

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

<b>BETWEEN:</b>	)	
	)	
HER MAJESTY THE QUEEN	)	
<b>– and –</b>	)	Geoffrey Roy and Amanda Hauk, for the
	)	Crown
SHEREEN EL-AZRAK	)	
	)	
Defendant	)	Kim Schofield, for the Defendant
	)	
	)	<b>HEARD: June 13, 2019</b>

2019 ONSC 5845 (CanLII)

**REASONS FOR SENTENCE**

*Delivered Orally*

**DE SA J.**

**The Offences**

- [1] I found Shereen El-Azrak (“Shereen”) guilty of trafficking in fentanyl and possession of fentanyl for the purpose of trafficking. (see *R. v. El-Azrak*, 2018 ONSC 5613).
- [2] Shereen, who is a pharmacist, Liridon Imerovik (“Donny”) and Dr. George Otto were all involved in a scheme to traffic in fentanyl. Donny would obtain names for Dr. Otto. Dr. Otto would write the false prescriptions. The false prescriptions would be filled by Shereen, and the fentanyl would be given to Donny for sale.
- [3] Between August 2015 and January 2016, Shereen and Donny communicated via text numerous times regarding the scheme. The evidence tendered at trial demonstrates that Shereen was a principal in the operation. The evidence also demonstrates that Shereen was illicitly supplying fentanyl to traffickers other than Donny.
- [4] When police executed warrants at Shereen’s pharmacy, they located various handwritten notations consistent with “debt lists” (Exhibit 40). A number of individuals were listed together with notations referencing “scripts” owing in relation to “boxes”. Some of the notations included:

- 1) Cosmo: owes script for 13 boxes and need to pay.
  - 2) Joe: owes script for 26 boxes and needs to pay. Owes 75 oxy. Total 30 Box + 75 oxy (paid \$1,000).
  - 3) Frank: Advanced 4 boxes.
  - 4) Rosa: Advanced 6 boxes from next script.
- [5] The debt list seized confirms that Shereen had been advancing fentanyl regularly and required prescriptions to conceal the unlawful distributions. Shereen had also been routinely backdating prescriptions in the system to conceal the actual number of fentanyl patches that were being dispensed at a particular time.
- [6] The number of patches that were diverted is in the thousands. The total number of fentanyl patches dispensed by Shereen through prescriptions written by Dr. Otto was over 6000. Looking at the date period referenced in the Indictment, the total number of patches dispensed from the pharmacy through prescriptions written by Dr. Otto would be 3,895. If considering the number of prescriptions calculated at four to six per week, as contemplated in the discussions between Shereen and Donny, the total number of fentanyl patches dispensed illicitly during the relevant time period would be 2,780.

### **Position of the Parties**

- [7] The Crown seeks a sentence of 11-14 years given the serious nature of the offences and Shereen's role in the scheme. She played a pivotal role. The scheme resulted in the diversion of thousands of fentanyl patches. The Crown argues that the Court must send a serious message regarding offences of this sort, particularly given Shereen's position as a pharmacist.
- [8] The defence seeks a suspended sentence. In doing so, counsel relies on the comments of Justice Green in *R. v. McGill*, 2016 ONCJ 138 (CanLII) that the Court need not be bound by any apparent range. Sentencing is a "highly individualized exercise" that ultimately determines "a just and appropriate sentence" and the "exercise of judicial discretion in each case". *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089.
- [9] Shereen suffers from a rare syndrome called Von Hippel Lindau Disease. The disease affects the nervous system, kidneys, pancreas, eyes and potentially other body sites. It leads to tumours in the nervous system, cancer in the kidneys and pre-cancerous lesions of the pancreas and haemangiomas of the retinae (tumours made out of blood vessels that can bleed and lead to blindness). The lesions tend to be recurrent, multiple, and unpredictable.
- [10] The defence takes the position that given Shereen's particular health concerns, a sentence outside typical range is warranted.

- [11] Counsel also points out that incarceration will be difficult on Shereen's children who have already been under extreme distress because of the circumstances. While other family members are available to assist, Shereen's incarceration will leave her children without a parent. Shereen is a single parent. Their father has left the country and is no longer involved in their lives.
- [12] If a suspended sentence is not appropriate, the defence takes the position that a three to four-year sentence would be warranted.

### **Analysis**

- [13] The principles of sentencing set out in ss. 718 of the *Criminal Code*, R.S.C., 1985, c. C-46 include denunciation of unlawful conduct, deterrence of the offender and others from committing offences, assisting in rehabilitating offenders and promoting a sense of responsibility in offenders. The Court should also impose sentences similar to those imposed for similar offences committed in similar circumstances.
- [14] Shereen has been convicted for trafficking in a Schedule I substance, fentanyl, contrary to s. 5(1) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19. The maximum penalty is imprisonment for life. A conditional sentence is not available, according to s. 742.1(c) of the *Criminal Code*.
- [15] The Court of Appeal has repeatedly emphasized principles of denunciation and deterrence in sentences for drug trafficking. In recent decisions, the Court of Appeal has recognized the seriousness of trafficking in fentanyl, even in small quantities.
- [16] In *R. v. Lu*, 2016 ONCA 479 (CanLII), the Court stated that: "Fentanyl is one of the most highly addictive and dangerous drugs. It is illegally obtained exactly in this way, through the misappropriation of legally dispensed prescriptions. General deterrence and denunciation are paramount factors."
- [17] In *R. v. Patel*, [2017] O.J. No 5375, a pharmacist pleaded guilty to trafficking, and possession for the purpose of trafficking, 3,000 fentanyl patches over a two-year period. In passing sentence, Graham J. found that as a pharmacist Mr. Patel's breach of trust was egregious and his moral blameworthiness was exceptionally high.
- [18] In spite of his plea of guilt and his genuine remorse, the Court found that a sentence of 11 years jail was appropriate, relying on the fact that Mr. Patel "trafficked a significant quantity of maximum strength fentanyl patches without regard to the potentially catastrophic consequences to members of the public." The Court noted that, as Mr. Patel was a pharmacist, "through his experience and training he must have known that he was putting lives at risk."
- [19] Similarly, in *R. v. Shaheen*, 2018 ONCJ 150, Waseem Shaheen, a pharmacist, was convicted after trial of trafficking over 5,000 patches of fentanyl over a two year period. Evidence at trial showed that when his criminal activity was at risk of being

