
CANADA / JUDGMENT

R. v. Schneider

2019 BCSC 356

COURT

Supreme Court of British Columbia

DECIDED

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2019 BCSC 356 R. v. Schneider

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Schneider,

2019 BCSC 356

Date: 20190118

Docket: 86286-2

Registry: Kelowna

Regina

v.

James Robert Schneider

Before: The Honourable Mr. Justice G.P. Weatherill

Oral Reasons for Sentence

Counsel for the Crown:

A. Wilson

Counsel for the Accused:

J.D.A. Watt

Place and Date of Trial/Hearing:

Kelowna, B.C.

December 14, 2018

Place and Date of Judgment:

Kelowna, B.C.

January 18, 2019

- [1] THE COURT: Mr. Schneider is before me for sentencing having pled guilty to one count of trafficking .2 grams heroin/fentanyl/methamphetamine on February 16, 2017, contrary to s. 5(1) of the Controlled Drugs and Substances Act [CDSA].

Circumstances of the offences

- [2] The circumstances of the offence are straightforward.
- [3] In February 2017, the Kelowna RCMP were involved in an undercover investigation targeting the ongoing and rampant trafficking of illicit drugs in the downtown area of this city. On February 16, 2017, an undercover officer on a bicycle approached Mr. Schneider, who was also on a bicycle. Mr. Schneider, who went by the street name of "Slim", was known by the RCMP to be involved in the drug culture. The two engaged in a conversation about bicycles and then Mr. Schneider left, stating that he had a court appearance to attend.
- [4] The undercover officer observed him meet up with another person and watched as they smoked some heroin together. The undercover officer approached Mr. Schneider again and asked for a point of heroin, which is .1 grams. Mr. Schneider replied that he could do "20 no problem", and asked the officer to follow him. They rolled their bikes to a private area and Mr. Schneider sold the officer .2 grams of "blue angel". He then gave the officer his phone number and rode off.
- [5] The substance was analyzed and determined to be a combination of heroin and fentanyl.
- [6] Mr. Schneider was arrested on March 8, 2017, and remained in custody at the Okanagan Correctional Centre in Oliver, BC, until he was released on bail on September 6, 2017, on strict conditions, including that he reside at New Vision S.H. Society, a support recovery centre in Surrey ("New Vision"). He has been there ever since.

Mr. Schneider's background

- [7] Mr. Schneider's background is detailed in a presentence report that was prepared on November 14, 2018, which I have had the benefit of reading and which provided some helpful insight into Mr. Schneider's past. Mr. Schneider is 36 years of age. He has had a difficult and unfortunate life marred by sexual abuse. The abuse was at the hands of one of his mother's partners and started when he was eight years old. The Ministry of Children and Family Development was involved.
- [8] He has been entrenched in the drug culture since his teens. His highest level of education is Grade 8.

- [9] He left his family home at age 12. He became a father at age 14. He has three children spanning three different relationships.
- [10] His drug addiction started with marihuana, then crack cocaine, then crystal methamphetamine, and finally heroin. His involvement in the drug subculture has led to numerous encounters with the criminal justice system. He has been homeless, unemployed and entrenched in the drug subculture for most of his life.

Mr. Schneider's position on sentence

- [11] On Mr. Schneider's behalf, Mr. Watt seeks a two-year suspended sentence on strict conditions. In support of his position, he argues that Mr. Schneider has displayed exemplary behaviour since his arrest and has completely turned his life around. Mr. Watt encourages me to look at Mr. Schneider's record through his personal circumstances and understand that it reflects a person whose crimes have been fueled by a homeless and hopeless living environment.
- [12] Since his arrest, he has taken positive steps to improve himself. While incarcerated, he has conscientiously taken some 22 voluntary substance abuse and life skills courses focusing on relapse prevention. For the first time in his life, he has actively been involved in his own rehabilitation and recovery. He now has insight into his drug addiction issues and understands how he got to this point. He is motivated to move forward in a positive manner. He has been alcohol and drug free since March 2017.
- [13] This, Mr. Watt argues, is precisely what society wants to see: an offender well on his way to becoming a law-abiding and productive member of society.
- [14] Mr. Watt says that Mr. Schneider's personal circumstances fall into the meaning of exceptional circumstances, as expressed by the British Columbia Court of Appeal in *R. v. Voong*, 2015 BCCA 285 at para. 59:
- [59] In summary, absent exceptional circumstances, the sentence for a first offence or with a minimal criminal record, dial-a-dope drug seller will be in the range of six to eighteen months imprisonment, depending on the aggravating circumstances. Exceptional circumstances may include a combination of no criminal record, significant and objectively identifiable steps towards rehabilitation for the drug addict, gainful employment, remorse and acknowledgement of the harm done to society as a result of the offences, as opposed to harm done to the offender as a result of being caught. This is a non-exhaustive list, but at the end of the day, there must be circumstances that are above and beyond the norm to justify a non-custodial sentence. There must be something that would lead a sentencing judge to conclude that the offender had truly turned his or her life around, and that the protection of the public was subsequently better served by a non-custodial sentence. However, Parliament, while not removing a non-custodial sentence for this type of offence, has concluded that CSO sentences are not available. Thus, it will be the rare case where the standard of exceptional circumstances is met.

