

COURT OF QUEEN'S BENCH OF MANITOBA

B E T W E E N:

HER MAJESTY THE QUEEN,)	<u>Counsel:</u>
)	
- and -)	<u>ERIN E. MAGAS</u>
)	for the Crown
MICHAEL GLEN HIDALGO,)	
)	
accused.)	<u>J. RICHARD WOLSON, Q.C</u>
)	for the accused
)	
)	
)	JUDGMENT DELIVERED:
)	MAY 29, 2017

SUCHE J.

[1] Michael Hidalgo has pled guilty to conspiracy to traffic a total of six kilograms of methamphetamine in a series of five separate transactions between May and September 2014. He is before me for sentencing.

[2] These charges arise out of Project Distress, a year-long investigation conducted by the Manitoba Integrated Organized Crime Task Force which used a police agent to target high-level drug dealers. The agent made purchases of large quantities of drugs from numerous targets. Deliveries were received and

payment was made primarily by undercover operators posing as the agent's courier.

[3] With the exception of one face-to-face meeting which was audio recorded, communication between the agent and Hidalgo occurred on PGP devices. Hidalgo's address was DragonMaze@safemobile.tv. All payments were with recorded bills.

[4] The first transaction, which occurred on May 8th, was negotiated between the agent and another target, Sean Demchuk, for one kilogram of methamphetamine. The transaction was concluded by Hidalgo's courier, Reighner Delacruz. On May 12th, the agent messaged Demchuk advising that he wanted two kilograms but wanted to have a face-to-face meeting with DragonMaze. On May 14th that occurred. No details of any transaction were discussed.

[5] On May 15th, arrangements were made among the agent, Hidalgo and Delacruz for two kilograms of methamphetamine in exchange for \$56,000. Delacruz delivered the drugs and received a backpack with \$56,000 in it. On June 10th, the agent contacted Hidalgo asking for a kilogram of methamphetamine. They agreed on a price of \$26,500. Later that day Delacruz delivered the drugs to the agent's courier and received a backpack containing \$26,500. On July 12th, the agent contacted Hidalgo and arranged the purchase of another kilogram of methamphetamine. Delacruz delivered a kilogram to the agent's courier and received a backpack containing \$26,000 later the same day.

Finally, on September 2nd, the agent contacted Hidalgo and arranged to purchase a kilogram of methamphetamine for \$24,000. The next day Delacruz delivered the drugs to the agent's courier and received a backpack containing \$24,000.

[6] In total \$160,500 was paid to Hidalgo. Demchuk was also paid a commission on each sale.

[7] In September 2014, police executed a search warrant at Delacruz's residence and seized two kilograms of methamphetamine along with scales and packaging materials. Police seized the backpack given to Delacruz on September 3, 2014 along with \$41,000 in cash, \$24,000 of which was the marked bills used in the September 3rd transaction.

[8] Delacruz pled guilty to trafficking in cocaine and was sentenced to five years. Demchuk pled guilty to charges relating to his involvement but is yet to be sentenced.

BACKGROUND OF THE ACCUSED

[9] Mr. Hidalgo is 35 years old. He has a grade 11 education. His parents immigrated to Canada from the Philippines before he was born. He has two sisters who appear to be quite successful – one is a dental hygienist and the other is a project manager. Mr. Hidalgo is close to his family and is supported by many friends and members of his community. A total of 11 letters of support were filed along with a report from a psychologist who expressed the view that Hidalgo is remorseful and embarrassed for the shame he has brought upon his family, is psychologically healthy and at low risk to reoffend.

[10] Hidalgo's only prior involvement was as a youth: in 2000 he was convicted of possession for the purposes of trafficking a controlled substance and in 2001 he was convicted for possession of property obtained by crime.

[11] Following his arrest, Mr. Hidalgo spent 20 months and three days in pre-trial custody. He was released on bail about nine and a half months ago. Since then he has been living with his sister and works for her husband in his home renovation business. He has been volunteering at Siloam Mission and his church. He says he wants to carry on to work in home renovations once he is released from prison.

[12] When given the opportunity to speak at the sentencing hearing he explained that he has come to understand the impact that drugs can have on people, having observed some of his fellow inmates while in pre-trial custody.

[13] Sentences for offenders involved in trafficking drugs depend on the nature and quantity of the drugs, as well as the offender's role. In the case of hard drugs, which includes methamphetamine, the Manitoba Court of Appeal in ***R. v. Grant***, 2009 MBCA 9, and ***R. v. Rocha***, 2009 MBCA 26, established ranges for kilogram-level trafficking as follows:

- mere couriers, three to six years imprisonment;
- those trusted beyond a mere courier, five to eight years (***Rocha***, paragraph 64);
- those who are suppliers or at the top of the drug distribution network, eight to 12 years imprisonment (***Grant***, paragraphs 106-108).

