

CANADA / JUDGMENT

R. v. Sunner

2023 BCSC 2169

COURT

Supreme Court of British Columbia

DECIDED

23 November 2023

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2023 BCSC 2169 R. v. Sunner

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Sunner,

2023 BCSC 2169

Date: 20231123

Docket: X084312

Registry: New Westminster

Rex

v.

Parmvir Paul Singh Sunner

Before: The Honourable Justice Norell

Oral Reasons for Sentence

Counsel for the Crown:

C. Fast

Counsel for the Accused:

A.S. Sidhu

Place and Date of Hearing:

New Westminster, B.C.

October 31, 2023

Place and Date of Judgment:

New Westminster, B.C.

November 23, 2023

- [1] THE COURT: On August 28, 2023, I found Parmvir Sunner guilty of four counts charged in Indictment 84312-5 of possession of a controlled substance for the purpose of trafficking contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 [CDSA]. The drugs are fentanyl, cocaine, methamphetamine, and a mixture of cocaine and methamphetamine. I also found him guilty of one count of failing to remain at the scene of an accident, contrary to s. 320.16(1) of the Criminal Code, R.S.C. 1985, c. C-46. These are the reasons on sentencing.

The positions of the parties

- [2] The Crown seeks a sentence of 24 to 30 months' imprisonment on the most serious conviction involving fentanyl, with nine months' imprisonment to be served concurrently for each of the other three drug convictions, and 45 days imprisonment served consecutively for the conviction for failure to remain at the scene of the accident, plus a 12 to 18-month driving prohibition.
- [3] Mr. Sunner seeks a conditional sentence order ("CSO") of two years less a day with 24-hour house arrest for the first 18 months, and with exceptions for work and necessary appointments, followed by probation. Mr. Sunner accepts that 45 days is appropriate for the failure to remain at the scene of the accident, but seeks that it be served as a CSO within the two years less a day. Alternatively, Mr. Sunner seeks a term of imprisonment of nine to 12 months with probation following release.

Principles of sentencing

- [4] Section 718 of the Code sets out the fundamental purpose of sentencing, which 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.
- [5] The objectives of the sanctions are: to denounce unlawful conduct and the harm done to victims or to the community; to deter the offender and other persons from committing offences; to separate offenders from society where necessary; to assist in rehabilitating offenders; to provide reparations for harm done to victims or to the community; and to promote a sense of responsibility in offenders and acknowledgment of the harm done to victims or to the community.
- [6] The sentencing judge must be guided by the principles in ss. 718.1 and 718.2 of the Code. The fundamental principle is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

- [7] Other relevant sentencing principles include that a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender. A sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. Where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh. An offender should not be deprived of liberty if less restrictive sanctions may be appropriate, and all available sanctions other than imprisonment that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders.
- [8] Sentencing for the controlled substance offences is also governed by s. 10 of the CDSA. Subsection (1) provides:
- 10 (1) Without restricting the generality of the Criminal Code, the fundamental purpose of any sentence for an offence under this Part is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation, and treatment in appropriate circumstances, of offenders and acknowledging the harm done to victims and to the community.
- [9] A CSO sought by Mr. Sunner is a sentence of imprisonment but which is served in the community rather than in jail. It is served under strict conditions, usually house arrest. A CSO can provide denunciation and deterrence, as well as promote restorative objectives such as rehabilitation: *R. v. Proulx*, 2000 SCC 5 at para. 22.
- [10] Section 742.1 of the Code provides the prerequisites that must be met before a conditional sentence may be imposed. As summarized in *R. v. Proulx* at paras. 46, 49 to 78, and *R. v. Sharma*, 2022 SCC 39 at paras. 13 and 14, they are:
- 1) the offender was not convicted of an offence that is excluded by s. 742.1 of the Code;
 - 2) the court would otherwise impose a term of imprisonment of less than two years;
 - 3) the safety of the community would not be endangered by the offender serving the sentence in the community; and
 - 4) service of the sentence in the community would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2 of the Code.
- [11] The second requirement requires a preliminary determination that a sentence of incarceration of two years or more or a suspended sentence is inappropriate: *Proulx* at para. 58.
- [12] In assessing whether the community would be endangered, the court considers the risk of the individual reoffending while serving the sentence in the community, and the gravity of the damage that could result if there were a reoffence: *Proulx* at paras. 68 and 69.