- [15] Mr. Watt asserts that this case is one such rare example. In support, he called Mr. Justin Thomas, the founder and operator of New Vision in Surrey, the recovery facility where Mr. Schneider has been living since his release on bail.
- [16] Mr. Thomas has a bachelor of arts from Simon Fraser University and is a certified drug and alcohol counsellor. He started New Vision in 1996. It was then known as Renaissance House. It has since grown into a facility with five recovery houses with a total of 48 beds. It is funded by the province's Ministry of Social Development.
- [17] Mr. Schneider has been at one of the houses for the past 14 months, initially under a 24-hour house arrest and now under a 9:00 p.m. to 9:00 a.m. curfew. He has undertaken cognitive behavioural therapy and has participated in life skills programs, detoxification programs, and a substance abuse program sponsored by Fraser Health. He also attends daily group sessions. In addition, he has passed semi-monthly random drug testing. Because of how well he is doing at New Vision, he is now in the privileged position of on-site house monitor. As such, he mentors and motivates new arrivals at the facility.
- [18] In addition to his compliance with the strict house rules at New Vision. He has also dutifully complied with his bail conditions.
- [19] Mr. Taylor testified that the majority of residents who come to New Vision either breach the house rules, their bail conditions, or both, and are immediately returned to custody. He stated that out of every 50 arrivals at New Vision, only 10 make it through to sentencing. Mr. Schneider is one of those 10.
- [20] He testified that Mr. Schneider is a changed man from when he arrived in September 2017. He has shown extraordinary motivation and commitment to the program. He is emotionally stronger and uses more common sense. He does not go out much, choosing to spend most of his time in the residence. He is now at the point of self-sufficiency and will be working with BC Works to find suitable employment. Mr. Thomas even indicated that he would like to eventually hire him in a paid position with New Vision.
- [21] There is no maximum period of time a person can stay at New Vision. Before leaving the program, an approved exit plan must be in place, which includes appropriate housing, employment, relapse prevention, and continued counselling. If Mr. Schneider is given a custodial sentence, he may reapply to New Vision on his release and would be welcomed back, space permitting.
- [22] In further support of his urgings that a suspended sentence is the appropriate sentence for Mr. Schneider, Mr. Watt relies on a series of cases where suspended sentences were handed down.

- [23] R. v. Preston [1990] 47 B.C.L.R. (2d) 273 (C.A.) involved a Crown appeal of a two-year suspended sentence for a 41-year-old heroin addict with no skills or education and with 23 prior convictions, but who had shown objectively identifiable steps towards rehabilitation. The appeal was dismissed.
- [24] R. v. Naccarato, 2017 BCSC 645, involved a drug-addicted courier of two ounces of heroin laced with fentanyl, with no prior history, who was motivated by financial gain and who also was able to demonstrate significant rehabilitative steps. The accused was given a three-year suspended sentence because of exceptional circumstances.
- [25] R. v. Dixon, [2017] O.J. No. 3477, involved a drug-addicted offender with a significant prior record who continued to offend while on bail. He was given a three-year suspended sentence for possession for the purpose of trafficking of heroin laced with fentanyl because of exceptional circumstances of rehabilitative steps mirroring what Mr. Watt argues Mr. Schneider has done in this case.
- [26] R. v. Porter, 2017 BCPC 330, involved an aboriginal offender with a significant prior criminal history who pled guilty to trafficking heroin laced with fentanyl. He was given a three-year suspended sentence.
- [27] R. v. Joon, 2017 BCPC 301, involved a young offender motivated by greed in a dial-a-dope operation. He had no prior record, pled guilty to trafficking in fentanyl and heroin, and received a three-year suspended sentence because of the positive rehabilitative efforts he had undertaken.
- [28] Lastly R. v. Olenik, 2017 BCPC 390, involved an offender addicted to illicit drugs with no prior criminal record, who was given a two-year suspended sentence for possession of heroin and fentanyl for the purpose of trafficking. He was trafficking drugs to fuel his addiction. He, too, was found to have turned his life around and was a changed person.

