

CANADA / JUDGMENT

R. v. Pelgrom

2022 BCSC 1058

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Supreme Court of British Columbia

DECIDED

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2022 BCSC 1058 R. v. Pelgrom

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Pelgrom,

2022 BCSC 1058

Date: 20220606

Docket: 177308-2

Registry: Victoria

Regina

v.

Roy Joseph Pelgrom

Before: The Honourable Mr. Justice Steeves

Oral Reasons for Sentence

Counsel for the Crown

appearing by videoconference:

M. Adams and A. Van Tine

Counsel for the Defence:

D. McKay

Place and Date of Trial/Hearing:

Victoria, B.C.

June 2 - 3, 2022

Place and Date of Judgment:

Victoria, B.C.

June 6, 2022

[1] THE COURT: This is my decision on the sentencing of the defendant, Mr. Roy Joseph Pelgrom. Mr. Pelgrom has pled guilty to the following counts, and I set out Counts 2, 3, 5, and 10 from the Information.

Count 2:

Roy Joseph Pelgrom, on or about the 4th day of July, 2019, at or near the City of Victoria, in the Province of British Columbia, did unlawfully possess a controlled substance, to wit: (N-(1-phenethyl-4-piperidyl) propionanilide), for the purpose of trafficking, contrary to Section 5(2) of the Controlled Drugs and Substances Act.

Count 3:

Roy Joseph Pelgrom, on or about the 4th day of July, 2019, at or near the City of Victoria, in the Province of British Columbia, did unlawfully possess a controlled substance, to wit: Methamphetamine (N,a-dimethylbenzeneethan-amine), for the purpose of trafficking, contrary to Section 5(2) of the Controlled Drugs and Substances Act.

Count 5:

Ray Joseph Pelgrom, on or about the 4th day of July, 2019, at or near the City of Victoria, in the Province of British Columbia, did unlawfully possess a controlled substance, to wit: Heroin (diacetylmorphine) and Fentanyl (N-(1-phenethyl-4-piperidyl) propionanilide), for the purpose of trafficking, contrary to Section 5(2) of the Controlled Drugs and Substances Act.

Count 10:

Roy Joseph Pelgrom, on or about the 4th day of July, 2019, at or near Victoria, in the Province of British Columbia, did possess an unloaded prohibited or restricted firearm, to wit: a Walther PPQ 9mm handgun, with readily accessible ammunition capable of being discharged in the firearm, without being the holder of an authorization or a licence under which he may possess the prohibited or restricted firearm in that place and a registration certificate for the firearm, contrary to Section 95(1) of the Criminal Code.

[2] This is the Information dated November 15, 2019: Counts 1, 4, 6, 7, 8, and 9 will be addressed by the Crown after I complete this sentencing decision.

[3] A trial on all counts commenced in November 2020. After my rulings on some voir dires, Mr. Pelgrom entered a guilty plea on September 7, 2021. He has been in custody since July 2019.

