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Docket: CR 23-01-39375
(Winnipeg Centre)
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COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

HIS MAJESTY THE KING	)	
	)	Julian Kim
- and -	)	for the Crown
	)	
CURTIS SUGIRA NDATIRWA, MANVEER SINGH, MARCUS REMINGTON BURT,	)	Shimon Segal
	)	for the accused,
	)	Manveer Singh
accused.	)	
	)	Judgment Delivered:
	)	January 29, 2024

TOEWS J.

INTRODUCTION

[1] Manveer Singh ("Singh"), has pleaded guilty to one count set out in the indictment, admitting that on or about the 29th day of November 2021, in the R.M. of Springfield, Manitoba, he did unlawfully traffic a controlled substance, to wit, fentanyl contrary to s. 5(1) of ***The Controlled Drugs and Substances Act***, S.C. 1996, c. 19 (the "***CDSA***"). As part of an agreement with Crown counsel, Singh has admitted that he is a high-level drug courier and although not set out in the count to which he has pleaded guilty, Singh also admits to trafficking in cocaine and methamphetamine in respect of the same

transaction. All other charges on the indictment against him were stayed by the Crown. With respect to the co-accused, Marcus Remington Burt, he has had all charges against him stayed. The co-accused, Curtis Sugira Ndatirwa, has sentencing dates set for March 18 and 26, 2024. That matter is being heard by another Justice of this court.

[2] There is no dispute that the currency (approximately $29,000) and the drugs seized by police in relation to the arrest of Singh are to be forfeited. Ancillary orders, including a lifetime weapons prohibition pursuant to s. 109 of the ***Criminal Code*** and a secondary DNA order, are also agreed to. However, counsel are not agreed upon the appropriate length of the prison term to which Singh should be sentenced. The Crown is seeking a 13-year prison term while defence counsel submits that a sentence in the range of an eight to nine year prison term is the appropriate sentence.

FACTS

[3] The facts underlying the offence are agreed to by counsel and were read into the court record. In summary, the police followed another co-accused in his vehicle from a location in Winnipeg to Deacons Corner in the R.M. of Springfield just east of Winnipeg on Highway #1. At this location the co-accused met with Singh, a semi-truck driver, who had parked the semi-truck he was driving at that location. Singh handed the co-accused two bags and the co-accused placed them into his vehicle. After the co-accused left Deacon's Corner, a subsequent search of that vehicle resulted in the seizure of the two bags provided to him by Singh which contained the following:

- 15 kilograms of methamphetamines (street value of approximately $1.7 million);

- 2 kilograms of fentanyl (street value of approximately $1.2 million sold by the point); and
- 1 kilogram of cocaine (street value of approximately $90,000).

[4] The semi-truck driven by Singh was later stopped in Brandon Manitoba. Inside the cab of that vehicle the police found just under one pound (410 grams) of fentanyl as well as approximately $29,000 in Canadian currency. Singh was the lone occupant of the semi-truck. Both the fentanyl and the currency were in clear plastic bags next to the driver's seat inside two separate backpacks which also contained Singh's personal documents. (See Exhibit S1)

[5] The validity of the search warrants executed during these seizures is not contested.

POSITION OF THE CROWN

[6] The Crown states that Singh is a high-level courier and that he has a high degree of moral culpability. He is not an addict and his involvement in the trafficking of these drugs is part of a wholesale commercial venture. The Crown states that the primary sentencing considerations here are denunciation and deterrence. Rehabilitation is a lesser or secondary consideration.

[7] In its submissions, the Crown emphasizes the very significant danger of fentanyl and the harm caused by drug dealers preying on very vulnerable addicted people. The Crown takes the position that based on the case law, the amounts of methamphetamine and cocaine seized by themselves justify a prison sentence in "double digits".

[8] The Crown summarizes the aggravating factors in this case as including the gravity of the offence itself, the nature of the substances being trafficked, and the fact that there

was a further amount of dangerous drugs and a significant amount of cash in Singh's possession when he was arrested in Brandon. It is the Crown's position that given the quantity of drugs involved, he is clearly a trusted member of a sophisticated drug organization.