Crown's position on sentence

- [29] The Crown seeks a sentence of three years' incarceration, a lifetime firearms ban, and a DNA order.
- [30] In support of its position, the Crown relies on the recent decision in R. v. Smith, 2017 BCCA 112, where the Court of Appeal held that the sentences for fentanyl-related drug trafficking will normally start at 18 months; R. v. Brideau, a November 13, 2018, decision of Provincial Court Judge Tam; R. v. Au Clair, a September 1, 2017, decision of Provincial Court Judge Threlfall; R. v. Forsberg, a September 27, 2017, decision of Provincial Court Judge Higinbotham; and R. v. Mann, 2018 BCCA 265.
- [31] In Smith and although in dissent in the ultimate decision, Madam Justice Newbury stated at paragraph 45:

- [45] I agree with the many judges who have stated that denunciation and deterrence must generally be given primacy in sentencing in cases involving Fentanyl. To this end, I would suggest a normal range beginning at 18 months' imprisonment, as the Crown suggests. I would place Mr. Smith's offences at the bottom of this range, in light of the mitigating factors discussed by the court below. I do not believe it is necessary for us to specify the top of the range, although I would suggest it might well exceed 36 months, especially where the offender has a substantial record involving the sale of Fentanyl or otherwise demonstrates an indifference to the human lives he or she is putting at risk. This is a matter that can be worked out in future cases. Obviously, the 'range' may also increase beyond 36 months, or a different range will apply, where the offender is higher up the chain of sale or distribution.
- [32] The other two appeal judges agreed with this proposed range.
- [33] Brideau involved a 32-year-old homeless fellow with an extremely lengthy criminal record who had amassed some 56 convictions in the past and who had sprinkled carfentanil on a rock that looked like drugs and sold it to an undercover police officer. In sentencing Mr. Brideau to three years' incarceration, Judge Tam held that general deterrence and denunciation played a primary role. He stated at paragraph 20:
- [20] Following the reasoning in Smith it strikes me that where the substance being trafficked contains carfentanyl, even a higher sentence may well be called for to properly address the principles of denunciation and general deterrence. . . . the lethal and unpredictable nature of carfentanyl ought to result in a higher sentence.
- [34] Judge Tam then quoted Fitz J.A. in *R. v. Mann*, 2018 BCCA 265 at para. 73:
- [73] First, as the appellants' counsel acknowledged in oral argument, the offence of trafficking in carfentanil is even more serious than the offence of trafficking in fentanyl. The fundamental principal of proportionality requires courts to craft sentences reflecting both the gravity of the offence committed and the moral blameworthiness of the offender: *R. v. Ipeelee*, 2012 SCC 13 at para. 37, 39; *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500 at para. 80. The proportionality principle, said in *Ipeelee* to be the sine qua non of a just sanction, finds statutory expression in s. 718.1 of the Code:

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

As the proportionality principle takes its meaning, in part, from the gravity of the offence, it is not surprising that the more serious of the offences committed by Sarabjit attracted a harsher penalty. I see no error in principle in the judge's decision to distinguish, for sentencing purposes, between the offences involving carfentanil and those involving fentanyl.

...

