Citation: R v Deol, 2024 MBCA 84
Date: 20241104
Docket: AR23-30-09987

IN THE COURT OF APPEAL OF MANITOBA

Coram: Chief Justice Marianne Rivoalen
Madam Justice Janice L. leMaistre
Madam Justice Anne M. E. Turner

B E T W E E N:

	)	***J. S. Kliewer*** *and*
	)	***K. Henley***
HIS MAJESTY THE KING	)	*for the Appellant*
	)	
Appellant	)	***R. D. Harrison*** *and*
	)	***A. E. Dawson***
- and -	)	*for the Respondent*
	)	
MANDEEP DEOL	)	*Appeal heard:*
	)	***May 29, 2024***
(Accused) Respondent	)	
	)	*Judgment delivered:*
	)	***November 4, 2024***

On appeal from *R v Deol*, 2023 MBKB 125 [*Deol*]

TURNER JA

Introduction

[1] This case establishes a sentencing range of twelve to eighteen years' imprisonment for a courier without decision-making power involved in a high-level fentanyl trafficking organization.

[2] The offender was convicted after trial of possession of fentanyl for the purpose of trafficking (the fentanyl offence) and possession of methylenedioxyamphetamine (MDA) for the purpose of trafficking (the MDA

offence), both contrary to section 5(2) of the *Controlled Drugs and Substances Act*, SC 1996, c 19 [the *Act*]. He was sentenced to fourteen years' imprisonment for the fentanyl offence and eight years concurrent for the MDA offence.

[3] The offender was the driver of a rented van that was pulled over by police for speeding. In the back of the van, police located twenty-six kilograms of fentanyl, sixteen kilograms of which was combined with benzodiazepines[1], and fifty kilograms of MDA. This was the largest seizure of fentanyl in Manitoba at the time and one of the largest seizures of fentanyl in Canada.

[4] The Crown seeks leave to appeal and, if granted, appeals the fourteen-year sentence imposed for the fentanyl offence. It says that the sentencing judge (who was also the trial judge and is referred to hereafter simply as the judge) committed errors leading to a demonstrably unfit sentence. The Crown urges this Court to set a sentencing range for couriers with no decision-making power involved in a high-level fentanyl trafficking organization. It also argues that the offender's sentence ought to be increased to twenty-two years for the fentanyl offence.

[5] For the following reasons, I would grant leave and allow the appeal.

[6] In my view, the appropriate sentencing range for couriers with no decision-making power involved in a high-level fentanyl trafficking organization is twelve to eighteen years. I am also of the view that errors made by the judge led him to impose a demonstrably unfit sentence. I would

[1] Benzodiazepine is a substance listed in Schedule IV of the *Act*; however, the offender was not charged with an offence related to that substance.

vary the sentence for the fentanyl offence to one of eighteen years. I would not disturb the eight-year concurrent sentence imposed for the MDA offence.

Background

Facts

[7] On July 28, 2020, the arresting officer was on patrol just outside of Brandon, Manitoba, when he saw a van speeding eastbound on the Trans-Canada Highway. The officer pulled the van over. The offender was the driver and there was one passenger (who was also charged with offences but acquitted after trial).

[8] Police learned that the offender rented the van at the Toronto Pearson International Airport (the airport), on July 23, 2020 and was supposed to return the van to the same location on July 29, 2020. He drove directly to Vancouver, British Columbia, arriving approximately forty-six hours later, on July 26, 2020. The offender picked up the fentanyl and MDA in the Vancouver area.

[9] The offender left Vancouver on July 27, 2020, and was pulled over just over twenty-one hours later outside of Brandon. Police located the drugs in two large hockey bags in the back of the van. In total, the police seized twenty-six kilograms of fentanyl and fifty kilograms of MDA. As noted earlier, of the twenty-six kilograms of fentanyl, sixteen were combined with benzodiazepines.

[10] An analysis of the offender's phone showed several messages talking about the progress of his trip and, while none of the messages explicitly mentioned illegal drugs, the judge accepted that the messages

contained coded words that suggested drugs. Some messages also mentioned money. One of the incoming messages directed the offender to meet "Happy" in Burnaby at two o'clock p.m. on July 26, 2020.