[9] Singh is a non-citizen and will face immigration consequences which may include deportation. The Crown takes the position that this is not a mitigating factor. On the contrary, the Crown submits that being involved in drug trafficking on this scale while a temporary resident on a student visa, is an aggravating factor notwithstanding that he is also in the process of applying for refugee status.

[10] The Crown states that the guilty plea took place after the preliminary hearing and that the guilty plea here is not a significant mitigating factor.

POSITION OF SINGH

[11] Counsel for Singh notes that the real issue here is the appropriate quantum of time which the court must impose in sentencing Singh to a term of imprisonment. Counsel notes that Singh has pled guilty and that he has no prior criminal record.

[12] Counsel also argues that it is not appropriate for the court to assume that Singh was a highly trusted member of the drug organization for whom he was delivering the drugs. When his plans for school did not work out and he was facing significant financial pressures arising out of loans related to his educational program and his subsequent professional truck training, he turned to this activity. As a foreign national facing significant financial pressure in the form of student related debt and threats on his life emanating from his home country, he should also be considered a vulnerable person.

[13] Counsel submits that there is a substantive difference between a person like Singh carrying drugs as a courier and the higher degree of moral blameworthiness which is attributable to the directing minds of the criminal organization that utilized him in this role. In this context, counsel submitted that Singh was unaware of the contents of the bags he handed over to his co-accused and although he knew they contained something illegal, he had no actual knowledge of their contents. Accordingly, counsel argued that the level of moral blameworthiness of Singh is the same as if he were trafficking in less dangerous drugs, although the contents of the bags subsequently turned out to contain very dangerous drugs.

DECISION

[14] In coming to the conclusion that a fit and proper sentence in this case is one of 12-years imprisonment, I have considered the submissions of both counsel, the case law submitted and the statutory provisions relevant to sentencing which I am required to consider in arriving at my conclusion.

[15] In ***R. v. Parranto***, 2021 SCC 46, 31 Alta. L.R. (7th) 213 (QL), the court made the following observations in respect of the sentencing generally:

> **9** This Court has repeatedly expressed that sentencing is "one of the most delicate stages of the criminal justice process in Canada" (*R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089, at para. 1). More of an art than a science, sentencing requires judges to consider and balance a multiplicity of factors. While the sentencing process is governed by the clearly defined objectives and principles in Part XXIII of the *Criminal Code*, it remains a discretionary exercise for sentencing courts in balancing all relevant factors to meet the basic objectives of sentencing (*Lacasse*, at para. 1).
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> **10** The goal in every case is a fair, fit and principled sanction. Proportionality is the organizing principle in reaching this goal. Unlike other principles of sentencing set out in the *Criminal Code*, proportionality stands alone following the heading "Fundamental principle" (s. 718.1). Accordingly, "[a]ll sentencing starts

> with the principle that sentences must be proportionate to the gravity of the offence and the degree of responsibility of the offender" (*R. v. Friesen*, 2020 SCC 9, at para. 30). The principles of parity and individualization, while important, are secondary principles.
>
> **11** Despite what would appear to be an inherent tension among these sentencing principles, this Court explained in *Friesen* that parity and proportionality are not at odds with each other. To impose the same sentence on unlike cases furthers neither principle, while consistent application of proportionality will result in parity (para. 32). This is because parity, as an expression of proportionality, will assist courts in fixing on a proportionate sentence (para. 32). Courts cannot arrive at a proportionate sentence based solely on first principles, but rather must "calibrate the demands of proportionality by reference to the sentences imposed in other cases" (para. 33).
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> **12** As to the relationship of individualization to proportionality and parity, this Court in *Lacasse* aptly observed:
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> > Proportionality is determined both on an individual basis, that is, in relation to the accused him or herself and to the offence committed by the accused, and by comparison with sentences imposed for similar offences committed in similar circumstances. [para. 53]Individualization is central to the proportionality assessment. Whereas the gravity of a particular offence may be relatively constant, each offence is "committed in unique circumstances by an offender with a unique profile" (para. 58). This is why proportionality sometimes demands a sentence that has never been imposed in the past for a similar offence. The question is always whether the sentence reflects the gravity of the offence, the offender's degree of responsibility and the unique circumstances of each case (para. 58).

