

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: R v. SIYAMAND SHAFIKIYAH

BEFORE: S.F. Dunphy J.

COUNSEL: *Christie Black and Connor Macorin*, for the Federal Crown

Barry Fox, for the Defendant

HEARD at Toronto: March 22, 2024

REASONS FOR DECISION - SENTENCING

[1] On December 14, 2023 a jury convicted Mr. Shafikiya of two counts of importing opium and one count of possession for the purpose of trafficking. I heard the parties' submissions as to sentencing this day and the following is the sentence I am pronouncing in this case and my reasons therefor.

Circumstances of the offences

[2] The charges arise from a single shipment – that arrived in two separate parts – of a total of approximately 3.6 kg of opium that was intercepted by Canada Border Service Agency agents on July 21 and July 23, 2021.

[3] On July 18, 2021, Mr. Sisayamd Sahfikiya responded to a Kijiji advertisement placed by the landlord of a rooming house on Richmond Street. He phoned the landlord that evening. One of his tenants having left mid-month, Mr. Yong was seeking a replacement tenant. Mr. Shafikiya applied, arranged to meet the landlord and inspect the room the next day and, upon viewing the room agreed to rent it on the spot. He provided identification and a deposit, signing a brief agreement for a one-month tenancy paid in advance, expiring on August 19, 2021. The balance of the rent was paid to the woman who cleaned and prepared the room for him and gave him the key.

[4] The shipment was sent from Switzerland on July 20, 2021 via Federal Express. The Waybill listed the addressee as "Amand Shafi" at a Richmond Street address in Toronto. The telephone number of the addressee was also listed. The shipment consisted of two boxes described as containing hydraulic cylinders being shipped from a

shipper in the automobile industry. The addressee provided by the unknown shipper was a simple abbreviation of Mr. Shafikiya's real name and the cell phone number was his own but with two transposed digits.

[5] Although he had rented the room on July 19, 2021 and paid the month in full and in advance (in part directly to the landlord with the balance to the cleaning custodian who prepared the room for him), Mr. Shafikiya did not in fact move in to his room then or ever.

[6] The CBSA intercepted both shipments when they arrived at Pearson Airport on July 21 and July 23 respectively. The shipments were turned over to the RCMP. The RCMP in turn arranged to perform a controlled delivery of the first shipment with an RCMP officer disguised as a courier delivery driver on July 27, 2021. The shipment was accepted by Mr. Shafikiya who was waiting on the porch of the building. He brought the package to his rented room where he left it before returning to his vehicle parked nearby where he was apprehended by police.

Position of the parties

[7] The Crown submitted that a global sentence of six years was appropriate in all of the circumstances of this case. The parties agreed that pre-sentence custody should be credited at the rate of 1.5 to 1 on the basis of 99 days actual time and 149 days credited time under s. 719(3.1) of the *Criminal Code*. Ancillary orders requested were a forfeiture order, a 10 year s. 109 prohibition and a DNA order.

[8] The defence submitted that Mr. Shafikiya's stable family, steady employment record and lack of prior entanglements with the law would warrant a sentence at or near the low end of the range and suggested a sentence of four years.

Circumstances of the offender

[9] Mr. Shafikiya is 38 years of age. He has completed high school but has not completed any post-secondary education. At the time of the incident giving rise to these charges, he had been living with his parents in north Toronto and had been working as a pizza maker and delivery person. He has no prior criminal history.

[10] The pre-sentence report reveals few details of his life at the time of his apprehension that provides much in the way of an explanation for his involvement in these offences. He was living at home with his mother and siblings at the time. He has a long-time girlfriend with whom he has an on-again off-again but apparently positive relationship. He has a young son with her and contributes some support and shares some parenting responsibilities with her. He has aspirations of moving into the construction trades for employment but has earned his living since graduation primarily as a pizza maker with a variety of employers supplemented by driving for ride sharing companies, food delivery services and similar occupations. He is by all accounts a fairly quiet person. He declined to offer any explanation of his own to the author of the PSR.

[11] It does seem reasonable to infer that this particular venture – for it must be so described given that the importation involved at least one other party abroad, some coordination with him or her and a quantity whose commercial destination cannot be doubted – was somewhat out of character for him. The only motive that can be inferred is that of greed. There is no indication that he was in particularly dire financial circumstances.

Aggravating circumstances

[12] The substance involved is opium, a schedule 1 substance. While not the worst of the drugs currently in circulation in our community, opium remains a dangerous drug with addictive qualities. It can serve as the raw material and be refined into other more powerful drugs including heroin and morphine.

[13] It is clear that Mr. Shafikiya's role in these offences was that of a principal and not a mere mule. There is evidence of planning and organization. Mr. Shafikiya arranged to rent a short-term room in a downtown rooming house on July 19, 2021. The next day the shipment of opium packed into two tubes and labelled as auto parts was made to that same address by a person unknown in Switzerland. The addressee was a thinly-disguised abbreviation of Mr. Shafikiya's name and used his cell phone number as a contact (with two digits transposed). Mr. Shafikiya met the delivery driver on July 27, 2021 to receive the first shipment at the rooming house, arriving shortly before the driver. The scheme required Mr. Shafikiya to organize the Toronto end at least and required coordination between a person or persons unknown in Switzerland. It was clearly planned and executed over a time frame of at least several days. There was nothing rash or impetuous about it.