- [4] With respect to the circumstances of the offence, on July 4, 2019, following police surveillance, Mr. Pelgrom was arrested for the subject offences while walking on a public street towards his car. Arrest was done pursuant to s. 79 of the Motor Vehicle Act. Following a voir dire, I concluded on December 8, 2020, that the arrest was contrary to s. 79 and therefore the arrest was contrary to s. 9 of the Charter. However in a subsequent decision on December 11, 2020, under s. 24(2) of the Charter I concluded that the evidence seized in the arrest should not be excluded.
- [5] The evidence that was seized that is relevant to the counts in this sentencing decision is as follows: 82 grams of fentanyl; 69 grams of methamphetamine, 53 grams of heroin-fentanyl; an unloaded Walther 9mm handgun that was eventually determined to be stolen; two box magazines of 9mm ammunition; 31 loose rounds of 9mm ammunition; Canadian cash in the amount of \$24,562; United States cash in the amount of \$477.
- [6] The circumstances of Mr. Pelgrom are that he was 37 years old at the time of a Gladue report in November 2021. He identifies himself as a Métis with roots in Nova Scotia. The Gladue report describes what can only be called a very troubled background for Mr. Pelgrom. He never knew his father. His mother drank alcohol to excess and used drugs. He and his brother were neglected throughout their childhood. Mr. Pelgrom was sexually abused by a boyfriend of his mother. The mother and her children moved to various places on the prairies. In Alberta, the children were put in foster care and continued to be in and out of foster care until they left home. The family moved to Kamloops, British Columbia, and Mr. Pelgrom had problems in school. He learned he could get money by committing crimes and he was using drugs.
- [7] Mr. Pelgrom had his own child when he was 16 years old, and in 2007 a second one with a different mother. He was in jail for both births. He moved to Victoria. His mother and brother were drug addicts and they died in Kamloops.
- [8] Mr. Pelgrom has been in custody since July 2019. During that time he has taken courses and obtained certificates in subjects such as respectful relationships, money management, time management, kitchen safety training, WHMIS, and emergency first aid.
- [9] There are also letters of support from family and friends, including a letter that was submitted today. His brother says Mr. Pelgrom is remorseful and deserves another chance. A co-worker says he can offer Mr. Pelgrom work, although what that work would be is not stated. Mr. Pelgrom's partner has also written a letter of support. She notes his issue of substance abuse and mental health issues. She talks to him almost every night and he has a good support system in place if he is released. Another letter is from a friend of Mr. Pelgrom's, a Ms. Carol Poole. As Ms. Poole states, Mr. Pelgrom has had some hard times with the law and she continues to support him.

- [10] Finally, as part of this sentencing proceeding Mr. Pelgrom presented an intelligent and well thought out letter to the court. Among other things, he explained how he has worked on trying to understand how his childhood has affected his adult life. He said he is not trying to make excuses for himself but "I now know I was abusing drugs as a coping mechanism to numb my pain and feelings, to fill my lack of meaningful connection."
- [11] Mr. Pelgrom has a significant criminal record from 2003 to 2017. It includes in excess of 80 convictions and sentences. The last before the subject count was in July 2019, and for dangerous operation of a conveyance. The last weapons conviction was in January 2016 when he was given a 30-day jail term for possessing a weapon for a dangerous purpose contrary to s. 88.1 of the Criminal Code. There are other weapons convictions in 2003, 2006, 2007, 2009, and 2013. There are 21 drug convictions, primarily in the later years, including five possession for the purpose of trafficking. The last possession for the purpose of trafficking conviction was in September 2017 when Mr. Pelgrom received three years imprisonment involving two -- for trafficking in 2.89 grams of fentanyl. Finally, there are a number of breaches and seven assault charges, including assaulting a police officer in 2008.
- [12] The Crown seeks a custodial sentence of eight years. This is calculated by using concurrent sentences for the three drug counts of five years, and then adding four years for the weapons offence. That total is then reduced to eight years using the totality principle. Forfeiture is also sought including the cash seized. There have been previous orders from previous convictions with respect to DNA samples.
- [13] For his part, Mr. Pelgrom seeks a sentence of three to four years for the three drug offences and then 30 months for the s. 95 weapons offence. All of these would be concurrent. Mr. Pelgrom relies on the Gladue report for his sentence and for his submission that there should be concurrent sentences.
- [14] Looking at mitigating and aggravating circumstances, the mitigating circumstances here are that Mr. Pelgrom has pled guilty. That is somewhat modified by the fact that he entered his plea after voir dires were completed. Those voir dires, of course, he was entitled to pursue under the Constitution. Too, as set out in the Gladue report, Mr. Pelgrom has had a very difficult childhood. He acknowledges this in the letter he presented to the court.
- [15] The aggravating factors include the very significant criminal record Mr. Pelgrom has. He has pled guilty to trafficking in fentanyl. That is a very serious drug causing five to seven people to die each day in British Columbia from overdoses. I will discuss below that I conclude that he was a mid-level dealer. A third aggravating factor is the firearm he was found with. At the time there were multiple firearm prohibitions against Mr. Pelgrom, the weapon was stolen, and he was carrying it around in public.
- [16] There is agreement that the primary sentencing principles are deterrence and denunciation. Mr. Pelgrom also introduces the issue of rehabilitation as reflected in his recent training while he has been in custody. In addition, a sentence must be proportionate to the gravity of the offence and the degree of the responsibility of the offender. Aggravating

