

CANADA / JUDGMENT

R. v. Nour-Eldin

2023 BCSC 2310

COURT

Supreme Court of British Columbia

DECIDED

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2023 BCSC 2310 R. v. Nour-Eldin

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Nour-Eldin,

2023 BCSC 2310

Date: 20231221

Docket: 31564

Registry: Vancouver

Rex

v.

Meaz Abdelrahma Nour-Eldin

And

Docket: 33339

Registry: Vancouver

Rex

v.

Meaz Abdelrahma Nour-Eldin

Restriction on publication: A publication ban has been mandatorily imposed under s. 486.4(1) of the Criminal Code restricting the publication, broadcasting or transmission in any way of information that could identify the complainant in SCBC Action No. 33339. This publication ban applies indefinitely, unless otherwise ordered.

Corrected Judgment: The text of the judgment was corrected at paras. 14, 38, 128 d), and certain paragraphs within the Schedule attached to these Oral Reasons for Sentence on January 10, 2024

Before: The Honourable Madam Justice Fitzpatrick

Oral Reasons for Sentence

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Place and Date of Hearing:

Vancouver, B.C.

December 20-21, 2023

Place and Date of Judgment:

Vancouver, B.C.

December 21, 2023

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OVERVIEW

- [1] This hearing was convened to address the sentencing of Meaz Nour-Eldin arising from his conviction in respect of two matters:
- a) Action VA 31564-2: Following trial, on July 18, 2022, Mr. Nour-Eldin was convicted of three counts of possessing heroin and fentanyl (Count 1), cocaine (Count 2), methamphetamine (Count 3) for the propose of trafficking in June 2017, contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 [CDSA] (the "PPT Offences"); and
- b) Action VA 33339: In October 2022, Mr. Nour-Eldin pleaded guilty to Count 1, being human trafficking of a person under the age of 18, in respect of V.A. in the period from December 2018-February 2019, contrary to s. 279.011(1) of the Criminal Code, R.S.C., 1985, c. C-46 [Criminal Code]. Mr. Nour-Eldin was also charged with Count 2 in the Indictment, being that he received a financial benefit arising from the first offence, contrary to s. 279.02(2) of the Criminal Code. The intention of Crown and defence is that Count 2 will be stayed upon sentence being imposed on Count 1 (the "Human Trafficking Offence").
- [2] The sentences for both matters is by way of a joint submission by the respective Crowns and respective defence counsel. As such, the sentence is to be considered in accordance with the principles outlined in R. v. Anthony-Cook, 2016 SCC 43.

CIRCUMSTANCES OF THE OFFENCES

[3] I will address each matter separately.

The PPT Offences

- [4] The events leading to Mr. Nour-Eldin's conviction on the PPT matter are set out in my reasons for judgment after a voir dire, indexed at R. v. Nour-Eldin, 2022 BCSC 730.
- [5] In summary, in the early hours of June 13, 2017, Mr. Nour-Eldin was involved in a traffic stop by the West Vancouver Police Department while they were on patrol in North Vancouver. The officers became focussed on a vehicle at that late hour since it was linked to the drug trade in the police database and was being driven by a female, not the male registered owner. After following the vehicle for a time, the officers located it in a cul-de-sac in a residential neighbourhood. The officers initiated a traffic stop to ask the driver for the usual documentation.
- [6] As the officers approached the vehicle, they noticed Mr. Nour-Eldin reclined in the passenger seat. The driver of the vehicle was unable to produce a driver's license upon request. In the course of the initial discussions between the officers and Mr. Nour-Eldin, he mentioned that he was bound by conditions relating to a robbery charge.
- [7] In the course of the traffic stop, and after the officers asked Mr. Nour-Eldin to get out of the vehicle for a pat down for officer safety, Mr. Nour-Eldin fled from the scene. As he left, he yelled to the police officers something to the effect that he could not, because he was breaching curfew. The officers formed the view that Mr. Nour-Eldin was breaching his curfew conditions.
- [8] The officers, later joined by a police dog, pursued Mr. Nour-Eldin. He was eventually found in the nearby neighbourhood and surrendered to police. He was found with a cell phone and some \$350 cash. The cell phone indicated messages relating to orders for drugs.
- [9] A later search of the area through which Mr. Nour-Eldin has fled revealed his baseball hat and an M&M container that contained 40 baggies of drugs, being: 12 black baggies of heroin and fentanyl, weighing 1.5 grams; 14 white baggies of powder cocaine, weighing 2.5 grams; 12 blue baggies of rock cocaine, weighing 4 grams; and 2 orange baggies of methamphetamine, weighing 0.4 grams.
- [10] The total value of the drugs seized was approximately \$1,100 at the street level.

The Human Trafficking Offence

- [11] The events relating to the Human Trafficking Offence occurred between December 23, 2018 and February 24, 2019.
- [12] An agreed statement of facts was introduced into the record and it is attached as a Schedule to these Reasons for Judgment.

