

CANADA / JUDGMENT

R. v. Mercieca

2025 BCSC 1974

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 1974 R. v. Mercieca

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Mercieca,

2025 BCSC 1974

Date: 20250924

Docket: 27879-2

Registry: Quesnel

Rex

v.

Helen Marie Mercieca

Before: The Honourable Justice Greenwood

Oral Reasons for Sentence

Counsel for the Crown:

C. Choi

Counsel for the Accused:

E. Ariaee

Place and Date of Hearing:

Vancouver, B.C.

September 24, 2025

Place and Date of Judgment:

Vancouver, B.C.

September 24, 2025

- [1] THE COURT: On June 6, 2025, Ms. Mercieca entered a guilty plea to one count of possession of methamphetamine for the purposes of trafficking and the matter was adjourned to today for the purposes of sentencing. As I will outline shortly, the offence was serious and involved a text message agreement to traffic a kilo of methamphetamine for \$18,500, and to deliver the kilo from the Lower Mainland to Quesnel.
- [2] The Crown position is that a two-year jail sentence would appropriately reflect the need for a deterrent sentence and the personal circumstances of Ms. Mercieca, and that a conditional sentence order would not be a proportionate sentence in the circumstances.
- [3] The defence argues that while a CSO would not be appropriate in many cases that deal with trafficking at this level, it is appropriate in Ms. Mercieca's case and should be imposed. Counsel stresses the steps that Ms. Mercieca has taken, the recent improvement in her compliance with bail and in her life generally, her low risk of re-offending, and the fact that she is not a danger to the community.

Circumstances of the Offence

- [4] The circumstances of the offence are set out in an agreed statement of facts that was marked as Exhibit 2 in these proceedings. I will not restate everything in the agreed statement of facts. By way of overview, in early February of 2021, Constable Hundial of the Quesnel RCMP received unsolicited text messages on his RCMP-issued phone from "Helen", believed to be Helen Mercieca of Langley, British Columbia, asking for an individual by the name of Les who would purchase large amounts of illicit drugs.
- [5] The RCMP launched an undercover operation and began exchanging text messages with Ms. Mercieca which ultimately ended up in her appearing in a red GMC Sierra at a McDonald's parking lot in Quesnel, where she was arrested. A search of the red Sierra revealed one kilogram of methamphetamine, as had been discussed.
- [6] The details in the agreed statement of facts have been set out before me. The nature of the communications shed light on the nature of the offence in the case at bar. They include messages from Helen that say, among other things, "What will you pay for a key if I come up there?" There are discussions of price, reference to the fact (from "Helen") that, "I'm putting up 3,000 to make \$1,000 and I'm taking all the risk driving on winter roads," and reference to the fact that her driver is waiting. It appears from the text messages that at one point in time there was a discussion of the quality of the methamphetamine and Ms. Mercieca stated that the quality is guaranteed in one of the text messages at 4:01 p.m.

- [7] There appeared to be some miscommunication between the undercover officer and Ms. Mercieca, in that the undercover officer asked, "How much you want 4K," which was meant to convey how much for a single kilo. Ms. Mercieca misunderstood and began to discuss four kilos rather than one key, and said, "If you are taking more than one key, I trust you will take the money from the apartment." She also sent a message saying that for four it would be cheaper.
- [8] There is no indication that she was planning to or that she trafficked in that quantity, but when it was raised by the RCMP officer, she did begin to discuss it. She also stated in text messages that she could not afford any "fuck ups" based on what she was doing and, as I indicated, when she arrived in Quesnel and was arrested, there was a vacuum-sealed container with one kilogram of methamphetamine inside of it.

Circumstances of the Offender

- [9] Ms. Mercieca is 57 years old and was born in Etobicoke, Ontario. When she came to B.C. in 1980, she was living in Surrey, but is now living in Langley at the home of a friend. I am advised that Ms. Mercieca is not Indigenous herself, but her children are, so she is aware of the effects of Canada's colonial history and assimilationist policies through her children.
- [10] She has a Grade 10 education and dropped out of school after that point.
- [11] It is certainly fair to say that Ms. Mercieca has endured personal tragedy and many difficult events in her life. She had a daughter who was taken from her care in 2004. More recently, her son tragically died when he was hit by a train. These are devastating and difficult events.
- [12] In terms of drug use, Ms. Mercieca has a history of addiction to crack cocaine but she quit over 20 years ago. I am advised that she did use methamphetamine on occasion, but quit that as of September 2024. There is no suggestion that she was addicted at the time of the offence or that her motivation was related to substance abuse.
- [13] There are times in her background where Ms. Mercieca has unfortunately been without a home. I am also advised that Ms. Mercieca suffers from agoraphobia, which has manifested in anxiety on her part any time that she has to leave her home, although, I am advised that her agoraphobia has much improved as of late.
- [14] Counsel outlined the fact that Ms. Mercieca's motivation for the offence was financial, but it was born of desperation to help her son find a place to live. She has complied with bail and is remorseful.
- [15] She spends her time now, among other things, caring for her granddaughter, including picking her up from school and spending time with her at the granddaughter's home.

