

CANADA / JUDGMENT

R. v. Nazarek

2023 BCSC 722

COURT

Supreme Court of British Columbia

DECIDED

6 April 2023

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2023 BCSC 722 R. v. Nazarek

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Nazarek,

2023 BCSC 722

Date: 20230406

Docket: 35071-6

Registry: Fort St. John

Rex

v.

Dana Andrew Nazarek

- and -

Docket: 33334-2

Registry: Vancouver

Rex

v.

Dana Andrew Nazarek

Corrected Judgment: The text of the judgment was corrected on the front page on May 5, 2023.

Before: The Honourable Mr. Justice Mayer

Oral Reasons for Sentence

Counsel for the Crown:

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Place and Date of Trial/Hearing:

Vancouver, B.C.

March 2-3, 2023

Place and Date of Judgment:

Fort St. John, B.C.

April 6, 2023

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Introduction

- [1] The accused, Dana Nazarek, is before the Court today to be sentenced for convictions arising under two indictments.
- [2] Under Indictment 35071-6, on June 30, 2021, a jury found Mr. Nazarek guilty of all counts under a ten-count indictment. The events at issue took place in Fort St. John, British Columbia, on February 24, 2018. Mr. Nazarek was convicted of the following:
- a) Counts 1-6: 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]. The controlled substances included, in respect of each count, cocaine, methamphetamine, Fentanyl, a substance including Fentanyl and Carfentanil, a substance including heroin and Fentanyl; and a substance including heroin, Fentanyl and Carfentanil;
 - b) Counts 7-8: Possession of loaded prohibited firearms without holding the required licences or authorizations contrary to s. 95(1) of the Criminal Code, R.S.C. 1985, c. C-46 [Criminal Code]. This included, under Count 7 illegal possession of a 40 calibre Glock handgun and under Count 8, illegal possession of a 22 calibre Swiss Arms pistol (collectively, the "Handguns").

- c) Counts 9-10: Possession of firearms, knowing their possession was unauthorized, contrary to s. 92(1) of the Criminal Code. This included, under Count 9, possession of a 22 calibre Savage model 6B rifle and under Count 10, possession of a Remington 12-gauge shotgun (collectively, the "Long Guns").
- [3] In these reasons I refer to the drug offences collectively as the "PPT Offences" and firearms offences collectively as the "Firearms Offences".
- [4] In addition, on March 2, 2023, Mr. Nazarek pleaded guilty to three counts under a five-count indictment (Indictment 33334-2), which included charges arising from Mr. Nazarek's failure to attend court as required and otherwise breaching the terms of his release order while on bail, near the end of his jury trial under Indictment 35071-6. In particular, Mr. Nazarek pleaded guilty to one count of failure to attend court and two counts of breach of conditions of a bail release order.
- [5] In these reasons, I will outline the circumstances of the relevant offences, the circumstances of Mr. Nazarek, the law pertaining to sentencing and the positions of the Crown and defence. I will then turn to my analysis, including considering the applicable principles of sentence, the aggravating and mitigating circumstances and my decision with respect to the appropriate sentences to be rendered in these circumstances.

Circumstances of the PPT and Firearms Offences - Overview (Indictment 35071-6)

- [6] On February 24, 2018, the RCMP executed a search warrant at Mr. Nazarek's residence in Fort St. John. Mr. Nazarek was arrested by the RCMP as he was exiting his bedroom.
- [7] After conducting a search, the RCMP seized what they suspected to be a significant quantity of controlled substances from Mr. Nazarek's bedroom. The RCMP also seized a digital scale, score sheets, marked baggies of various sizes (some containing the suspected controlled substances) and approximately \$34,000 in cash. In addition, the RCMP seized the Handguns and the Long Guns.
- [8] At trial Mr. Nazarek admitted that the Handguns were loaded restricted firearms and the Long Guns were loaded non-restricted firearms. In addition, Mr. Nazarek admitted that he was not, nor had ever been, the holder of a licence or authorization under which he could possess the Handguns nor the Long Guns.

Proven Facts Arising From The Jury's Verdict

- [9] Section 724(2) of the Criminal Code sets out the duty of a sentencing judge following a jury trial. The section reads:
- (2) Where the court is composed of a judge and jury, the court
- (a) shall accept as proven all facts, express or implied, that are essential to the jury's verdict of guilty; and

- (b) may find any other relevant fact that was disclosed by evidence at the trial to be proven, or hear evidence presented by either party with respect to that fact.
- [10] *R. v. Ferguson*, 2008 SCC 6, provides further guidance for the finding of facts after a jury trial. The sentencing judge is bound by the express and implied factual implications of the jury's verdict, and must not accept as fact any evidence consistent only with a verdict rejected by the jury: *Ferguson* at para. 17. The sentencing judge is only required to determine the facts necessary for sentencing, and may not need to arrive at a complete theory of the facts: *Ferguson* at para. 16. When the factual implications of the jury's verdict are ambiguous, the sentencing judge should make their own independent determination of the relevant facts: *Ferguson* at para. 18.
- [11] In determining which facts are necessary to reach a sentencing decision, the sentencing judge should first ask what the issues on sentencing are, and then find such facts as are necessary to deal with those issues based on their own independent determination of the relevant facts: *Ferguson* at para. 18. Aggravating facts or previous convictions must be proven beyond a reasonable doubt, while other factors may be established on a balance of probabilities: *Ferguson* at para. 18.

PPT Offences

- [12] In finding Mr. Nazarek guilty of the PPT Offences, the jury necessarily accepted as fact the essential elements that must be proven to find a conviction for each offence. The relevant facts which this Court must conclude the jury found are as follows:
- a) Mr. Nazarek was the offender and the offences took place on or about February 24, 2018, in Fort St. John, British Columbia;
 - b) the substances seized from Mr. Nazarek's residence, as set out in each count, were controlled substances under the CDSA, namely cocaine; methamphetamine; Fentanyl; a substance including Fentanyl and Carfentanil; a substance including heroin and Fentanyl; and a substance including heroin, Fentanyl and Carfentanil (collectively the "Controlled Substances");
 - c) Mr. Nazarek had possession, either constructively or jointly, of the Controlled Substances;
 - d) Mr. Nazarek knew the nature of the Controlled Substances; and
 - e) Mr. Nazarek possessed the Controlled Substances for the purpose of trafficking.
- [13] Beyond the essential elements of the relevant offences, the additional facts I find necessary for sentencing concern the quantity of the Controlled Substance, the nature of the trafficking operation and Mr. Nazarek's role in the operation.