- [13] In summary, in fall 2018, V.A. was a 15-year old female of Indigenous heritage. She was attending high school; however, by that time, she had begun withdrawing from her family and from school. Eventually, she stopped attending school and began running away from home.
- [14] In December 2018, V.A. was invited to a party by A.A.S., also a youth of 14 years age. At the party, V.A. was introduced to Mr. Nour-Eldin and Elkan Vyizigiro. At the time, Mr. Nour-Eldin was 21 years old. Later, V.A. was recruited by all three of them to, at least initially, act as a decoy in allowing "Johns" to be robbed while pretending to offer sexual services to those "Johns". Later, in December 2018, V.A. was involved in various robberies, including one at knifepoint on December 24, 2018. V.A. was returned to her home after that incident.
- [15] By December 28, 2018, V.A. had run away from home again and returned to working for Mr. Nour-Eldin and his criminal associates. Eventually, she relented to their request that she engage in sex work. V.A. would become heavily involved in sex work, all as managed and directed by Mr. Nour-Eldin and his associates.
- [16] In particular, they created the marketing material on websites, set V.A.'s rates and forms of payment and arranged for meetings with "Johns", at locations rented by them and, they arranged for "outcalls" where V.A. would meet customers at various locations including hotels.
- [17] The circumstances of V.A., while under the control of Mr. Nour-Eldin and his associates, is detailed in the agreed statement of facts. She was physically mistreated by the men by violence or the threat of violence at times. They controlled her movements to a degree, including by providing her with drugs and alcohol. V.A. was required to work over a two-month period, including most of the month of January 2019 while seeing numerous customers. She saw only a tiny fraction of the amounts she earned. V.A. was required to provide sex services that she did not wish to. V.A. was exposed to health risks, including by the fact that she was not provided with condoms to use. She was also required to have sex with Mr. Nour-Eldin and his associates, and their friends. She was trafficked across the border into Alberta.
- [18] After V.A. was returned to Vancouver into her family's care, V.A. again ran away from home and began working for the men. Only after talking to a John who discussed with her what was happening, did V.A. return home and stop working for Mr. Nour-Eldin and Vyizigiro.
- [19] A year later, in February 2020, V.A. contacted the police and had her first interview.
- [20] There are two very distinct impacts arising from each offence or set of offences.

Impact of the PPT Offences

- [21] There were very significant impacts on drug users and the community arising from the drug offences, as I will detail below.

Impact of the Human Trafficking Offence

- [22] The impact of this crime on V.A. and her family has been profound.
- [23] V.A. gave a victim impact statement at this sentencing and, to her credit, gave it orally before the Court.
- [24] V.A. describes being devastated by the exploitation and the fact that her youth and innocence was stolen from her. She continues to feel guilt, shame and fear and feels isolated from her peers. She continues to view her life and experiences through that traumatic experience. She feels that her ability to form intimate relationships has been impaired, perhaps permanently. She notes that her relationship with her family has been negatively impacted, although she appreciates the support then and now from her mother and sisters.
- [25] V.A. has shown this Court that she has incredible resilience, strength and bravery. She is now attending an educational institution and making her way in the world toward gaining employment and, as she hopes, making a mark in the world.
- [26] V.A.'s mother has also provided a victim impact statement. She describes the significant impact of this crime on her, her family, emotionally, spiritually and financially. The matter has impacted her relationship with her partner. The stress of the ordeal has impacted her physically and mentally. V.A.'s mother confirms the significant impact on her daughter, and her efforts to support her daughter through her recovery.

CIRCUMSTANCES OF THE OFFENDER

- [27] Mr. Nour-Eldin was born in June 1997 in Libya. He is one of four boys in his family, which his counsel describes as a conservative Muslim family. His family moved from Libya to Egypt. Eventually, in the 2000s, Mr. Nour-Eldin's family immigrated to Canada when he was six years old, arriving first in Saskatchewan and later in BC. Mr. Nour-Eldin grew up in Surrey where he attended school where he graduated from high school in 2015. He says that he fleetingly tried drugs in his last year of high school.
- [28] Mr. Nour-Eldin says that his upbringing involved some isolation and lack of support from his peers, and some exposure to racism.
- [29] Mr. Nour-Eldin also later took some courses at BCIT. That plan quickly dissolved when he was reintroduced to drugs, a habit that quickly escalated. That escalating drug use then led to crime to feed his habit.
- [30] Mr. Nour-Eldin is now 26 years old. He was just shy of 20 years old at the time of the PPT Offences and 21 years old at the time of the Human Trafficking Offence.
- [31] Mr. Nour-Eldin has an adult criminal record, beginning from the time he reached the age of majority in 2015 and consistent with the time when he began his drug habit. Of his five convictions, two involved violent offences.

- [32] In October 2015, he breached an undertaking or recognizance resulting in a fine. In February 2016, he committed a robbery for which, in January 2017, he received a jail sentence of just over 10 months and two years probation. I am told that this was a hold-up to obtain money for his drug habit. This was the probation that Mr. Nour-Eldin was breaching at the time of the traffic stop in June 2017.
- [33] On June 27, 2016, Mr. Nour-Eldin assaulted a peace officer. In February 2017, he was sentenced and received credit for 14 days in jail.
- [34] These last two and violent offences - the robbery and assault - were disposed of just months before the drug trafficking offences in June 2017.
- [35] In January 2018, he breached a further undertaking or recognizance. In November 2018, he was sentenced to one day in jail, after being credited for 3 days in jail.
- [36] Since the drug charges were laid, Mr. Nour-Eldin has been convicted of two human trafficking offences and breach of recognizance.
- [37] The events relating to the Human Trafficking Offence occurred in December 2018-February 2019.
- [38] In February 2019, Mr. Nour-Eldin failed to comply with a recognizance arising from a matter in Winnipeg. This appears to coincide with the events related to the Human Trafficking matter in that, after V.A. was taken into care and returned to Vancouver while in Alberta, Mr. Nour-Eldin, Vyizigiro and A.A.S. then went to Winnipeg, where they continued to direct V.A.'s sex work.
- [39] The Human Trafficking charges were laid and a warrant executed in December 2020 in Montreal. Mr. Nour-Eldin has been incarcerated since that time, ending his criminal activity.
- [40] By fall 2021, Mr. Nour-Eldin, Vyizigiro and another person were also charged with various offences - including human trafficking - in Ontario, arising from circumstances in September-October 2019, subsequent to their crime against V.A. In that case, the human trafficking charges related to a young adult female who was 22 years old at the time. In May 2022, Mr. Nour-Eldin pleaded guilty to Count 1, being the human trafficking offence in relation to this female. An agreed statement of facts was entered at the time in the Ontario court and is before the Court now. A review of that document indicates circumstances similar to that of V.A. in terms of exploitation by Mr. Nour-Eldin.
- [41] Initially, the Ontario matter was transferred to BC so that it could be addressed in this Court by way of a joint submission on sentencing for not only that matter, but also the PPT Offences and the Human Trafficking Offence. However, on August 1, 2023, Mr. Nour-Eldin withdrew from the joint submission and the Ontario matter is being returned to that province for disposition: see *R. v. Nour-Eldin*, 2023 BCSC 1739 at paras.12-14.