- [16] There is a presentence report that was ordered. It outlines Ms. Mercieca's history, including financial struggles, residential instability, and some of the facts I have already mentioned, including the motivation for the offence being her desire to make money so she could help her son secure housing.
- [17] The PSR makes reference to Ms. Mercieca having sold drugs to supplement her income in the past as well in 2005. It says that she has never been diagnosed with a mental or learning disability, and that she has largely abstained from illegal substances for five to eight years.
- [18] I would not describe the PSR report as particularly positive in terms of Ms. Mercieca's prospects of complying with court orders. In the section entitled "Court and correctional history", the PSR outlines five convictions for breach of probation, which are also reflected in her record that has been filed in these proceedings. It also outlines difficulty following through with community counselling resources. It does mention struggles to comply with the electronic monitoring program, although counsel explained to me during his submissions that this was due to the embarrassment of having an electronic monitoring bracelet with her granddaughter when she was at the pool, and I am advised that the bail condition to that effect was removed.
- [19] The PSR also refers to the fact that Ms. Mercieca indicated to the author that she was not open to being bound by a curfew or to attending counselling or treatment or house arrest, and I will return to the house arrest issue later in these reasons briefly.
- [20] The PSR makes reference to 11 prior reports of various kinds of non-compliance without specifying what those are.

Legal Principles

- [21] Section 718 of the Criminal Code sets out the fundamental purpose of sentencing:

718 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.

[22] The principle of proportionality set out in s. 718.1 of the Code is a fundamental principle of sentencing and mandates that a sentence be proportionate to the seriousness of the offence and the degree of responsibility of the offender.

[23] There is also s. 718.2(a) that sets out other sentencing principles and provides at (a) that:

a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender

And then s. (b) says:

a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

Section (d) says:

an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances;

And s. (e) says that:

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.

Aggravating and Mitigating Factors

[24] In this case there are a number of aggravating factors that underline the seriousness of the offence, including:

- a) the nature of the substance - methamphetamine is a hard drug;
- b) the quantity and value involved being one kilogram worth \$17,500 if sold by the kilo, but up to \$100,000 if broken down to smaller street-level quantities;
- c) Ms. Mercieca's criminal record including a prior conviction for PPT, although it is very dated. The conviction for possession for the purposes of trafficking also resulted in a suspended sentence. Based on those factors, her record carries less weight than it otherwise might, but she does not come to the court as a first offender;
- d) The financial motivation for the trafficking, to be contrasted by trafficking that we do see in these courts on occasion that is fueled by substance abuse disorder; and
- e) the fact that the offence involved delivery of a kilo of methamphetamine from the Lower Mainland to a smaller community.

[25] There are mitigating factors, including Ms. Mercieca's guilty plea. I accept she has acknowledged responsibility for the offence and that her remorse is genuine. She agrees that the conduct was wrong and was not justified, and that is to her credit.

Analysis

- [26] The authorities make it clear that in cases involving the trafficking of hard drugs, particularly in large quantities, the principles of deterrence and denunciation take precedence. That is understandable. Trafficking hard drugs is in no way a victimless crime. The illegal drug trade affects virtually every community in British Columbia and causes untold damage, social problems, and harm.
- [27] With respect to methamphetamine, I would adopt the comments of Greycliff J. in *R. v. Nguyen*, 2017 BCSC 2403 at para. 23:
- [23] I start with the nature of the substance Mr. Nguyen was dealing in. Methamphetamine has consistently been identified by the courts as a highly dangerous substance with harmful effects upon those who use it. In *R. v. Georgiev* [citation omitted], Madam Justice Saunders of the Court of Appeal, wrote this, at para. 8 of her decision:
- [8] The production of methamphetamine has been repeatedly recognized by this court as a serious matter, both as to the character of the drug itself, and as to the danger presented by the precursors to it and the manufacturing process. For example, Mr. Justice Donald said in *R. v. Cote*, 2002 BCCA 29:
- [10] I also wish to record my agreement with Mr. Yule's position for the Crown that methamphetamine should be understood as a dangerous drug having highly addictive properties and the potential for inducing aggressiveness and violent behaviour. It is said that methamphetamine poses a much greater risk to the user's health than does cocaine by causing brain damage. For sentencing purposes possession of methamphetamine may be treated as comparable to possession of cocaine, allowing for the difference that cocaine is a Schedule 1 drug and methamphetamine is a Schedule 3 drug under the Controlled Drugs and Substances Act.
- I pause to note that since 2005, methamphetamine has been moved from Schedule 3 to a Schedule 1 drug because of the drug's serious health consequences.
- [9] In *R. v. Francis*, 2008 BCCA 309, Madam Justice Ryan observed:
- [22] I agree with counsel for the Crown. The sentencing judge in this case catalogued the evils of methamphetamine which are becoming more apparent to the courts with its increased use. The sentencing judge referred to the highly addictive qualities of the drug, the physical damage it causes to the user including brain damage, psychological damage and associated violent behaviours. She noted that its use was on the increase in her community. In my view, the sentencing judge was right to address this sentencing in the way she did.
- [10] And, in *R. v. Bamdad*, 2013 BCCA 87, Mr. Justice Hinkson . . . said:

[32] The sentencing judge heard evidence of the dangers associated with the manufacture and use of MDMA. She heard evidence that methamphetamine production labs create serious health and safety risks, that red phosphorus is flammable, explosive and toxic to humans, and that the production of MDMA and ecstasy creates danger from the handling of the bases and acids used in their production.

...

[34] Methamphetamine was described by the toxicologist as having powerful addictive potential, and being more likely to cause psychosis than cocaine. It was described as having extreme consequences and being potentially lethal in dosages as low as 120 milligrams.

[28] Thus, when I consider those comments, returning to the case at bar, while it is obvious that this offence did not involve any form of production of methamphetamine, I adopt the comments with respect to the seriousness of methamphetamine and that it should be treated in a manner that is similar to cocaine for the purposes of sentencing.

[29] The Crown has put a number of authorities before me that are of some assistance in setting out a range of sentence that has been imposed in other cases, although no two cases are the same, and what is required is an individualized sentence that addresses the facts that are before me.

[30] In *R. v. Tran*, 2015 BCCA 212, the Court of Appeal considered a case where there had been trafficking on three occasions and the police then seized one kilogram of cocaine. In that case, the Court of Appeal said the range for a first offender kilo-level drug trafficker ranged from a CSO to four years in jail, depending on the circumstances. Neither of the accused had a record. The court upheld a three-year sentence for one accused and reduced the sentence for the other to three years from 3.5, so that the sentences matched.

[31] In *R. v. Nagy*, 2013 BCCA 419, the Court of Appeal found that sentences of 2.5 years or two and a half years for trafficking one kilo of cocaine and three years for PPT of two kilos of cocaine, were appropriate sentences individually, but the trial judge's decision to make them consecutive rendered the sentence too harsh when totality was considered. Accordingly, one of the sentences was reduced such that the total sentence was four years.

[32] In *R. v. Sidhu*, 2019 BCSC 2145, Macintosh J. sentenced the accused to three years in jail for two offences, each of which involved one kilo of cocaine. Counsel in that case submitted the range was two to three years.

[33] In *R. v. Snider*, 2013 BCSC 721, the court sentenced Mr. Snider to two and a half years' imprisonment for one count of possession of 1.3 kilograms of cocaine. Mr. Snider had no criminal record and had rehabilitated himself at the time of sentencing.

[34] In *R. v. Huber*, 2004 BCSC 1421, the court sentenced the accused to two years plus five months' credit for the time that had already been served. Mr. Huber also had no record and almost seven years had lapsed since the offence had been committed.

- [35] I have also been referred to the two R. v. Nguyen cases, 2022 BCCA 409 and, as I indicated earlier, 2017 BCSC 2403, the trial-level decision. They are instructive as to the nature of methamphetamine, but they do not provide guidance in terms of the length of sentence, since the case in Nguyen involved a greater quantity, an international element, and more enduring and extensive criminality than the present case.
- [36] I would note that the Court of Appeal in Nguyen, 2022 BCCA 409, appeared to share the trial court's view with respect to the dangers of methamphetamine, describing it at para. 45 as "a highly addictive and destructive Schedule I substance". I agree with that characterization.
- [37] Collectively, the authorities the Crown has put before me demonstrate that penitentiary sentences are well within the range for the kind of offence that Ms. Mercieca committed. As can be seen, sentences are often in the range of two and a half or three years.
- [38] The question is, based on the specific circumstances in this case, is a penitentiary sentence required, as the Crown submits, or is a lesser sentence that can be served conditionally an appropriate sentence, as the defence submits. The defence has drawn my attention to R. v. Proulx, [2000] 1 S.C.R. 61, which is the leading case on conditional sentence orders.
- [39] Counsel for Ms. Mercieca argues that a CSO would meaningfully denounce PPT methamphetamine, while at the same time address her unique personal circumstances, her mental health challenges, and the capacity for rehabilitation that she has demonstrated. He stresses her agoraphobia, the personal loss and trauma she has experienced, as well as her historical use of hard drugs, although she has maintained sobriety for a number of years and has taken a number of positive steps recently.
- [40] The defence says the offence occurred during a period of desperation and out of a desire to help her son, and that her culpability is mitigated by those factors.
- [41] I accept that Ms. Mercieca is not a person of means and had a strong desire for extra money to help her son, but in my respectful view, her financial need is not really a mitigating factor when the conduct involved in the offence is the sale of methamphetamine at the kilo level. Unfortunately, there is always money to be made in the illegal drug trade but, as counsel properly acknowledged, that in no way justifies participation in such a destructive activity.
- [42] I do accept that Ms. Mercieca's personal difficulties and background are somewhat mitigating but, in my view, the facts demonstrate a clear knowledge of the nature of the conduct she was engaged in, and a decision to proceed despite whatever risks that entailed. She was not suffering from a substance abuse disorder at the time and, in my view, her degree of responsibility for the offence remains very high.
- [43] In addition, I have concerns with the viability of the particular CSO that has been proposed. Counsel submitted that the conditions could include six months of house arrest with exceptions, a curfew from 10:00 p.m. to 6:00 a.m., a no-contact order, community work service, and counselling as directed.

