
CANADA / JUDGMENT

R. v. Subramaniam

2020 BCSC 1641

COURT

Supreme Court of British Columbia

DECIDED

21 October 2020

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Subramaniam,

2020 BCSC 1641

Date: 20201021

Docket: X080597

Registry: New Westminster

Regina

v.

Rajkumar Subramaniam

Before: The Honourable Mr. Justice A. Saunders

Oral Reasons for Sentence

Counsel for the Crown:

A. Novakovic

Counsel for the Defence:

K. Westell

Place and Date of Hearing:

New Westminster, B.C.

October 19, 2020

Place and Date of Judgment:

New Westminster, B.C.

October 21, 2020

- [1] THE COURT: Rajkumar Subramaniam was convicted by a jury on October 17, 2019, of one count of importing methamphetamine and one count of possession of methamphetamine for the purpose of trafficking.
- [2] Sentencing has, unfortunately, been greatly delayed by a succession of unforeseen events: difficulties with the calendar of Mr. Subramaniam's former counsel; and then a change of counsel, necessitating an adjournment; an error in failing to book a Tamil interpreter; the shutdown of the Courts' regular hearings due to the COVID-19 health emergency; a medical emergency suffered by Mr. Subramaniam, necessitating surgery; and then, the recent fire at the New Westminster pier, which resulted in closure of the court due to air quality concerns. I was finally able to hear sentencing submissions on Monday of this week.
- [3] As to the circumstances, Mr. Subramaniam was detained by Canadian Border Services officers on the evening of July 1, 2014. He was attempting to cross back into Canada from the United States, having ventured south several hours earlier that same day. He appeared nervous to the officers, and he gave a confused account of his activities while in the U.S. He was referred to secondary screening and his motor vehicle was searched.
- [4] The vehicle was an SUV which he had purchased and which was, at the time, owned by a family-owned company. He was registered as the principle operator of the vehicle.
- [5] A search of the vehicle revealed the existence of an elaborate aftermarket compartment installed in the rear seat fold-down well; and, a complex system of aftermarket electronic components tied into the compartment locks and the car's electrical systems, including a GPS locator device. Inside the compartment were 33 individually wrapped packages inserted in plastic containers, some of which were marked "Made in Mexico" in Spanish. The packages contained 14.79 kilograms - a little over 32 and a half pounds - of methamphetamine, a Schedule I substance under the Controlled Drugs and Substances Act, S.C. 1996, c. 19 [CDSA]. Samples of the methamphetamine showed a purity between 98 percent and 100 percent. The drugs had a wholesale value of approximately \$375,000. On the street, the shipment would yield approximately 150,000 individual doses, with an approximate value of \$1.5 million dollars.
- [6] The amount of drugs, the steps taken to conceal them, and the fact that the hidden GPS locator device in the vehicle was remotely activated while Mr. Subramaniam was in detention, all point to him having been part of a sophisticated scheme with considerable planning and deliberation.

- [7] Mr. Subramaniam is 49 years old. Born in Sri Lanka, he immigrated to Canada in 1971, initially living in Toronto. He had two brushes with the law when in his mid-twenties, being convicted of two separate counts of fraud under \$5,000 in 1997 and 1998. He received suspended sentences, with periods of probation of one year. He then moved here to British Columbia, and by all accounts has been an industrious and contributing member of society. He has worked as a hotel night manager, and for a number of years in hotel-related accounting positions with major hotel chains. Up until 2018, he was operator and co-owner of a restaurant. He and his current life partner are now operating several construction contracting companies, and they have interests in a business that distributes Tamil language films. He has been active in the Tamil community, and supports a Tamil charitable trust in the Indian state of Tamil Nadu. Numerous letters of support from friends and family members attest to his kindness and compassion, and his strong work ethic. He has two teenage boys from a previous relationship; he and his current partner are expecting their first child.
- [8] There is no explanation put forward for Mr. Subramaniam having committed this act. The only reasonable inference is that he did it for money. In that regard, I must begin my consideration of sentence by citing the words of Mr. Justice Lamer, as he then was, in *R. v. Smith*, [1987] 1 S.C.R. 1045, at para. 2:

Those who import and market hard drugs for lucre are responsible for the gradual but inexorable degeneration of many of their fellow human beings as a result of their becoming drug addicts. The direct cause of the hardship cast upon their victims and their families, these importers must also be made to bear their fair share of the guilt for the innumerable serious crimes of all sorts committed by addicts in order to feed their demand for drugs. Such persons, with few exceptions (as an example, the guilt of addicts who import not only to meet but also to finance their needs is not necessarily the same in degree as that of cold-blooded non-users), should, upon conviction, in my respectful view, be sentenced to and actually serve long periods of penal servitude.

- [9] Methamphetamine is recognized by our courts as being highly addictive and particularly harmful. The severe harm that this drug does to users and the havoc that addiction visits on their families are two aspects of the consequences of importing and trafficking. Another, as noted by Mr. Justice Lamer, is the crimes committed by addicts to feed their addiction. But the harm done to our communities does not stop there. Those addicted to stimulants such as methamphetamine will also commit impulsive crimes due to their inhibitions being suppressed. And further, those who profit from the sale of drugs can and do commit terrible crimes of violence - assaults, kidnappings, and murder - as they seek to maintain and expand their markets. Seen in this light, contributing to the drug trade, even through acting in a more passive role as a courier or importer, is a profoundly antisocial act. Recognizing these consequences and in order to address the primary goals of denunciation and deterrence, our justice system imposes significant penitentiary sentences on offenders.

- [10] The Crown in this case seeks a sentence of nine years. Counsel for Mr. Subramaniam submits that a just sentence would be in the range of four and a half to seven years.
- [11] Sentencing is, of course, an individualized process, but guidance is provided by decisions handed down in other cases. And in fact that comparative process is prescribed by the Criminal Code, in what is referred to as the parity principle: that a Court seeks to impose a sentence similar to those imposed on similar offenders, for similar offences, in similar circumstances.
- [12] The body of case law describing sentences imposed on offenders discloses a range of what would conventionally be regarded as a just and fit sentence for a particular offence. Comparison of the aggravating and mitigating factors between cases, and weighing those factors in the particular circumstances of the offender being sentenced, assists the court in situating the case within that range. Departures from ranges are, of course, possible when one takes into account the full range of sentencing principles, but in general, the farther one departs from the range, the more unusual or extraordinary the circumstances must be.
- [13] There is some case authority in British Columbia for the proposition that the usual sentence range for importing significant quantities of hard drugs is from six to as much as 12 years. This Court, in *R. v. Grossman*, [1998] B.C.J. No. 62 [Grossman], found that range to be suggested by the decision of Mr. Justice Finch, as he then was, in *R. v. Isaza* (1993), 86 C.C.C. (3d) 19 [Isaza], a case involving cocaine trafficking. In *R. v. Hein*, 2008 BCCA 230, Mr. Justice Smith interpreted the Isaza decision in the same manner. More recently, in *R. v. Esparza-Ochoa*, 2020 BCSC 861 [Esparza-Ochoa], a methamphetamine importing case, the sentencing judge stated, although without citing his sources, that for a first-time offender, importing illegal drugs into Canada carries with it a range of six to 12 years.
- [14] However, as pointed out by my colleague Mr. Justice Tammen, in *R. v. Demirovic*, 2020 BCSC 900, that range appears to be based, with respect, on a misreading of Isaza. Justice Finch, in Isaza, noted that the cases referred to by counsel did demonstrate a range of six to 12-year sentences imposed on persons involved in couriering drugs; but he went on to note that two of the cases relied on as establishing a 12-year upper end to the range, involved sentences that were imposed before a statutory seven-year minimum sentence for importing was ruled unconstitutional. Justice Finch concluded that the appropriate range was six to seven years.
- [15] Again, with respect, I place greater weight on the survey of the case authorities undertaken by Mr. Justice Williams in *HMTQ v. Sandhu*, 2003 BCSC 2033 [Sandhu], and his conclusion that the general range in British Columbia for importing substantial quantities of cocaine is six to 10 years. In saying that, I recognize that importation is a more serious offence than possession for the purpose of trafficking. I note that a six to 10-year range was accepted by Mr. Justice Melnick in *R. v. Pocasangre*, 2013 BCSC 193 [Pocasangre]. In *R. v. Francis*, 2008 BCCA 309 [Francis], the Court of Appeal confirmed that *R. v. Cote*, 2002 BCCA 29 [Cote], stands for the proposition that the range of sentence imposed for possession for the purpose of trafficking cocaine is a useful tool for a sentencing judge dealing with trafficking in