- [42] Mr. Nour-Eldin's counsel also advises that his client is facing kidnapping charges from events in 2019 in Surrey. Those charges are not yet resolved.
- [43] Not surprisingly, Mr. Nour-Eldin's life of crime has impacted others in his life. He is estranged from his brothers. He is estranged from his community generally. Mr. Nour-Eldin has a 7-year old child from an ex-girlfriend who lives back East, although she does not want him involved in her or their child's life.
- [44] Nevertheless, Mr. Nour-Eldin's mother has provided a letter of support for her son. There is no doubt that Mr. Nour-Eldin's mother loves her son and supports him. However, her glowing references to Mr. Nour-Eldin as being "responsible, compassionate and hardworking" is very much belied by other aspects of his life, including as they relate to the victimization that is evident from the serious drug conviction that she mentions, and also the serious Human Trafficking Offence.
- [45] Mr. Nour-Eldin has also supplied a letter of support from a friend who has known him for the last four years.
- [46] Both of Mr. Nour-Eldin's counsel indicate that their client has made strides toward rehabilitation. They say that he is doing his best to stay sober and has taken a six-week course while incarcerated to address his drug use. His counsel advise that he has reflected on his past and realized the significant harm he has caused others by his selfishness. He looks forward to taking more programs that will be available in the federal penitentiary system.
- [47] Mr. Nour-Eldin's statement to the Court during this sentencing is also that he is very remorseful of his actions in the past, having recognized the tremendous harm caused, particularly to V.A. and her family.
- [48] Mr. Nour-Eldin has a girlfriend in Ontario who is providing support to him.
- [49] Mr. Nour-Eldin hopes to reconcile with his family and his community when he is released from jail. He hopes to eventually move to Ontario to find gainful employment.
- [50] All of this is to say that Mr. Nour-Eldin has begun to make some efforts toward rehabilitation. The veracity of his comments as to his commitment to do so remains to be tested.

POSITIONS OF CROWN / DEFENCE

- [51] As stated above, a joint submission has been made in respect of both matters.
- [52] With respect to the PPT Offences, the proposed sentence is: Count 1: 16 months; Count 2: six months; Count 3: six months, all to run concurrently. Various ancillary orders are also sought, which are either mandatory or agreed upon, as I will discuss below.

- [53] With respect to the Human Trafficking Offence, the proposed sentence is six years. Various ancillary orders are also sought, most of which are mandatory, again as I will discuss below.
- [54] The proposal is that the sentence for the PPT Offences and the sentence for the Human Trafficking Offence would be served consecutively. That would result in an overall sentence of seven years and four months.
- [55] The pre-trial custody period has been discussed and agreed upon between all counsel. It is a complicated exercise given the various charges, including others not being addressed today, and the dates on which the warrants were executed and Mr. Nour-Eldin taken into custody.
- [56] Mr. Nour-Eldin was initially arrested on the PPT Offences on June 13, 2017 and a bench warrant was executed on those charges on December 10, 2020. Prior to that, he spent a cumulative total of 23 additional days in custody. On December 21, 2020, the warrant was executed on the Human Trafficking matter.
- [57] The calculations agreed to by counsel are as follows:
- a) Human Trafficking Offence: Sentence of six years. Less pre-sentence time credit of 1,096 days times 1.5 equal to 4 years and 184 days (1,644 days) from December 21, 2020 to December 21, 2023. Net sentence of one year and 181 days (546 days); and
 - b) PPT Offences (Count 1): Sentence of 16 months (480 days). Less pre-sentence time credit of 23 days times 1.5 equal to 35 days. Net sentence of fourteen months and 25 days (445 days).

PRINCIPLES OF SENTENCING

- [58] The Crown and defence agree on the relevant Criminal Code sentencing provisions effective at the time of the Offences, as follows:

Purpose

718 The fundamental purpose of sentencing is 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;
- (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 and to the community.

Fundamental principle

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

[59] Section 718.01 of the Criminal Code mandates that the principles of general deterrence and denunciation are paramount considerations when considering offences against children, such as in relation to the Human Trafficking Offence:

718.01 When a court imposes a sentence for an offence that involved the abuse of a person under the age of eighteen years, it shall give primary consideration to the objectives of denunciation and deterrence of such conduct.

[60] Other sentencing principles are found in the Criminal Code, as particularly relevant to the Human Trafficking Offence, as follows:

Other sentencing principles

718.2 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,

(ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,

(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,

.

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar

[61] Finally, Crown counsel emphasized the principle of restraint found in s. 718.2(d) and (e) of the Criminal Code that requires that an offender not be deprived of liberty, if less restrictive sanctions are appropriate. Having said that, there is no dispute at this sentencing that a federal penitentiary sentence is appropriate in relation to Mr. Nour-Eldin.

Sentencing for the PPT Offences

[62] With respect to the PPT Offences, a conviction is liable to imprisonment for life: CDSA, s. 5(3).

Sentencing for the Human Trafficking Offence

[63] With respect to the Human Trafficking Offence, the minimum sentence is five years imprisonment and the maximum sentence is 14 years imprisonment: Criminal Code, s. 279.011(1)(b).

