Date: 20170823
Docket: CR 16-01-35438
(Winnipeg Centre)
Indexed as: R. v. Romanishen
Cited as: 2017 MBQB 85

COURT OF QUEEN'S BENCH OF MANITOBA

BETWEEN:	)	**APPEARANCES:**
	)	
	)	Jean-Pierre Deniset
HER MAJESTY THE QUEEN	)	for the Crown
	)	
	)	Eric Wach
- and -	)	for the accused
	)	
JADE ASSUNTA ROMANISHEN	)	
	)	Judgment delivered:
accused.	)	August 23, 2017

TOEWS J.

Introduction

[1] Jade Assunta Romanishen (Ms. Romanishen) was convicted for possession for the purpose of trafficking, contrary to s. 5(2) of the ***Controlled Drugs and Substances Act***, S.C. 1996, c. 19 (the "***CDSA***"), as well as the possession of the proceeds of crime not exceeding $5,000, contrary to s. 354 of the ***Criminal Code***, R.S.C. 1985, c. C-46 (the "***Code***"). She has also pleaded guilty to an outstanding breach of a condition of a release which occurred approximately one month after her initial arrest on November 28, 2013.

[2] Although Ms. Romanishen was arrested with a co-accused, only Ms. Romanishen pleaded not guilty to the charges and proceeded to trial. The co-accused pleaded guilty and was sentenced by another judge in a separate proceeding. Following a *voir dire* in which I ruled that the arrest and the related search of Ms. Romanishen did not violate the ***Canadian Charter of Rights and Freedoms***, I admitted the evidence seized by the arresting officers at the time of her arrest. Following my ruling, counsel for Ms. Romanishen invited me to enter a conviction in respect of the two counts on the indictment. These are the reasons related to the sentences I am imposing in respect of all three convictions.

The Evidence In Respect of the Offences

[3] The two police officers who stopped the motor vehicle being driven by Ms. Romanishen for a traffic violation, testified that upon the car window being rolled down, there was an overpowering smell of burnt marihuana mingled with the scent of air freshener coming from the car. At the same time, the arresting officer noticed three cell phones lying on the center consul with the LCD lights on. He also noticed Canadian currency in 10 and 20 dollar denominations strewn about in the same area. He estimated it to be about $300 or $400.

[4] The arresting officer testified that on the basis of his extensive experience with drug cases, he almost immediately came to the conclusion that the accused and the co-accused, a passenger in the front seat of the motor vehicle, were engaged in drug trafficking. The factors involved in coming to this conclusion was a combination of

matters that included the smell of burnt marijuana, the number of cell phones, the loose currency, the manner of driving and the nervous behaviour of the accused.

[5] Both the accused and the passenger were advised that they were under arrest for drug trafficking and were ordered out of the vehicle. The accused got out of the vehicle and as she did so, she tracked paper money out onto the street. The arresting officer states that the money came out of the vehicle. As the accused exited the vehicle, she had one of her hands in her pants and was stuffing something into them. When she did not remove her hand when requested, the officer handcuffed her, but did not search her because of the difference in their gender.

[6] A female officer called to the scene advised her again that she was under arrest and provided her with the specific reasons for her arrest and then frisked her. The officer noticed that there was a lump in her tight pants in the area of her right thigh. When asked what was there she stated that it was "crack". The female officer did not search the accused further at that time, but advised her of her right to legal counsel and the accused advised she wished to speak to counsel.

[7] At the Public Safety Building, the accused was skin searched and at that time the female officer uncovered 84 individually wrapped ¼ grams of what proved to be crack cocaine in her underwear near her vaginal area and some in her thigh area. She also was found to be carrying $42.50 in her left jacket pocket.

[8] A fourth officer conducted a search of the accused's vehicle after it had been towed to the Public Safety Building. As a result of the search, the officer located three cell phones and an IPod device in the front of the vehicle. He located an additional cell

phone on the rear seat of the vehicle and a can of air freshener on the front passenger mat. A can of dog spray was recovered from the dashboard above the radio.