[11] The matter proceeded to trial, during which the passenger testified. In his reasons for convicting the offender, the judge accepted several aspects of the passenger's testimony, noting that they were uncontradicted:

- The offender invited the passenger to go with him to Vancouver, saying he would pay for the gas and food.
- The offender was the only one who drove the van during the trip.
- The offender and the passenger never stayed in hotels; rather, they each sometimes napped in the van.
- The offender controlled the pace of the trip.
- The offender was alone with the van for a period of time while in Vancouver.

[12] Ultimately, the offender was convicted of the fentanyl offence and the MDA offence.

The Sentencing Hearing

[13] At the sentencing hearing, the Crown sought a total sentence of twenty-two years. It suggested that the range of sentence for the fentanyl offence should be sixteen to twenty years and the range of sentence for the MDA offence should be eight to twelve years. The Crown stated:

> So whether you impose consecutive sentences and then reduce for totality or, as our Court of Appeal has instructed, focus on the more serious offence but ensure there's no free ride on the second offence and therefore give concurrent sentences, in my submission either of those approaches is going to get you to the 22 years I'm seeking.

[14] The offender submitted that a global twelve-year sentence was appropriate for a mere courier with no previous criminal record. He did not suggest how much time should be attributed to each offence or whether the sentences should be served consecutively or concurrently.

[15] Several reports were filed, by consent, at the sentencing hearing, including: (1) Spotlight: The Evolution of Fentanyl in Canada over the Past 11 Years[2], (2) Risks and Harms Associated with the Nonmedical Use of Benzodiazepines in the Unregulated Drug Supply in Canada[3], (3) expert evidence report, and (4) pre-sentence report. The following is a summary of information contained in these reports.

1. Spotlight: The Evolution of Fentanyl in Canada over the Past 11 Years

[16] Fentanyl is fifty to one hundred times more potent than morphine and was involved in eighty-six per cent of accidental deaths associated with opioids in Canada in 2021. Between January 2012 and December 2022,

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[2] Health Canada Drug Analysis Service, *Spotlight: The evolution of Fentanyl in Canada over the past 11 years*, by Marie-Line Gilbert et al, (report), (Longueuil: DAS, 2023), online (PDF): <canada.ca/content/dam/hc-sc/documents/services/publications/healthy-living/evolution-fentanyl-canada-11-years/evolution-fentanyl-canada-11-years-en.pdf>

[3] Canadian Centre on Substance Use and Addiction, in partnership with Canadian Community Epidemiology Network on Drug Use, *Risks and Harms Associated with the Nonmedical Use of Benzodiazepines in the Unregulated Drug Supply in Canada*, CCENDU Bulletin (CCSA, 2021), online (PDF): <ccsa.ca/sites/default/files/2021-12/CCSA-CCENDU-Nonmedical-Use-Benzodiazepines-Unregulated-Drug-Supply-Bulletin-2021-en.pdf>

fentanyl was identified in 77,141 samples of suspected illegal drugs seized by Canadian law enforcement agencies and submitted to the Drug Analysis Service. Between April 2020 and March 2022, opioid deaths increased by ninety-one per cent in Canada. Between January 2016 and March 2022, an estimated 30,843 people died and 32,319 people were hospitalized in Canada due to opioid-related poisoning.

[17] In samples submitted to the Drug Analysis Service, fentanyl was often found to be mixed with other dangerous substances, such as sedatives and hypnotic substances, starting in 2019. The number of substances with which fentanyl is mixed has increased each year since.

2. Risks and Harms Associated with the Nonmedical Use of Benzodiazepines in the Unregulated Drug Supply in Canada

[18] Benzodiazepines are central nervous system depressants or sedative-hypnotics. They slow down the nervous system, giving a calming, sleep-inducing effect. Medically, they are used to treat anxiety and sleep and seizure disorders.

[19] When benzodiazepines are mixed with fentanyl, there is an increased risk of drug poisoning because both drugs slow down vital functions, such as breathing.

[20] Naloxone is effective at reversing a fentanyl overdose by restoring breathing but is not effective at countering the sedation caused by benzodiazepines. Therefore, when fentanyl and benzodiazepines are combined, the combination is more likely to be fatal as there is not an easily accessible antidote.