MITIGATING / AGGRAVATING FACTORS

[64] These factors are agreed between the Crowns and defence counsel.

Mitigating Factors

[65] The same mitigating factor is present in respect of all the Offences, being that Mr. Nour-Eldin was a young man at the time.

[66] The most significant mitigating factor arises with respect to the Human Trafficking Offence.

[67] As set out above, in October 2022, Mr. Nour-Eldin entered a guilty plea, which spared V.A. the trauma of reliving her ordeal at a trial. In advance of this sentencing, there was no agreement as to the underlying facts of the offence, which would have required V.A. to testify as to the facts, in addition to providing her victim impact statement. That further trauma to V.A. was avoided by the agreement as to the facts for sentencing purposes, as set out in the Schedule attached.

[68] I would add at this time that, earlier, Mr. Nour-Eldin indicated that he was seeking to withdraw his guilty plea on the Human Trafficking Offence. In light of the joint submission at this sentencing, Mr. Nour-Eldin has confirmed that he will not be proceeding to advance any such application.

[69] Mr. Nour-Eldin's counsel also assert that their client was incarcerated at North Fraser Pre-Trial Centre in December 2020 at the height of the COVID-19 pandemic. In addition to experiencing general facility lockdowns since that time, Mr. Nour-Eldin has contracted COVID-19 on three separate occasions. His counsel estimates that he was isolated for approximately 4-5 months as a result.

[70] Mr. Nour-Eldin's counsel refers to *R. v. Handule*, 2023 BCSC 1031 at paras. 99-102, citing *R. v. Fulton*, 2021 BCSC 2721, as supporting that unduly harsh pre-trial incarceration conditions can be considered as mitigating factors in determining a sentence.

[71] However, in *R. v. Suter*, 2018 SCC 34 at para. 48, the Court described this issue as one of collateral consequences as relevant to an offender's personal circumstances and not necessarily a "mitigating factor".

[72] At paras. 48-49, the Court in *Suter* stated that the question is whether the effect of collateral consequences means that a particular sentence would have a more significant impact on the offender because of his or her circumstances. In addition, the Court stated that the collateral consequences must flow naturally from the conviction, sentence or commission of the offence and must relate to the offence and the circumstances of the offender.

[73] At paras. 56 and 58 in *Suter*, the Court confirmed that the principle of proportionality must not be overwhelmed by any collateral consequences and that any collateral consequences should only be considered to a limited extent.

- [74] In *R. v. Scholz*, 2022 BCCA 339, the court applied these principles in the context of incarceration during the COVID-19 pandemic in stating:
- [39] While recognizing the hardship that can be caused due to COVID-19, courts are not prepared to interfere with a fit sentence in the absence of evidence regarding the particular circumstances of an offender's incarceration or any indication of a unique or personal vulnerability of the offender: *McKibbin*; *Milne*; *R. v. Morgan*, 2020 ONCA 279; *R. v. Lariviere*, 2020 ONCA 324. In *R. v. Stevens*, 2020 BCPC 104, the judge noted the risk of COVID-19 can be best characterized as a collateral consequence, not mitigation, and the impact of a collateral consequence does not displace the general rule that a sentence must be fit, having regard to the crime and the offender: *Stevens* at paras. 47, 49.
- [75] I acknowledge that Mr. Nour-Eldin has been subjected to certain lockdowns for COVID-19, which have affected his time in custody. Certainly, it goes beyond what he might otherwise have experienced in the community although I would not describe these conditions as particularly harsh. I conclude that any collateral consequence to Mr. Nour-Eldin arising from COVID-19 during his time in custody is limited, at best, and does not represent a significant collateral consequence relevant to his sentence.
- [76] Both defence counsel also make much of the fact that Mr. Nour-Eldin is black and they assert that he has suffered impacts in his life, including "systemic racism", that has contributed to his circumstances.
- [77] Again, defence counsel cite *Handule*, where Justice Winteringham (as she then was), addressed the role of race and ethnicity in sentencing beginning at para. 77. After reviewing the case law, Winteringham J. stated:
- [95] In sum, the recent jurisprudence from Nova Scotia, Ontario and our province recognizes the role of systemic racism in the over-representation of racialized individuals in the Canadian criminal justice system. I am satisfied that judges must factor pervasive systemic racism into the proportionality analysis when crafting a just and appropriate sentence. Social context evidence can also inform the weighing of specific deterrence and rehabilitation in determining the sentence. While the offender must prove some connection between the systemic racism and the circumstances that mitigate or explain their conduct, the aim is not to prove causation. Rather, they only need to show a discernible nexus between the social context and their personal circumstances such that the social context evidence can inform their sentencing: *Ellis* at para. 88.
- [78] Defence counsel submit that Mr. Nour-Eldin's family was financially unstable and that Mr. Nour-Eldin lacked supports. While one defence counsel refers to assuming a lack of employment opportunities for the family because of their race, I would note that Mr. Nour-Eldin was industrious enough to work at a part-time job to assist his family's finances. By all accounts, he was well supported by his family throughout his teenage years to the point of graduating from high school and entering BCIT toward obtaining employment. He was moved off that worthwhile path by drugs, as encouraged by his friends, which then led him

to a life of crime to pay for that habit.

[79] I cannot discern any connection or nexus between the fact that Mr. Nour-Eldin is black and his turn toward a life of crime in all of the circumstances that have been brought to my attention.

[80] Having said that, I acknowledge that Mr. Nour-Eldin's personal and background circumstances, including that he is a young Black person, are properly considered in this sentencing in terms of assessing his moral culpability: *R. v. Ellis*, 2022 BCCA 278 at para. 81.