[9] The officer also found the vehicle insurance papers in the name of the accused. Inside the interior of the vehicle the officer recovered approximately $133.25 in the form of various paper denominations with the largest amount being $20. The officer testified that when he searched the vehicle there was $55 on the consul consisting of two $20 bills and three $5 bills. Inside a black ladies purse beside the driver's seat the officer found the identification of the accused as well as 50 $20 bills, and one $50 bill in the middle pocket as well as $330, consisting of 14 $20 bills and one $50 bill in a small pocket in the purse. The identification included a Quebec identification card, a social insurance number and two Bank of Montreal cards, all in the name of the accused.

[10] It is noted that the passenger also had approximately 75 rocks of cocaine and approximately $495 in his possession. Ms. Romanishen admits that she was jointly involved with her passenger in the trafficking of these drugs.

The Evidence at the Sentencing Hearing

Sergeant Tony Atkins

[11] At the sentencing hearing, Sgt. Tony Atkins a 22-year veteran of the Winnipeg Police Service was qualified as a drug expert (for the purposes and extent set out in Exhibit S1) and provided opinion evidence in the context of that expertise.

[12] He testified that the amount of crack cocaine rocks seized was high for a street level dealer. A street level dealer usually has about 5 to 20 rocks in their possession, although sometimes there could be as many as 40 rocks. Each rock sells for $20, with

the result that the street value of the drugs in the joint possession of Ms. Romanishen and her co-accused was over $3,000.

[13] Sgt. Atkins testified that in order to obtain this amount of cocaine rocks from a supplier, there must be a level of trust between the dealer and the supplier who usually "fronts" the dealer with the drugs and then the dealer is responsible for paying the supplier back from the proceeds of the sales. It is therefore common to see cash broken up and kept in different locations by the dealer with some being the amount to be paid back to the supplier and a separate amount representing the dealer's profit. In this case, over $2,000 in cash was found in various locations in the car, including on the person of the two accused.

[14] Sgt. Atkins also testified that in a "dial a dealer" operation such as the one in which Ms. Romanishen and the co-accused were involved in, the dealers often work in pairs, following a business model that resembles a pizza delivery system, with one person driving and the other answering the phones. Not only are they supplied with the drugs, but they are often supplied with a phone with a list of customer's names already entered into the phone so that when a customer calls for an order of drugs, the name of the customer pops up on the mobile phone screen. In this way, there is a greater measure of certainty for the drug dealer that the person he is dealing with is a known or regular customer and less likely to be someone who might present a threat to the business operation.

[15] It was Sgt. Atkins' opinion that although Ms. Romanishen was a street level dealer, she was operating at a higher level than the regular street dealer and that this

indicated a higher measure of trust in her as a participant in this drug dealing operation.

Ms. Romanishen

[16] At the sentencing hearing, Ms. Romanishen was eight months pregnant and on maternity leave from her place of employment. She says that she has been working as a waitress at a retail business in St. Vital and also at a pizza hotline call centre since the time of her arrest. While her work hours have not necessarily been full time, she worked on a steady basis.

[17] She stated that at the time of the offence she was approximately 20 years of age and that she had just moved back home to Winnipeg from Montreal about three weeks earlier. She indicated she had gone to live in Montreal after turning 18 years of age as a result of falling in love with an individual whom she met while in Montreal on a family trip. This relationship did not prove to be a good relationship and she soon found herself involved in the sex trade and the man she thought she was in love with now acting as her pimp. Her income was controlled by her pimp and when earned, it went to him or used to purchase street drugs. She worked in a strip club and a massage parlour in Montreal and used alcohol and speed as well as other street drugs including MDMA, marijuana and cocaine.

[18] Ms. Romanishen testified that she was able to leave Montreal when her pimp left that city on business. She loaded her possessions into a car that her mother had bought her and drove to Winnipeg. It was in this car that she was arrested approximately three weeks later on November 28, 2013.

[19] She testified that she continued with her drug use in Winnipeg and while she was not able to find the speed she had been using in Montreal, she says she used ecstasy, marijuana and alcohol. She stated that she got into dealing drugs on her return to Winnipeg because this was a quick way to make money, which she needed in order to get back on her feet.