- [75] In my view, the judge made no error in principle in his approach to this issue. A trafficker's ignorance as to the exact composition of drugs will not, as a general rule, operate as a mitigating factor. In *R. v. Herrell*, 2014 BCCA 114 at para. 19, the Court noted that "the seller of a synthetic illegal drug must be assumed to recognize an inherent risk associated with distributing synthetic drugs, which is that the composition of the drugs may be unknown". *Herrell* reflects the well-established sentencing principle that determining moral culpability involves an examination of the "intentional risks taken by the offender, the harm he or she has caused, and the degree of deviation from acceptable standards of behaviour the conduct represents": *R. v. Johnson* (1996), 112 C.C.C. (3d) 225 at para. 33 (B.C.C.A.).
- [76] An offender's ignorance as to the nature or composition of a drug being trafficked by them may exceptionally operate as a mitigating factor where the offender took reasonable steps to ascertain the nature of the trafficked substance but was duped by co-conspirators into trafficking a more harmful substance than he or she expected: *R. v. H.* (C.N.) (2002), 170 C.C.C. (3d) 253 (Ont. C.A.); *R. v. Sidhu*, 2009 ONCA 81 at para. 18. There is no evidence in this case that Sarabjit took any steps, let alone reasonable steps, to ascertain the nature of the substances he was trafficking.
- [35] *Au Clair* involved a street-level drug addict with a prior record who pled guilty to three counts of trafficking in heroin laced with fentanyl and carfentanil to an undercover officer. He was well aware of the dangerous nature of the substance. He was sentenced to concurrent sentences of 24 months.
- [36] *Forsberg* involved a similar fact pattern with Gladue factors, where a sentence of four year' incarceration was handed down.
- [37] Crown does not agree that a suspended sentence is warranted in this case, because there are no exceptional circumstances within the meaning of *Voong*. Crown asserts that Mr. Schneider has trafficked in illicit drugs before and has not learned his lesson. Although Crown concedes that a period of incarceration would interrupt his rehabilitation, rehabilitation is only one sentencing factor to consider. Crown asserts that the most important factors when sentencing a person trafficking in fentanyl are deterrence and denunciation.
- [38] Crown filed in evidence a BC Coroner Services report on overdose deaths from January 1, 2012 to December 31, 2017. To say that the statistics were staggering would be an understatement. From 2016 to 2017, there has been a 73-percent increase in drug overdose deaths with fentanyl detected, from 670 in 2016, to 1,156 in 2017, 200 of which were in the Okanagan. Of that number, 67 were in Kelowna, and the numbers continued to rise in 2018.
- [39] Crown's point is, in effect, "he did the crime, he must do the time." It argues that when *Voong* was decided in June 2015, the prevalence of fentanyl-related drug deaths was not as severe as it now is. It is a very different climate in 2018 with drug fentanyl-related deaths on the rise and now at epidemic levels.

- [40] The Crown points to Mr. Schneider's commendable accomplishments while at the Okanagan Correctional Centre that show he is still capable of rehabilitation while in custody.
- [41] In sum, the Crown asserts that a sentence of three years' incarceration is appropriate because of Mr. Schneider's lengthy and related criminal record.
- [42] I note that in the cases upon which Crown relies, Brideau, Au Clair, and Forsberg, the offenders did not put forth any (or at most, underwhelming) efforts at changing their lives for the better and did not suggest that any exceptional circumstances were at play that would warrant sentences below the 18-month starting point.

Purpose and principles of sentencing

- [43] The principles of sentencing are set out in s. 718 of the Criminal Code and s. 10 of the Controlled Drugs and Substances Act and are well known.

- [44] Section 718 of the Code reads:

718 The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

- [45] Section 10 of the CDSA provides that, without restricting the generality of the Code provisions on sentencing, the fundamental purpose of any sentence under the CDSA is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society. At the same time, sentencing judges are encouraged to consider rehabilitation and treatment in appropriate circumstances and acknowledge the harm done to victims and to the community.

Aggravating and mitigating factors

- [46] There are aggravating and mitigating factors in this case.

i. Aggravating Factors

- [47] The aggravating factors are:

- a) Firstly, his record. Mr. Schneider is 36 years old and has a lengthy criminal record stretching back to when he was a youth. Since then, he has accumulated some 37 convictions, the most recent being on September 21, 2017, when he pled guilty to two counts of possession of a controlled substance. He has three prior convictions for trafficking in a controlled substance, all in 2015 and all after guilty pleas. This is an aggravating factor under 10(2)(b) of the CDSA. Additionally, over the years he has been convicted of or pled guilty to a number of charges related to failure to abide by or respect court orders, including breaches of probation, breaches of undertaking, breaches of recognizance, and failing to appear when required.
- b) Secondly, the nature of the substance. Mr. Schneider trafficked in heroin and fentanyl. This has been described by some as "dealing in death".

ii. Mitigating Factors

[48] The mitigating factors are:

- a) Shortly before his scheduled trial he pled guilty, thus avoiding the cost and expense of a trial. Mr. Watt informed Crown of Mr. Schneider's intention to change his plea far enough in advance that Crown was able to call off its witnesses. Although late in the day, this is still a mitigating factor: *R. v. Dulude*, 2008 BCSC 510 at para. 27 to 28.
- b) While in custody between March and September 2017, he has not sat idly by, but has taken some 22 courses to help all aspects of his life. Since his bail release, he has fully participated in the Visions programs, including one-on-one counselling sessions and relapse prevention.
- c) Since his release in September 2017, he has been compliant with his strict bail conditions: *R. v. Spencer*, 2004 ONCA 5550 at para. 43.