Type and Quantity of Controlled Substances

[14] The evidence before the jury was that while executing the search warrant, the RCMP found the Controlled Substances in Mr. Nazarek's bedroom, including on the desk, on a stool, on the bed and inside bags in the closet. Samples were taken of the substances which were then analyzed. Based on the certificates identifying the substances and the testimony of RCMP witnesses at trial, I find that the Controlled Substances seized by the RCMP included the following:

- a) Count 1: approximately 490 grams of cocaine (crack and powder cocaine);
- b) Count 2: approximately 52 grams of methamphetamine;
- c) Count 3: approximately 88 Fentanyl pills and 39.6 grams of powder Fentanyl;
- d) Count 4: approximately 553 pills and 14.7 grams a powder containing a mixture of Fentanyl and Carfentanil; and
- e) Counts 5 and 6: approximately 48.4 grams of powder containing a mixture of heroin and Fentanyl and heroin, Fentanyl and Carfentanil.

[15] Constable Richards estimated and I find, that the combined value of the Controlled Substances was between \$43,000 and \$83,000.

The Nature of the Trafficking Operation

[16] I find that the quantity of drugs, presence of packaging materials and drug paraphernalia, and the quantity of cash seized by the RCMP prove beyond a reasonable doubt that Mr. Nazarek was involved in a drug trafficking operation on a scale significantly higher than street level trafficking. I am satisfied that the scale of the operation is most appropriately described as a relatively small-scale wholesale drug trafficking operation in which Mr. Nazarek was supplying dealers lower down the distribution chain.

[17] Corporal Richards testified that the Controlled Substances were packaged in quantities that would generally be sold to other traffickers and not to end users. For example, the Fentanyl pills were packaged in quantities ranging from 12 to 252 pills. End users are generally sold individual pills or up to 4 pills in a pack. Fentanyl powders were packaged in plastic baggies in quantities of 2 to 8 grams. End users typically purchase .1 grams at a time, packaged in folded pieces of foil or paper.

[18] In addition, there was evidence adduced at trial that Mr. Nazarek's associate, Mr. Flintoff, reported to Mr. Nazarek that he had secured a customer seeking to purchase one ounce of methamphetamine which suggests that Mr. Nazarek was generally supplying other dealers. There was also evidence including an exchange of text messages and a sticky note found in Mr. Nazarek's bedroom that a Shannon Watson had purchased approximately \$400-600 worth of drugs from Mr. Nazarek per week since December 2017.

Mr. Nazarek's Role in the Trafficking Operation

[19] I find beyond a reasonable doubt that Mr. Nazarek was the operating mind of the wholesale drug trafficking operation. Some of the evidence at trial supporting this finding includes: the exchange of text messages between Mr. Flintoff and Ms. Watson in which she asked to speak with a "boss" concerning a problem she was having and was then put in contact with Mr. Nazarek; an exchange between Mr. Flintoff and a drug trafficker named Nick who asked to get in touch with Mr. Nazarek who Nick described as a "boss"; a number of text exchanges between Mr. Flintoff and Mr. Nazarek in which Mr. Flintoff spoke of how much he looked up to Mr. Nazarek and wanted to be like him; a number of text exchanges in which Mr. Flintoff reported to Mr. Nazarek on the status of drug sales and the drug inventory and received direction from Mr. Nazarek on which vehicles to use and the timing of drug deliveries.

Firearms Offences

- [20] The jury heard that the RCMP seized four firearms from Mr. Nazarek's residence. The Handguns were seized from a basket on the desk in Mr. Nazarek's bedroom. The Long Guns were seized from different locations: the shotgun was seized from a bench in a mudroom area inside an entry door to the residence and the shot gun was seized from a closet in Mr. Nazarek's bedroom. The jury also heard evidence that ammunition was found in multiple locations within Mr. Nazarek's bedroom. Corporal Salant testified that a shotgun and handgun holster were found inside Mr. Nazarek's bedroom. I find these facts to be proven.
- [21] As noted above, Mr. Nazarek admitted that he did not, nor had ever, held the licences or authorization necessary to possess the Handguns nor the Long Guns.

Possession of a Loaded or Restricted Firearm

- [22] In finding Mr. Nazarek guilty of Counts 7 and 8, possession of a loaded prohibited or restricted firearm contrary to s. 95(1) of the Criminal Code, the jury, by necessity, must have accepted the following as fact:
- a) Mr. Nazarek was the offender and the offences were committed on or about February 24, 2018 in Fort St. John, British Columbia;
 - b) Mr. Nazarek possessed the Handguns and knew or was willfully blind that he possessed them;
 - c) The Handguns were restricted firearms;
 - d) The Handguns were loaded;
 - e) Mr. Nazarek knew or was willfully blind that the Handguns were loaded;
 - f) Mr. Nazarek did not have an authorization or licence permitting possession at his residence or a registration certificate for the Handguns; and

- g) Mr. Nazarek knew, or was willfully blind that he did not have an authorization or licence permitting possession of the Handguns at the residence or a registered certificate for the handguns.

Possession of a Firearm Knowing its Possession is Unauthorized

[23] In finding Mr. Nazarek guilty of Counts 9 and 10, possession of a firearm knowing its possession is unauthorized contrary to s. 92(1) of the Criminal Code, by necessity, the jury must have accepted the following facts:

- a) Mr. Nazarek was the offender and the offences were committed on or about February 24, 2018 in Fort St. John, British Columbia;
- b) The Long Guns were non-restricted firearms;
- c) Mr. Nazarek possessed the Long Guns;
- d) Mr. Nazarek did not have a licence permitting possession of the Long Guns; and
- e) Mr. Nazarek knew, or was willfully blind, that he did not have the licence permitting possession of the Long Guns.

Circumstances of the Failure to Appear and Breach of Release Condition Offences (Indictment 33334-2)

- [24] As I have already stated, on March 2, 2023, Mr. Nazarek plead guilty to failing to attend court as required, contrary to s. 145(2)(b) of the Criminal Code (Count 1) and two counts of breach of two bail conditions, both contrary to s. 145(5)(a) of the Criminal Code (Counts 3 and 5).
- [25] The bail conditions which were breached include (under Count 3) the requirement that Mr. Nazarek wear and care for electronic supervision equipment (an electronic monitoring bracelet) and (under Count 5) the requirement that Mr. Nazarek reside at the Launching Pad Addiction and Rehabilitation Society facility in Surrey, British Columbia (the "Launching Pad facility").
- [26] The relevant circumstances in respect of these charges are as set out below.
- [27] After a contested bail hearing, on March 11, 2021, Mr. Nazarek was granted bail. The March 11, 2021, release order included conditions that Mr. Nazarek reside at the Launching Pad facility, that he wear electronic monitoring equipment, and that he not leave the facility subject to limited exceptions, including for attendance at court. The trial of the drug and firearms charges commenced on June 3, 2021, by way of judge and jury. Mr. Nazarek attended on each day of trial until June 29, 2021, the day that the jury was to be charged, when he failed to appear.
- [28] The Crown provided evidence with respect to the investigation into Mr. Nazarek's non-appearance. At approximately 7:13 a.m. on June 29, 2021, Mr. Nazarek called the Central Monitoring Unit, which is tasked with monitoring the data transmitted from his monitoring