3. Expert Evidence Report

[21] Corporal West (Cpl West) of the Royal Canadian Mounted Police testified at the trial and his report was also filed at the sentencing hearing. He was qualified to provide expert evidence regarding the trafficking of fentanyl and MDA, including the distribution of the drugs at the kilogram level and packing and pricing of the drugs, as well as the role of couriers.

[22] At trial, Cpl West testified that the Vancouver area is a hub for fentanyl because the majority of fentanyl arrives in Canada through West Coast ports. From Vancouver, fentanyl is then distributed to other parts of Canada.

[23] A criminal organization will use couriers to transport the drugs and a courier will generally not have any other involvement, such as with manufacturing or distribution to users. A courier will be someone known to the organization because they must be trusted with the very valuable stash of drugs. They must be trusted to drive the most direct route in the least amount of time given that the clock starts ticking on the risk of being detected as soon as the drugs are picked up.

[24] At the time of the offence, in British Columbia, adulterated fentanyl would be purchased for $70,000 per kilogram. Therefore, the total purchase price for the twenty-six kilograms of fentanyl would have been over $1.8 million. One kilogram of MDA would be purchased for $8,000. Therefore, the total purchase price for the fifty kilograms of MDA would have been $400,000.

[25] The drugs were destined for Ontario, where the street value price per dose (0.1 g) of fentanyl for a user was thirty dollars to forty dollars (see *R v Olvedi*, 2021 ONCA 518 at para 45 [*Olvedi*]). In Vancouver, 0.1 g of MDA (also the common dose for a user) was ten dollars. Therefore, the total street value of the drugs seized from the van was between $12.8 and $15.4 million ($7.8 to $10.4 million for the fentanyl and $5 million for the MDA).

4. Pre-Sentence Report

[26] At the time of sentencing, the offender was forty-four years old and had a grade ten education. He was born in India and is a permanent resident of Canada. His wife and two children live in Toronto. His wife has a prosthetic leg, which impacts her mobility.

[27] In the pre-sentence report and at the sentencing hearing, the offender expressed concerns for his family but expressed little remorse about the offence. The judge noted that "[the offender] did not even hint that he [felt] any remorse at all for the addicts who consume fentanyl and MDA, and sometimes die from fentanyl overdoses" (*Deol* at para 11).

[28] The offender did not have a previous criminal record; however, he had amassed several institutional sanctions while in pre-sentence custody.

[29] While in pre-sentence custody, the offender suffered from depression. He was initially placed in segregation due to a high risk of suicidal ideation; however, he was downgraded to a medium risk after a few weeks. He was prescribed medication while in custody, which he found helpful.

[30] The offender was assessed as a medium risk to reoffend.

The Sentencing Decision

[31] The judge noted that proportionality was the paramount consideration in this case. He stated that denunciation and deterrence were also very important, and that rehabilitation played only a minor role in coming to the appropriate sentence.

[32] After reviewing the cases provided by counsel, the judge concluded that a total sentence of fourteen years was proportionate and fit for the fentanyl offence, with an eight-year sentence, to be served concurrently, for the MDA offence. He noted that had there been no MDA offence, the sentence for the fentanyl offence "would have been somewhat shorter" (*Deol* at para 49).

[33] In reaching his conclusion that fourteen years was appropriate for the fentanyl offence, the judge concluded that the high end of the appropriate range for the offender was seventeen years and the low end was eight years.

Issues on the Appeal

[34] On the appeal, the Crown argues that the judge failed to determine an appropriate range of sentence; imposed a sentence that failed to satisfy the fundamental principle of proportionality and the objectives of deterrence, denunciation and parity; and failed to give effect to the aggravating circumstances of the fentanyl offence. The Crown asserts that the appropriate sentencing range for the fentanyl offence is sixteen to twenty years and that the appropriate sentence for the offender is twenty-two years.

Analysis

[35] The standard of review on a sentence appeal is well established. As this Court stated in *R v Johnson*, 2020 MBCA 10 at para 9:

> Appellate courts must show great deference when reviewing sentencing decisions. Succinctly put, appellate intervention is only justified in cases where a material error has an impact on the sentence or when the sentence is demonstrably unfit. A material error includes an error in principle, a failure to consider a relevant factor or an erroneous consideration of an aggravating or mitigating factor. It also includes an overemphasis of the appropriate factors (see *R v Lacasse*, 2015 SCC 64 at paras 41, 43-44, 51).

