

CANADA / JUDGMENT

R. v. Saed

2025 BCSC 485

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 485 R. v. Saed

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Saed,

2025 BCSC 485

Date: 20250218

Docket: 34399-1

Registry: Vancouver

Rex

v.

Howjeen Saed, Hemen Hewa Saed, Diego Maradona Saed,

Vinod Kanna Aruldevarajan and Roger Alfredo Bardales Medina

Before: The Honourable Mr. Justice Crossin

Oral Reasons for Sentence

(Re: Hemen Saed and Diego Saed)

Counsel for the Crown:

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Counsel for the Offender, Hemen Saed:

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K. Neurauter

Place and Dates of Hearing:

Vancouver, B.C.

January 21-24, 2025

February 6, 2025

Place and Date of Judgment:

Vancouver, B.C.

February 18, 2025

- [1] THE COURT: The offenders, Mr. Hemen Saed and Mr. Diego Saed are before the court for sentencing having pled guilty to offences relating to their drug trafficking operation in the Lower Mainland of British Columbia.
- [2] Both accused have pled guilty to Counts 3 and 4 contained in the indictment before the court. Count 3 alleges a conspiracy to traffic in a variety of drugs, one with the other; and others in the organization, contrary to s. 465(1) of the Criminal Code, R.S.C. 1985, c. C-46. Count 4 alleges the two offenders trafficked in those same drugs contrary to s. 5(1) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19.
- [3] The offences took place between December 2020 and May 2021. The indictment was preferred in November 2022. Since that time Mr. Hemen Saed has been out of custody participating in a number of pretrial applications throughout 2024. The plea of Mr. Saed is the culmination of the proceedings against him.
- [4] Mr. Diego Saed is the cousin of Mr. Hemen Saed. Mr. Diego Saed, prior to the preferring the indictment, moved to the United States where he has been living and working over the course of these many months. He was arrested in California pursuant to a warrant issued in September 2024. He waived extradition and now appears as the first and last step in the proceeding from his perspective.
- [5] Two co-accused, Mr. Howjeen Saed (the brother of Mr. Hemen Saed), and Mr. Bardales Medina, also out of custody since the laying of charges, participated as well in the pretrial applications and both pled guilty in November 2024 and were sentenced pursuant to a joint submission on November 29, 2024.

- [6] The sentencing now before the court is not the product of a joint submission.
- [7] The general circumstances of the offences are relatively straightforward; the investigation however was complex and challenging.
- [8] The accused were associates in a drug trafficking organization comprised of a number of individuals. Mr. Howjeen Saed was the leader of the organization and provided direction in all manner of tasks relating to the conspiracy in drug trafficking. Mr. Hemen Saed was also a senior member of the organization in the sense that he was the only other member with influence and authority within the organization. The degree of influence and authority is a matter of some debate although it is clear that only the Saed brothers were persons of some authority. Mr. Diego Saed was, as characterized by the Crown, a trusted employee, taking directions from above relating to tasks required to produce, distribute, and maintain the wholesale operation.
- [9] The investigation began in and around 2020 as a result of the police coming to the view that one Mr. Mohammed was in fact heading an organization operating a drug trafficking regime in and around the City of Vancouver. The inventory of drugs being sold by the organization included heroin, fentanyl, methamphetamine and carfentanil. Mr. Mohammed was murdered part way through the investigation and it is in approximately January 2021 that Mr. Howjeen Saed is said to have stepped into the shoes of Mr. Mohammed.
- [10] The observations of the police concerning the activity of the group began around the summer of 2020 and ended with arrests in May 2021. The observations and nature of the investigation over those months included surveillance of the participants attending a variety of high-rise apartment buildings throughout the City. They were seen entering and exiting these various places transporting drugs and/or money, and various supplies. It was the units within these buildings that the group leased and used as stash sites in order to facilitate the drug trafficking activities.
- [11] In the course of the investigation the police obtained a significant number of judicial authorizations allowing the police to enter various buildings, make observations at various locations in those buildings, observe CCTV footage, secure fobs, and ultimately to enter particular units in certain buildings for the purpose of executing warrants. In particular the police obtained approximately 150 judicial authorizations over the course of the six-month investigation.
- [12] The evidence gathered over the initial months of the investigation ultimately provided the foundation for a successful Part VI authorization allowing the police to install audio and video probes in two of the stash sites. The authorization was granted on May 5, 2021. The evidence gathered pursuant to the Part VI authorization was highly incriminating. It captured audio of the participants mixing and weighing drugs, counting money, arranging for the delivery of drugs, and generally discussing the activities of the organization.

