Court of Queen's Bench of Alberta

Citation: R v Sharifi-Jamali, 2022 ABQB 52

Date:20220120
Docket: 190177246Q1
Registry: Calgary

Between:

Her Majesty the Queen

- and -

Kavon Sharifi-Jamali

Accused

Memorandum of Reasons for Decision on Sentencing
of
Associate Chief Justice J.D. Rooke

I. INTRODUCTION AND SENTENCE

[1] In this unique case, I departed downward from a proposed joint submission on sentence for drug related crimes, committed by a first-offender drug user, who had carried out and completed a remarkable self-directed regime of rehabilitation, had lived law-abidingly for three years since his arrest under strict terms, garnered exceptional community support, and had been attempting to plead guilty since April of 2021. After extensive submissions from Crown and Defence, I concluded that sending Kavon Sharifi-Jamali (Mr. Sharifi-Jamali) to prison would be contrary to the public interest, whereas the objectives of sentencing could be better served by a lengthy and strict period of community supervision. This matter had lingered too long since April, and I thus imposed the sentence with brief oral reasons on December 16, 2021, with full reasons to follow. These are those reasons (Reasons).

[2] On February 24, 2020, Mr. Sharifi-Jamali was indicted on 3 counts of offences under the *Controlled Drugs and Substances Act* (*CDSA*), 6 counts of offences under the *Criminal Code* (CC) and 1 count of an offence under the *Provincial Body Armour Control Act* (*BAC*), all offences alleged to have been committed on November 23, 2018.

[3] After indicating his intention to do so, on April 30, 2021 (see "Background" below), on December 16, 2021, Mr. Sharifi-Jamali entered a guilty plea to 5 counts, which, after confirmation of the provisions of s. 606 of the *CC* by Mr. Sharifi-Jamali, and the Agreed Statement of Facts (ASF) in Exhibit S-1 was reviewed, I accepted his pleas and thereafter sentenced him as follows:

> Count 5 (unsafe storage of a firearm, to wit, a shotgun), contrary to s. 86(1) of the *CC*; Count 6 (possession of a prohibited weapon/ammunition, to wit a firearm magazine, without a licence to possess, contrary to s. 91(2) of the *CC*; and Count 8 (a prohibited/restricted weapon, to wit brass knuckles, without a licence to possess, contrary to s. 91(2) of the *CC*. Sentence: a Conditional Sentence Order (CSO) for 2 years, less a day, without a custodial order, concurrent as between these counts, but consecutive to the sentence in Count 1, plus all applicable conditions[1].
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> Count 10 (possess body armour without a valid permit), contrary to ss. 3 and 22(1) of the *BAC*. Sentence: $500 fine, with statutory default.[2]
>
> Count 1 (possession of cocaine[3] for the purposes of trafficking), contrary to s. 5(2) of the *CDSA*. Sentence: 3 years suspended sentence (SS) and probation order (PO) (combined SS/PO), consecutive[4] to the sentences in Counts 5, 6 and 8, plus all applicable conditions.
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> There were other ancillary orders made, including:

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[1] The applicable conditions under the CSO and the Suspended Sentence/Probation Order (SS/PO) arising from Count 1 (see below) are set out in Sentencing Endorsements on the Indictment, as repeated in Appendix "A" to these Reasons, corrected by me in the Appendix as required. The only things that are somewhat unusual in these conditions, include the following (by condition # or additional conditions):

> 4. Only notice and location of residence was required to for Mr. Sharifi-Jamali to go, for work purposes, to a neighbouring Province or Territory for up to 30 days at a time;
> 7. Support of dependents;
> 9. Prohibition of possessing intoxicating drugs not prescribed by a doctor or dentist; and
> 11. Prohibition from possessing a weapon.
> Additional conditions: take such treatment as the supervisor directs for any addictions for which no consent is necessary under the CSO, but only on consent for the SS/PO; and perform community service of 120 hours within the first 23 months of the CSO and 180 hours under the SS/PO, except that, for ½ of the latter amount of time contribution to a charity approved by the supervisor of $30 per hour will be acceptable in lieu.

[2] The Court notes that all the weapons were found on the search of the Accused's property, not being actively used, and are, in the context of this case, considered to be safety storage issues, and/or possession for purely defensive, as opposed to offensive, purposes.

[3] The ASF states that the total weight of the cocaine (including packaging) was 34.69 grams (slightly over 1.15 ounces, by my calculation) divided into 8 packages, ranging from 0.67 to 22 grams.

[4] Crown Counsel submitted (TR 33/13 – 34/8 – formula = page/line to page/line) that, if there was going to be a CSO for the non-drug charges, and a suspended sentence/probation order on the drug charge, the latter had to follow the CSO and be consecutive thereto, based on the wording of s. 732.2(1) *CC*, which Defence Counsel supported, for total supervision of 1 day less than 5 years (TR26/20-22).

Victim Fine Surcharges, Fire Arms Prohibition (for 10 years, mandatory under Count 1) and surrender of any Fire Arms acquisition certificate, a Primary DNA Order and a Forfeiture Order (Exhibit S-5), as set out in Appendix "A" hereto.

[4] With this sentencing in place, Crown Counsel withdrew Counts 2-4, 7 and 9.

[5] In addition to the reasons in my oral sentencing judgment (TR 34/1 – 40/19), as noted, I reserved these further Reasons for these sentences. This latter process has taken much longer to issue than I had intended, including awaiting until January 10, 2022 to obtain the transcript of the oral submissions by Counsel (to confirm the accuracy of the submissions, as noted at the sentencing – TR 34/14 - 27). I am aware that an appeal against the sentences imposed has been filed, even without awaiting my Reasons (whether on the specific merits, or to protect the appeal period, not being known to me), but I have not reviewed the Notice of Appeal, nor do I provide any reasons herein beyond what I had intended before the filing of the appeal.

II. BACKGROUND

[6] While I don't believe it is overly relevant to the result, as alluded to above, the record should reflect that Mr. Sharifi-Jamali gave notice of his intent to plead guilty on Counts 1, 5, 6, 8 and 10, on April 30, 2021, before Justice Gates, and the matter was scheduled for sentencing to September 3, 2021 and then to October 29, 2021, I perceive, so as to determine whether there would be a joint or individual submission(s).

[7] When Justice Gates was not available to complete the sentencing, but no adjudication had been made (669.2(1) *CC*), the matter came before me on October 29, 2021. At that time, I gave notice, pursuant to ***R v Anthony-Cook***, 2016 SCC 43[5] at paras 49-60 (especially para 58), to Crown and Defence Counsel, that I was concerned about accepting the joint submission of two years imprisonment that was proposed to me. At that time, I outlined the type of sentence that I thought was fit (much similar to what I ultimately ordered), and provided cases that I believed supported the possible sentence. I set the matter over to November 23, 2021, "to speak to", to hear the intent of Counsel (which ultimately became separate, no longer joint, submissions on sentencing) and to, finally, set a date for sentencing, which was December 16, 2021. Crown and Defence provided a number of cases and full oral submissions supporting their respective positions at that time, the substance of which I will address below.

