

## **COURT OF KING'S BENCH OF MANITOBA**

### **B E T W E E N:**

HIS MAJESTY THE KING,	)	<u>Kathryn M.T. Henley</u>
	)	for the Crown
	)	
- and -	)	
	)	<u>Adam S. Pinx</u>
JEFFREY GAUDET,	)	for the accused
	)	
accused.	)	
	)	Judgment Delivered (Orally):
	)	February 27, 2024

### **SUCHE J.**

[1] Mr. Gaudet has pled guilty to conspiracy to traffic in cocaine arising from his involvement in the sale of one kilogram of cocaine on two occasions, being November 2, 2020 and December 21, 2020. His arrest was one of many in a three-year project targeting mid and high-level drug dealers in Winnipeg.

[2] Following a *Gardner* hearing, I found Mr. Gaudet was a courier of the drugs and proceeds. Police surveillance showed him to have the drugs in a car he was driving, and following the transaction, taking the money to his apartment.

[3] The question before me can be summarized this way: What is a fit sentence for a first offender, who committed the offence to repay a drug debt, while working to overcome a long-standing addiction, and who has since turned his life around?

[4] Mr. Gaudet is 34 years old. He was 31 at the time of the offence. By all descriptions, he was a hardworking, responsible person with good values, a supportive family and group of friends who deeply cared about him.

[5] On his 23rd birthday, a person very close to him committed suicide. The circumstances made him believe he was somehow responsible for her death. This sent him into a serious depression, fueled by alcohol and cocaine. His friends became people partying and selling drugs.

[6] Over time he lost his job, then his business, and many friendships. Two relationships he had during this period both ended because of his substance abuse. His birthday, a painful reminder, was often spent bingeing alone.

[7] Mr. Gaudet explains that the "wake up call" came when he discovered his girlfriend terminated a pregnancy without telling him because she thought he was incapable of parenting due to his addiction.

[8] At this point, he was using heavily and had lost a great deal of weight. He was hospitalized briefly for suicidal ideations. He sought help from his family doctor, which led to a Co-Occurring Disorders assessment, and then a six-month dialectic behavioural therapy program, which he successfully completed. This, he says, taught him coping skills that allowed him to face the difficult memories and emotions without using drugs or alcohol. He abandoned his drug friends and

reconnected with people who had previously been in his life. He says he has not used since January 2021.

[9] He moved to Alberta and then to British Columbia to work in the oil fields. In March 2023, he learned a warrant had been issued for his arrest for this charge and turned himself in. He was released on bail and resumed his job. In July 2023, his surety was cancelled for reasons unrelated to him. He has been in custody since.

[10] Since then, he has attended and completed pretty much every program available to him, including AA meetings. He tried to get into Winding River, the Provincial Correctional Treatment Centre, but was refused because of the high-profile nature of his charge. He then started working in the prison kitchen.

[11] The Pre-Sentence Report describes him as a low risk to reoffend. Both in his interview with the probation officer and again in court, Mr. Gaudet accepted responsibility for making the choices he did, showed he understands the impact of his actions on the community and apologized to the people in his life for the hurt he has caused. He expressed shame for allowing himself to be in this situation, but gratitude for the many people who have helped him. This included the Crown attorney who agreed to a bail plan that allowed him to continue work out of province.

[12] Many people were present in court to show their support for Mr. Gaudet. Many more submitted letters. This includes two former girlfriends who ended their relationships with him because of his drug use, family members, both his

employers in Alberta and B.C., the kitchen supervisor at Milner Ridge, and managers of the programs in which he participated. They confirm Mr. Gaudet has returned to being a responsible, engaged, and hardworking individual. A more glowing picture of the extent to which he had turned his life around could not be painted.

[13] So, to return to the question: What is an appropriate sentence for Mr. Gaudet? I begin by noting that trafficking in cocaine and other hard drugs is a most serious offence. The ***Criminal Code*** makes this clear by setting the maximum penalty at life imprisonment. As this situation shows, the damage these drugs cause is devastating and extends beyond those who consume. Thus, the primary sentencing objectives are denunciation and deterrence.

[14] The Crown seeks 6.5 years imprisonment. The defence, on the other hand, is asking for a sentence of 2 years less a day to be served in the community.

[15] A few principles. It is agreed that in Manitoba the sentence range for those involved as a courier in a high-level drug organization is 6 to 9 years. However, sentencing ranges are just that; generalized statements of appropriate sentences for certain crimes. Sentencing is an individualized process, which must take into account all the specific circumstances of the offence, as well as the offender.

[16] A preliminary question is the appropriate range. The Crown relies on what it considers to be an acknowledgment from the defence that Mr. Gaudet was a courier for a high-level organization. A high-level organization is one dealing in multiple kilograms of drugs.

[17] The defence says that while it is true that the organization itself is high-level, Mr. Gaudet's involvement was limited to two occasions, each involving one kilogram of cocaine. Many cases involving offenders caught with one, or even two, kilograms of hard drugs are treated as mid-level dealers.

[18] The designations of the level of trafficking are helpful, although somewhat arbitrary. Sometimes, such as here, the distinctions between these levels are blurred. It is important to consider their underlying premise.