Decision

- [49] While each case is unique, many aspects of this case are familiar. All too frequently, offenders who have grown up in difficult and unfortunate circumstances come before the court. Feeling hopeless, many of these offenders get caught up in the drug culture and begin trafficking drugs to feed their addictions. The cycle then repeats.
- [50] In this case, there are conflicting principles of sentencing at play. Mr. Schneider argues that because of exceptional circumstances, the principles of rehabilitation and reintegration into society should be put ahead of the principles of denunciation and deterrence.
- [51] There have been what are called exceptional cases that come before us where, despite the ugliness of the offender's history and the need for denunciation and deterrence, the offender has taken meaningful steps to turn his or her life around and suspended sentences have been handed down.

- [52] In my view, the Crown is correct that denunciation and deterrence are paramount considerations, especially when the drug involved is fentanyl. A person cannot go around the streets trafficking in fentanyl-laced heroin, even at low levels, and expect to get much sympathy from the courts.
- [53] There have been numerous, needless, and tragic deaths because of fentanyl. The numbers are increasing, despite everyone's knowledge that fentanyl is a deadly substance. There have been countless judges who have commented on society's abhorrence of drugs and the deleterious effect they are having. It serves no purpose regurgitating the same point.
- [54] I am satisfied that Mr. Schneider was a relatively low-level drug dealer, but one who had the ability to acquire a variety of illicit drugs and disseminate them throughout the community. I am also satisfied that he has had a difficult life and upbringing and has occupied the lower fringes of society for most of that life.
- [55] The appeal by the Crown in Voong was of four suspended sentences that were handed out to four separate offenders who pled guilty to trafficking illicit drugs in four separate drug-trafficking cases. That case sets out the guidelines for when suspended sentences might be warranted in drug trafficking cases. The court stated that the standard of proving exceptional circumstances justifying non-custodial sentences for drug trafficking is high. Two of the offenders had their suspended sentences affirmed, the other two were overturned.
- [56] To date, Mr. Schneider has not contributed much to society, if at all. At some point, a person must start to take responsibility for his or her behaviour. While I understand that his troubles led to drug addiction, which in turn led to his decision to traffic drugs, the fact remains that he chose to sell fentanyl-laced heroin to others when he knew, or ought to have known, that it was extremely deadly. Indeed, the statistics proffered by Crown show that roughly 85 percent of drug overdose deaths are fentanyl related.
- [57] I am satisfied that Mr. Schneider has taken meaningful steps to put the past behind him and I accept that he has begun to turn his life around. Indeed, this is the first time in his life that Mr. Schneider has made an effort to understand his addiction. He is sober and has a handle on his addiction issues. I accept that he is trying hard and is doing well with his recovery.
- [58] I must say I was particularly impressed by Mr. Thomas's evidence about how well Mr. Schneider is doing at New Vision.
- [59] Mr. Schneider also addressed the court in what I consider a heartfelt and sincere fashion. He expressed remorse for what he had done. By way of explanation and not as an excuse, he talked about the misery and hopelessness he experienced due to his drug addiction. He stated he was prepared to accept responsibility for his actions.

- [60] As mentioned, this case requires a balancing of the conflicting sentencing principles of denunciation and deterrence on the one hand and Mr. Schneider's rehabilitation on the other.
- [61] What a fit and proper sentence should be has not been easy to determine in this case. Had it not been for Mr. Schneider's significant rehabilitation steps, I would have had no trouble sentencing him to at least three years' incarceration. Crown counsel is correct that denunciation and deterrence are paramount considerations, particularly with the fentanyl epidemic throughout our country. People are needlessly dying because of fentanyl, with no end in sight.
- [62] While I agree with Mr. Watt that the ranges for sentences are only guidelines and that judicial discretion permits me to depart from them, I find that there is much merit in Crown's submissions.
- [63] In my view, while Mr. Schneider's efforts at rehabilitation are admirable, the need for general deterrence requires that his conduct be denounced, notwithstanding those efforts. People who are engaged in trafficking in fentanyl must understand they will be facing a lengthy jail sentence.
- [64] Balancing the mitigating factors against the aggravating factors and considering the principles of sentencing, I conclude that a period of incarceration is required during which Mr. Schneider can continue to receive the rehabilitation he needs. Upon his release, he will be able to apply to return to New Vision to continue his rehabilitation.
- [65] According to the presentence report, while incarcerated in the provincial system, he would be able to attend core programs offered through the BC Corrections Branch. These programs include substance abuse management to cognitive behavioural therapy, as well as substance abuse management programs that offer inmates alternatives to alcohol and/or drug abuse.
- [66] If Mr. Schneider is truly committed to his rehabilitation, he will take these programs.
- [67] Mr. Schneider, please stand.
- [68] I accept that you have been struggling with life and for the first time you have had the ability to gain insight into your drug addiction and you have some hope for your future, and I commend you for those positive steps.
- [69] I also accept that you made a choice to traffic in heroin and fentanyl and that you have done this before. I am not as concerned about specific deterrence as I am with general deterrence. We are in a very difficult climate now with the fentanyl crisis. I conclude that the principles of general deterrence and rehabilitation can both be met with a period of incarceration, although less than what Crown seeks, and a lengthy period of probation thereafter.