- [13] There is no doubt the evidence before me demonstrates both Mr. Hemen Saed and Mr. Diego Saed pursued the business model of the drug trafficking organization with enthusiasm, high energy, recklessness, and with a single-minded goal of profit.
- [14] The group operated within a certain degree of sophistication. It was a wholesale operation. The leadership had access to a relatively pure, high-volume supply chain that in turn was diluted to distribute. The group generally dealt in kilograms and ultimately generally sold in ounces. The operation generated multi-ounce sales on a daily basis. For instance, the evidence reveals approximately \$50,000 worth of fentanyl was distributed daily. The stash sites were used for the assembly of the drugs, cooking and manufacturing, packaging and storing cash generated from sales. The sites were located in luxury residential condominium buildings. They were used as rotating stash sites. Mr. Howjeen Saed explaining at one point that the purpose of moving stash sites on a regular basis after only relatively short stays was simply to hedge their bets against detection and allow the business to carry on in the event one of the sites was taken out of commission by law enforcement.
- [15] The efforts of the group included activity intended to disrupt and frustrate the prospect of discovery, including taking circuitous routes when driving to and from stash sites and when delivering drugs to purchasers. Many of the members of the conspiracy used fictitious names and the leadership used the name of nominees to lease the units in the buildings. In terms of the potential profitability of the operation, I made this observation in prior proceedings:
- [23] The volume and value of the drug products in the possession of the offenders over the course of the scheme is not possible to know, but the results of searches on particular days do provide a window into the size and sophistication of the scheme.
- [24] On December 21, 2020, the police executed a search warrant at the Homer Street stash site. The only evidence before the court indicates there they seized kilo-level quantities of fentanyl, methamphetamine and cocaine with a potential street value of \$1.3 million. In addition, they seized approximately \$65,000 in cash.
- [25] On May 31, 2021, the police conducted searches on two sites, one located on Seymour Street, and one on Alberni Street, known as the Shangri-La Residences. There again, the only evidence before the court is that kilogram quantities were seized with an estimated street value of \$1.2 million and again a significant amount of cash was seized.

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The Circumstances of the Offenders

Mr. Hemen Saed

- [16] Mr. Hemen Saed was 28 years of age at the time of these offences. The life of Mr. Hemen Saed has somewhat mirrored the unfortunate life of his brother Howjeen. Mr. Hemen Saed is the son of first-generation Iraqi immigrants. He experienced life in a racialized culture and he suffered within that culture. He was bullied and emotionally abused. He, like his brother, found solace in sports but there again would often be the target of racial slurs.
- [17] His homelife appears not to have provided any comfort in this regard. Members of his extended family were involved in criminal activity. He was exposed to this in his childhood. His parents had an unhappy union. His mother abandoned the family. His father took work overseas. He was, at 13 years of age, left in the care of others; his grandmother and other family members.
- [18] Notwithstanding these hardships, he completed high school in Vancouver. His life after high school however proved difficult. He kicked around on the employment front without much success. He ultimately found his calling, at least temporarily, in drug trafficking.

Mr. Diego Saed

- [19] Mr. Diego Saed is currently 26 years of age. He was 23 at the time of these offences; the youngest of the group.
- [20] Unfortunately, he shares much common ground with his cousins, and the other offenders, regarding his childhood and upbringing. He was raised; such as any nurturing existed; by a single mother who had a continuous relationship with alcohol and cocaine. In his early childhood he had relationships with his cousins, Howjeen and Hemen Saed. These ties were severed when the mother of Diego moved herself, with him, to Texas where his mother had taken up with someone she had engaged with online. This man turned out to be abusive towards Diego Saed.
- [21] Diego Saed was subsequently apprehended; placed in foster care, and ultimately adopted in the United States by a great aunt. He developed some roots in this regard in California during this time.
- [22] He found his way back to Canada as a teenager, living with his grandparents. He went to high school but did not graduate. He ultimately returned to California to work. He then came back to Canada at age 21. This proved to be a fatal decision. He ultimately joined his cousins participating in these criminal activities.

Analysis

- [23] The principles of sentencing make clear that the fundamental purpose of sentencing is to protect society and contribute to respect for the law and maintenance of a just, peaceful and safe society. Other objectives include denouncing unlawful conduct and its resultant harm, deterrence, both general and specific, separating offenders from society where necessary to protect the public, assisting in rehabilitation, providing reparations for harms done, and promoting responsibility in offenders in acknowledging the impact of their conduct.
- [24] Section 718.1 and 718.2 of the Criminal Code delineate a number of sentencing principles that guide judges in crafting a just sanction that will be a meaningful effect to one or more of the codified sentencing objectives. The court, as well, must avert to the sentencing principles in relation to drug offences that are set out in s. 10 of the Controlled Drugs and Substances Act; s. 10(1) that refers to the importance of encouraging rehabilitation and treatment in appropriate circumstances. Achieving a proportionate sentence is a case specific determination requiring a multi-factorial analysis tailored to the individual circumstances of the offence and the offender. All relevant factors must be considered.