- [13] When the first three prerequisites are met, the court must give serious consideration to the fourth prerequisite of whether a conditional sentence would be consistent with the fundamental purpose and principles of sentencing: Proulx at para. 90. Where the objectives of denunciation and deterrence are particularly pressing, incarceration will generally be the preferable sanction. However, generally a CSO will be better than incarceration at achieving restorative objectives: Proulx at para. 127.
- [14] In this case, the Crown concedes that the first three prerequisites are met, and therefore a CSO was a possible available sanction, but argues that a CSO would not be consistent with the fundamental purpose and principles of sentencing.

Application of the principles of sentencing to this case

Circumstances of the offence

- [15] Mr. Sunner was the driver of an Infiniti which was involved in a car accident with a B.C. Ambulance Service vehicle (the "SUV") at approximately 1:00 a.m. on November 9, 2020. The accident took place north of the intersection of 216th Street and 40th Avenue in Langley.
- [16] Mr. Sunner was driving south on 216th Street and approaching that intersection. Up ahead, an emergency incident of some sort had taken place and emergency lights were visible at that intersection. At the same time as Mr. Sunner was proceeding south, the SUV was also driving south on 216th Street and was approaching Mr. Sunner's vehicle from behind with its lights flashing and siren on. The driver of the SUV was headed to the emergency incident at the intersection. Mr. Sunner slowed and pulled to the right side of 216th Street and stopped. As the SUV was nearing the Infiniti, Mr. Sunner turned the Infiniti to the left to make a U-turn. The SUV collided with the left side of the Infiniti. The SUV landed in the ditch and the driver suffered non-life-threatening injuries.
- [17] Mr. Sunner did not remain at the scene of the accident. By the time the driver of the SUV was able to exit his vehicle shortly after the accident, he observed that the Infiniti was across the lanes of traffic on 216th with the driver's door open and the driver's airbag deployed. The driver of the SUV was not at the scene. Mr. Sunner was located a short while later by a tracking dog. Mr. Sunner was found lying on his stomach under a tree near the top of a long driveway near the scene of the accident. He was searched incident to arrest and the Infiniti was searched. Controlled substances were found in the driver's door well of the Infiniti.
- [18] Following a Charter voir dire in which I found a s. 8 breach pertaining to s. 490(2) of the Code and a 10(b) breach, I admitted evidence of the items located in the searches. The quantity of controlled substances located was:
- a total of 3.815 grams, including packaging, of fentanyl in 24 plastic bags;
 - a total of 1.17 grams, including packaging, of cocaine in three plastic bags;
 - a total of 2.295 grams, including packaging, of methamphetamine in five plastic bags; and

- d) a total of 4.135 grams, with packaging, of methamphetamine and cocaine in 12 plastic bags.
- [19] I accepted the expert opinion of Constable Shergill that the quantities of the drugs and other circumstances of the offence were consistent with a dial-a-dope operation and that the value of the drugs was approximately \$1,620. Mr. Sunner had \$505 cash on his person, mostly but not all in small bills. Two cellphones were located. The plates on the Infiniti had been altered.
- [20] Crown counsel filed statistical evidence from the B.C. Coroner's Service of unregulated drug deaths from 2013 to 2022. These provided statistics by health authorities and areas, drugs involved, and identified the drugs involved in deaths. The statistics evidence the enormous rise in death rates which are attributable to illicit drug use, in particular fentanyl, since 2013. The significant risks and harms to users, their families, and society are detailed in many appellate authorities: for example, *R. v. Smith*, 2017 BCCA 112; *R. v. Mann*, 2018 BCCA 265; *R. v. Parranto*, 2021 SCC 46; and *R. v. Ellis*, 2022 BCCA 278.

Circumstances of Mr. Sunner

- [21] Mr. Sunner is currently 24 years old. He was 21 at the time of the offences. He has one conviction for dangerous operation of a motor vehicle, for which he received a suspended sentence and a one-year driving suspension. The offence date for that conviction was in June 2021 and post-dates the events of these convictions. He is therefore treated as a first-time offender.
- [22] Mr. Sunner has an unenviable driving record. He had numerous Motor Vehicle Act, R.S.B.C. 1996, c. 318 [MVA], violations from 2018 to the first half of 2021. These were primarily non-moving violations such as failing to display an N, failing to produce a driver's licence or insurance, but there are others such as driving contrary to a driver's licence restriction. These resulted in prohibitions imposed by the Superintendent of Motor Vehicles under s. 93(1)(a)(ii) of the MVA.
- [23] Mr. Sunner declined to have a pre-sentence report, instead preferring to obtain a report from his counsellor, Mr. Narinder Serown. Mr. Serown's report dated October 30, 2023, and his CV were filed at this hearing. Mr. Serown is a registered clinical counsellor. He was employed for over 30 years with the B.C. Public Service in both custody and community corrections. This included 15 years as an adult probation officer, senior probation officer, and local manager for adult community corrections, and 12 years as a youth correctional officer.
- [24] Mr. Sunner attended counselling with Mr. Serown for eight sessions between June and October 2022 in connection with the dangerous driving offence. In early October 2023, Mr. Sunner contacted Mr. Serown again to seek counselling for the present convictions. At the time of the sentencing hearing, Mr. Sunner had attended four sessions.