[20] Ms. Romanishen testified she graduated from high school before she left for Montreal and that since her arrest she has been taking courses at the University of Winnipeg and Red River College. She says that she eventually wants to get into work that would involve assisting people, perhaps in the area of social work. She says that as a result of some of the time that she has spent in custody and in working with families in the inner city of Winnipeg as a volunteer, she has seen the devastation that drugs like crack cocaine have caused.

[21] Ms. Romanishen said that she started using drugs at 13 or 14 years of age, starting with alcohol and marijuana. She states that her parents, who divorced when she was very young, also used drugs, primarily marijuana, but on occasion other drugs as well. She advises that although she no longer uses street drugs, she has not gone through any formal addictions counseling or drug rehabilitation programming such as the programming offered by the Addictions Foundation of Manitoba. Her main support in breaking with her reliance on street drugs has been her parents, both of whom attended the sentencing hearing and spoke in her support. She states that she recognizes the problem caused by drugs and no longer associates with people who use drugs.

[22] Ms. Romanishen advises that her pregnancy was not a planned one and that the child's biological father is not in the picture. However, she stated at the hearing that she was looking forward to her child's birth. In hearing the submissions that both of her parents made, it is my impression that they are both very supportive and active in their expressed desire that their daughter breaks her association with drugs. They believe she will be a good mother to her child.

Crown's Submission on Sentence

[23] It is the Crown's position that Ms. Romanishen be incarcerated for a period of three years on the s. 5(2) ***CDSA*** offence and 18 months concurrent on the charge of possessing the proceeds of crime. The Crown points out that her co-accused was sentenced on two separate charges under s. 5(2) of the ***CDSA*** and received a sentence of four years' incarceration. In respect of the incident in which she was arrested, he received a sentence of two and one-half years and a sentence of one and on-half years consecutive in respect of an unrelated incident. This sentence was imposed by the court on the co-accused following a plea bargain with the Crown. The Crown states that both on the basis of parity in sentencing with the sentence imposed on the co-accused and that the sentence imposed on the co-accused was as a result of a guilty plea following a plea bargain, two and one-half years incarceration should be the starting point in considering a fit and proper sentence for Ms. Romanishen.

[24] The aggravating factors identified by the Crown include:

a) The very dangerous nature of the drug that she was trafficking;

b) The amount in her possession was quite large for a street level drug dealer and according to the drug expert who testified, she would be classified at the upper level of a street level drug dealer;

c) There is a commercial aspect to her drug dealing which is confirmed by her admission as to why she got involved in dealing drugs;

d) Since her arrest in November 2013, there have been three separate incidents in which she breached her release conditions, including a curfew breach a month after her arrest (which she has recently pleaded guilty to and will be sentenced for at this hearing), two breaches in March 2014, involving a curfew breach and being intoxicated respectively for which she received a 12-month conditional discharge, and a breach of a no contact order on December 29, 2015, for which she received a six-month conditional discharge.

[25] The Crown submits that these aggravating circumstances disentitle Ms. Romanishen from the court imposing a lower sentence which might be available in "rare cases" owing to the presence of "exceptional circumstances".

[26] In this respect, the Crown relies on the decision of ***R. v. Racca***, 2015 MBCA 121, 323 Man.R. (2d) 245 (QL), where the court cited the decision of the British Columbia Court of Appeal in ***R. v. Voong***, 2015 BCCA 285, 325 C.C.C. (3d) 267. At para. 16 of the ***Racca*** decision, Burnett J.A. states on behalf of the court:

> **16** In *Voong*, Bennett JA commenced her reasons with the observations that those who embark in drug trafficking engage in serious criminal conduct, and absent exceptional circumstances, they should expect to be sent to prison (see para 1). Later in her reasons, she described the "exceptional circumstances" that would justify a non-custodial sentence, and she observed that it will be the rare case where that standard is met (at para 59):

> Exceptional circumstances may include a combination of no criminal record, significant and objectively identifiable steps towards rehabilitation for the drug addict, gainful employment, remorse and acknowledgement of the harm done to society as a result of the offences, as opposed to harm done to the offender as a result of being caught. This is a non-exhaustive list, but at the end of the day, there must be circumstances that are above and beyond the norm to justify a non-custodial sentence. There must be something that would lead a sentencing judge to conclude that the offender had truly turned his or her life around, and that the protection of the public was subsequently better served by a non-custodial sentence. However, Parliament, while not removing a non-custodial sentence for this type of offence, has concluded that CSO [conditional sentence order] sentences are not available. Thus, it will be the rare case where the standard of exceptional circumstances is met.
>
> [emphasis added]