methamphetamine. I see the cocaine importation cases as being similarly analogous.

- [16] I find six to 10 years to be the appropriate range in the present case. In saying this, I recognize that many of the importation cases establishing that range do deal with first offenders; as has often been observed, upstanding citizens, with no history of interaction with the justice system, are most likely to be recruited as couriers and importation "mules" as they would be thought less likely to attract attention: see Grossman at para. 24. For that very reason, the fact that a courier or importer may be a first-time offender is usually not accorded great weight as a mitigating factor. Mr. Subramaniam is not a first offender. However, his record is very dated and was not drug related and did not involve violent crime. His record is an aggravating factor, but not one that carries any great weight.
- [17] The other aggravating factors present here are, of course, the quantity of methamphetamine Mr. Subramaniam was attempting to smuggle into the country; the sophistication of the steps taken to conceal the drugs; and the apparent motive being only for his personal profit.
- [18] The Crown also points to some evidence of recent increases in the societal impact of methamphetamine use, in the form of information circulars from the B.C. Coroners Service. One report indicates that methamphetamine-related illicit drug deaths, which numbered in the range of fewer than 50 deaths annually from 2008 to 2012, have now climbed into the hundreds, with more than 300 deaths in each of 2016 and 2017. That report also states, however, that fentanyl - which we know to be associated with very high mortality - was "found to be relevant" in 87 percent of those "illicit deaths"; cocaine and heroine were also highly involved. To put it one way, methamphetamine use would appear to be a co-factor in the increased mortality rates. I do not find it possible to draw any conclusions about methamphetamine use in particular having become more prevalent or its effects having become more pronounced.
- [19] The Crown submits that there are no mitigating factors present. I have to agree. Counsel for Mr. Subramaniam submits that his age, and his years of pro-social activity should count towards mitigation. But, as I have observed, his background may very well have played a role in his recruitment; and as for his age, this was not an impulsive crime committed by a young person lacking the judgment necessary to avoid risky or anti-social behaviour. Mr. Subramaniam was old enough to know better.
- [20] In contending for a lower sentence than the range I have indicated, defence counsel relies principally on three cases. In *R. v. Clifford*, 2018 ONCJ 495, the offender received a sentence of eight years for importing almost 16 kilograms of cocaine. The judge noted the Crown's submission that this amount of cocaine could be distributed as more than 15 million individual "hits", which the judge noted was "staggering" in considering the overall harm that amount of cocaine could do and "the trail of violence and destruction that drug trafficking and drug use entail". It is submitted that the potential impact on society was therefore that much greater than in Mr. Subramaniam's case. There are, however, two problems with that submission. The first is that it invites a direct comparison of the harm caused by a dose of

cocaine versus a dose of methamphetamine. I have no evidence before me of the relative toxicological properties of those drugs or of the typical usage or dosage patterns that would enable such a comparison to be made. Second, as stated by Justice Melnick in Pocasangre, at para. 14, when considering sentences involving significant quantities - multiple kilograms of drugs, "one does not simply use a comparative scale of the quantity involved as compared with the length of sentence".