Range of Sentence

- [25] R. v. Parranto, 2021 SCC 46 has emerged as the leading jurisprudence concerning sentencing in these circumstances; including, most pointedly, relating to the wholesale drug trafficking of fentanyl and carfentanil.
- [26] The Supreme Court of Canada has made it clear that the guiding principles must be deterrence and denunciation. The court, recognizing the gravity of the offence, and the destruction left in the wake of its plague on society, has provided a range of sentence of 8 to 15 years imprisonment.
- [27] That said, as the court reaffirms, a range of sentence is a guide to trial courts. While it is a principled guide from our highest court, there remains an overarching consideration; namely that sentencing is a highly individualized exercise unbound by the four corners of a range.
- [28] In this context, the Crown in their carefully crafted submission, seeks a sentence of 12 years incarceration for Hemen Saed; and eight years incarceration for Diego Saed.
- [29] Counsel on behalf of Hemen Saed and Mr. Diego Saed, in their very able submissions, seek sentences of seven years and four years, respectively. Counsel generally submit each of the accused are youthful first offenders that are presumed to have, and in fact have demonstrated, good prospects for rehabilitation. Counsel say in addition, each had a role in the organization that justifies a sentence significantly lower than those sentences urged by the Crown.

- [30] The parties have presented an array of authorities in aid of fashioning an appropriate sentence in the circumstances.
- [31] Parranto considered the sentences imposed upon two offenders; Mr. Parranto and Mr. Felix.
- [32] Mr. Felix entered guilty pleas to two counts of trafficking in fentanyl and two counts of trafficking in cocaine. Mr. Felix was the directing mind of a drug trafficking operation in Fort McMurray, Alberta that included selling drugs destined for Nunavut. Mr. Felix at the time of the offence was a 34-year-old college-educated individual with no prior criminal record and a successful owner/operator of a non-drug related business. He had no physical or mental impairments nor issues of addiction. He provided a number of letters of reference speaking to his good character.
- [33] The sentencing judge imposed a seven-year global sentence including seven years on both counts of trafficking fentanyl to be served concurrently. The Court of Appeal found the sentence demonstrably unfit and indicated that it would have imposed a 13-year sentence on each of the two counts of trafficking in fentanyl to run concurrently. In recognition however of the fact that the Crown sought a 10-year sentence at the sentencing hearing, and that the parties' sentencing positions were taken when the jurisprudence was still evolving, the Court of Appeal imposed a 10-year sentence.
- [34] Mr. Parranto's circumstances were significantly different. Mr. Parranto entered guilty pleas on two counts of possession of fentanyl for the purpose of trafficking; two counts of illegal possession of a loaded handgun for use in the trafficking operation; one count of possession of a handgun, knowing it was prohibited by court order, and breach of recognizance. The charges concerning Mr. Parranto arose from events that occurred on two separate dates: March 24, 2016 and October 22, 2016. Mr. Parranto was found in possession of significant amounts of fentanyl in addition to large quantities of other drugs, guns and body armour. He had a lengthy and related criminal record, and following his release from detention in July 2016, he was able to, and did in fact, re-establish his presence as a wholesale trafficker in fentanyl in short order. At the time of his arrest, Mr. Parranto was under a lifetime firearm prohibition and was bound by a recognizance order prohibiting him from possessing controlled substances and firearms.
- [35] Justices Brown and Martin on behalf of Chief Justice Wagner and Justice Kasirer concluded the appropriate range of sentence that should guide sentencing courts concerning wholesale trafficking in fentanyl is 8 to 15 years imprisonment. In coming to this conclusion the court cited an array of cases throughout Canada falling within this range; some dealing with persons that were the leaders of the organizations; and some dealing with persons somewhat lower in the hierarchy.
- [36] The court, in addition to recognizing the general blight created by fentanyl trafficking, made these remarks that have a ring of recognition, certainly in this province:

- [70] While not raised by the parties or the court below, this appeal provides an opportunity to emphasize that, when assessing the gravity of the offence, it is open to both the sentencing judge and the Court of Appeal to take into account the offender's willingness to exploit at-risk populations and communities. In this regard, choices which demonstrate a reckless disregard for human life increase not only the gravity of the offence but the moral culpability of the offender and may amount to an aggravating factor in sentencing.
- [37] Justice Moldaver in separate reasons, often quoted, made these remarks:
- [101] Ultimately, largescale trafficking in fentanyl is a crime that preys disproportionately on the misery of others -- the marginalized and those whose lives are marked by hopelessness and despair. It is a crime motivated by greed and by a callous disregard for the untold grief and suffering it leaves in its wake. Above all, it is a crime that kills -- often and indiscriminately. It follows, in my view, that what matters most is that those individuals who choose to prey on the vulnerable and profit from the misery of the Canadian public for personal gain are sentenced in accordance with the severity of the harms they have caused. Fentanyl trafficking, and largescale trafficking in particular, are a source of unspeakable harm. Accordingly, while the range of sentences currently imposed for the directing minds of largescale fentanyl operations straddles the upper single digits and lower double digits, sentencing judges should feel justified, where circumstances warrant, in applying a higher range, consisting of mid-level double digit sentences and, in particularly aggravating circumstances, potential sentences of life imprisonment.
- [38] Justice Moldaver further stated that the particular focus of his guidance concerned sentences for the directing minds of largescale fentanyl trafficking operations.
- [39] These sentiments expressed by the Supreme Court of Canada were of course not unique observations; particularly in this Province. In *R. v. Smith*, 2017 BCCA 112 Newbury J.A. (in dissent but not on this point) observed:
- [44] . . . British Columbia has one of the worst, if not the worst, problems of Fentanyl abuse in Canada. This public safety emergency has prompted various media campaigns, public alerts and outreach efforts by police and social workers who are involved in seeking to contain this scourge -- yet Fentanyl abuse continues to claim lives every day in our communities. The danger posed by such a drug must surely inform the moral culpability of offenders who sell it on the street, and obviously increases the gravity of the offence beyond even the gravity of trafficking in drugs such as heroin and cocaine.
- [40] The court in *Parranto*, however, was careful to caution that the seriousness of the offence and the range are not to shackle the court:
- [41] The court restated these propositions:
1. Starting points and ranges are not and cannot be binding in theory or in practice (*R. v. Friesen*, 2020 SCC 9, at para. 36);

2. Ranges and starting points are "guidelines, not hard and fast rules", and a "departure from or failure to refer to a range of sentence or starting point" cannot be treated as an error in principle (Friesen, at para. 37);
 3. Sentencing judges have discretion to "individualize sentencing both in method and outcome", and "[d]ifferent methods may even be required to account properly for relevant systemic and background factors" (Friesen, at para. 38, citing Ipeelee, at para. 59);
- [42] In other words sentencing must always balance an array of factors in determining a fit and proper sentence. It is often a difficult and delicate exercise of discretion; but it remains a discretionary exercise.
- [43] Proportionality remains the organizing principle in attempting to determine a fit sentence. Individualization is at the heart of a proportionality assessment. It goes without saying, each offence is committed in unique circumstances, by uniquely situated offenders. Sentencing in wholesale drug operations is no different than sentencing related to any other offence. The sentence must reflect the gravity of the offence, the offender's degree of responsibility and moral turpitude, and the unique circumstances of each case. Parity is an expression of assistance in assessing proportionality. It was put this way in Friesen, with approval in Parranto:

Courts cannot arrive at a proportionate sentence based solely on first principles, but rather must "calibrate the demands of proportionality by reference to the sentences imposed in other cases".

[44] The court pointedly returned to this in Parranto at para. 36:

... Contrary to the Crown's submission, it is not an open question whether sentencing judges are free to reject the starting-point approach. Sentencing judges retain discretion to individualize their approach to sentencing "[f]or this offence, committed by this offender, harming this victim, in this community" ([citation omitted]). There is no longer space to interpret starting points (or ranges) as binding in any sense.

[45] In the case at bar the accused are first-time relatively youthful offenders. In this context, I adopt the observations of Justice DeWitt-Van Oosten as she then was in *R. v. Ferguson*, 2018 BCSC 1523. *Ferguson* involved the sentencing of a youthful offender for attempted murder:

[144] For first time offenders who are facing imprisonment, it is generally understood that the term of imprisonment "should be as short as possible and tailored to the individual circumstances of the [offender] rather than solely for the purpose of general deterrence".

[145] There is a presumption that a first time offender is capable of rehabilitation: [citation omitted]. In *R. v. Lacasse*, the Supreme Court described rehabilitation as "one of the fundamental moral values that distinguish Canadian society from the societies of many other nations . . . , and it helps the courts impose sentences that are just and appropriate".