[16] In ***Parranto***, the court upheld the decision of the Alberta Court of Appeal in finding that a sentence of a global sentence of 14 years was not inappropriate in a case of an accused with a lengthy and related criminal record where the quantity of fentanyl being trafficked was significantly less than the amount being trafficked here. While a significant amount of cash was also seized in ***Parranto***, in that case there were two counts of trafficking in fentanyl involving 27.8 grams and 485.12 grams respectively. The court stated that a range of sentence on a first offence of 9 to 12 years was appropriate. In ***Parranto***, unlike the case at bar, ***Gladue*** factors were also relevant as a factor in

fashioning the appropriate sentence (see para. 80). The court held that the global sentence of seven years imposed by the sentencing judge was demonstrably unfit.

[17] In ***R. v. Felix***, 2019 ABCA 458, 98 Alta. L.R. (6th) 136, the court considered the appropriate sentence for an accused involved in wholesale fentanyl and cocaine trafficking involving several transactions totaling 2,388 fentanyl pills and 2.5 kilograms of cocaine. In that case he had pled guilty, had no criminal record, a positive background and favourable prospects for rehabilitation. This judgment establishes a starting point of nine years for fentanyl trafficking at a wholesale commercial level. The court increased a nine-year sentence to ten years, stating the sentence in this case was bound by the position taken by the Crown in the court below being that a fit global sentence would be ten years.

[18] In ***R. v. Petrowski***, 2020 MBCA 78, [2020] M.J. No. 195 (QL), decided prior to ***Parranto***, the court dismissed an appeal from a 10-year sentence imposed by a trial judge. The court made the following observations in respect of the dangers of fentanyl:

> **38** The proportionality analysis requires consideration of the gravity of the offence. Fentanyl is a Schedule I substance (see Schedule I of the *CDSA*). Pursuant to section 5(3)(a) of the *CDSA*, anyone who is convicted of trafficking it in is guilty of an indictable offence liable to imprisonment for life.
>
> **39** Canadian courts have consistently recognised that denunciation and deterrence must be the primary sentencing considerations in cases involving trafficking in Schedule I substances defined in the *CDSA*, such as cocaine, heroin, and methamphetamine. In *White* at paras 74-92, Saunders JA undertook an extensive analysis of Canadian jurisprudence regarding sentences for cocaine and heroin, following which he concluded (at para 92):
>
> > From this broad canvass of Canadian case law, it is indisputable that no matter where the crime occurs, persons convicted of trafficking, or possession for the purpose of trafficking, in dangerous and highly addictive substances, can expect to receive lengthy prison sentences. The primary objective being the protection of society requires severe punishment that

> will expressly denounce such conduct, and deter not only the offender, but any others who may be similarly inclined.

See also *R v Johnson*, 2020 MBCA 10 at para 12; *R v Racca*, 2015 MBCA 121 at para 13; and *R v Grant (IM)*, 2009 MBCA 9 at paras 108-109.

. . . . .

42 In this case, the Court had the benefit of a report authored by Dr. Graham R. Jones dated January 27, 2016 (the Jones report), providing information regarding fentanyl which had been entered as evidence at the sentencing hearing. This report is authored by the same person and appears to contain much of the same information that was considered by the courts in *Felix* and *White*. It is also similar to the evidence provided in other provinces such as British Columbia (*Mann* at paras 16-31); Saskatchewan (*Smith 2019* at paras 81-84); and Ontario (*Loor* at paras 35-39).