Aggravating Factors

[81] I accept the aggravating factors advanced by the Federal Crown in relation to the PPT Offences:

- a) The dangerous and toxic nature of fentanyl;
- b) Mr. Nour-Eldin was in possession of three different types of drugs;
- c) Mr. Nour-Eldin was involved in dial-a-dope drug trafficking, which requires a higher level of sophistication and increases access to drugs for users;
- d) Mr. Nour-Eldin was on probation at the time of the Offences; and
- e) Mr. Nour-Eldin's flight from police, which engaged the pursuit of several officers, as well as a police service dog, and involved Mr. Nour-Eldin attempting to hide in the residential backyard of an innocent third party.

[82] I also accept the aggravating factors advanced by the Provincial Crown in relation to the Human Trafficking Offence:

- a) V.A.'s age and vulnerability, particularly given that she was victimized by Mr. Nour-Eldin, an adult;
- b) The methods of control exercised by Mr. Nour-Eldin in respect of V.A.;
- c) Mr. Nour-Eldin's significant efforts to "market" V.A. for his own benefit;
- d) V.A. was subjected to violence, threats and mistreatment in many respects;
- e) V.A. was victimized over a two-month period over which time she worked most days and saw many customers;
- f) V.A. was further victimized by being deprived of the money that she earned;
- g) V.A. was made to work in unsafe conditions. She was exposed to health risks and risk of violence from her customers and others;
- h) In the face of V.A. being returned to her family, Mr. Nour-Eldin made efforts to entice her back, again for his benefit; and

- i) The significant effects upon V.A. and her family.

DISCUSSION AND ANALYSIS

- [83] It is unquestionably the case that the principles of denunciation and deterrence are the more relevant ones here, as they relate to the Offences.
- [84] While rehabilitation of an offender is appropriately considered, it is a secondary consideration here, particularly in light of Mr. Nour-Eldin's late and somewhat lacklustre efforts to return to a law-abiding life since his incarceration. This is particularly so, despite the fact that he was charged with a string of offences in the 2017-2020 timeframe that might have served as a wake-up call about his crimes and their impact upon others.

The Human Trafficking Offence

- [85] The Human Trafficking Offence is a serious one, particularly as Mr. Nour-Eldin victimized a 15-year old child.
- [86] The Provincial Crown and Mr. Nour-Eldin's counsel have referred the Court to various Ontario case authorities with respect to the Human Trafficking Offence.
- [87] Both the Provincial Crown and Mr. Nour-Eldin's counsel agree that the range for the Human Trafficking Offence is 4-8 years, as I will discuss in more detail below.
- [88] The Provincial Crown has referred to a number of Ontario cases, being *R. v. Byron*, 2014 ONSC 990; *R. v. Lopez*, 2018 ONSC 4749; *R. v. A.E.*, 2018 ONSC 471; *R. v. Safieh*, 2019 ONSC 287 and *R. v. Purcell*, 2019 ONSC 4683.
- [89] Both counsel advise that they were unable to locate any relevant and reported BC case law dealing with the sentencing of offender for a human trafficking offence involving a minor(s).
- [90] All of the Ontario cases speak to the horrors and abject abomination that comes with child prostitution. I agree with the Crown that the comments of Justice Campbell in *Lopez* are apt and deserving of repetition to frame any discussion of such an offence:
- [52] For many years Canadian courts have decried the inherently exploitive, coercive and controlling actions of "pimps" in relation to prostitutes. The unfortunate contemporary reality of the sex trade is that male pimps typically are involved in the exploitation, degradation and subordination of women. At its most basic level, it is a form of slavery, with pimps living parasitically off the earnings of prostitutes. Pimps exercise their control over prostitutes by means of a variety of tactics including emotional blackmail, verbal abuse, threats of violence and/or pure physical violence and brutality. The prostitutes that are the subject of this coercive exploitation are typically vulnerable and disadvantaged women, who have been manipulated and taken advantage of by the pimp. Even in cases where their initial participation in the sex trade is voluntary, including perhaps their business association with the pimp, and adopted for reasons of perceived increased security and safety in an inherently dangerous line of work, the relationship invariably becomes one-

sided and exploitive. Prostitutes are ultimately forced, in one way or another, to provide sexual services for money in circumstances where they would not otherwise have agreed to such services, and the money earned from those sexual services is collected by the pimp. Accordingly, in a very real and practical sense, pimps traffick in the human resources of prostitutes, callously using their sexual services as an endlessly available commodity to be simply bought and sold in the market place. Accordingly, pimps have been aptly described as a "cruel, pernicious and exploitive evil" in contemporary society.

See also Purcell at para. 38.

[91] On the issue of what range of sentencing might be considered by the Court, the Provincial Crown refers to A.E. at para. 65. There, Justice Boswell stated that, since 2014, the range has been elevated to be roughly 4-8 years, depending on the aggravating and mitigating circumstances. As before, where a child such as V.A. is involved, the range can only start at 5 years as the minimum sentence in BC under the Criminal Code. See also R. v. M.E.D., 2022 ONSC 1899 at para. 17.