[8] Thus, while I acknowledge that "judges are obliged to depart only rarely from joint submissions", and I have almost never done so in 30+ years on the Bench, in the exceptional circumstances of this case, I had a concern that "the severity of [the] joint submission would offend the public interest", requiring me to "provide clear and cogent reasons for departing" therefrom: ***Anthony-Cook***, paras 54, 52 and 60.

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[5] I note that, after the sentencing herein, the Court of Appeal, in ***R v Naslund***, 2022 ABCA 6, especially at paras 68 - 74 made comments regarding the test for rejecting a joint submission, as discussed in ***Anthony-Cooke***, none of which needs further comment from me herein.

III. STATUTORY AND COMMON LAW SENTENCING PRINCIPLES

[9] The broad statutory purposes and principles of sentencing, are set out in s. 718 *CC*, as follows:

> The fundamental purpose of sentencing is to protect society and to contribute along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:" (emphasis added).

[10] There follow 6 objectives:

(a) DENUNCIATION – "to denounce unlawful conduct and the harm done ... to the community that is caused by unlawful conduct;"

(b) DETERENCE – SPECIFIC and GENERAL– "to deter the offender and other persons from committing offences;"

(c) INCARCERATION – "to separate offenders from society, where necessary;

(d) REHABILITATION – "to assist in rehabilitating offenders";

(e) REPARATIONS – "to provide reparations for harm done to ... the community" and

(f) RESPONSIBILITY AND ACKNOWLEDGEMENT OF OFFENDERS – "to promote a sense of responsibility in offenders, and acknowledgment of the harm done to ... the community".

[11] Each of these needs to be considered in any sentence, and I have done so, and will address them, combining two and somewhat changing the order, trying to recognize the relative importance of each in what I find to be the *exceptional circumstances* of this case.

a. Denunciation & Deterrence

[12] I begin, as in all drug trafficking cases, with acknowledgment of the principle that denunciation and deterrence must lie at the heart of every sentence for commercially motivated drug offences. These are prime considerations in sentencing of trafficking or possession for the purpose of trafficking of hard drugs – see ***R v Ostertag***, 2000 ABCA 232 at para 41, as to Alberta, and ***R v Oickle***, 2015 NSCA 87 at para 31, as to Nova Scotia.

[13] There are, however, different, creative and innovative ways to achieve these goals in the case of each offender. In the tools available to a sentencing justice, these goals can be accomplished, in the right case, by a period of sharp – even if relatively short incarceration, as in the proposed 2-year sentence by the Crown, or by a sentence of a longer, broader, duration. Judicial wisdom and a wide discretion must be applied, not merely some formula. In relation to this offender, Mr. Sharifi-Jamali, I have chosen the latter as being fit and just for him, and for the community, and for general sentencing purposes.

[14] In my view, allowing Mr. Sharifi-Jamali to continue as a contributing member of society, under strict, lengthy (5 years) community supervision, carrying a real risk of a lengthy imprisonment for any re-offence, better serves the deterrent and denunciative purposes in this case. Simply put, I believe that nearly 5 more years of strict supervision, under the CSO, with the additional 3 years under the SS/PO, is more important to these principles than merely

incarceration for less than 2 years (after statutory release, even with supervision continuing for the rest of those 2 years, less a day). This is especially so when Mr. Sharifi-Jamali has no prior record and has abided by conditions of judicial interim release for an additional period of over 3 years after arrest for these offences, before sentence (if completed, 8 years of law-abiding behaviour in total).

[15] A minimum term of incarceration in prison, as proposed in the joint submission, might well have allowed Mr. Sharifi-Jamali greater liberty in the community (including parole), for a longer period of time, than the restrictions on liberty and risk of sentence-collapse carried by the term I have imposed. By the end of this sentence that I have directed, Mr. Sharifi-Jamali will have been under judicial control of his liberty for 8 year of his young life. In the result, he can support his family and will be powerfully specifically deterred (not that I believe that is much needed anymore), and the extend and duration of state control over him still speaks powerfully to society's denunciation of his conduct.

[16] To the extent that general deterrence is effective, many unreformed and unrehabilitated drug dealers would likely much rather do prison time than live under the prolonged conditions and risk of lengthy summary re-incarceration that Mr. Sharifi-Jamali accepted, but that is not what is important to him, his family or society.

b. Incarceration

[17] The role of harm to the community is, as can be seen, normally referenced in relation to denunciation, reparations, acknowledgment of the offender, and starting point sentences, regularly and mechanically imposed: ***R v Arcand***, 2010 ABCA 363, at paras 6-7, and153, referenced by Crown counsel at TR 10/4-10, 11/4-13 & 20/30-36. However, that is absent exceptional circumstances, evident here, accepted by the Court.

[18] Moreover, offenders are jailed not for retribution, but to protect society. In this case, I found as a fact that Mr. Sharifi-Jamali poses no meaningful risk to the community or to re-offend. As discussed below, he has received a truly remarkable and unique expression of support from his community, which does not feel a need for him to be separated in the least.

[19] Absent a clear statutory prohibition (there is none here for the *CC* offences, as the Crown concedes (TR 21/2-18)), and, as is seen in relation to CSOs for non-drug offences, incarceration is only to be invoked if "necessary", and while often used, it is not necessary for denunciation or deterrence, in the right case (see ***R v Proulx***, 2000 SCC 5, at paras 1, 21-22), and again other cases also say that (see, *inter alia*, ***R v Peters,*** 2015 MBCA 119). Thus, incarceration should not be handed out as a matter of rout, but must be considered/re-considered in a creative and innovative way by the sentencing justice. However, the threat of incarceration, for breach of conditions, during the up to 5 years more supervision is not only a significant deterrent to recidivism, but also a denunciation of the crimes.

c. Rehabilitation

[20] Rehabilitation is absolutely significant in this exceptional case. I found, as a fact, that Mr. Sharifi-Jamali has rehabilitated himself as fully as seems possible and as could be hoped, recognizing that drug substance abuse is a disease, that never is beyond risk. In my oral decision on sentencing, I said (TR 34/38-40) and now repeat: "I find it ironic that you can go to a drug treatment court and get ... relief ... by way of sentence, a reduced sentence. But if you do it yourself, you cannot. There is something wrong with that picture....".

[21] I recognize that, in ***R v Spina***, 1997 ABCA 235, while there was significant – indeed "remarkable" (p 1) – and "continued" (p3) rehabilitation – he "completely rehabilitated his life" (p 2), and "spent considerable time functioning in that rehabilitative state (p 9), the Court, while noting a need for greater weight and recognition to rehabilitation, and a need for "a creative sentence [that] should be structured in the exceptional circumstances of this case" (pp 2 & 10), still gave a sentence of two years less a day incarceration and probation.

