done to society as a result of the offences, as opposed to harm done to the offender as a result of being caught. This is a non-exhaustive list, but at the end of the day, there must be circumstances that are above and beyond the norm to justify a non-custodial sentence. 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. However, Parliament, while not removing a non-custodial sentence for this type of offence, has concluded that CSO sentences are not available. Thus, it will be the rare case where the standard of exceptional circumstances is met.

- [40] The accused argues that the cases that the Crown relies on are distinguishable because the circumstances in those cases are more aggravating or the offender had a more significant criminal record.
- [41] The accused argues that the court should consider, in determining a fit sentence, that he has been struggling with addiction issues, has turned his life around, gained employment, and is attending counselling for his rehabilitation.
- [42] The accused argues that a conditional sentence is available to him and would fulfil the requirements of deterrence and denunciation.
- [43] The accused acknowledges that he has been sober for five months and that he has to do better in his life, and he acknowledges that he deserves or accepts whatever sentence that he is given.

Decision

- [44] I have to consider the purpose and principles of sentencing as set out in the Criminal Code in determining a fit sentence.

- [45] Section 718 of the Criminal Code outlines the purpose of sentencing and reads as follows:

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 that have one or more of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

- [46] Section 718.1 of the Criminal Code of Canada reads:

A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[47] Section 718.2 also provides the court with guidance as to other sentencing principles and reads:

A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

...

(iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,

...

shall be deemed to be aggravating circumstances;

- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
- (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
- (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

[48] I must also consider s. 10 of the Controlled Drugs and Substances Act, which reads:

10(1) Without restricting the generality of the Criminal Code, the fundamental purpose of any sentence for an offence under this Part is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation, and treatment in appropriate circumstances, of offenders and acknowledging the harm done to victims and to the community.

[49] There is no question that society is harmed every day by the sale of illicit drugs and in particular fentanyl which is a scourge on society. The amount of deaths in British Columbia as a result of fentanyl is mind-boggling and unacceptable.

[50] The accused was in possession of a relatively large amount of illicit drugs and a large amount of fentanyl at the time of his arrest.

- [51] The accused has a relatively lengthy criminal record with two prior convictions for possession of controlled substances. Perhaps more importantly, the accused also has convictions for uttering threats and numerous breaches of court orders.
- [52] It is clear in the case law that anyone convicted of trafficking in fentanyl, absent exceptional circumstances, should expect to go to jail for a lengthy period of time.
- [53] The accused is remorseful for these offences, which I accept. He has taken a number of steps towards his rehabilitation, including five months of sobriety, and has found employment and, as I earlier said, he has members of the community speaking highly of him with regard to his efforts at rehabilitation.
- [54] The accused is well on his way to rehabilitating himself and turning his life around. However, in my view, there are not exceptional circumstances in this case as described in Flintroy, where the accused in that case, six years later, had turned their life completely around.
- [55] There are aggravating factors in this case, including the fact that the accused was on probation at the time of these offences. While I accept the accused was likely, to some degree, supporting his own habit, given the amounts of drugs, it is clear he was also selling these drugs. He had a relatively large amount of narcotics, including fentanyl, in his possession.
- [56] The accused does have mitigating factors which include his efforts at rehabilitation, finding employment, and his sobriety.
- [57] In my view, a Conditional Sentence Order is not appropriate in the circumstances of this case primarily for two reasons. First, a fit sentence would require more than two years of incarceration and, given the accused's poor track record for complying with court orders, I have no faith that he would comply with the conditions of the conditional sentence order if he was placed on it, which would put society at risk.
- [58] I am, however, mindful of the efforts of rehabilitation made by the accused and the principle of restraint in coming to a decision as to a fit sentence.
- [59] So sir, if you could stand up, please. I am not in a position to grant you a conditional sentence order. In my view, there needs to be more than two years' incarceration. I am giving you a considerable discount, though, from what the Crown is asking, based on your efforts at rehabilitation.
- [60] So I am going to sentence you to a total of 28 months in custody. That will be broken down as follows:

Count 1, 18 months in custody;

Count 2, 28 months in custody; and

Count 3, eight months in custody.

[61] All the sentences are to be served concurrently, one with the other, so again that is a total of 28 months.

[62] You can have a seat, sir.

[63] In addition, I will make the following ancillary orders.

[64] Count 2 on the information is a secondary designated offence. After considering the factors set out in s. 487.051(3) of the Criminal Code, I am satisfied that it is in the best interests of the administration of justice to authorize the taking of samples of bodily substance from you. The samples will be taken from you while you are in custody and you must submit to the taking of the samples.

[65] Next, pursuant to s. 109 of the Criminal Code, you are prohibited from possessing any firearm, other than a prohibited firearm or restricted firearm, and any cross-bow, restricted weapon, ammunition, explosive substance for a period of 10 years following your release from prison, and any prohibited firearm or restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for life.

[66] And thirdly, Crown is seeking a forfeiture order pursuant to s. 16. Do you have that order, by any chance?

[67] CNSL A. MURRAY: Yes, Mr. Justice, we do. It's signed by both my friend and I. I've revised it, just to put today's date on it, and it's -

[68] THE COURT: All right.

[69] CNSL A. MURRAY: -- ready for your - Mr. Justice's signature.

[70] THE COURT: All right. I will sign that order. I am satisfied that the conditions of s. 16 have been met and the item should be forfeited to the Crown. I will hand that back to Madam Clerk.

[71] All right, so 28 months is the total sentence. Thank you.

"The Honourable Mr. Justice Tindale"

Source & reproduction note

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

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/23/01/2023BCSC0141.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-matson-2023>

Prepared on 28 October 2026 · Esheria