- [25] Mr. Serown reports that Mr. Sunner is an only child to parents who immigrated to Canada shortly after he was born. His father struggled with alcoholism for most of Mr. Sunner's life. Mr. Sunner described dysfunction, lack of parental guidance, and overall instability within his home while growing up. Recently, his father had begun working again but then lost his job due to alcoholism and failing to report for duty.
- [26] Mr. Sunner reported that he is very close with his mother and expressed that he is her only support and without him she has nothing.
- [27] Mr. Serown reports that Mr. Sunner feels anger, frustration, disappointment, and shame regarding his father and opined that Mr. Sunner carries a lot of resentment toward his father. When asked to reflect on his own criminal activities, Mr. Sunner reported that he felt embarrassed for his past choices and behaviours and he was fuelled by anger toward his father. Mr. Sunner acknowledged that fentanyl can kill people, and he felt very badly he was involved with drugs. Mr. Sunner expressed remorse and insight into the devastating impact of the current drug epidemic.
- [28] Mr. Serown reports that Mr. Sunner has shown a concerted effort in addressing his past criminal choices by maintaining a full-time job with a manufacturing company since 2023. Mr. Sunner reported that his manager had approached him about supervisory roles within the plant and offered to assist him with getting a boilermaker ticket to further strengthen his employability skills.
- [29] In 2022, Mr. Sunner enrolled in an adult education centre to obtain his GED. Mr. Sunner acknowledged that he struggles within a school setting and prefers to be active. He also advised that if his training is directly tied to his employment, this gives him a direct goal to strive towards.
- [30] Mr. Serown states that Mr. Sunner has been an active participant in their sessions and is showing insight and self-reflection in recognizing how his past choices carry significant consequences. Mr. Sunner reported how his work over the past nine months, his focus, his choice of companions, and his commitment to his family just to be better has been empowering.
- [31] Mr. Sunner's girlfriend of two years, who attends university, drives him to work every morning and continues to be a strong support for him as well.
- [32] Mr. Serown opines that Mr. Sunner is a young person who has experienced neglect, abuse, and dysfunction within his home from an early age. He lacked parental guidance during the critical moments of his formative years and he was essentially left to his own devices to grow up and navigate his surroundings. The current matter has been an eye-opener in recognizing the impact of his choices on his family, his community, and on himself.

- [33] Mr. Serown opines that Mr. Sunner is taking the necessary steps to mitigate his risk factors. Mr. Serown proposes that if Mr. Sunner is sentenced to a community supervision order, that he continue attending counselling services for support tools and guidance he needs to remain on his current trajectory.
- [34] Defence counsel advises that Mr. Sunner lives with his parents and is very close with his mother. He does not have hobbies, and spent a lot of time playing video games while growing up. Counsel submits that Mr. Sunner did not receive the guidance and attention necessary. He now spends a lot of time with his girlfriend, who is a very positive influence.
- [35] Defence counsel advises that there was a short interval in Mr. Sunner's life where he was before the courts on various driving violations under the MVA and ultimately the dangerous driving conviction. Since then, there has been a lengthy period where Mr. Sunner has not had any police matters.
- [36] Defence counsel advises that prior to Mr. Sunner's employment at the manufacturer, he had a job at an autobody shop for a number of months. At his current job, he recently received a raise and has extended health benefits. Counsel emphasizes the significance of Mr. Sunner already having had nine months of steady full-time employment. Counsel submits that Mr. Sunner has been able to move forward toward more responsibility in his job and has the support of his employer, where he may have the opportunity to move up further with education. Counsel submits that Mr. Sunner's steady employment is a good indication that he is going down the right path, and while education is not Mr. Sunner's strongest suit, he is still working toward a GED.
- [37] Counsel submits that the court should find that Mr. Sunner's rehabilitation is well underway and that the prospect of his ongoing rehabilitation is very high. Counsel submits that Mr. Sunner is redeemable or already redeemed and he has committed himself to a positive trajectory.
- [38] Defence counsel submits that Mr. Sunner was entirely forthright and remorseful and accepts the harm caused.
- [39] Mr. Sunner addressed the court and provided a sincere apology to his family and mother, the driver of the SUV, and anyone else hurt by his actions. He accepted responsibility for committing the offences and stated he understood the seriousness of his actions. He acknowledged the harm drugs can cause in the community and in a person's life. He expressed regret for his poor decisions and stated he will never end up in a situation like this again. He said he was committed to his job and knows he can have a good life if he works hard, and he wanted to complete his education and have a bright future.