[19] Mere couriers are at the lowest end of the sentencing hierarchy and receive the lowest sentence. They are the least involved, necessarily have the least amount of information to share because they are at the greatest risk of being caught. Nonetheless, they are an essential cog in the machinery. They insulate more serious offenders from detection. And, importantly, they must have somehow gained the trust of those higher up to carry large amounts of cash and/or very valuable drugs. As Sergeant Bazik testified, typically this arises from a proven record of involvement in drug dealing or other criminal activity. Here however, the element of trust arose from the fact he owed a drug debt.

[20] Clearly the quantity of drugs and number of deliveries involved goes to the level of risk, danger to the public and moral culpability. Here, two transactions of one kilogram each take Mr. Gaudet to the bottom of the range of a high-level courier.

[21] I do not agree that a sentence of 6.5 years reflects parity with others sentenced on this project. Each had aggravating factors, including the amount of

cocaine, other offences, criminal records, or indicia of their own mid-level trafficking. Only two individuals did not have a record. Mr. Din received 6.5 years, but was involved in more transactions and on arrest, was in possession of indicia of mid-level trafficking. Mr. Zandi received 6 years. He was involved in two transactions, one of which he transported 10 kilograms of methamphetamine. Neither of these offenders had the mitigating factors present here.

[22] The defence argues the balance between personal circumstances and the primary considerations of denunciation and deterrence tips very strongly in Mr. Gaudet's favour. It relies on the decision in ***R. v. Parker***. In brief, Mr. Parker was suffering from a long-standing addiction and was caught with a loaded gun while he was in the midst of a week-long binge using a mixture of various hard drugs. He was living in his car, owed money to drug dealers and was paranoid about being harmed by them. A friend gave him the gun for protection, but he claimed he had no intention of using it.

[23] In between the date of the offence and the sentencing hearing, Mr. Parker underwent treatment for his addiction. Like Mr. Gaudet, this taught him some coping skills which he was able to rely on instead of turning to drugs and alcohol. Three years later, he was employed, a responsible and valued member of a workplace and his community. Instead of applying the starting point of 3 years for the offence, plus time for breach of a weapons prohibition and an assault – also arising from the incident, I sentenced him to 2 years less a day, and placed him on a conditional sentence.

[24] Mr. Parker and Mr. Gaudet's circumstances are very similar. If anything, Mr. Gaudet's are somewhat more favourable.

[25] A distinction in the circumstances of their respective offences however, is that Mr. Parker committed the offence while truly in the throes of an addiction where his drug-induced perceptions were driving his criminal conduct.

[26] Here, Mr. Gaudet found himself with a debt to his suppliers that he had to make good on. He agreed to act as a courier to pay it off. While I accept that his offending was directly related to his drug addiction, nonetheless, he was making a choice when he agreed to this and financial gain was his motivation. To me, this is a small, but important, difference in his moral culpability.

[27] Having said that, I acknowledge that Mr. Gaudet was in a very vulnerable position. He was trying to address his addiction. No doubt he felt he had no choice but to comply.

[28] With this in mind, there still are many mitigating factors to be considered. He is a first offender with limited involvement. He was in possession of the drugs or money for a very brief time – in one instance it was a few minutes; and at all times, the co-accused South was either with him or very nearby.

[29] Added to this are the very important considerations that this offence is directly tied to his addiction, and long before he was aware of this charge, he sought treatment on his own and has completely turned his life around for an extended time.

[30] In the end, having considered the many cases counsel have provided to me, along with the factors I have just referred to, I conclude that a fit sentence for Mr. Gaudet is 3 years imprisonment. This is still a penitentiary sentence, which I am satisfied sufficiently recognizes the need for deterrence to anyone inclined to commit this offence.

[31] The sentence is to be reduced by 1 year for pre-trial custody. I also impose a mandatory weapons prohibition for 10 years, pursuant to section 109 of the ***Criminal Code***.

[32] I decline to make a DNA order. Albeit a very serious crime, in all the circumstances of this case, I am of the view that the intrusion on Mr. Gaudet's privacy is not justified.

[33] Before concluding, I would like to say three things. The first is the value of a comprehensive, well-researched Pre-Sentence Report. I also wish to acknowledge the work that has gone into the defence materials. Together, these have created a very clear picture of Mr. Gaudet's situation. Finally, the Crown's approach in focussing on the important issues in the case, but acknowledging the facts and considerations that must be taken into account in making this decision.

[34] The hard work of these participants made my task, if not easier, then at least clearer. I thank them.

\_\_\_\_\_ J.



**AUTHORITIES REFERRED TO**

- ***R. v. Johnson***, 2020 MBCA 10
- ***R. v. Cerezo-Brennan***, 2023 MBCA 17
- ***R. v. Cabal***, 2023 MBKB 159
- ***R. v. Kenyon***, 2010 MBCA 70
- ***R. v. McLean***, 2022 MBCA 60
- ***R. v. Oddleifson***, 2010 MBCA 44
- ***R. v. Parranto***, 2021 SCC 46
- ***R. v. Burnett***, 2017 MBCA 122
- ***R. v. Parker***, 2022 MBQB 66 (affirmed 2023 MBCA 51)
- ***R. v. Suter***, 2018 SCC 34
- ***R. v. Carter***, 2017 SKQB 74
- ***R. v. Klassen***, 2011 NLTD(G) 100
- ***R. v. Hanano***, January 23, 2009 – MBQB Unreported decision delivered orally by Spivak, J. (as she then was)
- ***R. v. Calanza***, 2010 MBQB 240
- ***R. v. Henderson***, 2002 ABQB 442