- [46] Both parties addressed *R. v. Harmes*, 2022 BCSC 663, and *R. v. Cashman*, 2022 BCSC 1836, as instructive, although approached from two different perspectives. These two men were part of the same drug trafficking scheme and both were sentenced by Justice Devlin. Mr. Harmes received a global sentence of 14 years; 12 years for trafficking in a host of drugs, including fentanyl. Mr. Cashman received a sentence of six years incarceration. I find the circumstances of each somewhat removed from the circumstances of Mr. Hemen Saed in this case.
- [47] It is common ground the circumstances of Mr. Harmes and Mr. Cashman involved a large-scale wholesale drug operation. Mr. Harmes was the directing mind of the operation. The search of the residence discovered large quantities of drugs, firearms, one loaded with ammunition, other ammunition and body armour. Mr. Harmes had an extensive criminal record of drug and firearm offences. He was not, as Justice Devlin pointedly referenced, a youthful first offender; far from it. He was a 38-year-old seasoned criminal. Justice Devlin found the fact that a loaded handgun was found in close proximity to the drugs, at the ready to use to protect his assets, a particularly aggravating feature.
- [48] Mr. Cashman again was not a youthful first offender. He was 37 years of age with a prior conviction for unlawful possession of a firearm. He was viewed as a trusted member of the scheme directed by Mr. Harmes. Letters of reference describing his otherwise good character were filed. He was observed delivering drugs to multiple residences of behalf of Mr. Harmes. The Crown sought nine years incarceration. Justice Devlin imposed a sentence of six years incarceration.
- [49] The parties addressed the case of *R. v. Kang*, 2024 BCSC 656, placed before the court by Crown counsel. Kang is the product of a joint submission. Joint submissions can be a helpful guide but often do not contain the detailed reasoning of the trial judge, for understandable reasons. The task of the trial judge on a joint submission is to determine whether the sentence is within a range of sentence that reflects a fit sentence; or, put another way, whether there are circumstances that justify deviation from the proposed sentence. Some trial judges, for instance the trial judge in *Kang*, will comment that, but for the mitigating circumstances, and the fact it was a joint submission, there may well have been a lengthier sentence. It may be the court was sensitive to the fact that in *Kang* there stood a particular aggravating feature, that is, a plea, not only to conspiracy, but as well a plea to trafficking for the benefit of a criminal organization. This plea concedes Mr. Kang was also in a leadership role in a gang. The fact there was a finding or an admission this offence was committed for the benefit of a criminal organization is a specific aggravating feature pursuant to s. 718 of the Criminal Code.
- [50] While Mr. Kang is described as a leading member of the organization operating a sophisticated drug trafficking enterprise, there is little or no detail placed before the court, or at least referenced by the court, relating to the circumstances of the criminal organization, or in particular the drug trafficking operation, nor any particular information relating to Mr. Kang. The judgment simply consisted of the fact he was 31 years of age and

had a criminal record including a prior drug conviction. The paucity of information, in the context of this joint submission, does not lend the case to being particularly helpful.

- [51] The Crown also quite properly placed a good deal of emphasis on *R. v. Coty*, 2024 BCSC 1485. There Mr. Coty pled guilty to four counts on the indictment including possession for the purpose of trafficking in fentanyl and methamphetamine and conspiracy to trafficking in those drugs and other drugs. The Crown sought a sentence of 12 years, which, in the end, is precisely the sentence imposed by the court.
- [52] Mr. Coty, for some time, sold drugs including fentanyl under cover of his legitimate gardening store. He was 50 years of age at the time of the offences without a criminal record. He was, in a sense, the sole proprietor of both his legitimate and illegitimate businesses.
- [53] *R. v. Kim*, 2022 BCSC 518 was placed before the court. Mr. Kim was convicted, after a trial, of a number of counts of possession for the purpose of trafficking of fentanyl, carfentanil and firearm offences including possessing, in the context of his drug trafficking, a loaded firearm. He was sentenced to 10 years for the drug counts.
- [54] Mr. Kim, at the time of the offence, was 37 years of age and had been, earlier in his life, involved in the drug trade in BC. He had one prior conviction for possession for the purpose of trafficking a scheduled substance. Mr. Kim was in possession of firearms while under a lifetime prohibition. He was not the directing mind, but an integral part of the management of a sophisticated mid-level drug trafficking operation. This sentence was upheld by the Court of Appeal. A point taken in the Court of Appeal was that the directing mind of the operation, Mr. Latimer, received eight years in relation to the drug trafficking charge. This, however, was a sentence that recognized the guilty plea of Mr. Latimer as an important mitigating factor in the context of a joint submission.
- [55] Finally, I refer to a very recent decision placed before me, *R. v. Dinh*, 2024 BCSC 109. The accused was found to be a courier of a very large amount of fentanyl. It appears from the judgment the accused invited the court to find the accused guilty. The accused was in her early 30s at the time of the offence, with no criminal record. She had, leading up to these offences, been a law-abiding citizen and resumed those lawful ways after her arrest and while awaiting trial. The court imposed a term of imprisonment of eight years. The court in *Dinh* relied in part on the decision of the Manitoba Court of Appeal in *R. v. McLean*, 2022 MBCA 60. The court in *McLean* pronounced a range of sentence for couriers in drug trafficking operations of fentanyl, in the mid-level, of six to eight years imprisonment. In sentencing the accused, the court in *Dinh* held:
- [45] In my view, there are no exceptional circumstances justifying a departure from the range stipulated by the Supreme Court of Canada in *Parranto* and the Manitoba Court of Appeal in *McLean*.