Aggravating and mitigating factors

- [40] The aggravating factors are:
- a) the nature of one of the substances, being fentanyl;

- b) the circumstances of the offence, being a dial-a-dope operation for profit, which has been recognized as a more insidious form of trafficking (R. v. Voong, 2015 BCCA 285 at paras. 16 to 18); and
- c) with respect to the failing to remain at the accident conviction, Mr. Sunner's prior driving record history.

[41] The mitigating factors are:

- a) Mr. Sunner was youthful, being 21 at the time of the offences;
- b) Mr. Sunner had no criminal record at the time of the offence;
- c) Mr. Sunner's lack of positive guidance and support and the level of dysfunction within his family, with a father who was an alcoholic throughout his youth, which all reduce his moral blameworthiness; and
- d) Mr. Sunner is remorseful of his past behaviour, accepts full responsibility for his actions, and his address to the court was sincere.

[42] Mr. Sunner has taken concrete and positive steps towards rehabilitation. He has recently restarted counselling with Mr. Serown. He has a full-time job which he has held for nine months and in which he may have an opportunity to gain further skills, and he is working on getting his GED. He has had no police involvement since the summer of 2021, nearly two and a half years ago, indicating success towards his rehabilitation.

[43] Defence counsel argued that the Charter breaches should be taken into account as a mitigating factor. Counsel referred to R. v. Nasogaluak, 2010 SCC 6 at para. 55. In my view, the police conduct here did not engage an interest that would be a mitigating factor in sentencing. In Nasogaluak, there was serious police violence in the arrest of the offender.

[44] Counsel also referred to R. v. Kirk, 2023 BCSC 301, where the court took into account a five-year delay between arrest and sentencing. In this case, it has been three years since the offence, but the charges were not brought until 2021 and there was no unreasonable delay after that. I therefore do not accede to these arguments. Rather, the length of time enables greater information on the remedial steps Mr. Sunner has undertaken.

Sentences for the possession for the purpose of trafficking charges

[45] I will address the more serious controlled substances convictions first.

Gravity of the offences

[46] The sentencing range for first offence dial-a-dope trafficking of controlled substances other than fentanyl is six to 18 months: R. v. Voong, 2015 BCCA 285 at para. 59; Smith at para. 49.

- [47] The sentencing range for street-level trafficking of fentanyl is higher, reflecting the greater risk and harms of fentanyl. In *Smith* at para. 48, the court set a sentencing range of 18 to 36 months' imprisonment for first-time offenders of street-level trafficking.
- [48] Sentencing ranges are useful tools and not straitjackets. They reflect judicial consensus on the gravity of the offence, which is only one component of the proportionality analysis: *Parranto* at paras. 20 and 44. Sentencing ranges are a place to start and the sentencing judge must consider all relevant sentencing principles such as rehabilitation and restraint, and individualize the sentence in a way that counts for both aspects of proportionality: the gravity of the offence and the offender's individual circumstances and moral culpability: *Parranto* at paras. 16, 17, 36, and 44 to 46; *Ellis* at paras. 128 and 164 to 165.
- [49] Those factors may justify a significant adjustment in the sentence imposed and do not require exceptional circumstances: *Ellis* at para. 180. Exceptional circumstances is a short-hand description of circumstances that warrant a departure from the general range. As stated in *R. v. Choi*, 2022 BCCA 90 at para. 24:
- [24] The task of the sentencing judge in such cases is not to determine whether the offender has met some ill-defined exceptional circumstances threshold test, but to fashion a proportionate sentence.
- [50] As stated in *Ellis* at para. 170:
- [170] However, there will also be cases in which the circumstances, considered as a whole, allow deterrence and denunciation to be given adequate effect without a custodial term. There is nothing about *Smith* that prohibits this result. In those cases, a finding of significantly diminished moral blameworthiness arising from the offender's social context, background and their personal circumstances, including a substance use disorder, are likely to play a pivotal role. There will likely also be evidence, as was the case in *Schneider*, *Graham* and here, that a community-based sentence carries the greatest potential for the offender's rehabilitation, or evidence about particular harms the offender may suffer if incarcerated, including an exacerbated risk of re-offending.
- [51] The gravity of trafficking-related offences, particularly involving fentanyl, is high. This was a dial-a-dope operation, although there was no evidence it was sophisticated. The sentencing objectives of denunciation and deterrence must generally be given substantial weight: *Ellis* at paras. 3, 82, and 169. A sentence of imprisonment will generally be required: *Ellis* at para. 169.