[92] A.E. is also helpful in outlining circumstances or factors that might be present and might be considered in terms of assessing what sentence might be fit, citing R. v. Tang, 1997 ABCA 174 and R. v. Miller, [1997] O.J. No. 3911. At paras. 56-57 of A.E., those factors are summarized as:

1. The degree of coercion or control imposed by the pimp on the prostitute's activities;
2. The amount of money received by the pimp and the extent to which the pimp allowed the prostitutes to retain their earnings;
3. The age of the prostitutes and their numbers;
4. Any special vulnerability on the part of the prostitutes;
5. The working conditions in which the prostitutes were expected or encouraged to operate, including their physical surroundings in terms of soliciting customers and servicing customers, and safety concerns, in addition to whether appropriate health safeguards were taken;
6. The degree of planning and sophistication, including whether the pimp was working in concert with others;
7. The size of the pimp's operations, including the numbers of customers the prostitutes were expected to service;
8. The duration of the pimp's exploitive conduct;
9. The degree of violence, if any, apart from that inherent in the pimp's parasitic activities;
10. The extent to which inducements such as drugs or alcohol were employed by the pimp;
11. The effect on the prostitutes of the pimp's exploitation; and,

12. The extent to which the pimp demanded or compelled sexual favours for himself from the prostitutes.
 13. The age of the customers attracted to the bawdy-house operation;
 14. Steps taken by the accused to evade detection by authorities; and,
 15. Attempts by the accused to prevent a prostitute from leaving his employ.
- [93] Time does not permit me to analyze each of these factors specifically as they relate to V.A. and the Human Trafficking Offence. As with many types of offences, the circumstances will vary widely between cases as relevant to the fitness of the sentence. Some or all of the factors may be engaged. What is required is a very fact-driven enquiry to understand the full import of the crime and its effect upon the victim.
- [94] In terms of considering the range, toward arriving at a fit sentence, the specifics of the various factors may point to lower or higher ends of the range. I agree with the Provincial Crown that, generally speaking, more aggravating aspects of the various circumstances will be in relation to: the age of the victim(s), the number of victims, the forms of coercion and if there is violence, to what degree, the mobility of the victim(s), in the sense of the person being actually or constructively confined, and finally, the duration of the trafficking.
- [95] Both Provincial Crown and Defence counsel refer also to R. v. Alexis-McLymont, 2018 ONSC 1152 as an example of imposing sentences on various offenders depending on the severity of the circumstances in which they were involved or to which they contributed. Sentences for the two offenders were six years and 9 years respectively. No guilty pleas were relevant in that case.
- [96] In this case, each of the above factors is engaged to a degree.
- [97] The proposed sentence for the Human Trafficking Offence - six years - is situated in the range but is still, appropriately, above the minimum sentence of five years that applies in BC. I agree that the higher end of the range is not appropriate given that Mr. Nour-Eldin's crime against V.A. did not involve the more egregious factors, such as higher levels of control and violence, as discussed in the case law.
- [98] On the topic of rehabilitation, as I have already discussed above, Mr. Nour-Eldin has expressed remorse which I take to be genuine on his part. In addition, he has begun to make strides while incarcerated toward leading a productive life that is not focussed on criminality.
- [99] However, as relevant to the issue of his background, character and prospects of rehabilitation, I have considered the fact that, after the events of December 2018/February 2019 when V.A. was being victimized, Mr. Nour-Eldin continued to engage in criminal behavior as it relates to the extant Ontario trafficking charge. I say criminal because Mr. Nour-Eldin has pleaded guilty to Count 1 of those charges.

- [100] The law is clear that evidence of acts or similar facts, that have resulted neither in charges nor convictions cannot be adduced for the purpose of obtaining a disproportionate sentence against the offender for the offence in question or for punishing the offender for an offence for which he or she has not been convicted; however, such evidence can be adduced to shed light on the offender's background and character, particularly as to the matter of rehabilitation: *R. v. Angelillo*, 2006 SCC 55 at paras. 17 and 37. See also *R. v. Johnston*, [1989] B.C.J. No. 1542 (C.A.) at p. 2.
- [101] In *Angelillo* at para. 27, the Court emphasized that such facts may be relevant and should not be excluded depending on the purpose for which admission is sought. Here, the Crown asserts that it is a relevant consideration and I agree. As stated above, it raised further questions about the real prospects of Mr. Nour-Eldin turning his life around, as he apparently hopes to do.

The PPT Offences

- [102] The same post-PPT charge criminal involvement on the part of Mr. Nour-Eldin similarly applies to the sentence on the PPT Offences, again as relevant to a consideration of his background, character and prospects for rehabilitation: *Angelillo* at paras. 27 and 30.
- [103] Mr. Nour-Eldin's drug trafficking warrants consideration of a serious sentence, particularly arising from the fact that Count 1 involved fentanyl.
- [104] The substantial negative effects of drug trafficking to the lives of many persons in our communities are generally well-known. As the Federal Crown states, denunciation is required because of the tremendous damage that drug trafficking causes to the health, emotional and financial integrity of drug users and their families, and to the safety and security of our communities as a whole.
- [105] Drug trafficking is not a crime of impulse. I accept the Federal Crown's submission that it is generally committed with some forethought and with planning and deliberation. That applies unquestionably to Mr. Nour-Eldin's actions in June 2017 when he was involved in a dial-a-dope operation.
- [106] The Crown has referred the Court to the background information and documentation in relation to the skyrocketing fentanyl-related deaths in BC since 2012 and into 2021. Sadly, the carnage from drug use in BC and across Canada, particularly relating to the use of fentanyl, has continued and in fact, increased. One need only listen to the ever increasing numbers of deaths reported in the media on almost a daily basis.
- [107] It is also well-known that the health authorities in the Lower Mainland and Vancouver (including the Downtown Eastside) record significant numbers of deaths arising from drug abuse. Having said that, it seems that no community has been spared.

[108] The Federal Crown has made submissions in relation to the BC Court of Appeal's recognition of this health care crisis, as aggravated by fentanyl, in *R. v. Smith*, 2017 BCCA 112 at paras. 44 and 65. In the latter para., the court stated:

... the continuing escalation in the number of fentanyl-detected deaths, the enormity of the total numbers of accidental overdosing, the increasing percentage of fentanyl detected deaths as a proportion of the total, and the currently ubiquitous awareness of the risks posed by illicit fentanyl, in combination, justify a recognition of a very substantial increase in the sentencing range applicable to street level dealing in fentanyl.

