



Summary of Judgment

DPP v FATHO; DPP v VAN; DPP v HUYNH [2019] VSCA 311

19 December 2019

The Court of Appeal (President Maxwell, Justice Priest and Justice Beach) today upheld two appeals by the Director of Public Prosecutions against sentences imposed for drug trafficking offences.

The charges concerned trafficking — and conspiracy to traffick — in a drug called 1,4 Butanediol ('BD'). BD is a precursor drug for another drug of dependence, gamma-hydroxybutyrate ('GHB'). The most serious charges concerned trafficking in quantities of BD which represented hundreds of times the commercial quantity ('CQ') of the drug.

The charges arose from events which took place between January and April 2018. During that period, Fatho was the principal of a drug trafficking syndicate which was attempting to source BD and supply it to another drug syndicate, known as 'the Chinese', of which Van and Huyhn were members.

Fatho pleaded guilty to trafficking in a commercial quantity of BD. The quantity trafficked equated to 700 times the CQ and had an estimated street value of \$1 million. He was sentenced to 4 years and 6 months' imprisonment. The Court said:

In our opinion, his role as principal of the syndicate, and the sheer scale and persistence of his trafficking activity, called for a substantially higher sentence.

Fatho was resentenced to 8 years' imprisonment on that charge.

The Court also concluded that the sentence of 1 year imposed on Fatho for burglary was manifestly inadequate:

This was a well-planned burglary, its purpose being the theft of very substantial quantities of BD. The sentence of 12 months simply did not reflect its objective gravity.

Fatho was resentenced to 3 years' imprisonment on that charge. His total effective sentence was increased to 10 years and 3 months and a non-parole period of 7 years and 6 months was fixed.

Van was sentenced to 2 years and 6 months on a charge of conspiracy to traffick a CQ of the drug. The Court said:

Van was not a principal but, on the judge's findings, he was an active participant in the Chinese syndicate. In view of his serious prior convictions, the scale of the trafficking (in his case, 260 times CQ) and the fact that he offended while on bail, the sentence of 30 months on charge 2 (which was also the total effective sentence) was manifestly inadequate

Van was resentenced to 5 years on that charge.

The third appeal — against the sentence imposed on Huynh — was dismissed. He pleaded guilty to conspiracy to traffick a CQ of the drug and was sentenced to 139 days' imprisonment combined with a 3 year community correction order (with attached treatment conditions).

The Court said:

The position of Huynh was materially different. His participation in the conspiracy to traffick was not to be viewed differently from Van's but his personal circumstances were quite different. First, he had no prior convictions; secondly, he had not offended while on bail; and thirdly, he had already made remarkable progress in his rehabilitation. It was open to her Honour, in our respectful opinion, to impose a sentence which would — in the manner explained in *Boulton* — achieve the sentencing purposes of punishment and rehabilitation simultaneously.

As the Court there explained, the advantage of a non-custodial sentence is that it demands of the individual that he 'take personal responsibility for self-management and self-control'.¹ In circumstances such as these, a CCO both enables and requires the offender to receive appropriate treatment for the conditions which were causative of the offending.² Her Honour was rightly concerned to maintain, rather than interrupt, Huynh's strong progress towards rehabilitation, as that will minimise his risk of re-offending and thus advance the public interest in community protection.³

NOTE: This summary is necessarily incomplete. It is not intended as a substitute for the Court's reasons or to be used in any later consideration of the Court's reasons. The only authoritative pronouncement of the Court's reasons and conclusions is that contained in the published reasons for judgment.

¹ *Boulton v The Queen* (2014) 46 VR 308, 335 [114].

² *Ibid* 327-8 [73]-[74].

³ *Ibid* 338 [130].