[22] Times have changed some small amount in the drug world in the 24 years since that case. Recent medical crises, and acknowledgement of the need for increased emphasis on harm reduction (***Canada (Attorney General) v PHS Community Services Society***, 2011 SCC 44), have elevated the importance of rehabilitation, both in law and in the public mind. Moreover, Mr. Spina did not have the significant family obligations of Mr. Sharifi-Jamali, and other mitigating factors present here, which I find to be more "exceptional circumstances" and requiring a more "creative sentence", with "an alternative means of community service" than in ***Spina***. For these reasons, I have weighted rehabilitation more heavily in the present case.

d. Reparations

[23] In the sentence that I have imposed, I have provided for reparations for the harm done by allotting 300 hours (60 hours more than alternatively proposed by the Crown), for community service under the CSO and SS/PO scenarios (TR 22/29-34), under the control of the offender's supervisor, or work to provide funds (based on his work hourly rate) for donation to charities designated by his supervisor for ½ of the last 180 hours. This is significant in comparison to any sentence, for which community service has been ordered.

e. Responsibility and Acknowledgement of Offenders

[24] Rehabilitation must be balanced with deterrence and denunciation: ***Ostertag***, para. 45. However, here, Mr. Sharifi-Jamali rehabilitating himself from past substance use, almost completely on his own, ceasing his illegal activities and supporting his family powerfully demonstrates his taking responsibility for his actions and acknowledging the harm that he has done to society and his community - see further discussion below in the context of the Pre-Sentence Report (PSR).

IV. SUBMISSIONS ON SENTENCING

a. Crown

[25] After the Court gave notice of not accepting the joint submission, the Crown submitted the following sentences would be appropriate: Count 1 – two years; and Counts 5, 6, 8 and 10 – 3 months concurrent to one another and concurrent to Count 1, for a total of two years.

[26] ***R v Friessen***, 2020 SCC 9[6], was referenced by Crown Counsel, at paras 53 and 96, for the principle that the maximum sentence available for an offence (Count 1) determines the gravity and proportionality (both on an individual basis, and, in comparison, to sentences for other similar offences): see also ***R v McGill***, 2016 ONCJ 138 at paras 56 and 58, and ***Arcand*** at

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[6] Counsel for the Crown, in oral submissions (TR 9/23-27), correctly referenced ***Lacasse*** and ***Friessen*** as authorities for the statement that, in her words: "… all sentencing starts with the principle that sentences must be proportionate to the gravity of the offence, the offender's degree of responsibility and the unique circumstances of each case" (my emphasis).

para 67. I recognize this and the resulting gravity of the offence, but, in the exceptional circumstances that I find here, the result is a SS/PO sentence with 36 months of probation, with strict conditions, following and consecutive to a 2 year less a day CSO sentence with substantially identical conditions.

b. Defence

[27] Defence Counsel was content with the sentence that I originally outlined for consideration in October 2021 and ultimately substantially imposed on December 16, 2021.

V. CASES

a. Cases for Joint Submission

[28] The Crown and Defence provided three Alberta cases on possession of cocaine for the purpose of trafficking, in support of their initial joint submission: ***R v Maskell***, 1981 ABCA 50; ***R v McCulloch***, 2011 ABCA 124, at para 4; and ***R v Gittens***, 2019 ABCA 406.

[29] ***Maskell***, the root authority for over 40 years, held (para 11) that "all cases of ... possession of narcotics for the purpose of trafficking, a gaol sentence is to be imposed except in exceptional circumstances" (emphasis added). The Court there found (paras 19 and 20) that the "...operation had a commercial character...", and was "...a commercial operation on something more than a minimum scale", as I do here. There the Court found no exceptional circumstances, but I do here. Deterrence was there identified (para 16) as "remain[ing] the most important element...". While Maskell had some mitigating characteristics (para 17) similar to Mr. Sharifi-Jamali (primarily age and education), the appeal from a 3-year sentence was dismissed.

[30] ***McCulloch*** was a single transaction of trafficking in cocaine, undertaken (with some small relationship to the case at Bar) to support an addiction[7]. It was noted (para 8), referencing, *inter alia*, ***Maskell***, that, in Alberta "the starting point sentence for commercial trafficking[8] in cocaine in small quantities ("beyond a minimal scale") is three years", which, in non-exceptional cases, I accept. However, in the same para, it was noted that ***R v Ostertag***, at paras 12-16, is authority that a starting point sentence is not a minimum, "nor does it eliminate the sentencing judge's wide discretion in imposing a sentence"; see also ***R v Corbiere***, 2017 ABCA 164 at para 20.

[31] As I read it, ***McCulloch*** is not contrary to the sentence imposed here at Bar; it is different, and, indeed, in one or more contexts is supportive of the principles that something less than actual prison *may* be appropriate to deal with denunciation and deterrence, and that sentencing judges have a wide discretion. In ***McCulloch***, a prison sentence of 18 months was overturned, and the Court of Appeal held (per headnote) that "[i]t was an error in principle to state that a conditional sentence could not provide the necessary level of deterrence and denunciation". A 13-month CSO, then available under the Criminal Code, was substituted.

[32] I don't find ***Gittens*** particularly or specifically relevant in the context of the case at Bar, although its value is that it does summarize a number of drug possession and trafficking cases.

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[7] See ***McCulloch*** at paras 20 and 25 for the inter-relation between addiction and commerciality.

[8] There is no issue, and the authorities are consistent, that actual trafficking and possession for the purpose of trafficking are treated the same, if a commercial operation is present.

There the issue was whether the transaction was beyond a "minimal scale" (not in issue in the case at Bar) when the sale of .64 gram of cocaine was sold and (per headnote) "the offender discarded two additional small packets of cocaine". The Court found it was beyond a minimal scale, and, having regard to aggravating circumstances (including a criminal record of 10 convictions, one for a conditional sentence (CSO) for drug trafficking, which he had breached) and mitigating factors, upheld an 18-month sentence of imprisonment.

b. Crown Cases Opposed to Court's Contemplated Sentence

[33] The Crown submitted a brief synopsis of each of 12 ABCA cases from 2014 – 2019 where, post termination of the availability of CSOs for trafficking in hard drugs, the Court overturned suspended sentences and imposed custodial sentences, or approved (or increased/decreased) custodial sentences in relation to the starting point of 3 years (TR13/34-14/7), including, in chronological order: ***R v Prak***, 2014 ABCA 114; ***R v Melnyk***, 2014 ABCA 334; ***R v Perrot***, 2015 ABCA 209; ***R v Legerton***, 2015 ABCA 79; ***R v Geiger***, 2016 ABCA 337; ***R v Sargent***, 2016 ABCA 104; ***R v Corbiere***; ***R v Fuller***, 2017 ABCA 361; ***R v Giroux***, 2018 ABCA 56; ***R v Godfrey***, 2018 ABCA 369; ***R v Sumner***, 2019 ABCA 399; and ***R v Gittens***.