- [56] I would make two observations. In my view, the authorities in BC have not determined a definitive sentencing range for couriers possessing wholesale values and amounts of fentanyl for the purpose of trafficking. Second, it may be argued the notion of deviating from a range of sentence rests on a finding of 'exceptional circumstances' is no longer an approach endorsed by the Supreme Court of Canada. I say this in light of the court's comments in *Parranto*, at 40:
- [40] We emphasize, however, that it is inappropriate for appellate courts to "artificially constrain sentencing judges' ability to impose a proportionate sentence" by requiring "exceptional circumstances" when departing from a range ([citation omitted]). Departing from a range or starting point is appropriate where required to achieve proportionality.
- [57] The circumstances at bar, as previously outlined, clearly disclose that there are numerous and serious aggravating features to this offence. I will not repeat those. I will say this however. A quarter century ago the Supreme Court of Canada made these stark observations in *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982:
- 88 it is impossible to underestimate the harm that is done to Canadian society in the form of criminal activity, often violent, by the trafficking of illicit drugs. Unfortunately, there are also other costs associated with illicit drug trafficking and use, which reflect the widespread harm caused by these activities.
- [58] It is plainly obvious these observations are more starkly relevant today even more so than 25 years ago.
- [59] In sentencing individuals in these circumstances the court must take heed of the collateral damage that is caused by trafficking in these drugs.
- [60] The drugs being dispersed by the offenders at bar were illicit, addictive and very often life threatening. Of particular note is fentanyl, a pernicious drug, and a particular scourge in British Columbia. It is a synthetic opioid that can still be used properly regarding certain painkillers through controlled release patches, pills or sprays. In its illicit form, however, as here, it has proven to be highly addictive and often lethal. It is more potent than heroin, in fact far more potent. It is a drug that is exceedingly strong, fast acting and easy to make. It wreaks havoc on the most vulnerable of our citizens. They are the desperate, the disillusioned and the disenfranchised; they who live on the outskirts of hope and seek respite through these drugs from the oppression that exists in their marginalized world. They are the immediate victims of this activity. The fact is, it must be concluded, the offenders knowingly and with calculation, in the course of their trafficking activities, were delivering a death warrant to certain consumers.
- [61] Somewhat related is the fact that in addition to the seizure of drugs and money, the police also seized firearms and ammunition. Counsel are clear that there is no evidence before me any of the offenders had knowledge of those items.

- [62] There is also a submission that there is no evidence of violence undertaken by these offenders in pursuit of their trafficking business.
- [63] I accede to these points and agree the finding of firearms and ammunition cannot be viewed as aggravated in relation to these offenders. That is not to say the issue of violence is irrelevant to the overall factual landscape.
- [64] In my view, it is axiomatic that the world of drug trafficking and drug use at some points begets violence. It may be violence that is unknown and unseen and unfelt by these offenders, but the violence associated with drug trafficking and drug use cannot be said to be wholly unconnected to the suppliers; all suppliers, in all circumstances. Suppliers may not see and hear the violence, but they aid and abet it.
- [65] The moral culpability of the offenders in this case cannot be understated. The need for deterrence and denunciation cannot be overstated. That said, in accordance with Parranto, individual circumstances may mitigate moral turpitude to one degree or another.
- [66] There was a good deal of time spent during the proceedings discussing the role of Mr. Hemen Saed within the organization; largely relating to comparing offenders in other cases, but particularly as his role related to his brother, Howjeen Saed. Similarly there is much analysis concerning the role of Diego Saed with particular regard to others in the organization, but focussing on Mr. Bardales Medina.
- [67] Mr. Howjeen Saed received a sentence of 10 years imprisonment. Mr. Bardales Medina received a sentence of five years imprisonment. I found the joint submissions in this regard were within a reasonable range of a fit and proper sentence in all the circumstances.
- [68] The position of the Crown is that there is really nothing to separate the brothers in the hierarchy of the organization.
- [69] On the evidence before me I would not go that far, but I do conclude that while Howjeen Saed was viewed, in a singular way, as the directing mind of the organization; Mr. Hemen Saed was an additional force driving the organization. All others were clearly in a subservient role to the Saed brothers.
- [70] It is clear to me Howjeen was generally, and perceived to be, the ultimate decision-maker. There is no suggestion Mr. Hemen Saed directed Mr. Howjeen Saed to do anything. There is some evidence Howjeen directed Hemen Saed, although there is evidence any direction was sometimes ignored without any repercussions. Similarly, there is some evidence of Mr. Hemen Saed providing overall direction in circumstances where he is 'standing in' for Howjeen Saed. For instance, a Samsung phone was generally in the custody and control of Mr. Howjeen Saed for the purpose of directing operations. I am told the Samsung phone was the drug trafficking line; utilized to arrange all manner of tasks to advance the operation, appearing to be really the digital heartbeat of the enterprise. There is some evidence there may have been others that had access to the Samsung phone; however, it is unclear about its use.