[27] The Crown relies on the comments of Burnett J.A. at paras. 13-15 where he states:

> **13** As noted in *Grant* (at para 108), this Court and other appellate courts in Canada (see, for example, *Voong* at para 18) have consistently stated that denunciation and deterrence are the paramount considerations when sentencing offenders trafficking in hard drugs.
>
> **14** I agree with the Crown's submission that the sentencing judge placed undue emphasis on the passage of time between the offence and sentencing, that he overemphasized the principle of rehabilitation at the expense of the principles of deterrence and denunciation, and that a conditional sentence was outside the range of appropriate sentences. The passage of time by itself is not sufficient. While a guilty plea is always a mitigating factor in the determination of a sentence, a guilty plea entered four years after being charged in the face of an overwhelming case should have had little impact on the sentence imposed (see *R v Barrett*, 2013 QCCA 1351 at paras 18-22 (QL)).
>
> **15** In *Tran,* the accused was a youthful, immature young offender who continued his education, obtained full-time employment and completed his house arrest and community service. Here there was no evidence of rehabilitation, no allegation that section 11(*b*) of the *Canadian Charter of Rights and Freedoms* was violated and no evidence that the accused was prejudiced by the delay. As the Crown points out, complying with conditions and obeying the law, even for a lengthy period of time while on judicial interim release, does not constitute rehabilitation; it is the standard expected of persons released on their own recognizance.

[28] Finally, in respect of the ***Racca*** decision, the Crown also points out that the court also noted the comments of MacInnes J. (as he then was):

> **19** As MacInnes J (as he then was) observed in *R v Sem (S)*, 2005 MBQB 208, 197 ManR (2d) 47 (at para 49):
>
> > [T]hose who choose to undertake the risk of trafficking in cocaine, particularly on a continuing and/or escalating basis, must understand that while the reward may be easy money and material benefits, the risk when caught entails a sentence of incarceration in the penitentiary.

[29] The Crown also relies on the decision of the Manitoba Court of Appeal in ***R. v. Gilchrist (R.)***, 2004 MBCA 21, 184 Man.R. (2d) 23. In that case, the court considered whether a four year sentence of incarceration imposed on a 20-year-old accused with no criminal record was demonstrably unfit. In that case, the accused had 351 rocks of cocaine in his possession as well as $7,640 in cash. He was described by the trial judge as something a little more than a street level dealer. At paras. 27-28 the court held:

> **[27]** The range for this type of offence, and for this type of offender, may start at less than two and a half years but it is certainly wide, and extends beyond four years. In **Pacheco**, when Conner, P.J., said, "Sentences of three to five years incarceration are appropriate sentences for street level cocaine traffickers," he continued with, "This is true even for first time offenders" (at p. 5). I see no error by the judge in identifying the range. In any event, her view of the range did not lead her astray, as is evident from a review of her reasons, and was not the source of unfitness, if any there was, in the sentence.
>
> **[28]** The final ground of appeal is based on the accused asserting he was only a street level dealer, and the absence of any evidence that he was anything more. The judge did describe him as "a little up from" (at para. 22) a street level dealer, but she defined a street level dealer as "the kind of person who sells a few rocks at the street level in order to support their own habit" (ibid.).

[30] The Crown also points out and distinguishes various cases relied on by counsel for Ms. Romanishen, pointing out that there are no ***R. v. Gladue***, [1999] 1 S.C.R. 688 (S.C.C.), or ***R. v. Ipeelee***, 2012 SCC 13, [2012] 1 S.C.R. 433, factors which could

mitigate the sentence which a court might otherwise impose if those factors were present.