- [70] Accordingly, Mr. Schneider, I sentence you to 26 months' incarceration. In determining your sentence, I have taken into account the fact that you were in custody for 183 days from March 8, 2017 to September 6, 2017, and that during that incarceration you served a 60-day sentence on other unrelated charges. Thus, the net result is that you will receive a presentence credit of 185 days, or about six months ($183 - 60 = 123 \times 1.5 = 184.5$; rounded: 185 days), and that will be a credit against your 26-month sentence.
- [71] This means your new sentence will be approximately 20 months and you will serve your sentence in the provincial system. Upon your release, you will be on probation for a period of two years on the following conditions:
- a) Keep the peace and be of good behaviour;
 - b) Appear before the court when required to do so;
 - c) Notify the court or probation officer in advance of any change of name or address, and promptly notify the court or probation officer of any change of employment or occupation;
 - d) Report in person to a probation officer within two working days of your release from custody, and after that you must report as directed by the probation officer;
 - e) When first reporting to the probation officer, you must inform him or her of your residential address and phone number;
 - f) You must not change your residence or phone number without written permission from your probation officer;
 - g) You must not possess or consume alcohol, drugs, or any other intoxicating substance, except in accordance with a medical prescription; and
 - h) You must attend, participate in, and successfully complete any intake, assessment, counselling, or program as directed by your probation officer, including but not limited to alcohol and drug abuse programs, which may include re-admission into New Vision.
- [72] You may now be seated.

Ancillary Orders

- [73] Now, by way of ancillary orders, there will be a lifetime firearms prohibition pursuant to s. 109 of the Code. The offence under s. 5(1) of the CDSA is listed in s. 109(1)(c) of the Code. This is not your first conviction for this offence, and therefore pursuant to s. 109(3), you are prohibited from possessing any firearm, crossbow, restricted weapon, ammunition, and explosive substance for life.

- [74] I am also satisfied that there should be an order under s. 487.051 authorizing the taking of the number of samples of bodily substances that are reasonably required for the purpose of a forensic DNA analysis. Although it is a discretionary order, I am exercising my discretion to make the order. This DNA order will be in Form 5.04.
- [75] Now, those are my reasons. Crown, did you wish to do something with Count 2?
- [76] MS. WILSON: Yes, I direct a stay of proceedings with respect to the Count 2, My Lord.
- [77] MR. WATT: Yes, My Lord, just with respect to the credit calculation, I would just have a different calculation. Yes, he did receive 60 days, but that was a sentence that was -- he had already finished serving that sentence, so when he was -- if he was in custody and had actually been sentenced, he would have been released from that sentence after statutory remission. So in my submission, he shouldn't lose 60 days from that sentence, he should lose 40, so the calculation that I have is 183 would be minus 40, which is 143 at enhanced, which is 214.5, which equals 215 days.
- [78] THE COURT: Crown?
- [79] MS. WILSON: That seems reasonable, My Lord.
- [80] THE COURT: All right, I will trust your math on that. My reasons will be amended, the credit will be 215 days which is 183 days less 40 equals 143, times one and a half is 214.5 rounded up to 215.
- [81] MR. WATT: Yes.
- [82] THE COURT: All right, and the balance of the sentence will be reduced accordingly.
- [83] MR. WATT: Thank you very much, My Lord.
- [84] THE COURT: Mr. Schneider, I wish you well. I wish you the best. Good luck with the programs. The period of time you will spend, if you use it wisely, will get you on the right track.
- [85] THE ACCUSED: Yes, Your Honour. Thank you.
- [86] THE COURT: Thank you.
- "G.P. Weatherill J."

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