bracelet and advised that he was leaving the Launching Pad facility to attend at court. Data from the monitoring bracelet shows that Mr. Nazarek left the Launching Paid facility at 7:22 a.m., crossed into the City of Richmond at approximately 7:55 a.m. and that by 7:59 a.m. the monitoring bracelet had been severed and removed from his ankle. Shortly after noon on June 29, 2021, the monitoring bracelet was located by the RCMP on the side of Highway 99 in Richmond, approximately 15' from the roadway, in a location consistent with it having been thrown from a moving vehicle. Mr. Nazarek was convicted of the PPT and Firearms Offences by the jury in his absence.

- [29] Various warrants were issued for Mr. Nazarek's arrest and the RCMP made efforts to locate him. RCMP investigations included attending at the Launching Pad facility and obtaining a cell phone tracking warrant for Mr. Nazarek's cell phone and a warrant for production of his banking records. These efforts were unsuccessful, but on August 5, 2022, Mr. Nazarek was apprehended by two officers with the Vancouver Police Department after they observed what appeared to be a fight between a male and a female in a Walmart parking lot on Grandview Highway in Vancouver.
- [30] Although at the time of his arrest Mr. Nazarek identified himself as Riley Fisher, the arresting officers believed he was lying about his identity. Several forged identity documents were found in Mr. Nazarek's possession, including a driver's licence for Riley Fisher and a Jose Aquire. Police also found a bank card in Mr. Nazarek's name, from which the officers determined the person in their custody was in fact, Mr. Nazarek. As well as the forged identity documents, Mr. Nazarek was found to be in possession of a brass knuckle, a dagger, and two other knives.

Circumstances of The Offender

Overview of Mr. Nazarek's Background and Circumstances

- [31] Mr. Nazarek is 51 years old. He was born and raised in Edmonton Alberta. Counsel for Mr. Nazarek submits that Mr. Nazarek had an extremely difficult childhood. Counsel advises that Mr. Nazarek was raised by his mother and suffered from physical abuse from his mother and physical and sexual abuse from an uncle until he moved out of his mother's home at the age of 16.
- [32] Mr. Nazarek has had steady employment throughout his life, including working in the oil fields for an extended period of time and owning several businesses.
- [33] Mr. Nazarek has three children, aged 9, 14 and 25. His youngest children have been adopted as their mother is unable to care for them and his oldest child lives independently.
- [34] Mr. Nazarek has struggled with addiction since high school but says that he has been working to address his addiction issues. He completed the Federal Integrated Correctional Program Model in August 2019 and his GED in February 2020, while serving a previous sentence. He says that he was unable to complete some secondary programs when the

program was shut down because of COVID-19 and because he was transferred to the Surrey Pre-trial Center. Prior to the failure to appear and breach offences, Mr. Nazarek spent three months at the Launching Pad facility attending meetings and counselling sessions--from March 12, 2021 until he absconded on June 29, 2021.

- [35] Mr. Nazarek worked as a cleaner during his last sentence, both while in Federal custody and continues to do so at Surrey Pre-trial. His counsel advises that his institutional record is very positive.

Mr. Nazarek's Criminal Record

- [36] Mr. Nazarek was convicted of breaking and entering offences in 1990 and received a suspended sentence and probation. He was convicted of aggravated assault in 2000 and received a sentence of a fine and a mandatory ten-year firearms prohibition.
- [37] In 2017, Mr. Nazarek was convicted by Justice Watchuk for offences committed in 2013, being possession of Fentanyl and cocaine for the purpose of trafficking (the "2013 Offences"). He was on bail awaiting sentence when he was arrested in February 2018, on the PPT and Firearms Offences which are the subject of this sentencing hearing. In July 2018, he was sentenced by Justice Watchuk to a 40-month penitentiary sentence on top of eight months pre-sentence custody for the 2013 offences.
- [38] Mr. Nazarek submits that since he had not been sentenced for the 2013 Offences at the time of his arrest in 2018, that for the purposes of sentencing in respect of the drug and firearms indictments currently before this Court, he should be considered a first-time offender. I will address the defence position on this point later in my reasons.
- [39] In addition, Mr. Nazarek was convicted in December 2018 for escaping lawful custody. He had briefly escaped police custody in Fort St. John when he was brought back to the RCMP detachment after receiving medical treatment for drug withdrawal. He received a sentence of one day for this offence.

Impact on the Community

- [40] The following relevant comments were set out in the reasons of Justice Devlin in *R. v. Kim*, 2022 BCSC 518:
- [26] [I]t is important to consider the broader societal context within which [drug trafficking] offences occurred: The trafficking in hard drugs is not a victimless crime.
- [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 addictions and those seeking to maintain control over the lucrative drug trade.

- [41] At the sentencing hearing, the Crown tendered a report prepared by the British Columbia Coroners Service entitled "Illicit Drug Toxicity Deaths in BC, January 1, 2012 - December 31, 2022". According to this report in 2018, the year Mr. Nazarek was arrested for the relevant drug offences, there were 1,562 illicit drug toxicity deaths in British Columbia, almost 90% of which were related to Fentanyl. In the Northern Health Authority, where Fort St. John is located, illicit drug toxicity death rates were the second highest in of any region in British Columbia, at 34.1 deaths per 100,000 people. In 2022, the Northern Health Authority had the worst death rate of any region, at 59.5 deaths per 100,000.
- [42] The Crown submits, and I agree, that the impact of drug trafficking is particularly acute in smaller communities such as Fort St. John for a variety of reasons including reduced access to drug and alcohol treatment facilities and emergency care in case of overdose. As was stated by Madam Justice Dickson, as she then was, at para. 6 in *R. v. McFarlane*, (20 March 2009), Fort St. John No. 27468-1 (B.C.S.C.), a 2009 case:

Fort St. John and the surrounding area have a population of approximately 40,000 people. It is a community with a resource-based economy that was, at the time of the offence, booming. As a result, there were many young men with significant disposable income living in Fort St. John. This is a population group that is particularly vulnerable to cocaine use, which can easily escalate from recreational use to addiction with all the attendant woes, both for the individual and the community in which he or she lives.