[34] The Crown also submitted the case of ***R v Shrivastava***, 2019 ABQB 663 (authored by my then colleague, Antonio J., now J.A.), highlighting paras 83-85. Those highlighted provisions go to the issue of how to treat an offender who has a good background, and concludes (para 85), "...positive systemic background factors do not mitigate the offender's degree of responsibility". I accept that, but find it unhelpful in this case. While there are some similarities between the offender there and Mr. Sharifi-Jamali, the latter has not used this as an excuse for the offences or to mitigate his responsibility. Rather, unlike the offender in ***Shrivastava,*** he has taken full responsibility for his actions.

[35] What is more relevant from **Shrivastava,** in my view, is that it hinged on the finding (para 98) that the offender "has shown no insight into his behaviour, and instead continues to minimize his authorship of the offence, even when purporting to take responsibility of to express remorse. I therefore conclude that rehabilitation has not yet been effected." That is very much the opposite of the case at Bar.

[36] Still later the Crown submitted further cases, which she referenced at the sentencing hearing as follows: ***R v Ostertag***; ***Corbiere***; ***Spina***; ***Oickle***; ***R v Lau***, 2004 ABCA 408; and ***R v Dunn***, 2011 NBCA 19, all of which I have discussed herein.

c. Cases Supporting the Sentence Imposed

[37] The following cases (in ascending order of decision)[9], and, undoubtedly others, support the sentence imposed.

1. R. v. Peters

[38] In ***R v Peters***, a Crown appeal against a suspended sentence, with three years of supervised probation and 200 hours of community service, imposed following a guilty plea to a charge of possession of 13 grans of cocaine for the purpose of trafficking and two breaches of the terms of release, was dismissed. That case, and others identified herein, is/are support for the fact that changes in the law as to CSOs in 2012, did not, as ***Oickle*** suggests (paras 43-4), take

[9] Most of which I presented to Counsel when I gave the ***Anthony- Cook*** notice.

away the wide discretion of a sentencing justice to impose a lengthy suspended sentence, with stringent conditions, in *exceptional circumstances*.

[39] ***Peters*** found (para 3) that there were "'exceptional circumstances' warranting a departure from the established sentencing range", turning "mainly" on Mr. Peters being an Indigenous person to whom ***R v Gladue***, [1999] 1 SCR 688 and ***R v Ipeelee***, 2012 SCC 13, applied, a consideration not applicable to the case at Bar.

[40] However, there were also a number of more serious aggravating circumstances related to Mr. Peters, not present at Bar. He had 54 convictions prior to his sentencing, the latest one also for possession for the purpose of trafficking, whereas Mr. Sharifi-Jamali had none; had a pre-sentence report assessing him as "a very high risk to re-offend, whereas Mr. Sharifi-Jamali was not so assessed, at least implicitly being at low risk; and Mr. Peters had past gang affiliation, which Mr. Sharifi-Jamali does not. Different from Mr. Sharifi-Jamali, who cured his cocaine addiction himself (as confirmed by Crown counsel – TR 23/41-24/2), Mr. Peters attended a 30-day residential treatment program and participated in AA and NA meetings. Otherwise, except for Indigenous status, many of the antecedents are similar to Mr. Sharifi-Jamali, including no public safety concerns.

[41] I agree with and adopt the following passage from the sentencing judge in ***Peters***, quoting from Justice LeBel in ***Ipeellee***, at para 67:

> ... if an innovative sentence can serve to actually assist a person in taking responsibility for his or her actions and lead to a deduction in the probability of subsequent re-offending, why should such a sentence be precluded just because other people who commit the same offence go to jail?

In my view, the same principle should apply to non-Indigenous, as well as Indigenous, offenders.

[42] The sentencing judge added, in the context of this Indigenous offender, in a more significant child care case (Mr. Peters was the sole parent to 3 young children, whereas Mr. Sharifi-Jamali supports a new spouse and two young children) that "[s]ending him to prison at this point would be, I think, the opposite of everything the Supreme Court of Canada has instructed ...." I agree, but it should also be true in this non-Indigenous case.

[43] In ***Peters***, the sentencing judge also stated (para 12):

> The probation order is lengthy. It's three years in length. That gives you a long time to continue be responsible towards ... not just your community and your family, but the larger community, and to continue to prove to yourself and your family and community that you are prosocial and that you will not turn back in any way on drug use and substance abuse, on gangs and any kind of crime. (Emphasis added).

Here, at Bar, the sentences provide an additional 5 years of supervision (in addition to 3 years pre-sentence) - under a CSO for 2 years less a day, and a consecutive SS/PO of 3 years ("a 'Sword of Damocles' hanging over the offender's head" - para 61 of ***McGill)***. This amounts to 2 more years of post sentencing supervision than in ***Peters***, and over 3 years more than the custodial supervision (even ignoring parole) under the originally proposed joint submission. It is thus a heavy penalty for Mr. Sharifi-Jamali for his crimes.

[44] In ***Peters***, on appeal, the Crown argued (paras 13-15) that the sentence imposed: failed "to recognize that paramount principles in sentencing cocaine traffickers must be deterrence and denunciation" and "that a probation order is insufficient to act as a proper deterrent"; erred by avoiding Parliament's direction that cocaine traffickers are no longer eligible for community-based sentences"; and was demonstrably unfit. Before dealing with these arguments directly, the ***Peters*** Court went on to look at the principles in another case that considered these issues.

[45] The Court of Appeal in ***Peters*** (para 21), considered the judgment of Bennett J.A. in ***R v Voong (DM) et al***, 2015 BCCA 285, where at paras 59-62, Bennett J.A. said:

> ... absent exceptional circumstances, the sentence for a first offence or with a minimal criminal record, dial-a-dope drug seller will be in the range of....[10] Exceptional circumstances may include a combination of no criminal record, significant and objectively identifiable steps toward rehabilitation for the drug addict, gainful employment, remorse and acknowledgement of the harm done to society[11].... This is a non-exhaustive list, but at the end if 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. (First emphasises added, second in the original text).

The Court in ***Peters*** thought, as I do here, that the offender had "truly turned his ... life around". The purpose of public protection has been well and fully served there and here.

[46] The quote from Bennett J.A. goes on, the parts relevant to my decision, including:

> ... a suspended sentence can attract similar strict conditions [as compared to a CSO], but only if they are aimed at protection of the public and reintegration of the offender into society. Rehabilitation clearly plays a significant role in ... those conditions.
>
> A suspended sentence can achieve a deterrent effect ... as well as a denunciatory effect". [Reference made to ***R v Chang***, 2002 BCCA 644.]