[36] As explained by Mainella JA in *R v McLean*, 2022 MBCA 60 at para 81 [*McLean*]:

> An appellate court cannot interfere with a sentencing decision "lightly" (*Parranto* at para 29). The issue is not whether the correct range was selected, whether the sentence imposed falls outside the correct range or whether this Court would have imposed a greater or lesser sentence. None of those reasons justify appellate intervention (see *R v Lacasse*, 2015 SCC 64 at paras 11, 51, 56-61, 67, 69; *R v Suter*, 2018 SCC 34 at para 25; *Friesen* at paras 37, 162; and *Parranto* at paras 29-30, 33, 36, 54).

[37] At the sentencing, several matters were not in dispute. First, the offender was involved in high-level drug trafficking as a mere courier. In other words, he was to move the drugs from point A to point B and did not have decision-making power (see *R v Rider*, 2013 MBQB 116 at para 36). Second, proportionality was the fundamental sentencing consideration, with denunciation and deterrence as paramount sentencing principles. Finally, if rehabilitation had any role determining the appropriate sentence, it was only a minor one.

What Is the Appropriate Range of Sentence?

[38] In *R v Parranto*, 2021 SCC 46 at para 16 [*Parranto*], the Supreme Court of Canada noted that quantitative sentencing guidance from appellate courts comes in one of two forms: starting points or sentencing ranges. They went on to describe this guidance as follows:

> These tools are best understood as "navigational buoys" that operate to ensure sentences reflect the sentencing principles prescribed in the *Criminal Code*. Busy sentencing judges face a challenging task; the *Code* often provides for a wide range of possible sentences and the factual circumstances of each case vary infinitely. Sentencing must begin somewhere, and both starting-point and range methodologies assist sentencing judges by providing a place to start in the form of either a single number or a range.

[39] Manitoba is a "range jurisdiction" (*Parranto* at para 24) when it comes to quantitative sentencing guidance in relation to trafficking offences involving hard drugs. The concept of "range" was defined as follows (*ibid* at para 17):

> Sentencing ranges generally represent a summary of the case law that reflects the minimum and maximum sentences imposed by trial judges in the past. They "provide structure and guidance and can prevent disparity", while leaving judges space to "weigh mitigating and aggravating factors and arrive at proportional sentences". The range, therefore, "reflects individual cases, but does not govern them".
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> [citations omitted]

[40] Currently, there is limited case law on sentencing couriers engaged in high-level fentanyl trafficking, perhaps due to its relative recency in the Canadian illicit drug subculture (see *Olvedi* at para 52). However, sentencing ranges also serve a role in setting "a new direction, bringing the law into

harmony with a new societal understanding of the gravity of certain offences or the degree of responsibility of certain offenders" (*R v Friesen*, 2020 SCC 9 at para 35 [*Friesen*], cited with approval in *Parranto* at para 22). Moreover, it may be appropriate to establish a range in recognition of a particular need (see *R v Smith*, 2019 SKCA 100 at para 124; see also *R v Bunn*, 2022 MBCA 34 at para 116).

[41] I believe that this is an appropriate case for this Court to set out a sentence range for a courier without decision-making power involved in a high-level fentanyl trafficking organization. Although high-level fentanyl trafficking is a relatively new offence in Canada, unfortunately drug trafficking in general is not. At its core, fentanyl trafficking is a subtype of drug trafficking that can easily be quantified by reference to the volume of drugs, the price of drugs, the level of commerciality and the nature of the drugs at issue (see *Parranto* at para 58).

[42] In *Parranto*, the Supreme Court dealt with two offenders, Mr. Parranto and Mr. Felix, who pleaded guilty to fentanyl trafficking offences. They were each found to be operating wholesale commercial operations and had significant involvement, including decision-making responsibility and control; therefore, they were more than mere couriers or custodians. In previous decisions, this Court has referred to similar operations as "mid-level" (*McLean* at para 6).

[43] Mr. Parranto was found in possession of 27.8 grams of fentanyl on one occasion and subsequently found in possession of 485.12 grams of fentanyl. These amounts were described as "significant" (*Parranto* at para 79). He was addicted to heroin and had a lengthy related criminal record.