and mitigating factors are to be considered, and an offender should not be deprived of liberty if less restrictive sentences are appropriate; that is Criminal Code s. 718.1, 718.2, and 718.2(d). As well, where consecutive sentences are imposed, the combined sentence should not be unduly long or unnecessarily combined.

- [17] The cases discuss the range of sentences for drug convictions and for weapons convictions. For possession for the purposes of trafficking in fentanyl, the leading case is *R. v. Smith*, 2017 BCCA 112. It rightly described fentanyl as a scourge on society causing high numbers of daily deaths from overdose. It set a range of 18 to 36 months for possession for the purposes of trafficking in fentanyl, although either end of that range is not a rigid boundary. However, the range in *Smith* was expressly for street dealers; that is at para. 46. Here, the evidence supports a conclusion that Mr. Pelgrom is more than a street-level dealer. He had in his possession significant amounts of fentanyl, 82 grams, broken up into 15 gram packages. These would not be single-use amounts and they were sold to be broken down further by the next level of dealer.
- [18] In addition, the amount of cash, \$24,000, demonstrates that Mr. Pelgrom was involved in something more than street-level dealing. He says that the cash on his person was obtained by winnings from gambling. He has provided five photographs of a slot machine or slot machines. It is submitted that they each show winnings that when added up equal \$20,355. There are problems with this information. There are no dates given for the winnings. The best counsel can do is say that they were obtained about two months before July 2019. They were apparently won in Nanaimo. In addition, the photos are busy with various numbers, symbols, and boxes; four have a sub-screen that says, "Jackpot, call attendant, hand pay" various amounts. The fifth screen has no such screen but may say the winnings "paid" are \$500.
- [19] As above, Mr. Pelgrom was found to have 11,297 Canadian dollars on his person, some in large amounts of cash. There was also \$13,255 in a backpack along with the drugs. Obviously not all of the money could be from gambling. It is not explained how or why the gambling winnings were divided, nor is it explained why Mr. Pelgrom was walking around with that amount of money on a public road. Finally, Mr. Pelgrom's explanation for the cash does not explain the 477 American dollars.
- [20] I find that all of the money in the backpack and on Mr. Pelgrom's person was from his trafficking in drugs. His explanation that it was winnings from gambling is simply not believable.
- [21] I conclude that Mr. Pelgrom was a mid-level drug dealer. His sentence must reflect that fact, and the range in *Smith* is not applicable; *R. v. Emery*, 2019 BCSC 1789, at para. 45. Previous cases have discussed a range of 28 months to seven years for a mid-level operator; *R. v. Toth*, 2017 BCSC 501, at para. 84. Another case describes a range of three to 10 years for serious cases; *R. v. Campbell*, 2021 BCSC 853, at para. 83.