[31] The final case referred to by the Crown in its submission that I wish to mention is the recent decision of the Associate Chief Justice of the Manitoba Court of Queen's Bench in ***R. v. Kurdydyk***, 2017 MBQB 2, [2017] M.J. No. 49 (QL). In that case, the accused was convicted after a trial of unlawful possession for the purpose of trafficking of "ecstasy" and methamphetamine contrary to s. 5(2) of the ***CDSA***. In that case, the Crown sought a period of two years' incarceration followed by a period of probation. The accused in that case was a 23-year-old male, single, with no dependents. He needed one more semester to complete his Bachelor of Arts degree and came from a middle class family background, although it was described as "hectic", with parental conflict. His father was a retired teacher and his mother was a nurse. The accused had significant involvement with mental health professionals and was diagnosed with attention deficit/hyperactivity disorder and was being prescribed medication. He had a relatively long and varied history of experimentation with drugs. He sold drugs partly in order to support his own drug use and also for commercial reasons. Perlmutter A.C.J. noted that he was caught with a significant amount of drugs - as much as 140 dosages.

[32] At paras. 19-20 of his decision Perlmutter A.C.J., states:

> **19** Turning to the question of what constitutes a fit and fair sentence, it is largely for these same reasons that I find that Mr. Kurdydyk's moral culpability is on the higher end. As discussed above, while Mr. Kurdydyk was also a user, there is compelling evidence that Mr. Kurdydyk was engaged in more than "social trafficking" and that there was a commercial aspect to his trafficking, wherein he promoted the use of these drugs notwithstanding his understanding of some of the associated health risks.

20 Denunciation and deterrence are the paramount considerations when sentencing offenders trafficking in hard drugs. See ***Racca*** at para. 13. The court must also consider the prospect of rehabilitation. Defence counsel argues that while there is a wide range of available sentences, the range of sentence is lower since the delivery of the Manitoba Court of Appeal decisions in ***Peters***, ***Tran*** and ***Racca***. In my view, Crown counsel is correct that the range of sentence for street-level trafficking of Schedule I drugs remains as set out in ***R. v. Gilchrist (R.)***, 2004 MBCA 21 at para. 26, 184 Man.R. (2d) 23, which is "very wide (anywhere from 12 months to significant penitentiary terms)." See also, ***Tran*** at para. 30. While not cocaine, which was the drug at issue in ***Gilchrist***, the drugs at issue in the case at hand are both dangerous Schedule I drugs.

[33] He concludes as follows at paras. 22-23 of the decision:

22 Notwithstanding my conclusion that Mr. Kurdydyk's moral culpability is on the higher end, when I weigh the mitigating circumstances, in particular Mr. Kurdydyk's young age, his own mental health and addiction issues, and his ongoing efforts at rehabilitation, I am of the view that these mitigating factors warrant a sentence at the lower end of the range. Overall, when I consider the amount of drugs that Mr. Kurdydyk had in his possession for the purpose of trafficking, his level of involvement, Mr. Kurdydyk's personal circumstances, sentences imposed for similar offenders who committed similar offences, the aggravating circumstances, the several mitigating factors, including the efforts towards rehabilitation, and the circumstances as a whole, I am of the view that a period of incarceration of 12 months is a fit and fair sentence.

Conclusion

23 Accordingly, I am imposing a sentence of incarceration of 12 months for each of the two offences, which are to be served concurrently, followed by two years of supervised probation. As conditions of the probation order, Mr. Kurdydyk must comply with the mandatory conditions of the ***Criminal Code*** and in addition:

*he must report to a probation officer within two working days after the start of the probation order and thereafter when required by the probation officer and in the manner directed by the probation officer;

*he must remain in the jurisdiction of the court unless written permission to go outside that jurisdiction is obtained from the court or the probation officer;

*he must abstain from the consumption of alcohol or other intoxicating substances or the consumption of drugs, except in accordance with a medical prescription; and

*he is to attend, participate in and complete such assessment, counselling, treatment or programming as his probation officer requires.

Defence Counsel's Submission as to Sentence

[34] It is the position of counsel for Ms. Romanishen that a fit and proper sentence in this case is a sentence of three months incarceration to be served intermittently along with a period of supervised probation. Counsel relies on a number of provincial court decisions from this province, as well as a number of other decisions from other jurisdictions in seeking to distinguish the authorities relied on by the Crown.