- [43] Many of the observations made by Madam Justice Dickson with respect to the impact of trafficking in Fort St. John, although made in 2009, still apply today-- although more significant impacts arise in this case given the nature of the drugs at issue. In particular, the risk of death from the use of Fentanyl and Carfentinil, which RCMP evidence indicates is approximately 100 times more powerful than Fentanyl, or drugs mixed with those substances is much more significant than the risk arising from the use of other hard drugs.
- [44] As was stated by Madam Justice Newbury in *R. v. Smith*, 2017 BCCA 112, dissenting on an unrelated point, British Columbia has "one of the worst, if not the worst, problems of Fentanyl abuse in Canada": at para. 44. As was noted by Justices Brown and Martin of the Supreme Court in *R. v. Parranto*, 2021 SCC 46 at para. 59 "[l]ocal conditions may enter into the assessment of the gravity of the offence" and by Justice Devlin in *Kim* "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.": at para. 31.

The Law

Principles of Sentencing

- [45] Section 718 of the Criminal Code sets out the purpose of sentencing. The section provides:

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.

[46] The fundamental sentencing principle is proportionality, which requires the court to craft a sentence that reflects both the gravity of the offence committed and the moral blameworthiness of the offender: *R. v. Ipeelee*, 2012 SCC 13 at para. 37, 39; Criminal Code s. 718.1.

[47] The following subsections under s. 718.2 are also relevant:

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

- (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] It is important to note that while sentencing ranges established by appellate courts are useful and important considerations, they are merely guidelines. Sentencing remains a highly individualized process based on the gravity of the offence, the offender's degree of responsibility, and the specific circumstances of each case: *R. v. Lacasse*, 2015 SCC 64 at para. 58.

Drug Offences

[49] There are specific considerations which must be applied in determining the appropriate sentence for the drug offences.

[50] First, s. 10(1) of the CDSA provides additional guidance for the purpose of sentencing offences under the CDSA. The section states:

Purpose of sentencing

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.

Factors to take into consideration

- (2) If a person is convicted of a designated substance offence, the court imposing sentence on the person shall consider any relevant aggravating factors including that the person
 - (b) was previously convicted of a designated substance offence, as defined in subsection 2(1) of this Act, or a designated offence, as defined in subsection 2(1) of the Cannabis Act;

[51] Second, the principles of denunciation and deterrence are paramount in sentencing individuals for trafficking in Fentanyl and Carfentanil: *R. v. Gill*, 2022 BCCA 127 at paras. 46-47, 57. The British Columbia Court of Appeal has held that trafficking in Fentanyl and Carfentanil are significant offences that attract increased sentencing ranges: *R. v. Mann*, 2018 BCCA 265 at para. 73; *Smith* at paras. 45, 65. In *Parranto* at paras. 93-101, Justice Moldaver, in concurring reasons, outlined the particularly grave threat of Fentanyl and Carfentanil.

[52] Third, the moral culpability of an offender is not reduced if it is subsequently discovered that the substances they trafficked contained an additional, more harmful substance: *Mann* at para. 79. As explained in *R. v. Herrell*, 2014 BCCA 114 at para. 19, "the seller of a synthetic illegal drug must be assumed to recognize an inherent risk associated with distributing synthetic drugs, which is that the composition of the drugs may be unknown".

Firearms Offences

[53] In sentencing for the Firearms Offences, the principles of denunciation, deterrence and protection of the public must be given sufficient weight to reflect the seriousness of the offences, along with the personal circumstances of the offender: *R. v. Edwardsen*, 2021 BCCA 338 at para. 22.

- [54] The caselaw also sets out that s. 95(1) captures a "spectrum" of firearm offences, ranging from situations of "true crime", such as carrying a loaded prohibited firearm in a public place for a criminal purpose, to crimes of a more regulatory nature, such as a licenced firearms owner storing their unloaded restricted firearm nearby readily accessible ammunition: R. v. Holt, 2015 BCCA 302 at para. 12, quoting R. v. Nur, 2013 ONCA 667 at paras. 51-53; R. v. Padda, 2019 BCCA 351 at para. 10.
- [55] The Firearms Offences fall closer to the true crime category given firearms were found in the location of a drug trafficking operation, all of the firearms were loaded, in the case of the rifle this weapon was located at a front entrance, seemingly for protection purposes, and in the case of one of the handguns the serial number had been filed off.
- [56] The mandatory minimum sentences for offences under ss. 92 and 95 were recently repealed: An Act to Amend the Criminal Code and the Controlled Drugs and Substances Act, S.C. 2022, c. 15. Prior to being repealed, the Supreme Court of Canada found the minimum sentence for offences under s. 95 to be unconstitutional: R. v. Nur, 2015 SCC 15. Despite this, the Court held at para. 5 that "[t]his does not prevent judges from imposing exemplary sentences that emphasize deterrence and denunciation in appropriate circumstances."
- [57] The Court of Appeal for British Columbia has indicated that the bottom range for a "true crime" contravention of s. 95(1), as opposed to a "regulatory" contravention, is 30 months imprisonment: Holt at paras. 19-20. In R. v. Mills, 2021 BCCA 86, the Court of Appeal recently confirmed a six-year global sentence for firearm related offences as a "mid point" which does not offend the principles of proportionality or parity: at para. 22.

Position of The Parties With Respect To Sentence

The Crown's Position

- [58] The Crown submits that an appropriate global sentence for the PPT Offences and the Firearms Offences is 14 years, and an appropriate sentence for the failure to appear and breach of bail condition offences is two years, to be served consecutively. The Crown submits, if this Court determines that concurrent sentences are appropriate, that the sentences under the various counts should be as follows:

Under Indictment 35071-6

Count 1 (cocaine): 5 years

Count 2 (methamphetamine): 3 years

Count 3 (Fentanyl): 10 years

Count 4 (Fentanyl and Carfentanil): 14 years

Count 5 (Fentanyl and heroin): 12 years

Count 6 (Fentanyl, Carfentanil & heroin): 14 years

Count 7 (Glock handgun): 6 years

Count 8 (Swiss Arms handgun): 6 years

Count 9 (rifle): 1 year

Count 10 (shotgun): 2 years

Under Indictment: 33334-2

Counts 1, 3 and 5: 2 years for each count.

[59] It is implicit in the Crown's submission concerning sentences for the PPT Offences that the Crown seeks significantly longer sentences for the counts involving substances mixed with Carfentanil.

[60] Taking into consideration the principle of totality, the Crown proposes a 15-16 year sentence.