[44] Mr. Felix was the directing mind of an operation that was sending drugs, including fentanyl, to Nunavut. The evidence demonstrated that five transactions were completed, which included a total of 1,398 fentanyl tablets. A further uncompleted transaction included 987 fentanyl tablets. Mr. Felix did not have a prior criminal record and engaged exclusively in pro-social pursuits after his arrest.

[45] The Supreme Court concluded that a sentencing range of eight to fifteen years was appropriate for an offender who was the decision maker in a wholesale fentanyl trafficking operation.

[46] In *McLean*, this Court provided its first post-*Parranto* analysis on sentencing fentanyl trafficking offences. The offender was found to be a mere courier for a sophisticated, interprovincial drug trafficking network. He transported 220 grams of fentanyl and 981 grams of cocaine in his suitcase on a flight from Vancouver to Winnipeg. The quantity of drugs and sophistication of the organization made it an instance of drug trafficking in "the upper end of mid-level trafficking" (*ibid* at para 56).

[47] Justice Mainella noted (at para 113):

> The message delivered in *Parranto* is clear: absent some obvious reason that mitigates moral culpability, those who engage in commercial fentanyl trafficking at the mid or high level should receive very lengthy penitentiary sentences. That approach accords with the fundamental purpose and principles of sentencing as set out in the *Code* and the *CDSA*.

[48] Ultimately, this Court, in *McLean*, held that the appropriate range of sentence for a courier engaged in mid-level fentanyl trafficking in Manitoba is six to eight years' imprisonment (see para 118).

[49] In my view, a person who is a mere courier in a high-level, multi-kilogram fentanyl operation should normally expect a sentence in the range of twelve to eighteen years for the following reasons.

[50] First, significant sentences are necessary for individuals who participate in commercial, high-level trafficking offences to meet the fundamental purpose and principles of sentencing given the insidious nature of fentanyl (see *McLean* at para 119, citing the *Criminal Code*, RSC 1985, c C-46, s 718 [the *Code*]; the *Act*, s 10(1)).

[51] Second, section 718.1 of the *Code* requires that courts consider the gravity of the offence in the assessment of proportionality (see *McLean* at para 120).

[52] In *R v Oddleifson (JN)*, 2010 MBCA 44, this Court held that a range of eight to twelve years' imprisonment applies to a trusted courier involved in the transport of multi-kilograms of cocaine in a sophisticated, high-end trafficking scheme. Mr. Oddleifson was found to be in possession of forty-six kilograms of cocaine in a vehicle driven through Manitoba.

[53] To recognize the greater harm and wrongfulness of trafficking fentanyl, the range of sentence for fentanyl should be higher than for cocaine. In my view, it is appropriate that the sentencing range for a high-level fentanyl courier begins at the top of the range for a high-level cocaine courier.

[54] The recent Ontario Court of Appeal decision in *Olvedi* is also helpful. The offender was sentenced on offences of importing and possessing just under 500 grams of one hundred per cent pure fentanyl, with a street value of upwards of $19 million given its purity. The offender was found to be a mere courier and sentenced to fifteen years' imprisonment for the importation

and twelve years' imprisonment, concurrent, for the possession for the purpose of trafficking.

[55] While I do not minimize the seriousness of the facts in *Olvedi*, the moral culpability of the offender in that case was lower than the offender in the case at bar. Mr. Olvedi was paid by his cocaine dealer to accept delivery of a package at his residence. The trial judge accepted what the offender told police: that he needed the money to purchase more cocaine and that, when the offender tried to back out of the arrangement, he was assaulted and threatened with death.

[56] In comparison, in the present case, the offender rented a vehicle at the airport in Toronto, drove for forty-six hours to Vancouver, almost immediately turned around and drove another twenty-one hours until he was pulled over by police. While driving back to Toronto, the offender was solely responsible for the successful delivery of the valuable stash of drugs in the vehicle. The offender's degree of responsibility and moral culpability was very high.

[57] Finally, section 718.1 of the *Code* requires that courts consider the degree of responsibility of the offender in the assessment of proportionality. As stated in *McLean*, "this Court has a long and well-defined jurisprudence as to assessing the role of the offender in drug cases in a principled fashion which is based 'strictly (on) offence-based considerations'" (at para 121, citing *Parranto* at para 47).