[47] In the result, the Court in ***Peters*** came back to address the Crown's arguments aforementioned:

> ... Because of what I would define as a major turnaround in the accused's life following his arrest, the sentencing judge crafted a sentence that was appropriate and recognized the very substantial change that has occurred in this accused's way of living. He appears to have achieved what is an important objective of the sentencing process, namely rehabilitation.
>
> In my view, because of the changes that the accused brought into his file following his arrest, he would have been a good candidate for a conditional

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[10] Range left out as it is peculiar to BC, not necessarily relevant to Alberta, but the substance of the point remains valid to the case at Bar.

[11] Mr. Sharifi-Jamali has all of these.

> sentence. However, because that option has been taken away from judges[12], the sentencing judge had to consider what other options were available to her, short of incarceration[13]. She was dealing with an *exceptional set of circumstances* and, in my view, dealt with them in a manner that was open to her. (Emphasis added).

While the circumstances in ***Peters*** are, in the same instant, more aggravating, and yet, in some respects, more mitigating, in total, I am of the same view as it relates to Mr. Sharifi-Jamali in the case at Bar.

2. R v McGill

[48] In ***R v McGill*** (a well written decision of Green J. on principles relevant to the case at Bar), without going into all the 22 paras of details of the offender, he was an Indigenous man, with a dated record for crimes of violence, who pleaded guilty to possession of 300 grams[14] of cocaine for the purposes of trafficking. However, by the time of his sentence, he (paras 3 & 4): was in a settled and supportive relationship and a caring father for an eight-year-old son; had secured employment; diligently pursued his schooling; abstained from illicit drug use; attended regular counselling programs; and had garnered certificates, an award and several commendatory attestations – all substantially similar to Mr. Sharifi-Jamali. Key considerations were, as at Bar, the maintenance of his employment, education and supporting his dependant family.

[49] The Court, recognizing that he had "he has turned his live in a very positive direction" (emphasis added), in addition to ***Gladue*** and ***Ipeelee*** principles, summarized the sentencing law to that date, and sentenced him to suspended sentence followed by a lengthy term of probation, pursuant to s. 732.1(h) CC.

[50] As noted in ***McGill***, at paras 64-7, at least the Supreme Court and the Ontario Court of Appeal (five cases therein cited), 5 years ago, while respecting the value of ranges, as I do, has stated that "trial judges must retain the flexibility needed to do justice in individual cases" (emphasis added).

[51] ***McGill*** spends 18 paras on cases of "*exceptional circumstances*" (paras 69-87), with much relevant to the case at Bar.

[52] ***McGill*** referenced ***Voong*** at paras 71-2. The issue in ***Voong*** was identified as to whether SS/POs were compatible with "the sentencing goals of deterrence and denunciation accorded precedence in drug trafficking cases". The ***McGill*** Court noted that ***Voong*** held (at para 72) that a SS/PO, is, in accordance with ***R v Proulx***, at para 23, a "rehabilitative sentencing tool", as compared to a CSO which has "both punitive and rehabilitative objectives".

[53] ***McGill*** (para 71) also addressed another issue relevant to the case at Bar – relatively small amounts of cocaine – and said: the "offences involved relatively small amounts of cocaine

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[12] This situation is under challenge in that s. 742 (c) and 742(e)(ii) of the CDSA were struck down in ***R v Sharma***, 2020 ONCA 478 (as discussed in ***R v Johnson***, 2021 ONCA 257, at paras 41-2), and are wending their way to the Supreme Court.

[13] It is to be noted that avoiding incarceration, if possible, is a principle in itself: *CC*, s. 718.2(d) – "an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances" and 718.2(e) (as relevant) "all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to … the community should be considered for all offenders…": see discussion in ***McGill***, at para 41.

[14] Over 9 times the amount at Bar.

or heroin, measurable in grams rather, as here, ounces". In ***Peters***, the quantity was a half-ounce of cocaine – "a fraction of that found in McGill's possession"– 300 grams (10.6 ounces) - see paras 90 & 116 of ***McGill***. At Bar the quantity of cocaine seized was 32.67 grams or 1.15 ounces. This all compares to what is said by the Court of Appeal in ***R v Lau***, at para 27: "The commercial cases that attracted a 3 year starting point ... typically involved a few grams of cocaine with 2 ounces (about 57 grams) at the high end of the scale".

[54] At para 74, ***McGill*** further addressed deterrence and denunciation, as follows:

> Invoking the deterrent impact of a suspended sentence and the authority of ***R. v. Shoker***, 2006 SCC 44 ... respecting the broad discretion of sentencing judges to craft appropriate probationary conditions, Bennett J.A., at para 43, reasoned that,
>
> > ... imposing conditions for the protection of the community may have a deterrent and denunciatory effect in addition to a rehabilitative effect. Put another way, a condition need not be punitive in nature to achieve deterrence or denunciation. (Emphasis in the original.)

[55] ***McGill***, at para 77, also noted that:

> The standard of "exceptional circumstances" developed in ***R v. Voong*** was re-affirmed ... in ***R. v. Pepper***, 2015 BCCA 476 and applied by way of suspended sentences in ***R. v. Lo***, [2015] B.C.J. 2169 (S.C.) and ***R. v. Madison***, [2015] B.C.J. 2528 (P.C.), both "dial-a-dope" cases.

3. R v Diedricksen

[56] In ***R v Diedricksen***, 2018 BCCA 336, the Court reviewed ss. 718 and 718.1 and s. 10(1) of the *CDSA* (paras 38 – 40), and then looked at the mitigating factors (para 41-2), which, similar to the case at Bar, included: first offender; guilty plea; complied with bail and was cooperative; was gainfully employed, such that incarceration would impair his employment; expressed remorse; has considerable support in the community, including his employer; and took active steps to reduce or eliminate his own substance abuse issues. However, in face of the fact that trafficking in cocaine is a serious offence, for which denunciation and deterrence are important principles, the original sentencing judge did not believe that these mitigating factors "rose to the level of 'exceptional circumstances' as that term is used in ***Voong***." I find the opposite at Bar.

[57] The ***Diedricksen*** Court reaffirmed (para 44) that "[w]hile a custodial sentence will usually be required to express the gravity of trafficking in hard drugs, a non-custodial sentence can meet the principles of denunciation and deterrence", referencing s. 731.(1) *CC*, and (paras 46 – 50) noting the comments of Bennett J. at paras 19, and 37-39 of ***Voong***, including that "[a] probation order has primarily a rehabilitative objective, - but not limited to this objective" and that "[a] suspended sentence has been found to have a deterrent effect", and, lastly, emphasizing that "sentencing is always an individualized process", substituted (paras 51-2) the custodial sentence of 6 months with a suspended sentence of 18 months (emphasis added).