[61] The Crown submits that in arriving at this sentence, the following aggravating factors should be taken into consideration:

- a) The dangerous nature of Fentanyl;
- b) Mr. Nazarek was the "operating mind" of a sophisticated and ongoing wholesale trafficking operation;
- c) Mr. Nazarek was supplying Fentanyl in a remote northern community;
- d) All four firearms were loaded and accessible and the serial number was removed from one of the handguns;
- e) The trafficking operation involved threats and acts of violence;
- f) Mr. Nazarek was motivated by profit; and
- g) Mr. Nazarek committed the drug offences while on bail awaiting sentence for a conviction on similar charges.

[62] The Crown relies on the following cases involving the trafficking of Fentanyl:

Decision

Facts

Sentence

R. v. Parranto, 2021 SCC 46

Felix: Four counts of trafficking. The offender was the directing mind of a wholesale trafficking operation structured to insulate the offender from criminal exposure. Five completed transactions involved 19.75 ounces of cocaine and 1398 Fentanyl tablets. One incomplete transaction involved 987 Fentanyl tablets and 69.63 ounces of cocaine. The offender had no record and pleaded guilty.

Parranto: Two counts of possession for the purpose of trafficking Fentanyl, three firearms related offences and on breach of recognizance. The police initially recovered 27.8 grams of Fentanyl from the offender's residence, and seven months later, while the offender was on bail, further recovered 485.12 grams of Fentanyl from the residence. The offender was a wholesale trafficker, had a lengthy and related record and pleaded guilty.

Felix:

SCC: 10 years

ABCA: 10 years

Sentencing Judge: 7 years

Parranto:

SCC: 14 years

ABCA: 14 years

Sentencing Judge: 11 years

R. v. Kim, 2022 BCSC 518

Nine counts of possession for the purpose of trafficking and five counts of firearm related offences. The police seized 170.06 grams of opioids and opioid mixtures (which included Fentanyl and Carfentanil), 216.43 grams of cocaine, 81.49 grams of methamphetamine, 76.78 grams of oxycodone and acetaminophen; 109.97 grams of Alprazolam).

The offender was not the directing mind, but played a significant role in a sophisticated street-level trafficking operation. The offender had one dated prior conviction.

10 years

R. v. Latimer, (20 May 2021), Vancouver, 27798 (B.C.S.C.)

Two counts of possession for the purpose of trafficking and two counts of firearm related offences, in addition to other offences relating to trafficking.

Police seized approximately \$65,000 worth of substances from the offender, which included Fentanyl. The offender was the directing mind of a sophisticated criminal organization found to be in possession of 10.8 kg of Fentanyl, 11.9 kg of methamphetamine, 9.3 kg of cocaine and 20 prohibited firearms. The offender had a dated and unrelated record and pleaded guilty.

17 years - based on a joint submission accepted by the sentencing judge.

[63] The Crown relied on the following cases involving the possession of firearms:

Decision

Facts

Sentence

R. v. Holt, 2015 BCCA 302

Possession of a loaded restricted firearm without an authorization or license. The firearm was found inside the offender's vehicle and accessible to intoxicated occupants. No criminal record.

BCCA: 2.5 years

Sentencing Judge: 18 months

R. v. Kachuol, 2017 BCCA 292

Possession of a loaded restricted firearm. The firearm was found inside the offender's vehicle during an impaired driving investigation. The offender was subject to a firearm prohibition due to a prior conviction for possession of marihuana for the purpose of trafficking.

BCCA: 3 years

Sentencing Judge: 2 years less a day

R. v. Guha, 2012 BCCA 423

Possession of a loaded prohibited firearm, possession of a prohibited device, and carrying a concealed weapon. The offender had the firearm concealed in his clothing while driving. The offender was on bail for possession of marihuana and had a lifetime firearms prohibition.

BCCA: 4.5 years

Sentencing Judge: 3.5 years

R. v. Mills, 2021 BCCA 86

Possession of a loaded restricted firearm in breach, possession of a firearm while prohibited, and possession of a prohibited firearm without a licence.

The firearm was found inside the offender's vehicle during a routine traffic stop. The offender had a long and serious record, including prior weapon convictions.

BCCA: 6 years

Sentencing Judge: 6 years

R. v. Nur & Charles, 2015 SCC 15

Nur: Possession of a loaded prohibited firearm. The offender threw the firearm away while being chased by the police. The offender had no record and pleaded guilty.

Charles: Possession of a loaded prohibited firearm, and four related firearm offences. The gun had an overcapacity magazine containing 19 rounds of ammunition and its serial number had been removed. The offender pleaded guilty and had a lengthy, relevant and serious criminal record.

Nur:

SCC: 40 months

ONCA: 40 months

Sentencing Judge: 40 months

Charles:

SCC: 7 years

ONCA: 7 years

Sentencing Judge: 7 years

R. v. Swales, 2016 BCCA 502

A total of 26 offences, including trafficking and 20 counts of firearm related offences. While executing a search warrant, the police seized large quantities of drugs, 19 firearms, six silencers and ammunition, which were found to be possessed jointly with others.

The offender's role in the trafficking operating was unclear, but he exercised control over the area where the items were seized.

BCCA: Sentence upheld.

Sentencing Judge: 9 years for firearms offence, reduced to 8 based on the totality principle, 15 years global.

[64] With respect to the failure to appear and breach bail condition offences the Crown relies on the comment at para. 100 of Parranto that maximum sentences should not be reserved for the worst crimes but may be imposed when circumstances warrant. It is on this basis that the Crown seeks the maximum sentence available for these offences - being two years.

The Defence's Position

[65] Mr. Nazarek submits that an appropriate sentence for the PPT and Firearms Offences is five to eight years, less credit for time served and that an appropriate sentence for the failure to appear and breach of bail conditions offences is one year. Taking into consideration the principles of totality and restraint, the defendant proposes a six-year global sentence.

[66] Mr. Nazarek says that the mitigating factors in his case are his addiction issues (which he says he is working to address), his participation in education and recovery programs since the offence, that he pleaded guilty to the failure to appear and breach of bail condition offences, and that he is remorseful and understands the impact that the offences have had on the community.

[67] The defendant takes issue with numerous aggravating factors raised by the Crown, including that:

- a) Mr. Nazarek's failure to appear offence was far from the worst offence captured in the provision;
- b) Trafficking drugs in Fort St. John is not analogous to trafficking to remote communities in Nunavut, as occurred in Parranto;
- c) Crown had not proven beyond a reasonable doubt that Mr. Nazarek was the "directing mind" of the operation, nor that it was a "wholesale" drug trafficking operation; and
- d) The evidence does not support that the operation was "wholesale", "sophisticated" nor of an "ongoing nature".

[68] The defendant relies on the following cases to support their suggested range:

Decision

Facts

Sentence

R. v. Campbell, 2021 BCSC 853

Two counts of possession for the purpose of trafficking (627.5 grams of Fentanyl, 846.42 grams of cocaine and 395.25 grams of methamphetamine). Offender was a mid-level dealer. The offender was Indigenous, had no record, and pleaded guilty.