- [21] The defence cites *R. v. Ma*, 2005 BCSC 493, as one which involves a similarly situated offender, convicted of importing 76 kilograms, approximately a million dollars worth, of ecstasy or MDMA. The Crown in that case contended for a sentence of seven years; the defence three to four. He was sentenced to six years. I note, however, that the effects of MDMA - described by Madam Justice Holmes, as she then was, as a "designer" and party drug rather, than a street drug, because it is typically used in a social setting" - appear significantly less severe than methamphetamine. Further, at the time of that decision, MDMA was a Schedule III CDSA drug only.
- [22] The defence also relies on *R. v. Truax*, 2019 ABPC 201, in which the offender was sentenced to three and a half years for conspiring to import 14.5 kilograms of methamphetamine, and a further one year for importing in association with a criminal organization. However, it is apparent that the judge gave considerable weight in that case to the offender's Métis background, a difficult upbringing in which she did not learn how to develop healthy relationships, her vulnerability, and her having been "not motivated by greed; rather by romance". The offender in that case and Mr. Subramaniam are not so similarly situated that this decision provides any real assistance.
- [23] I find no basis, in the circumstances of this case, for departing from the range of six to 10 years, and I find no basis for a sentence at the lower end of that range.
- [24] The cases cited by the Crown include several I have already referred to: *Francis*, *Cote*, *Grossman*, *Sandhu*, *Pocasangre*, and *Esparza-Ochoa*. The Crown also referred to *Ho*, 2011 BCSC 1185; *Ruth*, 2007 ABCA 34; *Figiel*, 2015 ABCA 19; *Anderson*, 2006 BCPC 418; and *Dyal*, 2007 BCSC 623.
- [25] Of these decisions, *Esparza-Ochoa* is relied upon most strongly, it being a very recent decision involving methamphetamine importing. The offender in that case was 31 years old, an illegal immigrant, described as a good provider for his family. He had been pressured into backpacking 12.8 kilograms of methamphetamine over the Canada/U.S. border. He pleaded guilty on the morning of trial. He accepted responsibility and was contrite. He was sentenced to eight years. The Crown submits that the absence, in Mr. Subramaniam's case, of the mitigating factors of a guilty plea and expression of remorse ought to lead, under the parity principle, to a modestly higher sentence of nine years.

- [26] I have noted, however, the judge's premise in that case of the applicable sentencing range being six to 12 years. I have not been provided with any authorities supporting sentences of as high as 12 years, and I am concerned that viewing the top end of the range at 12 years may have led to the sentencing judge in that case to impose a higher sentence than he would have had a six to 10-year range been contemplated.
- [27] I find, of the Crown's cases, the most analogous to be Pocasangre. The sentence in that case was eight years. There was an aggravating factor that was not present in Mr. Subramaniam's case, in that Mr. Pocasangre abused his position as a truck driver for a company that had U.S. Customs security clearance. On the other hand, Justice Melnick assigned "a measure of mitigation" to Mr. Pocasangre having no criminal record.
- [28] I find the just sentence in the present case to be a term of imprisonment of eight years.
- [29] Is Mr. Subramaniam able to stand? Mr. Subramaniam, would you stand, please. I note you have crutches. You can take your time, sir.
- [30] Rajkumar Subramaniam, on Count 1, the offence of importation, I sentence you to imprisonment for a term of eight years. On the count of possession for the purpose of trafficking, I sentence you to a concurrent term of six years.
- [31] I further impose a 10-year prohibition on the possession of weapons, under s. 109; and I order you to provide samples of bodily substances for the purpose of DNA forensic analysis, under s. 487.051 of the Criminal Code.
- [32] You may be seated.
- [33] That concludes my pronouncement of sentence. Is there anything further, counsel?
- [34] MS. NOVAKOVIC: No, thank you, My Lord.
- [35] MR. WESTELL: No, My Lord.
- [36] THE COURT: Thank you then. We are adjourned.

"A. Saunders J."

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