Responsibility of offender and rehabilitation

- [52] Balanced against this in the proportionality analysis, I must consider Mr. Sunner's degree of responsibility. I find that Mr. Sunner's moral responsibility is reduced due to his personal circumstances. Mr. Sunner was young and this was his first offence. Mr. Sunner grew up with an alcoholic father and lacked parental guidance during his critical formative years. He is under-educated and was left to his own devices. In Mr. Serown's opinion, Mr. Sunner experienced neglect, abuse, and dysfunction in his home from an early age.
- [53] Mr. Sunner has also taken positive, concrete steps towards rehabilitation. He has had no police involvement for nearly two and a half years. He has worked full-time for nine months at a job where he has received a raise and there is a possibility of further training. He worked at an autobody shop before then for a few months. He has engaged in some counselling with Mr. Serown. He has shown insight into his past behaviour and expressed remorse and accepted responsibility. These all weigh in favour of the chances of successful rehabilitation and reduced risk of reoffence.

CSO

- [54] I agree with counsel that the first three prerequisites for a CSO are met. First, the offences are not excluded offences in s. 742.1. Second, on a preliminary assessment of the circumstances, in my view, a penitentiary sentence of two years or above would not be a fit sentence, and nor would a suspended sentence with probation. Third, given Mr. Sunner's positive steps in the past more than two years without evidence of any offence, in my view, the risk to the public of Mr. Sunner reoffending is small and, to the extent it is present, can be appropriately managed through imposition of conditions.
- [55] The fourth and contested prerequisite is whether a conditional sentence is consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2 of the Code. As noted in *R. v. Schneider*, 2019 BCCA 310 at para. 16, there is a tension between the competing objectives and principles in trafficking-related cases, particularly involving fentanyl. These are the need for strong general deterrence and denunciation, and the need to recognize an offender's commendable progress toward recovery or rehabilitation.
- [56] Sentencing is an individualized process. The courts calibrate the demands of proportionality by reference to the sentences imposed in other cases, which serves the principle of parity: *R. v. Friesen*, 2020 SCC 9 at paras. 31 to 33.
- [57] Crown and defence counsel referred to several sentencing decisions, most involving youthful offenders, where a CSO or suspended sentence was sought. All involve trafficking offences involving fentanyl. In addition to cases already referred to, these were: *R. v. Stamp*, 2022 BCCA 408; *Choi*; *Schneider*; *R. v. Samadi*, 2023 BCCA 145; *R. v. Sekhon*, 2022 BCPC 0033; *R. v. Milne*, 2021 BCSC 1859; *Kirk*; and *R. v. Vu*, Provincial Court, June 9, 2021.