- [22] With respect to firearm offences, the cases discuss a "spectrum" of offences but do not set out a range of specific years. At one end is the offender who carries a loaded and prohibited firearm in public as a tool in a criminal operation. By any standard, "This person is engaged in truly criminal conduct and poses a real and immediate danger to the public." On the other hand, there is the otherwise law-abiding gun owner with a licenced firearm who possesses it outside the terms of the licence. This situation can be described as a "more in the nature of a regulatory offence"; *R. v. Holt*, 2015 BCCA 302, at para. 12.
- [23] Mr. Pelgrom asked me to give less weight to the unloaded firearm he was carrying because it was not in the open. It was in his backpack with a lock on the pack. It cannot be said that a lock on the backpack was a substantial obstruction to opening the backpack and the police had little difficulty doing so. I note the gun was with a significant amount of ammunition and the backpack also contained the drugs with the ammunition. I accept the gun was not loaded and, for example, stuck in Mr. Pelgrom's belt for immediate use. However, there can be no dispute that the gun was part of the illegal trafficking operation he was engaged in. He had no reason to carry the weapon except to defend himself while he was involved in that operation. In addition, Mr. Pelgrom had multiple weapons prohibitions at the time. The firearm he had was stolen, and he was carrying it in public. Other cases refer to firearms found in bedrooms in private homes; not the situation here.
- [24] As above, Mr. Pelgrom's record is lengthy. In my view it is significant that in September 2017 he received three years jail time for trafficking in 2.89 grams of fentanyl. I am urged to give this little weight because of recent changes to drug prosecutions where possession of 2.5 grams is not acted on. That may be so, but at the time, in 2017, it was illegal, and I note it was a conviction for trafficking, not just possession. I do not accept that I can ignore the 2017 sentence for trafficking in fentanyl.
- [25] The Crown relies on a number of cases for its submission on sentence. These include *R. v. Lloyd*, 2019 BCCA 128, a 29-year-old accused convicted of possession for the purposes of trafficking of heroin/fentanyl. Three were no guns, but a fight with the police using a knife. The sentence was a global sentence of six years. The amounts of drugs were roughly comparable to Mr. Pelgrom's case. The sentencing judge noted the "assiduous" steps the defendant had taken towards rehabilitation.
- [26] A second decision relied on by the Crown is *R. v. Mann*, 2018 BCCA 265. There two brothers were convicted of possession for the purpose of trafficking of fentanyl and one for the possession of carfentanil. Carfentanil, of course, is even more dangerous than fentanyl. A carfentanil/cafeine mix was 0.7 grams; a fentanyl/cafeine mix was 0.7 grams. There were 21.34 grams of cocaine. There were drug paraphernalia such as baggies and scales. There was \$5,200 in cash, and a .38 calibre revolver which was loaded with six rounds was found in a bedroom. Both defendants received four years for the trafficking in fentanyl, one brother received an additional year for the carfentanil, and there was a sentence of three years for the firearm offence. There was detailed evidence of packaging and, as I have noted, the gun was not in public.

- [27] Mr. Pelgrom relies on other cases primarily about firearms convictions. In *R. v. Brereton*, 2015 BCSC 1553, the defendant was given 26 months jail time. He was 33 years old. There was not a significant criminal record. He had a loaded .357 magnum and different amounts of drugs than in the subject case.
- [28] In *R. v. Desbiens*, 2019 BCSC 381, the defendant received a sentence of five years for conviction on a s. 95 weapons offence as well as drugs. The weapon was a .380 handgun in the door of a car and it was loaded. The drugs were possession of fentanyl of high potency. The sentence was five years total. The gun in that case was obviously more available and more dangerous than the gun found in Mr. Pelgrom's backpack. The record of Mr. Desbiens was also less than Mr. Pelgrom.
- [29] A third case relied on by Mr. Pelgrom is *R. v. Leblanc*, 2019 BCSC 536. There the defendant received a sentence of 36 months for a s. 95 weapons conviction and six months sentence for a second weapons conviction under s. 117.01. They were to be served concurrently. The criminal record of the defendant was less than Mr. Pelgrom, and the gun was in a hotel room, not in public.
- [30] Looking at all of the cases, it is trite to point out that no two cases are the same, nonetheless some general points can be taken. There is not a large difference between the Crown and the defence as to the sentence for a weapons offence under s. 95. The Crown seeks 36 months, and the defence says it should be 30 months. Similarly Mr. Pelgrom relies on the Crown's authorities with respect to the range of sentences for the drug convictions. The defence questions whether Mr. Pelgrom was a mid-level dealer, and also urges me to give little weight to the 2017 conviction for trafficking in fentanyl for which he received three years.
- [31] For these reasons it is submitted that a fit sentence for Count 1 would be three to four years; Count 3, 12 to 18 months, and for Count 5, two to three years. However, I found above that Mr. Pelgrom was a mid-level dealer. As for the 2017 sentence of three years, I take the point that today that might not be as significant; however, I am not able to give it no weight.
- [32] In my view, the decision in *Lloyd* where the defendant received six years has some similarities with this case. The amounts of drugs are broadly similar to Mr. Pelgrom's case. It is true that Mr. Lloyd used a knife in a fight with the police and there was no gun or ammunition as in Mr. Pelgrom's case, and Mr. Lloyd apparently made more efforts towards rehabilitation.
- [33] As above, the defendant's cases are only about weapons convictions. In *Brereton*, where the sentence was 26 months, the defendant's criminal record was less serious than Mr. Pelgrom. In *Desbiens*, where the sentence was five years, there was a more dangerous situation with a gun in the door, but there were also fewer drugs.