4. R. v. Livingstone et al

[58] In ***R v Livingstone et al***, 2020 NSCA 5, the original sentencing judge imposes a suspended sentence and a three-year probation period on 3 years, in three unrelated cases, one of which (Ms. Lungal) was upheld on the Crown appeal. In the process of judgment, the Court reviewed about 35 cases of suspended sentences being granted in Canada for trafficking in hard

drugs (including ***Peters***, ***Voong***, ***Diedricksen***, and ***McGill)*** and concluded (para 24) that the common factors were that" "mitigating factors substantially outweigh the aggravating factors"; and "specific and general deterrence are satisfied ..." and "a custodial sentence would negatively impact the offender's rehabilitation progress". All these factors are very important and present at Bar.

[59] The mitigating factors as it related to the offender, Ms. Lungal [note the differences as identified by Crown Counsel - see TR 20/5-8, and the differences and similarities recognized by Defence Counsel – see TR 29/9 – 30/19], whose sentence was affirmed, included others than Mr. Sharifi-Jamali, but the following coincided: low level addict retailer; petty retailing in small quantities; first time offender; guilty plea; expression of remorse and understanding of responsibilities; excellent rehabilitative prospects (actually accomplished in the case at Bar); no charges since arrest; and compliance with release conditions pending sentencing.

[60] I note that Nova Scotia has maintained a particularly robust tariff for drug offences, and am bolstered in my conclusion on the public interest that the latest pronouncement from its Court of Appeal on this issue embraces the use of long suspended sentences in exceptional circumstances.

VI. PRE-SENTENCE REPORT (PSR) (Exhibit S 2)

[61] Let me state this bluntly: the PSR is the most positive post-offence report I have seen for an offender after 30+ years on this Court. I find that it demonstrates exceptional circumstances as discussed herein. It should be read in full, but I believe that it can be fairly summarized (with page numbers in rough chronological order) as follows:

- Pp 1 & 2 – 28 years old
- P 2 – "very cooperative in the preparation and completion of his report" and "very forthcoming"
- No criminal record nor past community disposition
- Acknowledged the charges
- P 3 – remorseful – no efforts to minimize his actions, and while rationalizing them "did express that his actions were not acceptable regardless of his rationalizations and he expressed regret for his involvement..."
- He volunteered that the charges were "a blessing in disguise" – interrupted a worsening negative cycle
- Understood the negative effect of the offences on his family, himself and the community
- No further animosity or resentment in being charged, and is now amicable, respectful, forthcoming and thankful to police in his reports
- No violations since his Recognizance Order on release on November 24, 2018 – and reports thereunder "religiously" and with compliance
- Family history positive – only child of "amicably divorced" parents, with no parental custody issues – the parents remain good friends – no abuses or traumatic incidents during his childhood, very fair and appropriate parental discipline
- At 18, witnessed a roadside death, which negatively impacted him, leading to more regular use and increased quantities of intoxicating substances

- P 5 – close to extended family (which remains) and with Mother, with no family turmoil
- Resourcefulness - purchased first home, with aid of inheritance, at age 17 and has been independent since
- Immediate family – fiancé and step child, and new child – fiancé accepted him after he was charged and rehabilitated himself and engaged in November 2020 with plans to marry – good relationship with step-child, respecting his biological father – "he would not risk jeopardizing [his family] for anything as he realizes the importance of having a family and providing a solid foundation for both emotional and physical support" – "any return to or involvement with illicit substances or negative individuals would mean ..." his loss of his family- leading to a commitment to "abstain from illicit substances and poor influences"
- P 6 - Fiancé does not condone illicit drug use, and did not resume a [pre-existing] casual relationship until June 2019, when he had rehabilitated – a good step-father and father, and provides "a solid foundation for their family" – often works away from home, but returns regularly in intervals between work – close relationships with both parents, with community support in his relationships in the family
- Graduated high school at age 17 with average grades, and never expelled, but once suspended at age 15
- Attended SAIT and NAIT, completing courses in AutoCAD and blueprint reading, with certificates in a number of areas related to his employment in the construction industry – since being charged, took the initiative to challenge for and has been accepted into a Project Management Professional Certificate (Red Seal) program, through the Project Management Institute, which he continues to actively pursue
- Employment in the construction industry with a company (second in command), confirmed, continuously since 2019, as a Batch Plant Supervisor (nights) and Ironworker, Lead Hand (days) throughout the Province – prior employment in the construction industry since 2010, with no gaps except to deal with the subject charges – good working relationships in all employment with 3 positive reference letters from his current (long term future employment confirmed) and prior employment (presented to the probation officer, not the Court)
- Pp 6 – 7 - employment income annually between $80,000 - $120,000 – filed a Consumer Proposal after arrest to pay off debts of $57,000 with $7,000 left to be paid by the end of 2021
- P7 – supports his family with monthly expenses and savings of $5,7000 – he owns two homes (including the one purchased at age 17 (now rented out) and his current residence (acquired in 2017) and a vehicle
- Fiancé concern that while the family is currently financially stable, any real incarceration would cause their "young" family to suffer" emotionally and financially (as "sole financial provider"), and providing care for the children when he is home from work
- Pp 7 – 8 - based on self, family and peer reporting, the PSR notes confirmation that he has "turned his life around", "currently uses his free time constructively", has changed his peer group to positive influences, and will no longer allow negative influencing individuals to sway him negatively

- Pp 8 – 9 - maintaining physical fitness with no physical health issues except a heart tremor that is being medicated and monitored, and no mental health issues except some depression (now resolved) and anxiety regarding disposition of the subject charges, and no anger management issues, all views being supported by his family and peers
- P 9 – alcohol consumption started at 16 is now very moderate – experimented with marijuana at ages 15 – 16, but no use in the last 4 years – experimented with other illicit drugs at ages 19 and 23, and steroids at age 23
- Used cocaine from ages 20 – 23 while in the circumstance of his former employer, leading to an addiction, providing cocaine to his clients, and by age 25 was using up to 2 grams a day
- Pp 9 – 10 - started Narcotics Anonymous (NA) in November 2018 and attended for a month, abstaining from alcohol or illicit drugs for 1 year, and, after being informed of the conception of his child in May 2019, committed to "never use illicit substances again" and "does not require any external substance use assistance or counselling"
- P 10 – his Mother noted a "wake up call" for her son, and his taking advice and getting support from his broader Family after his arrest, leading to his rehabilitation from illicit drugs, and while continuing to use alcohol, "but not in excess"
- Pp 10 – 11 - his fiancé stated that "his issue with alcohol and cocaine slowly grew into a larger one" and "was prompted by his employment at the time and having to entertain well-to-do clients" – he currently consumes alcohol socially and in appropriate, non-intoxicating quantities, but that he is not using, and is committed to not using, cocaine, or any illicit substances or steroids
- P 11 - his future commitment is to his family (and his Mother and Fiancé add, to provide for them financially and emotionally) and after his sentence to lead a pro-social life, with employment closer to his family's residence
- Beneficial programing could include substance use assessment with AHS, with any follow-up as identified, which he accepted although being of the view that he had "addressed the issue"
- Pp 11 – 12 – Summary, Conclusion and Recommendations – a summary of some of the above points, including that he is "showing insight into the general areas to him that present risk, such as, substance use and social influences" – confirmed "no current substance issues", has family support – is the "primary financial provider to his family" – has "familial and community support"
- Recommendations for community supervision conditions, if part of sentencing, which I have considered (see, *inter alia*, discussions at TR 30/ 40 – 32/23) and imposed by the Court in sentencing herein