2 years

R. v. Grewal, 2021 BCSC 1208

Six counts possession for the purpose of trafficking (140 grams of powdered cocaine, 52 grams of crack cocaine, 25 pills containing Fentanyl, 15.9 grams of MDMA, 37 oxycodone pills, 926 grams of procaine, 451 grams of phenacetin) and three firearms related offences. Low- to mid-level dealer and first-time offender.

4 years: 4 years for trafficking, 2 years consecutive for firearms related offences. Global sentence then reduced by two years based on the totality principle.

R. v. Harmes, 2022 BCSC 663

Seven counts of possession for the purpose of trafficking (3.5 kilograms of Fentanyl, 1.636 kilograms of methamphetamine, 284 grams of cocaine, 509 grams of ketamine, 844 codeine pills, 558 hydromorphone pills, and 40 morphine pills), five courts of firearms related offences and three counts for the breach of a firearm prohibition order.

The offender was the directing mind of a wholesale operation with a related criminal history.

14 years: 2 years for the breach charges and 12 years for the trafficking of Fentanyl served consecutively, with sentences for all remaining charged served concurrently.

R. v. Lee, 2018 BCCA 428

One count of possession for the purpose of trafficking (11.7 ounces of cocaine, 65.7 grams of mixed heroin and Fentanyl, 9 ounces of crystal methamphetamine, 500 millilitres of GHB) and one count of possession of a prohibited firearm.

The offender was a mid-level dealer and pleaded guilty. The offender was young and had a criminal record.

BCCA: Sentence upheld.

Sentencing Judge: 7 years: 4 years for trafficking offence, served consecutively with 3 years for firearm offence.

R. v. Nelson, 2019 BCPC 168

Three counts of possession for the purpose of trafficking (756.59 grams of Fentanyl, 202.7 grams of cocaine, 228.2 grams of methamphetamine). The trafficking operation was mid-level, but the offender was found to have "a lower level" involvement. The offender had no criminal record.

3 years

R. v. Oswald, 2019 BCSC 1861

Three counts of possession for the purpose of trafficking (542 grams of cocaine, 1.48 kilograms of methamphetamine, 699 grams of Fentanyl), three firearms related offences, and other charges. The offender pleaded guilty to the Fentanyl and one firearms offence (possession of a loaded prohibited or restricted firearm). The offender had a significant and related criminal record.

9 years: 8 years for Fentanyl, 3 years for the firearms offence, reduced to 9 under the totality principle.

R. v. Pelgrom, 2022 BCSC 1058

Three counts of possession for the purpose of trafficking (82 grams of Fentanyl; 69 grams of methamphetamine, 53 grams of heroin-Fentanyl) and one count of possession of an unloaded prohibited firearm. Mid-level trafficking operation. The offender was Indigenous, had a significant criminal record, and pleaded guilty.

7 years: 4 years for trafficking offences, 4 years for the firearm offence, reduced by 1 year for the totality principle.

R. v. Pipping and Summers, 2018 BCPC 223

Summers: 10 counts of trafficking possession for the purpose of trafficking (19.8 grams of cocaine, 26.66 grams of heroin-Fentanyl, 0.8 grams of furanyl Fentanyl, 1.3 grams of ketamine, 77 oxycodone pills, 45 grams of methamphetamine). Employed and trained runners, but reported to Mr. Pipping. The Offender had one prior related conviction.

Pipping: Five counts of possession for the purpose of trafficking (4932 grams of cocaine, 2569.1 grams of heroin, 1578.3 grams and 15 pills of Fentanyl, 435 grams of methamphetamine, 14 grams and 3 pills of MDMA, 1 gram and various pills of ketamine, and 50 milliliters of GHB), production of a controlled substance (furanyl Fentanyl) and trafficking. Directing mind of the wholesale distribution operation. The offender had a prior related record.

Summers: 5 years global sentence - based on joint submissions

Piping: 15 years - 12 years for production and 3 years consecutive for two firearm related offences, based on joint submissions

R. v. Renshaw, 2022 BCSC 685

Eleven counts of procession for the purpose of trafficking (a total of 228.95 grams of various combinations of controlled substances containing Fentanyl), one count of possession of a prohibited non-restricted weapon, and one count of obstructing an officer during duties.

3 years

- [69] The defence submits that a sentence of one year for each of the failure to appear and breach of bail condition offences, to be served concurrently, is warranted.

Analysis

Mitigating Factors

- [70] I find that the mitigating factors to be considered in sentencing Mr. Nazarek include the following: that throughout his life Mr. Nazarek suffered from addiction issues which were likely contributed to by his history of physical and sexual abuse (although in the context of trafficking drugs at a significant level his addiction is not a significant mitigating factor: *R. v. Newson*, 2008 BCCA 28 at para. 22); that Mr. Nazarek started to make some efforts to address his addiction issues while in custody and on bail—which are somewhat mitigated by the decision to abscond; and, that in respect of the failure to appear and breach of bail condition offences, Mr. Nazarek pleaded guilty to these charges.
- [71] I do not find Mr. Nazarek's expression of remorse for committing the PPT and Firearms Offences to be a mitigating factor in sentencing for these offences. The fact that Mr. Nazarek absconded during the trial of this matter and remained at large for an extended period of time, after he was likely aware that he had been convicted, obtained forged identity documents and possessed weapons, is not consistent with remorse. As was explained in *R. v. Mangat*, 2021 BCCA 450, absconding during a trial is "properly treated as negating possible mitigating factors such as expressing remorse or accepting responsibility": at para. 30.

Aggravating Factors

- [72] I find it to be an aggravating factor that Mr. Nazarek was in possession for the purposes of trafficking of extremely dangerous drugs, Fentanyl and Carfentanil or combinations thereof. As was stated recently in *Parranto*, Fentanyl and its analogues have "altered the landscape of the substance abuse crisis in Canada, revealing itself as public enemy number one": para. 93. As well Carfentanil is so toxic that "it has no safe of beneficial human use ": para. 95. Trafficking in Fentanyl and its analogues during the current public health crisis is "a crime that preys disproportionately on the misery of others": para. 101.
- [73] I find as aggravating factors, as previously explained, that Mr. Nazarek was the operating mind of a wholesale drug trafficking operation.
- [74] I find it to be an aggravating factor that Mr. Nazarek was involved in the supply of Fentanyl in the northern community of Fort St. John, a place where the impact of this activity is more pronounced.
- [75] I find it to be an aggravating factor that Mr. Nazarek was in possession of a number of firearms—which can be described as a small arsenal. All four firearms were accessible and loaded, with the rifle located in a completely unsecure area, under a pair of coveralls just inside the entry door to Mr. Nazarek's residence. In addition, the serial number was

removed from one of the handguns. In my view, it is logical to conclude that the firearms were possessed in support of Mr. Nazarek's drug trafficking operation. It does not matter whether they were possessed for enforcement or security.