43 Briefly, the report filed in this case establishes:

* Fentanyl is a potent opioid analgesic (pain killer) which also has anesthetic properties at higher doses. Medically, it is used as a surgical analgesic and as an adjunct to anesthesia. It is also available for long-term control of severe pain and for the treatment of breakthrough pain in chronic conditions such as cancer, where the slow release of opioids is not sufficient to control pain;

* Like all opioids, a sufficient dose of fentanyl will cause a reduction in respiration rate which may lead to lack of oxygen to the brain and other organs which, if low enough, may cause brain damage, organ damage, coma and death;

* Toxic concentrations of fentanyl can also cause muscle rigidity, as well as nausea and vomiting, which can be aggravating factors to someone who is already compromised by the primary effects of the drug;

* Fentanyl is 80 to 100 times more potent than morphine and 25 to 50 times more potent than pharmaceutical grade (99% pure) heroin;

* A fatal dose of fentanyl will likely be lower than 2 milligrams for many people and especially a relatively naïve user. In *Felix*, the Court observed that, for inexperienced users, a lethal dose is likely to be under one milligram (see para 15);

* For those who have built up a tolerance to the drug, fatal toxicity can be produced with a sufficient dose;

> * Fentanyl has a very high abuse potential and physical dependence will develop after repeated use;
>
> * Fentanyl can be administered intravenously, inhaled or absorbed into the skin. Tablets are not used medically, although a slow-release lozenge is available.
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> **44** In *Leach*, the Court noted that, in April 2016, the Provincial Medical Health Officer declared a public health emergency in response to an alarming increase in drug overdose deaths in British Columbia, largely attributable to fentanyl (see para 16). Despite this, the Court noted that the evidence established that, "[i]n the first 10 months of 2017, there were 999 fentanyl detected overdose deaths in British Columbia representing a 136% increase in the number of fentanyl detected deaths (423) that occurred during the same period in 2016" (at para 48).

[19] The subsequent comments of the court in ***Parranto*** support the prior conclusion of the court in ***Petrowski*** that the 10-year sentence in respect of 51 grams of fentanyl is not "demonstrably unfit". Furthermore, the comparative sophistication of the operation here as well as the significantly larger amount of various types of dangerous drugs seized, lends support to the Crown's position that a sentence in the range of 13 years is fit and appropriate. Even after Singh delivered the bags containing 18 kilograms of various dangerous drugs, including cocaine, methamphetamine and fentanyl to his co-accused, he still had in his personal possession 410 grams of fentanyl – almost a pound of a very dangerous drug.

[20] The submissions of counsel for Singh rely heavily on the position that the moral blameworthiness of Singh is mitigated by the fact that he was apparently unaware of the contents of the bags he delivered to his co-accused and that as a foreign national, in debt and otherwise vulnerable as evidenced by his refugee claim, the court should impose a sentence which reflects those factors as mitigating circumstances. Furthermore, while

Singh admits that he is a high-level courier, counsel submits that he is not a directing mind of the criminal operation with which he was involved.

[21] In my view, the position advanced by counsel for Singh minimizes the important, if not vital role of the courier, not only in transporting the drugs themselves, but insulating the directing minds from detection by law enforcement. This important role of the courier in the drug distribution context is the subject of comment in ***R. v. Danilko***, 2008 MBQB 294, 234 Man.R. (2d) 310 (QL), at paras. 36 and 37 where the court held:

> **36** It is clear from the accused's comments that he has performed the role of courier on past occasions for the gang in question. What is concerning is the manner in which he minimizes his particular role. This minimization and rationalization is in some ways consistent with the youthful and naïve perceptions harboured by some of those accused persons who perform the role of courier. Couriers often tend to be people who come before the courts with few, if any, criminal antecedents. These individuals are often young and they are "used" and exploited. They are used and exploited by more experienced and organized traffickers, oftentimes those in gangs. They are used to evade arrest and implication. They provide a level of protective insulation for the mid and upper levels of an organization whose major profit usually comes from trafficking in drugs.
>
> **37** Two recent Manitoba drug investigations demonstrate the difficulty facing the police when attempting to gather enough evidence to prosecute organized drug criminals and gang members. Operations "Defence" and "Drill" involved cases where the Manitoba Integrated Organized Crime Task Force was required to utilize an undercover agent who infiltrated such organizations. With the assistance of surveillance and wiretaps, the levels of insulation protecting the higher-ups and the directing minds were penetrated. However, such necessary infiltration came with significant difficulty, challenge and potential danger. It is critical that courts recognize that part of that protection or insulation for the higher-ups is provided by couriers like the accused in the present case. Such an essential layer of insulation enables the directing minds and the criminal organizations generally to carry on their illegal and very profitable criminal activity.