- [71] In any event, what is clear is that Mr. Hemen Saed was sometimes in possession of the phone and was providing direction and asserting authority at least from time to time. Authority aside, Mr. Hemen Saed is a constant presence concerning the comings and goings from various stash sites and is observed carrying bags and other items related to the production, distribution and spoils of the operation. He had ready access to the stash sites and was in possession of fobs to facilitate that access. He personally conducted mid-level transactions with buyers, in addition to arranging transactions and directing others to go forth.
- [72] Counsel on behalf of Mr. Hemen Saed submits his role was not as influential as the Crown suggests. It is submitted the evidence is clear Mr. Hemen Saed had some authority but it was significantly less than his brother, Howjeen. The defence says that while Hemen Saed was a trusted confidante, the evidence does not allow for a finding he was the operating mind of the organization or that he was making "consequential day-to-day operational decisions".
- [73] As I have referenced, I conclude Mr. Hemen Saed was not on equal footing with his brother in terms of actual or perceived authority. He was, however, clearly an authority figure in the organization and did make consequential day-to-day operational decisions in various circumstances.
- [74] In addition, the fact is both brothers happily lived lives built on profits. The search of Hemen's apartment turned up approximately \$30,000 in cash, as well as Gucci purses. Mr. Hemen Saed's vehicles of choice were a Mercedes and Infiniti FX. He was not an employee. He was in management.
- [75] Mr. Diego Saed is the cousin of the brothers. There is no doubt on the evidence he had a close relationship with the brothers. He was a devoted and dependable part of the organization. That said, he took, rather than gave, direction. It does not appear on the evidence he had or conveyed, an air of authority. However, his industry played an important role in the success of the operation. He was often observed attending stash sites with items; sometimes in possession of fobs for those stash sites. He was sometimes someone Howjeen Saed confided in concerning aspects of the operation. He counted and bundled the cash. He delivered cash and drugs. He was trusted to be alone and in control of stash sites that contained cash and drugs.
- [76] The Crown submits that Diego Saed was "energetically engaged" in the activities of the organization on a daily basis starting around January 21, 2021. From that day, submits the Crown, until May 31, 2021, his activities were, to say the least, "relentless". The Crown points to an example that over the course of 19 days he visited the West Georgia stash site a total of 86 times in pursuit of facilitating the drug operation.

- [77] Counsel on behalf of Mr. Diego Saed did not take issue with this activity. The evidence clearly shows Mr. Diego Saed to be a ubiquitous presence in the conspiracy. Counsel, however, submitted that regardless, the role of Diego was somewhat less than Mr. Bardales Medina, and all things being equal a sentence of four years is a fit and proper sentence; one year less than the sentence imposed on Mr. Bardales Medina.
- [78] Frankly and respectfully, I did not find the compare and contrast analysis between Mr. Diego Saed and Mr. Bardales Medina particularly helpful in reaching an appropriate sentence for Diego Saed. In my view, an overall analysis of the material indicates Mr. Diego Saed engaged in a more robust participation than Mr. Bardales Medina. It is also apparent, consistent with this finding, Mr. Bardales Medina's participation in the activities were more blunted. He had involvement in December 2020 and in January 2021. He then left the scene and did not return for some months; until May 2021. I also find that during those times Mr. Bardales Medina was involved, he was struggling with drug addiction and mental illness.
- [79] I appreciate it is perfectly appropriate to parse the operational duties within an organization, but that is only one of many factors that are assessed for the purposes of determining a fit sentence, in all the circumstances.
- [80] Both Mr. Hemen Saed and Mr. Diego Saed have demonstrated contrition, remorse and positive prospects for rehabilitation.
- [81] Mr. Hemen Saed spoke at the sentencing proceedings. He is resigned and accepting of his fate. It appears he was attempting to put in place legitimate employment prospects during the conspiracy with the Longshoreman's Union. Following the arrests in May 2021, he has struggled to find work; a pecking order in the union requires waiting your turn. He has earned little income in that regard over the past three years.
- [82] There is evidence, that I accept, he has either renewed or has found spirituality in his life. He is a Muslim and attends mosques for Friday prayer. The mosque is connected to the NUSI Foundation of Canada. The chairman of the foundation has provided information to the court confirming Mr. Saed's regular attendances; and, in addition his participation in certain community outreach.
- [83] He has filed letters of positive support from family and friends. I am grateful for those that took the time to place those very positive thoughts and hopes on behalf of Mr. Saed.
- [84] In the intervening time Mr. Hemen Saed has started a family, his daughter is now almost 18 months old. A common theme in the letters submitted on behalf of Mr. Saed address the very positive impact having a child has had on the perspective of Mr. Saed. I am not surprised; having a child will often do that. Needless to say, that relationship will be challenging in the years to come. Hopefully it will continue to provide Mr. Saed with inspiration and motivation to make more of his life in his 30s than he did in his 20s.