[109] In *Smith*, the court suggested at para. 45 that a "normal range" would begin at 18 months for a drug conviction involving fentanyl. That would place Mr. Nour-Eldin's sentence for Count 1 of the PPT Offences below that range.

[110] Since *Smith* was decided, the overdose crisis, fuelled by fentanyl, has continued. In *R. v. Parranto*, 2021 SCC 46 [Parranto], the Court at paras. 93-94 noted the harms of fentanyl trafficking and its lethal nature, and stated that fentanyl has "altered the landscape of the substance abuse crisis in Canada, revealing itself as public enemy number one". It is unquestioned that street-level fentanyl trafficking poses greater risk of harm as compared to other drugs and sentencing for that offence is meant to reflect the gravity of the offence.

[111] The Federal Crown has referred the Court to two decisions, where 18 month jail sentences were imposed for trafficking small, street level amounts of fentanyl in circumstances of offenders who were described in sympathetic terms:

- a) In *R. v. KieIt*, 2019 BCSC 2458, Ms. KieIt was convicted after trial of trafficking 0.2 grams of heroin and fentanyl to an undercover officer. At the time of sentencing, Ms. KieIt was 53 years old, homeless and continued to struggle with a heroin addiction. She had a prior criminal record for several theft under \$5,000. The court found that in the circumstances, the low end of the sentencing range set out in *Smith* was appropriate. Ms. KieIt was sentenced to 18 months jail; and
- b) In *R. v. Essler*, 2021 BCSC 583, Ms. Essler pleaded guilty to trafficking a mixture of heroin and fentanyl to an undercover officer on two occasions. The total amount she sold between both transactions was 5.3 grams. The court detailed Ms. Essler's very difficult personal circumstances and longstanding addiction issues. At the time of sentence, the Court found that Ms. Essler had taken no significant steps to turn her life around and concluded that a sentence at the bottom end of the *Smith* range was appropriate. Ms. Essler was sentenced to 18 months jail.

[112] Having said that, both the Federal Crown and defence counsel submit, without controversy, that ranges are just that and do not necessarily bind the Court to arrive at a sentence within the range if the overall circumstances point to a different but fit sentence. As the saying goes, sentencing ranges are tools and guidelines to be used in sentencing and are not meant to be hard and fast rules or "straitjackets": *R. v. Friesen*, 2020 SCC 9 at paras. 37, 108. So long

as the sentence imposed is in accordance with the principles and objectives of sentencing and is proportionate to the gravity of the offence and the degree of responsibility of the offender, a sentence outside the regular range is not necessarily unfit: *R. v. Nasogaluak*, 2010 SCC 6 at para. 44; *R. v. Lacasse*, 2015 SCC 64 at paras. 56-72; *Friesen* at paras. 37-38, and 108; and *Parranto* at paras. 42-54, and 205.

- [113] In addition, defence counsel has referred me to *R. v. Ellis*, 2022 BCCA 278, which revisited the sentencing range from *Smith*. At paras. 117-124 of *Ellis*, the court confirms that a judge does not need to find "exceptional circumstances" in departing from the sentencing range, provided that all sentencing principles are properly applied to arrive at a fit sentence in the circumstances.
- [114] Defence counsel submits that the approach of this Court in *Kielt* and *Essler* must be viewed in that light, as being decided post-*Smith* and prior to the court's discussion in *Ellis*.
- [115] I agree with defence counsel and also agree that this type of approach is evident from the sentencing found in *R. v. Sunner*, 2023 BCSC 2169. In *Sunner*, Justice Norell imposed a 14-month prison term for a fentanyl conviction. At paras. 57-66, she did so after extensively reviewing recent case law, some involving youthful offenders, and fentanyl cases, where sentences of less than 18 months were imposed.

Summary

- [116] During the course of this hearing, I expressed some concerns to the Federal Crown regarding the appropriateness of a 16-month jail term for Count 1 of the PPT Offences, given the trafficking of fentanyl. In my view, that sentence is a very generous one and the Federal Crown was asked by the Court to explain her reasoning in some detail. She did so, supported by defence counsel's submissions in reply.
- [117] In my view, it is important at this juncture to return to the principles by which I am to consider this joint submission on sentencing with respect to all of the Offences. As Justice Ker recently observed in *R. v. Holt*, 2022 BCSC 2364:
- [28] As this is a joint submission, the principles enumerated by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43, establish the analytical framework that is applied in determining whether a sentencing judge should accede to a joint submission. A joint submission is when the Crown and defence agree to recommend a particular sentence to the judge in exchange for the accused waiving their right to a trial by entering a plea of guilty to an offence. Both sides carefully weigh the risks of taking the charges to trial, as well as a host of other factors, and determine that the certainty of resolution of a case is preferred. As Justice Moldaver, writing for the Court, noted in *Anthony-Cook* at para. 1, "[r]esolution discussions between Crown and defence counsel are not only commonplace in the criminal justice system, they are essential"

[Emphasis in original].