- [44] However, despite Ms. Mercieca's progress of late, there is a long history of non-compliance with court orders. As outlined in the PSR, she stated she was not open to house arrest or to counselling. Ms. Mercieca explained that she did not feel she could agree to house arrest when she spoke to the court. She stated that was because she was living at her best friend's house and she did not think it was her place to agree to house arrest in the circumstances. She also pointed out that she is spending time caring for her granddaughter, and that occurs also away from the house, my understanding is at the granddaughter's house.
- [45] Those are logical and understandable issues for her but, in my view, they undermine the viability of the proposed CSO. I have serious concerns that if I were to impose a CSO on the terms suggested, the risk of a breach would be very high.
- [46] The consequences of a breach involving further trafficking are not non-existent either, given Ms. Mercieca's knowledge of the risks involved in the offence for which she has pled guilty and her decision to proceed despite those risks.
- [47] Apart from the practical difficulties that arise, in my view, a CSO in these circumstances would not adequately address the need for a deterrent sentence, in light of the many aggravating factors and the kilo-level trafficking. It is particularly aggravating that this offence involved trafficking a large quantity of methamphetamine to Quesnel, a smaller community where the effects of a kilo of methamphetamine would have been felt acutely.
- [48] Balancing all the factors that are before me, I have concluded that a penitentiary term is appropriate in the circumstances to reflect the seriousness of the offence and the degree of responsibility of Ms. Mercieca, which is high. As outlined in Proulx at para. 58, if a penitentiary sentence is appropriate, then a conditional sentence should not be imposed.
- [49] Thus, while a CSO is an available sentence for this offence and I have considered it, in my view, it would not be a proportionate sentence.
- [50] There is no doubt that this sentence will have collateral effects on others, including Ms. Mercieca's granddaughter, but in my view those concerns are not sufficient to tip the balance in favour of a CSO. I accept that Ms. Mercieca is remorseful and has taken some positive steps toward rehabilitation, and is making a positive contribution to her granddaughter's life. It is for those reasons that I have concluded that the sentence should be at the very low end of the penitentiary range as suggested by the Crown. In my view, were it not for those factors, a higher sentence could be imposed.
- [51] I have aimed to impose a sentence that accounts both for the seriousness of the offence, the degree of responsibility of the offender, and accounts for Ms. Mercieca's difficult background and personal circumstances as required by the principle of proportionality.
- [52] For all these reasons, in my view, the shortest possible penitentiary sentence is a fit sentence in these circumstances, accounting for the aggravating and mitigating factor and the principle of proportionality.

- [53] Ms. Mercieca, I am going to ask you to please stand. For the offence of possession for the purpose of trafficking to which you have pled guilty, I sentence you to a period of imprisonment of two years.
- [54] In addition, I make the following ancillary orders.
- [55] Pursuant to s. 487.051 of the Code, I make an order authorizing the taking of a sample of bodily substance from you for the purpose of DNA analysis and inclusion in the DNA Data Bank.
- [56] Pursuant to s. 109 of the Code, you are prohibited from possessing any firearm, other than a prohibited firearm or restricted firearm, and any cross-bow, restricted weapon, firearm part, ammunition, and explosive substance for 10 years after release from your imprisonment, and restricted from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition for life.
- [57] I also order that the offence-related property identified by the Crown be ordered forfeited pursuant to s. 16(1)(b) of the Controlled Drugs and Substances Act.

"Greenwood J."

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