[35] Counsel submits that based on the totality of the evidence, there are exceptional circumstances here which warrant a sentence below the usual range for these types of offences. Counsel points out that with the exception of the four breaches of her conditions of release pending trial, she has no criminal record. He points out that the period of three years and three months is a significant amount of time during which she by in large, complied with her conditions of release. He states that she has been generally alcohol and drug free and that when she was apprehended, he states that she had only been trafficking a relatively short period of time (two or three shifts).

[36] In addition to the *viva voce* evidence which I have considered very carefully and referred to in the preceding pages, counsel has tendered a book of sentencing materials which includes various positive letters of reference from instructors at the University of Winnipeg and transcripts from that institution as well as Red River College.

[37] Counsel notes the very difficult situation in Montreal which Ms. Romanishen was able to leave. He states that Ms. Romanishen has maintained steady employment since her arrest and she is not working at present only because she is on maternity leave. She has shown initiative in taking University level courses and has insight into the

dangerous and destructive nature of the drug in which she was trafficking. She wants to find work in the area of social work once she completes her educational studies. Although she has not taken any formal drug rehabilitation programs, she has broken with former associates who were involved with drugs and has supportive parents who are committed to assisting her and the child that has now been born.

Analysis

[38] As stated by Perlmutter A.C.J. in ***Kurdydyk***, the principles governing sentencing can be summarized as follows (at paras. 9-10):

> **9** Section 718 of the ***Criminal Code*** (as in force on the date of the offences) sets out the objectives of sentencing as including:
>
> *the denunciation of unlawful conduct;
>
> *the deterrence of the offender and other persons from committing offences;
>
> *the separation of offenders from society, where necessary;
>
> *the assistance in rehabilitating offenders;
>
> *the provision of reparations for harm done to victims or to the community; and
>
> *the promotion of a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.
>
> **10** In addition to the proportionality principle outlined in s. 718.1 of the ***Criminal Code***, which requires that a sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender, s. 718.2 sets out additional principles to be considered. In particular, s. 718.2(d) provides that a court that imposes a sentence shall also take into consideration the principle that an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances, and s. 718.2(e) provides that a court that imposes a sentence shall also take into consideration the principle that all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders.

[39] In reviewing the applicable case law when sentencing offenders trafficking in hard drugs, Perlmutter A.C.J. stated (at para. 20):

> **20** Denunciation and deterrence are the paramount considerations when sentencing offenders trafficking in hard drugs. See ***Racca*** at para. 13. The court must also consider the prospect of rehabilitation. Defence counsel argues that while there is a wide range of available sentences, the range of sentence is lower since the delivery of the Manitoba Court of Appeal decisions in ***Peters***, ***Tran*** and ***Racca***. In my view, Crown counsel is correct that the range of sentence for street-level trafficking of Schedule I drugs remains as set out in ***R. v. Gilchrist (R.)***, 2004 MBCA 21 at para. 26, 184 Man.R. (2d) 23, which is "very wide (anywhere from 12 months to significant penitentiary terms)." See also, ***Tran*** at para. 30. While not cocaine, which was the drug at issue in ***Gilchrist***, the drugs at issue in the case at hand are both dangerous Schedule I drugs.

[40] Although no case is ever exactly the same factually, it is my opinion that many of the same personal, aggravating and mitigating factors present in the ***Kurdydyk*** case are present in this case as well. While the accused in ***Kurdydyk*** may not have experienced the type of abuse that Ms. Romanishen experienced as a result of her stay in Montreal, nor did that accused have a new born baby to be concerned about, I do not think that the totality of the evidence in this case, including Ms. Romanishen's unique personal circumstances, is such that the case presents a situation where there are exceptional circumstances giving rise to the rare case warranting a non-custodial sentence or an intermittent custodial sentence with probation as requested by counsel for Ms. Romanishen. Nor would her circumstances justify a sentence below the sentence imposed by the court in ***Kurdydyk***.

[41] I note that Parliament has specifically removed the option of imposing a conditional sentence order in these kinds of cases as the result of the ***Safe Streets and Communities Act***, S.C. 2012, c. 1, s. 34. While the possibility of a suspended sentence still remains an option, it is my opinion that the applicable sentencing directions from the Court of Appeal in our province, have made it very clear that absent

exceptional circumstances, the appropriate sentence in these kinds of cases is a custodial sentence that falls within a range of 12 months to a significant penitentiary term, even in the case of a first offender.