Is the Sentence Demonstrably Unfit?

[58] In the present case, the judge imposed a total sentence of fourteen years. While it is a sentence that falls towards the bottom of the now-established range for high-level fentanyl couriers, in my respectful view, the judge erred by failing to conduct a proper proportionality assessment and did not properly apply the "no free ride" principle (*R v Wozny*, 2010 MBCA 115 at para 44) resulting in the imposition of a demonstrably unfit sentence.

[59] When imposing concurrent sentences on an offender for multiple offences, a sentencing judge should first focus on the appropriate sentence for the more serious offence but then adjust that sentence to ensure that the offender does not receive a free ride on the remaining offence(s) (see *R v RJ*, 2017 MBCA 13 at para 13). As such, I will first focus on the proportionality of the sentence for the fentanyl offence and then move to a consideration of the appropriate sentence to ensure no free ride on the MDA offence.

Proportionality

[60] As stated in *Friesen*, "[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" (at para 30). It is the only mandatory principle in the Canadian sentencing regime and is contained within section 718.1 of the *Code*, which reads:

Fundamental principle **718.1** A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.	**Principe fondamental** **718.1** La peine est proportionnelle à la gravité de l'infraction et au degré de responsabilité du délinquant.

[61] Section 718.1 makes clear the case-specific nature of sentencing (see *R v Hamilton*, 2004 CanLII 5549 at para 88 (ONCA)). At its core, this section requires courts to determine the gravity of the offence and the degree of responsibility of the offender and also to ensure that the sentence given is proportionate to both. The more serious the crime or the greater the offender's degree of responsibility, the heavier the sentence (see *R v Lacasse*, 2015 SCC 64 at para 12). In *R v Ipeelee*, 2012 SCC 13 at para 37, cited with approval in *R v Nur*, 2015 SCC 15 at para 43, LeBel J explained:

> Proportionality is the *sine qua non* of a just sanction. First, the principle ensures that a sentence reflects the gravity of the offence. This is closely tied to the objective of denunciation. It promotes justice for victims and ensures public confidence in the justice system. . . .
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> . . .
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> Second, the principle of proportionality ensures that a sentence does not exceed what is appropriate, given the moral blameworthiness of the offender. In this sense, the principle serves a limiting or restraining function and ensures justice for the offender. In the Canadian criminal justice system, a just sanction is one that reflects both perspectives on proportionality and does not elevate one at the expense of the other.

[62] As explained by Mainella JA in *McLean* at paras 61-62:

> What is important in the assessment of proportionality for a drug sentence is the "magnitude of the individual's participation" in the illicit activity (*Regina v Lecapoy* (1974), 18 CCC (2d) 496 at 500 (Alta SC (AD))). An offender's "degree of responsibility" for the purposes of section 718.1 of the *Code* is concomitant to how important a role they played in the illicit activity. The more significant the offender's role, the greater their degree of moral culpability; the "converse is also true for those less criminally implicated" (*R v Smith*, 2019 SKCA 100 at para 46).

> Determining the magnitude of the individual's participation involves weighing typical markers of moral culpability: intentional risk-taking, consequential harm of the offender's actions and normative character of the offender's conduct (see *R v M (CA*), [1996] 1 SCR 500 at para 80; *Sass* at para 39; and *R v Johnson*, 2020 MBCA 10 at para 16).

[63] In this case, although the judge recognized the paramount sentencing principle of proportionality, he erred in failing to assess the offender's degree of responsibility.

[64] The significant dangers that fentanyl poses to the community mean that the gravity of the offence is extremely high. The offender was in possession of a massive quantity of fentanyl, which, as explained above, was even more deadly because much of it was laced with benzodiazepine. The undisputed fact that this was the largest seizure of fentanyl in Manitoba and one of the largest seizures in Canada also speaks to the extremely high seriousness of the fentanyl offence.

[65] As a courier with no decision-making power, the offender has a reduced level of moral blameworthiness as compared to someone directing a high-level drug operation. However, that does not negate the fact that such an offender must "still pay a 'heavy price' for the integral role they play in facilitating the deadly trade in hard drugs as the Court must protect society by denouncing and deterring such conduct" (*McLean* at para 63).