- [76] In my view, as was found in *R v. Wong*, 2012 ONCA 767 at paras. 11-13, "the toxic combination of drugs and guns poses a pernicious and persisting threat to public safety" which is a serious aggravating factor on sentencing.
- [77] I find, based on the significant quantities, and value, of the Controlled Substances and cash seized, that Mr. Nazarek was motivated by profit. Corporal Richards testified that the money found in Mr. Nazarek's bedroom and on his person consisted of organized stacks of bills. A score sheet found in Mr. Nazarek's bedroom showed significant amounts owing to him, suggesting a lucrative drug trafficking business. I find the operation of a wholesale drug trafficking business, with the object of profit, to be an aggravating factor.
- [78] I find Mr. Nazarek's criminal record, and in particular his conviction in 2017 for the 2013 Offences to be an aggravating factor. In my view, despite the fact that Mr. Nazarek had not received a sentence for the 2013 Offences at the time of his arrest in 2018, he should not be considered a first offender. I will address this issue in more detail.
- [79] The Coke rule, derived from Coke's *Institutes of the Law of England*, vol 2 (London: W. Clarke & Sons, 1817), provides the general policy that an accused should not "face jeopardy of an increased penalty" for a subsequent offence unless they have previously been convicted and sentenced for the prior offence: *R. v. Skolnick*, [1982] 2 S.C.R. 47 at 50, 1982 CanLII 54. However, the subsequent offences may be considered in determining the moral culpability of an offender and their prospects for rehabilitation. As summarised in Clayton C. Ruby et al., *Sentencing*, 9th ed. (Toronto: LexisNexis Canada, 2017) at §8.16:
- A repetition of an offence after an offender has been, so to speak, "warned" and "put on notice" by the imposition of a prior sentence, absent explanation, may be viewed more seriously than a first offence
- [80] The Court of Appeal clarified the application of the Coke Principle in *R. v. Pete*, 2019 BCCA 244 [Pete]:
- [40] In summary, the Coke principle describes the proper approach to treatment of first-time offenders in circumstances where they have been convicted of other subsequent offences by the time they are sentenced. It has been accepted and applied in this province as having general application and also permits consideration of subsequent convictions in appropriate cases for the purpose of ascertaining an offender's moral culpability and prospects for rehabilitation. Further, this approach to sentencing is consistent with general sentencing principles. A sentencing judge should not treat post-offence convictions as prior convictions or as an aggravating circumstance calling for a harsher sentence. The danger in doing so is that the offender may be treated more harshly than his or her record warrants. The degree of culpability of a first-time offender is not as high as someone who has been convicted and

sentenced of other offences at the time of commission of the subject offence. [Emphasis added.]

[81] In *R. v. Hexamer*, 2019 BCCA 285 [Hexamer] at para. 173, the Court of Appeal confirmed the correct interpretation of Pete is that "a first offender bears less moral culpability than someone who has been convicted and sentenced for other offences at the time of the commission of the offence". The Court of Appeal explained the rationale for the rule:

[172] The rationale behind the Coke rule rests in the expectation that the conviction and penalty for the initial offence, and the peril of a more severe penalty for a subsequent offence, should be present in the mind of the offender and guide his future conduct: *R. v. Cheetham* (1980), 1980 CanLII 2978 (ON CA), 53 C.C.C. (2d) 109 at 114 (Ont. C.A.) per Justice Blair, for the majority.

[82] The use of subsequent offences in sentencing was earlier explained by the Court of Appeal in *R. v. Johnston*, [1989] B.C.W.L.D. 2228 (C.A.), as cited in *R. v. Khosravi*, 2019 BCSC 509 at para. 19:

The fact that a person convicted of an offence has since the date of that offence committed similar offences cannot be regarded as irrelevant to the sentencing process. Other similar offences, whether committed before or after that for which an accused is being sentenced, may well be of considerable importance in determining the character of the accused, the extent, if any, to which there has been rehabilitation, the likelihood of rehabilitation in the future, the extent to which the accused is likely to be deterred by the fact of conviction, brief incarceration or a term of probation and - to some extent a factor related to all of these - the extent to which imprisonment is appropriate for the protection of the public against the commission of further similar offences by the accused.

[83] Similar to the rationale for leniency for first-time offenders, the Coke rule evokes the principle of specific deterrence, and the presumption that offenders will learn from their past punishment. When an individual has not yet been sentenced, and therefore not punished, they cannot be said to have benefited from specific deterrence, nor rehabilitation.

[84] Mr. Nazarek's circumstances involves the commission of a prior drug offence, not a subsequent offence. As a result, the Coke rule is not entirely applicable. Despite this, the principles inform how Mr. Nazarek's prior offences should be considered. In my view, if subsequent offences can be used to determine the moral culpability of an offender and their prospect of rehabilitation, certainly prior convictions that have not been sentenced can be used for the same purpose.

[85] While it could be argued that Mr. Nazarek had been "put on notice" or "warned" by his conviction by Justice Watchuk in 2017, he had not been sentenced. The imposition of a sentence has a greater denunciatory effect. As well Mr. Nazarek had not had the benefit of specific deterrence or rehabilitation through exposure to the justice system. As such, he does not have the same degree of culpability as "someone who has been convicted and

sentenced of other offences at the time of commission of the subject offence": Pete at para. 40. This does not mean that he does not have added moral culpability arising from his decision to reoffend while awaiting sentence on an earlier conviction--but rather it is a matter of the degree of his culpability.