- [85] Mr. Saed spoke to the court; I accept his stated contrition, regret and remorse. There is no doubt this has been amplified by the recent death of his cousin from drug overdose. The irony no doubt does not escape Mr. Saed.
- [86] Mr. Diego Saed was arrested in May 2021 and released without charges. Well prior to the charges being laid in this case, he moved back to California where he has developed some roots and history of employment. He in fact secured employment in Napa in February 2022. He developed a relationship and the two were planning on living together. The indictment in this matter was preferred in November 2022. It did not, I am advised, immediately come to his attention that a warrant had been issued. When it did come to his attention, he began getting his affairs in order. The plans for living with his partner were cancelled. He was eventually arrested and spent seven months in custody in California before agreeing to be extradited to BC. He has been in custody in BC since that date.
- [87] Much like his cousins, Mr. Diego Saed continues to have strong support from family and friends. They voice strong conviction that he will have a life in the future without risk of criminal behaviour. All concerned cite similar themes, perhaps best captured by Hawar Ventura. Mr. Ventura is a registered nurse and Mr. Diego's half-brother, and says the following:

I know my brother regrets his actions and his involvement. I think my brother's rough upbringing is partly to blame. In 2018/19 he was living between our grandmother and his own grandmother's house. No one was supervising him. He made the wrong decisions at a young age. When he went back to live in California, he was not trying to run away. He was trying to start a new chapter in life where he worked multiple jobs to be an independent adult.

I have been speaking with Diego frequently especially over the past year. I know he is determined to get out, get back to work and be a valuable member of society. He was demonstrating this before he was taken to jail in the USA. While Diego was in jail in California, he has told me he has developed an interest in the Islamic religion. He participated in Ramadan and began reading the Koran. Moreover, when I talk to Diego we discuss possible careers he could do when he gets out of jail. Despite the difficulties he has faced I know he has grown up and matured. I am confident that Diego's resilience, compassion, and commitment for personal growth will help in leading a successful and meaningful life.

- [88] Mr. Diego Saed spoke to the court, as well. He voiced contrition and regret. I accept that. His words I think conveyed the shame that accompanies activity that causes such grief, sickness and often death in the lives of our most vulnerable citizens. I accept he recognized the untold damage he has caused. I accept his expressed hope of ultimately finding a life worth living and pursuing. The hope of the court is that his determination and goodwill survives incarceration. Incarceration is a place where hope is sometimes hard to find.
- [89] Both are youthful offenders and without criminal records prior to these events. I have, as a judge, tended to view the universal condition of human failings, and the flawed moral boundaries of persons, through a lens I believe is charitable; but it is a lens that must be cut

by legal principle. In my view, and with the greatest respect, the sentences sought by the accused are not in accord with the principles of sentencing that must be brought to bear in determining a fit sentence in this case. That is not to say I do not appreciate the mitigating factors and the significant weight they deserve. I do. The accused are youthful first offenders, unlike many the offenders in these cases. There is no evidence to suggest they are other than good prospects for rehabilitation and a low risk to reoffend.

[90] I agree with counsel the guilty pleas have saved a good deal of financial and human capital by avoiding a lengthy and complicated criminal jury trial. In this regard, as Parranto makes clear, the seriousness of these offences must not transcend all other considerations. The court must provide meaningful and thoughtful considerations to the objectives of rehabilitation and the principles of parity.

[91] So, Mr. Hemen Saed, could I ask you to please stand.

[92] Mr. Hemen Saed, for each offence I impose a sentence of nine years incarceration to be served concurrently. You may be seated, sir, and I will return to the ancillary orders that will apply to both you and Mr. Diego Saed.

[93] Mr. Diego Saed, could I ask you to please stand.

[94] I impose a sentence on both counts of six-and-one-half years incarceration to be served concurrently. I understand you have served an enhanced period of time in custody of 575 days. Six-and-one-half years on my calculation comes to 2,372 days. Therefore you have a remaining sentence of 1,797 days. You may sit down.

[95] To both of you, pursuant to s. 109 of the Criminal Code you are prohibited from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition and explosive substance for 10 years.

[96] Pursuant to s. 487.051(3)(d), you will provide a sample of your DNA at a time and a place as the appropriate person so determines.

[97] The surcharge in this matter is waived.

[98] Do I understand there is a consent forfeiture order?

[99] CNSL C. SAUDER: Yes, Justice. I can speak to that now.

[100] THE COURT: Is it a consent order?

[101] CNSL C. SAUDER: Yes, it is.

[102] CNSL C. SAUDER: Thank you for your assistance, Justice. Thank you.

[103] THE COURT: Anything else?

[104] CNSL C. SAUDER: No, Justice, thank you very much.

[105] THE COURT: All right. Thank you.

"Crossin J."

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