[62] Defence counsel re-enforced the following: very positive childhood with a supportive family, with no evidence of abuse, addiction or mental health (TR 18/27-29); no prior criminal record or no subsequent interaction with the justice system; has demonstrated remorse; has a new child to support; had an addiction, but his "actions are certainly not solely profit motivated"; has demonstrated insight into his consumption of alcohol; and is pursuing his Red Seal (TR 28/23 – 29/2), with probationary conditions being the "Sword of Damocles hanging over his head" (TR 30/17 – 35).

[63] In his words to the Court before sentencing (TR 33/2 – 6), Mr. Sharifi-Jamali – re-enforced the importance of his family and his commitment no future negative actions that would bring him back to court.

VII. REFERENCE LETTER FROM FIANCÉ (Exhibit S 4)

[64] Mr. Sharifi-Jamali's fiancé supplied a reference letter. Her comments should be read in full, but some excerpts include[15], chronologically:

- "[he is] and honourable man with a pure heart and contributes so much more than just a paycheque to our family"
- Have known each other for 10 years.
- He took Narcotics Anonymous right after arrest until he learned to fight his addiction, and "[t]oday he remains sober from all illicit substances"
- "Between the time of his arrest until today ..." he has had "very hard lessons to learn ... I know, he has internally rehabilitated and outgrown the person he once was. For this reason, I can personally attest he will never reoffend."
- "[He] has proudly taken on the roll as stepfather to my eldest son, Ace ... 6 years old.... [she] reconnected with him in 2019, and Ace has ... excelled ... and has a sense of stability...."
- In July 2020 they were expecting a second child, and with the fiancé having medical complications, he "took on all the responsibilities of the household", and since the birth of their son, "this pattern of infinite support continues to grow every day" and has "an inseparable bond with our now [8]-month old son, Theodore".
- "Without Kavon in our lives, we would be in a financially crippling situation .... The financial support that Kavon provides is irreplaceable and cannot be replicated on my own .... He truly is our lifeline in more ways than one" (emphasis added)
- "... this will be the last [conviction] .... punishment ... extended to myself and my two children."

[65] I believe that these words and this mutual spousal commitment and support, compared to the alternative, strongly supports the sentence I have ordered. Simply put, to be in the public interest, sentences must serve the needs of the community. I find that, both in substance and appearance, the community's interests in the safety and wellbeing of all is *not* served by physically incarcerating this man. Much would be lost, and nothing gained.

VIII. STATUTORY OR COMMON LAW AGGRAVATING, MITIGATING OR OTHER/NON-FACTORS

[66] At the risk of some direct or indirect repetition, I wish to address these factors directly.

a. Statutory Factors

[67] There are no aggravating statutory factors in relation to Mr. Sharifi-Jamali, as set out in s. 718.2 CC.

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[15] I have edited to correct some spelling and punctuation, etc., that does not change the substance.

b. Non-Factors

[68] Sentencing starts with the presumption of a good character and no criminal record – the latter is acknowledged, as asserted by the Crown: TR14/13-15 and ***Lau***, at para 29.

c. Aggravating

[69] There are no obvious aggravating factors beyond the offences themselves, and there was no evidence of violence associated with the offenses. However, the Crown notes that the offences were premeditated, planned and deliberate, different from ***Diedricksen*** and ***Johnson*** – TR14/24-33 & 19/10-28. However, that adds little or nothing because, by definition, all commercial trafficking at more than a minimal scale involves at least the level of intentional conduct, as present here. The only meaningful distinction is in scale and amount, which the Defence properly pointed out was small in this case.

d. Mitigating

[70] The Crown fairly recognized (TR 14/9-11) the following mitigating factors for Mr. Sharifi-Jamali: youthfulness; rehabilitated from his drug use – "an important mitigating factor" (TR 14/19-20); "leading a positive prosocial life as a contributing member of society"; and his guilty pleas.

[71] As noted above, the amount of cocaine is mitigating – it is about ½ of the amount in "commercial" cases as identified in ***Lau,*** at para 27.

IX. ANALYSIS LEADING TO RESULTING SENTENCE

[72] A CSO is available for non *CDSA* drug trafficking cases under s. 742.1 *CC*, where there is no minimum sentence, the imposed sentence is to be less than 2 years, the sentenced "would not endanger the safety of the community", and "would be consistent with the codified purpose and principles of sentencing" (TR 24/23-35). In ***Proulx***, at para 90, Lamer CJ directed sentencing justices to give "serious consideration ... to the imposition of a conditional sentence in all cases where the[se] statutory prerequisites are satisfied". Counts 5, 6 and 8 meet these criteria. Contrary to what is said/suggested in ***R v Dunn***, at para 14, these offences are available for a CSO, as has been imposed in this case.

[73] Moreover, in the last 10 years, contrary to what is said/suggested in ***Dunn***, at paras 16 *et seq*, relying on ***Proulx***, at para 23, while primarily a "rehabilitative sentencing tool", a SS/PO can have deterrent and denunciatory effects, as recognized in other cases including ***Peters***, ***McGill***, ***Voong*** (and others) (*supra*).

[74] As to safety, it is noteworthy that 54 petitioners from Mr. Sharifi-Jamali's community have specifically beseeched the Court not to impose a custodial sentence. The Petition (Exhibit S-3), states (as written):

> "We ... support ... a non custodial sentence ... as we believe not only is he not a threat to our community or the public but furthermore he is a valued neighbour, friend and tribute to our community... We fully support a Non custodial sentence ... serving his sentence in the community around his peers and support system allowing him to provide for his new family and continue to contribute to society in a positive manner".

[75] The petitioners provide their names, street addresses, telephone numbers, email addresses, relationships, and signatures. The relationships are telling, as they include his relatives, but more importantly, his employer, fellow workers, landlord, neighbours and friends. This addresses the comments of Lamer C.J. in ***Proulx***, at para 102 (referenced at para 98 of ***McGill***) that "[d]nunciation is the communication of society's condemnation of the offender's conduct". Here, at Bar, a remarkable number of Mr. Sharifi-Jamali's community say, whatever their views on his past illegal conduct, that a custodial sentence would be contrary to other important principles, ***McGill*** noting in the next two para notes that "rehabilitation of offenders is an important objective of sentencing, both at common law and as now codified: s. 718(d)" (emphasis in the original), and "the repudiation of criminal activity and a transition to a pro-social lifestyle offers the best assurance of continuing societal protection". While it is for this Court to decide, this is sufficiently significant that, in considering all the exceptional circumstances of Mr. Sharifi-Jamali's conduct since these offences, I believe that this clear community support must not be ignored.