- [86] Several cases from this jurisdiction support the proposition that committing an offence while awaiting sentencing for a previous offence is an aggravating factor. None of these cases provide in-depth analysis on this point.
- [87] In *R. v. Kydd*, 2009 BCSC 1955, Justice Blair sentenced an offender for trafficking offences committed while awaiting sentencing for prior trafficking offences. Justice Blair considered this to be an aggravating factor: *Kydd* at paras. 7-8. While the offender had a very dated and unrelated record, the prior offences were the offender's first ever trafficking offences. There is no indication that the offender was treated as a first-time offender for the subsequent offences.
- [88] In *R. v. Schmok*, 2009 BCSC 929, Justice Joyce considered the fact that the accused committed the offences while awaiting sentencing for prior offences was an aggravating factor: at paras. 30, 40. The offender appeared to have a related criminal record.
- [89] In *R. v. Vincent*, 2006 BCCA 135, the Court of Appeal considered an application for leave to appeal the sentence imposed on an offender who had committed offences while awaiting sentence of a previous offence. In refusing leave, the Court stated:
- [7] In my view, the circumstances of the offences before us are serious and compounded by the fact that they were committed while the applicant was awaiting sentence. The applicant has a history of committing similar crimes. The nine-month sentence was lenient in the circumstances.
- [90] Given the above law, and the fundamental principle of sentencing that the sentence should reflect the gravity of the offence and the moral blameworthiness of the offender, I conclude that Mr. Nazarek should not be considered a "first-offender" in respect of the PPT Offences. As a result, I find the fact that Mr. Nazarek committed the PPT and Firearms Offences while awaiting sentence for earlier drug offences, constitutes an aggravating factor.
- [91] Finally, I find it to be an aggravating factor that Mr. Nazarek committed the PPT Offences and Firearms Offences while on bail for the 2013 Offences. At the time Mr. Nazarek was on recognizance of bail issued by Justice Watchuk which included the condition that he abstain from the possession or consumption of controlled substances, except as prescribed by a physician.

Review of Relevant Authorities

- [92] I have already addressed the applicable sentencing principles to be applied in this case, which include denunciation and deterrence, along with the aggravating and mitigating circumstances. I have also considered the case authorities provided by the Crown and defence counsel--which is necessarily in light of the requirements of the parity principle.
- [93] With respect to the drug charges I find the decisions in Parranto, Kim and Pelgrom to be instructive. The quantity of Fentanyl at issue in Parranto was higher than in the case at bar and Mr. Parranto was considered to be a directing mind of the drug trafficking enterprise engaged in distributing drugs to more remote communities in Nunavut. In Kim, the quantity of drugs at issue was lower and Mr. Kim, although found to have a significant role in the trafficking operation, was not a directing mind. In Pelgrom, the quantity of drugs at issue was lower, but Mr. Pelgrom had plead guilty and there were significant Gladue factors at play as a result of his Indigenous status.
- [94] With respect to the weapons charges, I find the decisions in Swales and Kim to be instructive. Mr. Swales had found to be in joint possession of larger quantity of firearms than Mr. Nazarek--12 firearms and six silencers. In Kim, Mr. Kim was found to be in possession of two unloaded rifles and two handguns, one loaded.

Sentence

- [95] Mr. Nazarek - please stand.
- [96] It is a requirement of Canadian law that the sentence I impose on you today on each of the counts, be proportionate to the gravity of the relevant offence and the degree of your responsibility.
- [97] The PPT and Firearms Offences are all very serious, in that they involve what are clearly scourges on Canadian society--being trafficking in substances which not only might, but frankly will kill, and the possession of dangerous weapons-- ostensibly to assist in this criminal enterprise.
- [98] In my view your degree of moral culpability, notwithstanding the difficulties you experienced earlier in your life, is very high. It seems that at one point you were a productive member of society, gainfully employed and running your own businesses. When you entered the toxic drug trade you ceased being a productive member of society and instead became a purveyor of death.
- [99] Although I must and have considered the prospect of your rehabilitation, this factor is secondary given the aggravating circumstances. It is clear that a substantial period of incarceration is required to satisfy the primary principles of denunciation and deterrence, and related to that, the necessity to protect the public from potential future criminal conduct. Hopefully, Mr. Nazarek, during your time in prison you will continue to participate in any substance abuse treatment and other counselling programs which are made available

to you and will continue to work.

[100] In this case I consider that it is appropriate to render concurrent sentences in respect of the PPT and Firearms Offences, which is within my discretion: Swales at para. 14. Unlike the PPT and Firearms Offences, which are temporally and geographically connected, the failure to appear and breach of bail conditions arose at a later date during your second jury trial. As a result, your sentence under these charges is to be served consecutively to the others.

[101] I sentence you as follows:

Under Indictment 35071-6, with the following sentences served concurrently:

For Count 1, I sentence you to 5 years for the possession of cocaine for the purpose of trafficking;

For Count 2, I sentence you to 3 years for the possession of methamphetamine for the purpose of trafficking;

For Count 3, I sentence you to 10 years for the possession of Fentanyl for the purpose of trafficking;

For Count 4, I sentence you to 12 years for the possession of Fentanyl and Carfentanil for the purpose of trafficking;

For Count 5, I sentence you to 10 years for the possession of Fentanyl and heroin for the purpose of trafficking;

For Count 6, I sentence you to 12 years for the possession of Fentanyl, Carfentanil, and heroin for the purpose of trafficking;

For Count 7, I sentence you to 6 years for the unlawful possession of the loaded Glock handgun;

For Count 8, I sentence you to 6 years for the unlawful possession of the loaded Swiss Arms handgun;

For Count 9, I sentence you to 1 year for the unlawful possession of the loaded rifle; and

For Count 10, I sentence you to 2 years for the unlawful possession of the loaded shotgun.

Under Indictment 33334-2, with each of the following sentences to be served concurrently--but consecutive to those imposed under Indictment 35071-6:

For Count 1, I sentence you to 1 year for failure to attend court as required;

For Count 3, I sentence you to 1 year for failure to comply with the condition of your bail that you wear an electronic monitoring bracelet; and

For Count 5, I sentence you to 1 year for failure to comply with the condition of your bail that you reside at the Launching Pad facility.

- [102] These sentences total 13 years which I reduce by one year to reflect the totality principle, resulting in a global sentence of 12 years imprisonment.
- [103] The Crown and your counsel have agreed on the calculation of credit you should receive for pre-sentence custody. The Crown calculates that you have spent 455 days in custody and therefore you are entitled to a credit for time served of 683 days pursuant to s. 719 (3.1) of the Criminal Code. I find that you are entitled to credit for time served for this period of time.
- [104] In addition, I make the following ancillary orders:
- a) Pursuant to s. 487.051(1) of the Criminal Code, I make an order authorizing the taking of a sample of bodily substance from you, for the purpose of a forensic DNA analysis and inclusion in the national DNA databank; and
 - b) Pursuant to s. 109(3) of the Criminal Code, you are prohibited from possessing any firearm, cross-bow, restricted weapon, ammunition, or explosive substance for life.
- [105] I grant the Crown's request for a Forfeiture Order pursuant to s. 16 of the CDSA.
- [106] Your counsel has advised that you are impecunious and therefore unable to pay a victim surcharge. This surcharge is waived.
- [107] Pursuant to s. 743.2 of the Criminal Code, I order that a copy of these Reasons for Sentence be forwarded to the Correctional Service of Canada.

"Mayer J."

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Prepared on 27 October 2026 · Esheria