- [58] In Stampp, the 21-year-old offender pleaded guilty. He sold fentanyl in a dial-a-dope drug operation. He had a positive upbringing, suffered from mental health challenges, and prior substance misuse. He had no criminal record, but was on probation as a term of a conditional discharge when the offence occurred. He had three children and had placed his life on a more positive trajectory, had disassociated from criminal associates, and obtained regular employment. The court upheld a 12-month jail sentence which reflected the weight the sentencing judge gave to the principle of rehabilitation.
- [59] In Choi, the 21-year-old had travelled to Vernon to participate in an established dial-a-dope operation. He was motivated by greed. Days before being arrested, he was stopped by police in the course of a drug investigation. This did not dissuade him. After his arrest, he continued to work on the drug line, lived in a drug house, and lied to his bail supervisor. He was a first offender, but was convicted of breaching his bail and conditional discharge before being sentenced. The sentencing judge was not satisfied the offender's youth decreased his moral culpability in this case. At the time of sentencing, the offender had moved from Vernon to live with his family and was employed with prosocial supports, but had an inexcusable lack of awareness of the harm he had caused. The court upheld a sentence of 18 months' incarceration and 12 months of probation.
- [60] In Schneider, the offender was 36 and had a lengthy record related to drug addiction. He pleaded guilty. He sold \$20 of heroin containing fentanyl to an undercover officer. The offender was homeless, living on the street, and addicted to heroin when the officer saw him consuming drugs and asked to purchase some from him. At the time, a CSO was not an available sentencing option. The offender had a sad history of addiction, charging in childhood after suffering repeated sexual assaults. At the time of sentencing, he had made truly exceptional rehabilitation efforts with extensive counselling, was a very favourable tenant in a recovery house, and had not used illicit drugs for 23 months, although there may have been a relapse. A suspended sentence would permit this offender to continue treatment in the community. The court allowed the appeal from a carceral sentence and substituted a three-year suspended sentence with strict conditions requiring continued treatment and monitoring, noting this was a rare case.
- [61] In Samadi, the 24-year-old offender was involved in a dial-a-dope operation. His intellectual functioning was in the borderline impaired range. He had social and mental health challenges from an early age and was addicted to opiates. There was three and a half years between offence and sentence. He had a tumultuous time after his arrest. He expressed remorse, but rationalized his behaviour, and was a poor historian in psychological assessments and to the author of a pre-sentence report, providing accounts inconsistent with documented events and was continuing to misuse drugs. For about six months before sentencing, he had been attending drug counselling and treatment programs and he was demonstrating good compliance. The sentencing judge found there had been substantial efforts recently at rehabilitation. The sentencing judge found that too long a jail sentence could impede his continued rehabilitation and increase the risk of relapse. The court upheld

an eight-month custodial sentence. An 18-month probation order was not appealed, noting that it represented a substantial departure from the generally applicable range because of the role the offender's circumstances played in the commission of the offences.

- [62] In Milne, the 21-year-old offender operated a dial-a-dope operation. He had no previous record. In Grade 12, he began to travel with the wrong crowd and eventually became addicted to drugs and began selling drugs to support his addiction. At sentencing, he was under the care of an addictions specialist and claimed to be clean for 18 months. He expressed remorse. Aggravating factors were that he was actively promoting an incentive program to enlist new customers. The substance was fentanyl, but was being provided as heroin, also an aggravating factor. He was sentenced to 18 months' incarceration.
- [63] In Kirk, the offender participated in a mid-level narcotic distribution enterprise, generating thousands of dollars a day in revenues. The offender was 38 years old, had mental health issues, and substance misuse disorder, and no criminal history. He became involved to pay bills and to support his substance use. A significant factor was that nearly five years passed from arrest to sentencing, and in that time, the offender did not return to criminal activities and appeared very unlikely to do so. Justice Baird found that the offender's promising course of rehabilitation would be imperiled by jail, and it was entirely possible the offender would emerge from jail at greater risk to reoffend. The offender was sentenced to a CSO of two years less a day with house arrest for 24 hours per day, seven days per week, and three years' probation.
- [64] In Vu, the Crown did not establish beyond a reasonable doubt that the offender was involved in a dial-a-dope operation, although there were hallmarks of it. The offender was 19 with no criminal record. He had a stable family, but he struggled in school and dropped out in Grade 9, moved away from home at age 16, and gravitated toward the wrong crowd and substance misuse. He supported himself through drug trafficking. At the time of sentencing, he had abstained from illicit drugs for nearly a year and distanced himself from former criminal associates, and had sought private counselling and turned himself in to custody in advance of sentencing to begin serving a sentence. The court rejected a CSO and imposed a sentence of 14 months' jail, which was reduced for pretrial custody.
- [65] In Sekhon, Judge Bakan helpfully reviewed a number of sentencing decisions, dividing them between those where CSOs had been imposed and those that had not. In that case, the accused was 38, had one dated unrelated criminal conviction, had been in the military and had a trade, but had lost contact with his family for years due to his drug use, and only very recently had contact with them. In the three months before sentencing, he had sought treatment for substance abuse and had obtained employment. He expressed insight and remorse. Judge Bakan rejected a CSO and imposed a carceral sentence of 18 months.
- [66] The sentencing cases cited by counsel are instructive for indicating the type and extent of circumstances where a CSO may be appropriate. These are the same circumstances cited in Voong at para. 59, and Ellis at para. 170, and include various combinations of youthfulness,

no criminal record, decreased moral responsibility due to disadvantaged backgrounds or health challenges, steps toward rehabilitation or treatment for drug addiction if applicable, or treatment for other health issues, and insight, remorse, and acknowledgment of harm: Samadi, Stampp, Vu, Milne, and Choi, which are respectively eight, 12, 14, and two 18-month sentences, reflect these circumstances.