[66] The offender's serious intentional risk-taking is demonstrated by the massive quantity of fentanyl involved and the more deadly nature of it due to the presence of benzodiazepine, as well as the distance and time the offender agreed to travel. He rented the van at the airport in Toronto, drove approximately forty-six hours directly to Vancouver, picked up the drugs, left

Vancouver the next day and was stopped approximately twenty-one hours later after driving straight through to Brandon. The offender's risk-taking was the opposite of impulsive—he had to undertake intentional steps, such as renting the van, and continued to participate over a very lengthy period of time and distance.

[67] The consequential harm of the offender's trafficking of fentanyl has been discussed above. As described by Moldaver J in *Parranto*, "[fentanyl trafficking] is a crime that can be expected to not only destroy lives, but to undermine the very foundations of our society" (at para 98). In addition, acting as a courier, the offender was insulating others in the trafficking business from being directly linked to the drugs and allowing them to continue the drug trafficking operation.

[68] Finally, as to the normative character of the offender's conduct, an offender who commits a crime to feed their own drug addiction has lower moral culpability than an offender who does so for greed. In the present case, there was no evidence to suggest that the offender was motivated to commit the offences to feed a drug addiction. In fact, there was no evidence about what motivated the offender or what compensation he was to receive.

[69] Ultimately, in my opinion, the offender's moral culpability is towards the upper end of the spectrum for a courier engaged in high-level fentanyl trafficking with no decision-making power.

[70] After considering the factors set out above and the aggravating and mitigating factors identified by the judge, including the offender's lack of remorse[4], that he had no prior criminal record and that he was assessed as a medium risk to reoffend, in my view, a sentence of sixteen years in the circumstances of this offence and this offender is appropriate.

The "No-Free-Ride" Principle

[71] The no-free-ride principle is a component of proportionality that ensures that where concurrent sentences are imposed for multiple offences, the length of sentence for the most serious offence does not give the offender a free ride for any criminal conduct (see *McLean* at para 78).

[72] This means that a sentencing judge must first determine if it is proper to impose concurrent sentences for multiple offences according to section 718.3(4) of the *Code*. In my view, the judge in this case appropriately determined that concurrent sentences were appropriate.

[73] While much of the focus of the sentencing hearing and this appeal was the fentanyl offence, the offender was also in possession of an enormous amount of MDA, which is also a hard drug included in Schedule I of the *Act*. The possession of fifty kilograms of MDA in itself is also a very serious offence.

[74] Once a sentencing judge determines that concurrent sentences are appropriate, they are also required to ensure that the sentence for the most serious offence does not give the offender a free ride for the other offences; a sentencing judge is entitled to impose a lengthier sentence for the most serious

[4] To be clear, the offender's lack of remorse is not an aggravating factor; rather, it is the lack of a mitigating factor (see *R v Fox*, 2024 MBCA 48 at para 26).

offence to reflect the fact that separate offences were committed together (see *R v Cook (N)*, 2014 MBCA 29).

[75] In considering the no-free-ride principle, the judge stated in *Deol* at para 49:

> Bearing in mind the "free ride" principle, and bearing in mind that the quantity of MDA was also enormous, I sentence [the offender] to 14 years for the fentanyl offence, and eight years concurrent for the MDA offence. If there had been no MDA at all, the sentence for the fentanyl would have been somewhat shorter.

[76] While the judge appropriately referred to the no-free-ride principle, it is impossible to determine how he adjusted the sentence to account for the fifty kilograms of MDA, other than to say that without it the sentence would have been "somewhat shorter."

[77] While perhaps at the low end, in my view, an eight-year sentence for the MDA offence is not demonstrably unfit in the circumstances of this case.

[78] To give effect to the no-free-ride principle, a two-year increase to the total sentence adequately accounts for the seriousness of the MDA offence.

Conclusion

[79] For the reasons set out above, I would grant the Crown leave to appeal and allow the appeal. I would set a sentencing range of twelve to eighteen years for a courier without decision-making power involved in a high-level fentanyl trafficking organization. I would also increase the sentence on the fentanyl offence to eighteen years' imprisonment. All other

aspects of the original sentencing, including the concurrent eight-year sentence for the MDA offence, credit for pre-sentence custody and the ancillary orders, remain undisturbed.

Turner JA

I agree: Rivoalen CJM

I agree: leMaistre JA