- [118] As I stated above, this joint submission arose, not in relation to Mr. Nour-Eldin's guilty plea in the Human Trafficking Offence, but only yesterday morning in the context of a resolution that would facilitate the entire sentencing hearing, particularly in relation to V.A.
- [119] In *Anthony-Cook*, the Court directed that sentencing judges should only depart from joint submissions where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system. Justice Moldaver stated:
- [34] In my view, these powerful statements capture the essence of the public interest test developed by the Martin Committee. They emphasize that a joint submission should not be rejected lightly, a conclusion with which I agree. Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold -- and for good reason, as I shall explain.
- [120] These comments were reiterated in *R. v. Manca*, 2019 BCCA 280:
- [29] The principles governing joint submissions are well established. Where the Crown and defence agree to recommend a particular sentence in exchange for a guilty plea, the sentencing judge may only depart from the recommendation where the "proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest". [Citations omitted.]
- [121] In that event, I must consider the totality of the circumstances and the fact that both Crowns and both defence counsel have arrived at a total sentence for all Offences. The sentencings for both matters have been a long and difficult process and it has been some time to move this matter to a resolution. Mr. Nour-Eldin has contributed to that delay and difficulty to a degree and I do not intend by this sentence to represent that his actions are being rewarded in that regard.
- [122] I accept the submissions of the Provincial Crown that what has allowed this joint submission to be presented to the Court yesterday and today was Mr. Nour-Eldin's agreement, only on the eve of the hearing, to a sentence on the Human Trafficking Offence that would avoid a contested hearing at which V.A. would be required to testify. This was also accompanied by both Crowns only then receiving information relevant to Mr. Nour-Eldin's remorse and prospects of rehabilitation. The Federal Crown has participated by agreeing to a settlement of the PPT Offences within that context but also, having regard to the overall circumstances, including as they relate to the PPT Offences and Mr. Nour-Eldin's moral culpability for the drug trafficking.

[123] Therefore, this joint sentence represents an overall resolution of both matters. As counsel state, it brings finality to the matter, particularly for V.A. as the victim and Mr. Nour-Eldin, to the extent that he will now embark upon a penitentiary term, where he may advance his rehabilitation efforts.

[124] Despite my concerns about the sentence on Count 1 of the PPT Offences, even having considered Ellis and Sunner, I am unable, but only just, to conclude that the high bar has been reached, in that there is any reason to reject the joint submission on the basis that it would bring the administration of justice into disrepute.

[125] In all of the circumstances, all four counsel have worked hard to arrive at a resolution that makes sense so that the Court can impose a fit sentence on Mr. Nour-Eldin.

DECISION

[126] Mr. Nour-Eldin, would you please stand.

1) Ancillary Orders

[127] With respect to the PPT Offences, as required and as agreed, the ancillary orders will be as follows:

- a) Firearms/Weapons Prohibition: A mandatory 10-year weapons prohibition, pursuant to s. 109 of the Criminal Code:
- b) DNA Order: As these are "secondary designated offences", this order is granted pursuant to ss. 487.04(b)(i) and 487.051 of the Criminal Code; and
- c) Forfeiture Order: A forfeiture order is granted with respect to certain cash, the cellular phones and drug paraphernalia and items, pursuant to s. 16 of the CDSA.

[128] With respect to the Human Trafficking Offence, as required, the ancillary orders will be as follows:

- a) Firearms/Weapons Prohibition: Pursuant to s. 109(2) of the Criminal Code, you are prohibited from possessing:
 - i. any firearm, other than a prohibited firearm or restricted firearm, and any crossbow, restricted weapon, ammunition and explosive substance for a period of 10 years following your release, and
 - ii. any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.
- b) DNA order: As this is a "primary designated offence" (s. 484.04(a)), this order is granted pursuant to ss. 487.051(1) of the Criminal Code;

- c) SOIRA order: Pursuant to Bill S-12, An Act to amend the Criminal Code, the Sex Offender Information Registration Act and the International Transfer of Offenders Act, which received Royal Assent on October 26, 2023, the granting of this order is mandatory. This offence is a "primary offence" pursuant to the Criminal Code, s. 490.011(1)(a)(xxi). Further, under s. 490.012 of the Criminal Code, all factors requiring such an order are met, being that this offence was prosecuted by indictment; the sentence is for a term of two years or more; and the victim is under 18 years of age. Finally, since the maximum term of imprisonment is 14 years, the mandatory duration of the SOIRA order is 20 years: Criminal Code, s. 490.013(2)(b); and
- d) Non-Communication Order: There will be a non-communication order with respect to V.A., Elkan Vyizigiro and A.A.S., pursuant to s. 743.21(1) of the Criminal Code.

[129] Neither Crown sought a Victim Fine Surcharge. I agree that no such order is appropriate given Mr. Nour-Eldin's financial circumstances and that he will be serving a federal penitentiary jail term for some time into the future.

2) Sentences

[130] Mr. Nour-Eldin, your criminal actions have had many effects, all negative. No doubt your family had hopes for your future in bringing you to Canada. You have squandered that opportunity, at least for the time being. Instead, you embarked on a life of crime that not only affected your family, but had serious and negative effects upon others. You trafficked street drugs, including a deadly drug, fentanyl, for financial gain. You victimized and exploited V.A., a child.

[131] In my view, it is an open question whether there is any prospect of your rehabilitation once you finish the penitentiary sentence that I am imposing, and perhaps other sentences that may be imposed upon you in the future.

[132] In the meantime, I must impose a sentence that properly denounces your behavior and deters you and others.

[133] On the Human Trafficking Offence, I impose a term of imprisonment, before any credit, of six years. The actual pre-sentence time spent in custody is 1,096 days. I am granting you credit at a rate of 1.5:1 and therefore, the total credit I am granting you is 1,644 days. The net sentence imposed in respect of Count 1 of the Indictment is therefore one year and 181 days, or 546 days.

[134] On Count 1 of the PPT Offences, I impose a term of imprisonment, before any credit, of 16 months or 480 days. The actual pre-sentence time spent in custody is 23 days. I am granting you credit at a rate of 1.5:1 and therefore, the total credit I am granting you is 35 days. The net sentence imposed in respect of Count 1 is 14 months and 25 days or 445 days. In respect of Counts 2 and 3 of the Indictment, I impose sentences of six months each. All of the sentences on the PPT Offences are to be served concurrently.

[135] The sentences for the Human Trafficking Offence and the PPT Offences are to be served consecutively.

[136] The Crown has directed a stay of Count 2 of the Indictment relating to the Human Trafficking charges.

"Fitzpatrick J."

SCHEDULE

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