[14] The quantity of opium imported was significant – 3.6 kilograms. While its "street value" depends upon what assumptions are made as to how it is marketed (i.e. wholesale or retail) the indicative values approximately \$70,000 on the low end and close to \$250,000 on the high end. Such figures are always approximate but provide a rough indication of the magnitude of the profit motive potentially involved in the scheme. Financial gain was the operative motive. Mr. Shafikiya was not a user and indeed there is no evidence that he abused any substance, legal or illegal.

Mitigating circumstances

[15] Mr. Shafikiya has no prior criminal record. There is no indication of any violence in his background.

[16] Mr. Shafikiya comes from a relatively stable, close-knit family environment. At the time of his arrest, he was living with his mother and three siblings in a North Toronto home. He has a steady work history. He has aspirations of moving into the construction sector for which he has received some training, he appears to have kept himself steadily employed working as a pizza maker, a pizza delivery person, a food delivery driver and a ride share driver.

[17] He also has an on-again, off-again girlfriend whom he has known for many years. They had a child together while he was awaiting trial on these charges and he contributes to the care of the child when he is able.

[18] It is difficult to form a very well-informed view of his rehabilitation prospects which I would assess as moderately favourable if somewhat opaque due to limited information. His close-knit family circle inevitably comes freighted with the caveat that that same stable environment had little impact in deterring him from becoming involved in this crime in the first place. Any assessment of rehabilitation prospects must also be tempered by the realization that there is no basis to assume that he has “learned his lesson” and will avoid the unknown contacts through whom he doubtless became involved in this venture in the first place. His insights if any into what led him here are unknown. On the other hand, he does appear to have worked on a full time or near full-time basis fairly steadily from the time of his graduation. Such a work ethic does bode well for his rehabilitation prospects.

[19] Mr. Fox asked me to accord additional mitigating credit to the presence of 12 days of partial lockdowns on the report from Toronto South Detention Centre over the 99 days that Mr. Shafikiya was detained there prior to sentencing. I decline to do so. There is no evidence of any particular degree of hardship associated with that circumstance sufficient to require additional mitigation recognition over and above the recognition implicit in awarding the maximum s. 719(3.1) credit and as reflected in the global sentence I have determined.

Application of sentencing principles

[20] This is a relatively straightforward sentencing. The quantity involved and its value are well within the “kilo” range with all that that observation entails in terms of sophistication and role in the distribution chain that sentencing must play a role in disrupting through denunciation and both general and specific deterrence. Those two sentencing goals must clearly play a central but not exclusive role in fashioning a fit and proper sentence.

[21] The narcotic in question – opium – is certainly a dangerous drug and it may be used as the raw material to produce a variety of valuable street drugs such as heroin or morphine. However, it is certainly a long way from drugs such as fentanyl or its cousins where there is a high degree of lethality associated with relatively tiny amounts. It is also something of a niche drug in that the number of cases focusing on this particular prohibited substance is comparatively modest relative to other more prevalent narcotics such as fentanyl or cocaine.

[22] The mitigating circumstances of a first time offender and moderately positive prospects for rehabilitation must be given fairly significant weight and would tend to direct a sentence near the middle to lower end of the range that the parity principle - guided as it is by the application of the sentencing goals of denunciation and deterrence and a

consideration of the nature and quantity of the substance involved – might otherwise suggest.

[23] The Crown's sentencing brief refers to a fairly wide range of cases that establish a range for similar offences in similar circumstances of three or four years at the low end and seven years or so at the high end for importing opium in the kilogram range. Possession for the purpose of trafficking sentences for similar quantities of opium have a somewhat wider range with the low end extending to conditional sentences or low end reformatory range sentences to approximately four years or so near the upper end of the range.

[24] The three charges for which Mr. Shafikiya was convicted all arise from a single shipment of two pieces that happened to arrive separately in Canada for whatever reason known only to the courier company. I can see no basis to consider consecutive sentences in these circumstances and the Crown did not make that request.

[25] I shall not refer to all of the cases cited by the parties. By and large, they each cited the same cases with differing aspects of each urged upon me. Of the cases cited, I think that the decision of LeMay J. in *R. v. Bayrami-Asl*, 2017 ONSC 2055, 2017 CarswellOnt 4881 offers the most concise summary of the applicable sentencing principles and has facts very closely aligned with the present case. I do not see Mr. Shafikiya being properly placed at the higher end of the spectrum and cannot follow the Crown's recommendation as far as a six year global sentence. Similarly, I cannot find in favour of a sentence as far towards the low end of the spectrum as Mr. Fox recommended given the aggravating circumstances present of a principal involved in importing such a large quantity and given the relatively small number of mitigating circumstances (without diminishing the weight due to a clean prior record in particular. I find myself entirely in agreement with both the approach and sentence meted out by LeMay J who ordered a global sentence of five years in very closely analogous circumstances.

Disposition

[26] I sentence Mr. Shafikiya as follows:

- a. Count 1 Import Opium July 21(CDSA s. 6(1)): five years less pre-sentence custody of 149 days (99 days grossed up);
- b. Count 2 Import Opium July 23 (CDSA s. 6(1)): five years less pre-sentence custody of 149 days (99 days grossed up) concurrent to count 1; and
- c. Count 3 Possession for Trafficking (CDSA s. 5(2)): three years

[27] The Shafikiya is entitled to presentence custody credit of 99 days at the rate of 1:5:1 pursuant to s. 719(3.1) of the Criminal Code for a total credit of 149 days.

[28] The following orders ancillary to sentencing shall also be made:

- a. Forfeiture of the various items seized upon his arrest as enumerated by me in court;
- b. A DNA order; and
- c. A ten year s. 109 prohibition order.

[29] Orders accordingly.

S.F. Dunphy J.

Date: March 22, 2024