[76] Moving to specific deterrence, ***McGill*** at paras 102-3 notes the interrelationship with rehabilitation, with words that I believe are very true and germane there, and in comparison to the case at Bar: "... the imperative of specific deterrence is ultimately, if inversely, linked to rehabilitation: the greater the evidence of self-directed and effective rehabilitation the less the need for severe sanctions to meet the ends of individual deterrence." In the end, at para 114, the Court held that "[a]ny concerns for specific deterrence can here readily be met by lengthy community supervision, appropriate probationary terms and the risk of resentencing of any future criminality" – the 'Sword of Damocles' , adding "[t]he sentencing objectives reflected in the principles of general deterrence and denunciation, to the degree that they are community-directed, are far better met in this case by a sanction that rewards rehabilitation than one that perpetuates incarceration".

[77] At para 104 of ***McGill***, the following is astutely observed of general deterrence: "In ***R v Proulx*** ... at para 107 ... a unanimous Court noted that, '[t]he empirical evidence suggests that the deterrent effect of incarceration is uncertain'. More recently, in ***R v Nur***, 2015 SCC 15, at para 113, the same Court ... affirmed that 'doubts concerning the effectiveness of incarceration as a deterrent had been longstanding'". In the result, ***McGill***, at para 105, concluded, I believe with much merit, on the "constellation of objectives" intersecting rehabilitation and deterrence, that "[w]here as here, there is unquestioned evidence of rehabilitation, social reintegration and a continuing resolve to remain crime-free, deterrence and denunciation take on more muted roles in the final calculus than they might in other cases where these virtues have not been satisfactory established".

[78] Near the end of the decision in ***McGill***, at para 119, the Court said:

> Ranges and exceptionality aside[16], a suspended sentence, coupled with a lengthy term of probation, is, in my view, a proportional sentence as directed by ***Lacasse***[17] and the Supreme Court's precursor judgments. It is a sanction that comprehends the seriousness of the offence as well as the circumstances of the offender, his moral responsibility and the role of the community in both the manufacture and repair of the criminal conduct at issue.

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16 And, I would add Aboriginal considerations as identified in ***Gladue*** and ***Ipeelee***.

17 2015 SCC 64.

[79] The role of discretion for first instance sentencing justices in ***R v Lacasse*** was recently re-enforced by the Supreme Court in ***R v Parranto***, 2021 SCC 46, stating, *inter alia*, in para 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*** ... 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 [CC], it remains a discretionary exercise for sentencing courts in balancing all relevant factors to meet the basic objectives of sentencing (***Lacasse***, at para 1). (Emphasis added).

[80] At TR 29/9 – 30/19, Defence Counsel referenced the individualistic nature of sentencing, referencing ***Felix*** and ***Parranto***, and, in referencing the comparisons to Ms. Lungal in ***Livingstone***, noted the need for, and submitting that while different, Mr. Sharifi-Jamali's possession of "exceptional circumstances", which, noting differences, discussed above, I accepted in coming to the sentence I imposed.

[81] The result in ***Livingstone*** was a maximum length CSO with considerable restrictions on liberty, followed by a SS/PO of 30 months (6 months less than here), both with strict conditions of probation. The resulting sentence here is more severe, both recognizing the different, but exceptional, circumstances in each case.

Heard on the 29th day of October, 2021 and the 23rd day of November, 2021 and the 16th day of December, 2021.
Dated at the City of Calgary, Alberta this 20th day of January, 2022.

J.D. Rooke
A.C.J.C.Q.B.A.

Appearances:

Ramsha Shafaq
for the Crown

Dean Zuk
for the Accused

SENTENCING ENDORSEMENTS ON THE INDICTMENT - APPENDIX "A"

Guilty Plea entered to Counts: 1, 5, 6, 8 & 10

Sentence

Counts: 5, 6 & 8 there will be a CSO for the duration of 24 months less 1 day.

REASONS FOLLOW.

Count: 10 - $500 fine/statutory default.

Count: 1 - 36 months probation under Section 731(1)(a) and Probation under the same section. Consecutive to the provisions relating to the CSO and it will start following the completion of the CSO one day before 2 years from today.

CONDITIONS: for both the CSO and Probation Order

Statutory Condition:

1)Keep the peace and be of good behavior.

2)Appear before the court when required to do so by the court.

3)Report to a supervisor within two working days after today and thereafter, when required by the supervisor and in the manner directed by the supervisor.

4)Remain within the jurisdiction of the court that means Alberta unless written permission to go outside that jurisdiction is obtained from the court or the supervisor except for work where attendance is required outside the jurisdiction in an adjacent province or territory for up to 30 days at one time on you providing written notice that includes email to the supervisor providing an address and a location of where you will be.

5)Notify the court or supervisor in advance of any change of name or address, and promptly notify the court or the supervisor of any change of employment or occupation.

6)You will live where supported by your supervisor.

7)You will support your Dependents when living with them or if living apart from them in accordance with the law.

8)When outside of your home, you will carry with you your release documents, including any written authorizations from your supervisor, and produce them on demand of a peace officer or a surveillance officer.

9)You are prohibited from buying, having in your possession, using or consuming intoxicating drugs not prescribed for you by a doctor or dentist.

10) Your cellular phone must be one for which you receive monthly statements and not a pay as you go service. Provide your probation officer with your monthly cellular telephone billing statement, within two weeks of receiving it.

11) You are prohibited from owning, having in your possession or carrying a weapon including knives except those you use for preparing or eating food, work tools, while you are at work, are a permitted exception to this ban.

Under the CSO you will take such treatment as your supervisor directs for any addictions and consent isn't necessary that's for the 2 years less a day. For the next 3 years the same thing will apply but only on your consent.

In each of the CSO conditions and the Probation Order you shall perform 120 hours of community service hours within the first 23 months of the CSO and there will be an exception and with the Probation Order in the last 3 years another 180 hours in the Probation Order of community service to the satisfaction of your supervisor or for one half of those amounts you may contribute to a charity approved by your supervisor in the equivalent of $30 per hour for each hour that you don't actually serve.

Victim Fine Surcharges are $100 with respect to Count 10 and $200 for each of Counts 1, 5, 6 & 8 in default is statutory. Time to Pay is 30 days.

Section 109(2) Fire Arms Prohibition for a period of 10 years on Counts 5, 6 & 8 and there will be a surrender of any firearms acquisition certificate that you have under Section 114 within 30 days.

Primary DNA Order on Count 1 and a Reporting Order.

The terms of the Forfeiture Order will also be a condition.

Counts 2, 3, 4, 7 & 9 are withdrawn.