discovered, he staged a false robbery at his pharmacy to cover up the inventory discrepancy, then lied to the police and defrauded his insurance company.

- [20] Much like in this case, the defence in *Shaheen* suggested that, due to Mr. Shaheen's health issues a jail sentence would be unduly harsh and requested a suspended sentence for the drug trafficking and a conditional sentence for the remaining offences. On the offence of trafficking, Mr. Shaheen was sentenced to 14 years imprisonment.
- [21] As evident from these decisions, when sentencing for the offence of trafficking in fentanyl, the principles of denunciation and deterrence are paramount.
- [22] Fentanyl when trafficked illegally is a deadly drug that is at the forefront of the opioid crisis. The evidence regarding the impact of fentanyl was recently reviewed in great detail by Petersen J. in *R. v. Olvedi*, 2018 ONSC 6330 (CanLII), at paras. 12 – 48. After reviewing a number of decisions, she stated at paras. 14 – 15:

In recent years, daily news reports have covered the alarming opioid crisis in our country. Fentanyl, in particular, has assumed centre stage in the unfolding tragedy. A number of courts have found that, every day in cities across Canada, fentanyl use is resulting in overdoses and fatalities. It is ravaging communities and claiming lives ...

Evidence of the devastating impact of fentanyl in other communities across Ontario has been documented in several recent sentencing cases...(Citations omitted).

- [23] As a pharmacist, Shereen was entrusted with the control of this deadly drug's distribution. In *R. v. Shaheen*, the Court explained at para. 29:

The proper functioning of our medical system relies on control of a supply of narcotics. A pharmacist dispenses narcotics to those to whom they are prescribed as part of their medical treatment. At the same time a pharmacist is responsible for preventing the unauthorized distribution of narcotics, as their presence on the street can result in crippling addiction or death. Within a pharmacy, narcotics are subject to strict controls and kept under lock and key. The ordering and distribution of narcotics even within a pharmacy is restricted to designated individuals.

- [24] She abused this position for personal gain. The breach of trust here is severe. The volume of drugs involved and the length of time over which the crime occurred are also extremely aggravating factors.
- [25] Shereen is not an addict. Her only apparent motivation was greed. While the funds were not located, Shereen clearly trafficked in fentanyl for profit. As a pharmacist, she would have also been aware of the deadly effects of this drug in the hands of addicts.

- [26] Shereen's lack of a criminal record is clearly a mitigating factor. I also view her rehabilitative prospects to be good. She has supports in the community by other family members and friends.
- [27] I also recognize that incarceration will be difficult on Shereen and her family. However, Shereen's medical condition can be monitored in custody. When she requires particular treatments or medical care, the custodial authorities will have to make the necessary arrangements to get her that care.
- [28] Moreover, while the consequences of her incarceration for her children are unfortunate, Shereen should have thought of these consequences before engaging in serious criminal activity. While I am entitled to take collateral consequences of this sort into account, the sentence ultimately imposed must be proportionate to the gravity of the offence and the degree of responsibility of the offender. *R. v. Pham*, 2013 SCC 15, [2013] 1 S.C.R. 739.
- [29] Given the circumstances here, I am satisfied that a substantial custodial sentence is warranted. Again, denunciation and general deterrence are the primary considerations at play.
- [30] The co-accused, Donny (Imerovik), received a sentence of 6 years custody: *R. v. Imerovik*, 2019 ONSC 1969. However, Donny was a youthful offender, and his own opioid addiction was an important motivator for his personal involvement in the scheme. In my view, the fact that Imerovik's drug addiction was a driving factor is a major distinguishing factor. Shereen's position as a pharmacist entrusted with control of this deadly drug's distribution is also a major difference in the relative positions of these offenders.
- [31] Donny also pled guilty which was a significant mitigating factor in my view.
- [32] Having considered all the circumstances, including Shereen's time on bail, a global sentence of 13 years would be appropriate. Had it not been for Shereen's unique medical circumstances, I would have imposed a higher sentence.
- [33] On the offence of trafficking, I impose a sentence of 13 years. I will also impose a sentence of 10 years on the offence of possession of fentanyl for the purpose of trafficking which is to be served concurrently.
- [34] There will be a weapons prohibition for 10 years, pursuant to s. 109 of the *Criminal Code*. A sample of DNA will be ordered taken for the DNA Databank.

"de Sa J."  
Justice C.F. de Sa

**Released Orally in Court:** October 10, 2019

***NOTE: As noted in court, on the record, this written Ruling is to be considered the official version and takes precedence over the oral reasons read into the record. If any discrepancies between the oral and written versions it is the official written Ruling that is to be relied upon.***