Disposition

- [67] In this case, I find that a CSO would not be consistent with the fundamental purpose and principles of sentencing and is therefore not a fit sentence. The gravity of the trafficking-related offences and in particular the offence involving fentanyl is high. The offences took place when the dangers of illicit drug use and fentanyl were well known. The amount of controlled substances was not large, but it was a dial-a-dope operation which was aggravating.
- [68] Every day in B.C., fentanyl causes fatal overdoses. Denunciation and deterrence generally must take primacy, and custodial sentences are generally required to fulfil that principle. While a CSO is intended to be punitive as well as rehabilitative, in my view it would not sufficiently address those principles in this case. I have considered the principles of restraint and that all reasonable sanctions other than imprisonment should be considered, but those sanctions must be consistent with the harm done to victims or the community.
- [69] Mr. Sunner's personal circumstances, being his youth at the time of the offences, lack of criminal record, his challenging upbringing with an alcoholic father resulting in dysfunction, lack of parental guidance, and overall instability in the home, and his remorse and acceptance of harm all cumulatively reduce his culpability in the proportionality analysis.
- [70] Further, Mr. Sunner's lack of police involvement for nearly two and a half years since the offences and his full-time job for the past nine months support that he is on the right path to a prosocial lifestyle. I consider this a significant factor. A lengthy period of incarceration would be counterproductive to his rehabilitation.
- [71] In my view, a custodial sentence, still meaningful but which is below the general range, will, in all the circumstances, be a fit and proportionate sentence. It will sufficiently denounce his conduct and deter others from engaging in these offences and will be a reminder to him and others of the consequences of serious criminal behaviour.
- [72] Finally, in my view, a custodial sentence will promote a sense of responsibility in Mr. Sunner and acknowledge the harms done to users and society.
- [73] I find that fit sentences are 14 months' imprisonment on the fentanyl conviction, followed by 12 months' probation, and six months on each of the other controlled substance convictions, to be served concurrently with the 14-month term.

Sentence for failure to remain at scene of accident

- [74] Crown counsel advised that he could not find any sentencing case authority of assistance. The few sentencing cases he located involved very different facts. This is a first offence, but Mr. Sunner's driving record, which is unenviable, is an aggravating factor. Crown counsel submitted a custodial sentence of 45 days would be appropriate. Defence counsel accepted this was appropriate.
- [75] Crown counsel also sought that this be served consecutively and, in my view, that is appropriate, although this offence is temporally related to the drug offences and the offence engages different societal interests. In *R. v. Robertson*, 2020 BCCA 65 at paras. 90 and 91, the court reviewed the test for determining whether a sentence should be concurrent or consecutive. I will read from it:
- [90] The test for determining whether concurrent or consecutive sentences are appropriate is "whether the acts constituting the offences were part of a linked series of acts within a single endeavour": *R. v. G.P.W.* (1998), 106 B.C.A.C. 239 at para. 35; *R. v. Bamdad*, 2013 BCCA 87 at para. 24, 334 B.C.A.C. 204; *Li* at para. 42. Some of the factors to consider are: "the nature and quality of the criminal acts; the temporal and special dimensions of the offences; the nature of the harm caused to the community or to the victims; the manner in which the criminal acts were perpetrated; and the offenders' role in the crimes": *R. v. Potts*, 2011 BCCA 9 at para. 89, 266 C.C.C. (3d) 279 (per Rowles J.A.).
- [91] However, even when a link is present, consecutive sentences can be imposed when the offences committed protect different societal interests
- [76] Crown counsel also seeks a 12 to 18-month driving prohibition under s. 320.24(4) of the Code. This is a discretionary order. In my view, this order, in addition to the 45 days in custody, would not be a proportionate sentence. Defence counsel advised of the collateral consequences in terms of licensing, penalty points, and other fines or fees that would be payable upon such an order and they are significant, being in the thousands of dollars. As Mr. Sunner will be incarcerated, it would be extremely difficult for him to pay and could impair his rehabilitative prospects. As well, a lack of a driver's licence will impair Mr. Sunner's ability to work upon release. In my view, a 45-day sentence will satisfy the purpose and principles of sentencing.
- [77] Finally, as the 45-day sentence is to be served consecutively, I have considered the totality principle in s. 718.2(c) of the Code. I find that the aggregate sentence is not unduly long or harsh and does not exceed the overall culpability of Mr. Sunner and is just and appropriate.
- [78] So to confirm, counsel, there was no period of pretrial custody, was there?
- [79] CNSL A. SIDHU: No.
- [80] THE COURT: No, okay. Mr. Sunner, will you stand, please. On Count 3, possession of fentanyl for the purpose of trafficking, I sentence you to 14 months' imprisonment.