[42] In my opinion, the practice of fashioning a sentence to include an intermittent period of custody along with a period of probation with stringent conditions, is not an appropriate disposition in circumstances where there are no exceptional circumstances as identified in the case law. The Court of Appeal has made it clear that in a case not involving exceptional circumstances, a lengthier period of incarceration is the appropriate disposition. Fashioning a sentence that includes an intermittent period of custody along with refocusing the rehabilitative intention of a suspended sentence to a sentence that more closely resembles a conditional sentence order, which is primarily punitive in nature, is in my opinion, an attempt to circumvent the clear legislative directive of Parliament in removing that disposition in these kinds of cases.

[43] In my opinion, where a custodial sentence is the appropriate disposition, as the Court of Appeal has ruled it is, absent any exceptional circumstances, especially where there are no ***Gladue*** or ***Ipeelee*** factors to be considered, the proper disposition is one which falls within the range of custodial sentences identified in cases like ***Gilchrist***, ***Rocca*** and summarized by Perlmutter A.C.J., in ***Kurdydyk***. Neither should trial courts readily agree to characterize cases as having exceptional circumstances in order to avoid what the Court of Appeal has directed should be a significant period of incarceration. As noted by the Court of Appeal, it will be the rare case where the standard of exceptional circumstances is met.

[44] In the case at bar, I am satisfied that the circumstances here do not meet the rare standard of "exceptional". As with many cases, the circumstances are unique and demonstrate the particular challenges that an accused has had to deal with over the course of a lifetime. However, they are not exceptional to the extent that would warrant characterizing this case as having exceptional circumstances permitting a departure from the range of sentences in cases where the Court of Appeal has noted a number of times that there is "the need for deterrence and denunciation for offences of this sort" and where " ... [d]eterrence and denunciation demand, ... significant prison terms for offences of this sort." (see ***Gilchrist*** at para. 17)

[45] In this case, I am mindful of the two and one-half year sentence which the co-accused received and the need to consider parity of sentences as between offenders involved in the same offence. I am also mindful that Ms. Romanishen's moral culpability is on the higher end of the scale in view of factors like the commercial nature and scale of her involvement, being on the higher end of a street level dealer, and the expressed desire to earn money quickly to get back on her feet.

[46] At the same time, I am of the view that given the mitigating factors present here, which include her relatively young age, the difficult experience she suffered while living in Montreal, the fact that she is a new mother, the steps taken towards rehabilitation and the lack of a prior criminal record (although noting her four convictions for failing to comply with her conditions of release while pending on these charges), warrant a sentence at the lower end of the range. I am of the view that as

was the case in the ***Kurdydyk*** decision, a period of incarceration of 12 months followed by a period of supervised probation is a fit and proper sentence.

Conclusion

[47] Accordingly, I am imposing a sentence of incarceration of 12 months on the conviction pursuant to s. 5(2) of the ***CDSA***, a concurrent sentence of six months on the conviction pursuant to s. 354 of the ***Code***, and a concurrent sentence of one month on the failure to comply with an undertaking. This global sentence of one year is to be followed by two years of supervised probation with the following conditions:

a) she must report to a probation officer within two working days after the start of the probation order and thereafter when required by the probation officer and in the manner directed by the probation officer;
b) she must remain in the jurisdiction of the court unless written permission to go outside that jurisdiction is obtained from her probation officer;
c) she must abstain absolutely from the consumption of alcohol or other intoxicating substances or the consumption of illegal or restricted drugs, except in accordance with a medical prescription; and
d) she is to attend, participate in and complete such assessment, counseling, treatment or programming as her probation officer may require.

[48] Crown counsel also seeks a number of ancillary orders to which defence counsel does not object. In the circumstances, the following orders are made:

a) an order requiring her to provide bodily samples for DNA analysis pursuant to s. 487.051(3) of the ***Code***;

b) a 10-year weapons prohibition under s. 109 of the ***Code***;

c) a victim surcharge of $200 payable before the expiration of the period of probation; and

d) an order of forfeiture of all items seized by the police.

_____ J.