- [34] There is something of an issue here about the application of consecutive versus concurrent sentences. Both the Crown and Mr. Pelgrom used concurrent sentences to describe the drug offences under Counts 2, 3 and 5. However, the Crown says the sentence for the s. 95 weapons conviction, Count 10, should be served consecutively, while the defendant says it should be served concurrently.
- [35] I adopt the description of consecutive and concurrent sentences from the previous judgment in Leblanc. The test is "whether the acts constituting the offence were part of a linked series of acts within a single endeavour." In Leblanc, convictions on what were essentially two weapons offences under s. 95(1) and s. 117.01 were to be served concurrently. In addition, the principles of totality and proportionality are to be considered; that is R. v. Lee, 2018 BCCA 428, at para. 11.
- [36] In the case of Mr. Pelgrom, the gun and ammunition were in the backpack with the drugs. Here I adopt the reasoning in Lee that a firearm offence is directed at a more serious issue than drug trafficking and it addresses a different societal interest; at para. 11. In Lee, the Court of Appeal agreed with the trial judge that the firearm sentence and the drug sentences should be served consecutively. I adopt that approach here and Mr. Pelgrom will serve his gun convictions consecutively with his drug sentences.
- [37] Mr. Pelgrom, would you please stand up.
- [38] Sir, I have considered the letters in your support, your letter to the court, your background, as well as the courses you have completed while in custody. Nonetheless trafficking in fentanyl is a very serious matter and that drug is responsible for the deaths of people. Your possession of a handgun with ammunition is also a serious matter with a real potential to cause harm to the public. Your criminal record does not assist you here.
- [39] In these circumstances, I sentence you to a global sentence of seven years. This is assessed as follows: Count 2, four years; Count 3, three years; Count 5, four years; the sentence on those three counts will be concurrent. Count 10, four years; that is a total of eight years. The sentence on Count 10 will be consecutive with the drug offences. I consider that to be a fit sentence in the circumstances here, except I have considered the totality principle and I reduce your sentence to seven years.
- [40] Have a seat, sir.
- [41] Mr. Pelgrom has been in custody since July 2019 for 1,551 days. That is calculated using the 1.5 multiplier. That time served will be allocated as follows: Count 2, 475 days; Count 3, 300 days; Count 5, 450 days; Count 10, 326 days; again totalling 1,551.
- [42] There remains the issue of the Crown's claim for forfeiture. Mr. Pelgrom opposes this, at least in part, because he says his -- the money found on him was from his gambling. As above, I disagree with that and I grant the Crown's order for forfeiture in the full amount of the cash on his person plus the weapon and other matters.

[43] Does the Crown want to say something about the other counts?

[44] CNSL A. VAN TINE: Yes. My apologies, Justice. I actually cannot quite see you. I can just see a little bit of your left shoulder, so my apologies. The Crown will direct a stay of proceedings on all of the outstanding counts; that would be Counts 1, 4, 6, 7, 8 and 9.

[45] THE COURT: All right.

[46] CNSL D. MCKAY: Thank you. And if I may, Mr. Justice, I would ask you to consider waiving the victim fine surcharge given his time in custody that he will be spending.

[47] THE COURT: That is waived.

[48] CNSL D. MCKAY: Thank you.

[49] THE COURT: All right.

"J. J. Steeves, J."

The Honourable Mr. Justice Steeves

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