- [81] On Counts 4, 5, and 6, which are respectively possession for the purposes of trafficking of cocaine, methamphetamine, and a mixture of cocaine and methamphetamine, I sentence you to six months' imprisonment on each conviction to be served concurrently with Count 3.
- [82] On Count 2, failure to remain at the scene of an accident, I sentence you to 45 days imprisonment to be served consecutive to Count 3.
- [83] Following your release from custody, you will serve a period of probation for 12 months. The conditions of your probation are as follows. Please listen carefully, because at the end I am going to ask you to confirm that you have heard them and you understand them.
- [84] So during your probation -- I think there is a picklist here, so it might help. Yes, it is 5001, Madam Clerk: You must keep the peace and be of good behaviour. You must appear before the court when required to do so by the court. You must notify the court or the probation officer in advance of any change of name or address, and promptly notify the court or the officer of any change of employment or occupation.
- [85] Next is 5004: You must report in person to a probation officer at the office, probation -- I will maybe just stop here. Counsel, is it better in Surrey or is there a probation office in Surrey?
- [86] [Discussion regarding probation office.]
- [87] THE COURT: So I will start that again. 5004, Madam Clerk: You must report in person to a probation officer at 82851 20th Street in Delta, British Columbia, within two days of your release from custody, and thereafter when required by the probation officer and in the manner directed by the probation officer.
- [88] CNSL A. SIDHU: Can it be two business days, in case it ends up --
- [89] THE COURT: Oh, yes, two business days, that is fine.
- [90] CNSL C. FAST: The address, Justice, 8285 120th Street.
- [91] THE COURT: Oh, I am sorry, I said that wrong. It is, yes, 8285 120th, I should have recognized that. Thank you.
- [92] 5602: You must not possess or consume controlled substances as defined in the CDSA, except with a medical prescription.
- [93] 5701: You must attend, participate in, and complete any intake, assessment, counselling, and education program as directed by your probation officer.
- [94] Those are the end of the conditions. Did you hear and understand those, Mr. Sunner?
- [95] THE ACCUSED: Yes, Your Honour.

- [96] THE COURT: Yes, all right. So, if you breach or fail to comply with the probation order, you can be charged with an offence. I am sure your counsel will have reviewed this with you. The probation terms can be varied upon application, so either you, your probation officer, or the prosecutor can apply to the court to make changes to the conditions that I have just read to you if you feel that becomes necessary once you are released. In that case though, you have to make an application, all right.
- [97] All right, I am also making two ancillary orders. The first is mandatory. Pursuant to s. 109(1) and (2) of the Code, you are prohibited from possessing any firearm, other than a prohibited firearm or restricted firearm, and any cross-bow, restricted weapon, ammunition, explosive substance for a period of 10 years from the date of your release from prison; and (2) for life you are prohibited from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device, and prohibited ammunition.
- [98] The convictions for the controlled substances related offences are secondary designated offences. After considering the factors in s. 487.051(3) of the Code, and being advised by your counsel at the hearing that there was no opposition, I am satisfied that it is in the best interests of the administration of justice to make an order in Form 5.04 authorizing the taking of samples of bodily substances from you for the purposes of registration in the DNA National Data Bank. The sample will be taken from you while you are in jail and you must submit to the taking of it.
- [99] Pursuant to s. 16 of the CDSA and s. 490(9) of the Criminal Code, items seized from Mr. Sunner and the Infiniti will be forfeited, and I understand counsel will be forwarding an agreed draft order to that effect.
- [100] And there will be no victim surcharge under s. 737. I find it would cause Mr. Sunner undue hardship as he will be in custody.
- [101] Is there anything arising?
- [102] CNSL A. SIDHU: No, Madam Justice.
- [103] CNSL C. FAST: We do have a copy of the --
- [104] THE COURT: Oh, you do have an order.
- [Discussion regarding forfeiture order, signed at the bench.]
- "Norell J."

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