[22] Furthermore, the argument that he was unaware of the contents of the bags still does not explain that he had in his personal possession, even after the delivery of the two bags to his co-accused at Deacon's Corner, 410 grams of fentanyl, worth

approximately $200,000 to $250,000 based on the evidence read into the record by the Crown that two kilograms of fentanyl has a value of approximately $1.2 million when sold by the point on the street. In my opinion, accepting for the purposes of argument, a lack of knowledge on his part of what was in the bags, the 410 grams of fentanyl among his personal belongings in the cab of the semi-truck he was driving is still eight times as great as the 51 grams considered by the court in ***Petrowski***. In addition, the drug distribution method there (courtesy of Canada Post), was a far less sophisticated delivery system than the system in place here which Singh facilitated through the operation of the semi-truck he drove.

[23] In this case, while the immigration or refugee status of a person before the courts is generally relevant in considering the background of an accused at sentencing, I am not convinced that the immigration or refugee status of Singh is either an aggravating factor (as argued by the Crown) or a mitigating factor (as argued by defence counsel) for the purposes of sentencing such as to result in a reduction of the sentence that should otherwise be imposed. In a case like this where denunciation and deterrence are the primary considerations in sentencing, the immigration status is informative and of assistance, but in my view is not dispositive of the consideration of the issue of sentencing one way or another to any significant degree.

[24] Furthermore, in the consideration of any collateral consequences which may flow from the imposition of a period of imprisonment, this is not a situation similar to that which led the court to adjust a sentence to avoid the collateral consequences of the operation of a statute as in ***R. v. Pham***, 2013 SCC 15, [2013] 1 S.C.R. 739 (QL). In

Pham, where the collateral consequences of a two-year sentence were considered by the court, there was a joint submission by the Crown and defense counsel, pursuant to which the sentencing judge imposed a sentence of two years' imprisonment. Neither party had raised the issue of the significant collateral consequences of a two-year sentence on the accused's immigration status before the sentencing judge. In that case, the Supreme Court of Canada reduced the sentence of imprisonment to two years less a day which then effectively dealt with the adverse collateral consequence of concern in that case. However, as the court noted:

> **15** The flexibility of our sentencing process should not be misused by imposing inappropriate and artificial sentences in order to avoid collateral consequences which may flow from a statutory scheme or from other legislation, thus circumventing Parliament's will.
>
> **16** These consequences must not be allowed to dominate the exercise or skew the process either in favour of or against deportation. Moreover, it must not lead to a separate sentencing scheme with a *de facto* if not a *de jure* special range of sentencing options where deportation is a risk.

[25] Imposing even a significantly less period of imprisonment here would not in this case minimize any collateral immigration consequence and would in my view result in an inappropriate or artificial sentence.

[26] In my opinion, based on my consideration of the case law, the statutory provisions and the submissions of counsel, the request by defence counsel for a sentence of eight to nine years' imprisonment is too low. Instead, I am imposing a 12-year sentence of imprisonment as a fit and proper sentence.

[27] Rather than imposing the 13 years requested by the Crown, the lower 12-year sentence is imposed on the basis that there was a guilty plea after the preliminary hearing

in this case and because the apology and the other comments made personally by Singh at the time of the sentencing hearing indicate to me that there is a sincere measure of regret on his part for his role in this criminal enterprise.

CONCLUSION

[28] In the result, based on the foregoing reasons, Singh is sentenced to a period of 12-years imprisonment with credit towards that sentence at the rate of 1.5 days for each day in custody in respect of his detention prior to today's date. As stated at the onset of these reasons, the ancillary orders requested by the Crown in respect of the lifetime weapons prohibition pursuant to s. 109 of the ***Criminal Code***, the DNA testing, and the forfeiture of all seizures, including but not limited to the Canadian currency and any controlled drugs seized by the police in respect of the arrest of Singh, are also granted.

_____ J.