[14] Sentencing ranges or starting points are only guidelines of course, not hard and fast rules. There can be occasions when a fit and proper sentence in a particular case is not within the range.

[15] Here, the agreed statement of facts reveals that Hidalgo clearly falls within the category of a high-level dealer. He fits precisely the description in ***Grant*** – he negotiated the transactions, set the price and gave direction to Delacruz. He employed anti-detection techniques, including intermediaries, to effect drug drops and pick-up of proceeds of sales.

[16] I was not told know how many people were charged as a result of Project Distress, but so far eight have pled guilty and all but Mr. Demchuk have been sentenced. In Mr. Delacruz's case, the Manitoba Court of Appeal upheld the sentence of five years, observing that it was at the low end of the range given his involvement (***R. v. Delacruz***, 2017 MBCA 10).

[17] The Crown seeks a sentence of 10 years imprisonment. In addition to the amount and nature of the drugs, the Crown cites the number of transactions, the fact that the drugs were brought in from elsewhere, and the use of anti-detection techniques. It argues 10 years, which is at the mid-point of the range, is appropriate, and recognizes Mr. Hidalgo's guilty plea and positive background.

[18] The defence asks that I impose a sentence of six to seven years. It says that the absence of any criminal involvement since youth, a guilty plea which avoided a long and protracted trial dependent on a police agent with serious credibility issues, and Hidalgo's significant rehabilitative prospects make a

sentence below the range appropriate. The defence distinguishes Mr. Hidalgo from the offender in *Grant*, who was a full patch Hells Angel, had a long record of violence and was found by the trial judge to be a professional extortionist.

[19] The defence also relies the decision of McKelvey J. in *R. v. Peck* (unreported, January 11, 2007, CR 06-01-26581), another full patch Hells Angel with a long criminal record, who was sentenced to six and a half years on a joint recommendation following a guilty plea to trafficking one kilogram of cocaine.

[20] In terms of the individuals sentenced as a result of this Project, the defence points to Michael Nguyen, who received seven and a half years on a joint recommendation following a guilty plea. Nguyen, who has a lengthy criminal record, was involved in a single transaction for one kilogram of cocaine. Similarly, Randy Baldovi was sentenced to seven years less a day after pleading guilty to one count of possession of proceeds of crime – \$60,000 – which he received as payment for three kilograms of methamphetamine which were never delivered, and one count of possession for the purposes of trafficking, being half a kilogram of cocaine. Baldovi had a lengthy record and, in fact, had only recently been released from penitentiary at the time the charges arose.

DECISION

[21] It is trite law that denunciation and deterrence are the paramount considerations when sentencing offenders who traffic in hard drugs. Although an everyday occurrence within the court, it should never be forgotten that drugs such as methamphetamine truly wreak devastation in our community: to those

who are addicted, whose lives are ruined and sometimes ended; to relationships destroyed and children neglected or worse. A wide variety of crimes are committed and the public is required to fund police, child and family services agencies and hospitals to deal with the fallout. All of this to satisfy the greed involved in a very lucrative business. The moral culpability of those involved in the high end of the hierarchy is very high and they must be treated severely.

[22] I begin by noting that the sentence in ***Grant*** was 12 years, which was reduced to 11 years as part of the totality calculation. While Grant was a career criminal, the amount of drugs involved was much less – two kilograms of cocaine and one kilogram of methamphetamine. The same comments are true of the ***Peck*** decision. It must also be kept in mind that ***Peck*** was a joint recommendation, which only demonstrates that six and a half years was within the sentencing range. This is also true for Nguyen. Regard also must be had to the sentence imposed on Mr. Hidalgo's employee, Reighner Delacruz. He had no record and presented good prospects for rehabilitation and was sentenced to five years imprisonment.

[23] Certainly, Mr. Hidalgo gets significant credit for his guilty plea, which is a formal acknowledgement of responsibility. His comments to me suggest that, in fact, he also feels remorse. I do not make too much of the suggestion that a guilty plea in this case should be particularly significant given the problems with credibility of the agent. The agent's testimony would not have been a significant factor given that the transactions were conducted on PGP devices.

[24] As for his personal circumstances, Mr. Hidalgo does present a real possibility for rehabilitation. I take him at his word that he now understands the effect of this very dangerous drug on people who use it. It is also significant that he has a committed and loving family who supports him. Although they appear to have had no influence in his choice to engage in drug dealing, the fact that they will be there for him when he is released from prison will help him to find his place in society.

[25] Sentencing is an individual process and a just sentence must take into account both the facts underlying the offence and the circumstances of the offender. The use of ranges for sentences involving drug trafficking recognizes that even for those persons who are convicted of identical offences, these two considerations will affect the result.

[26] In this case, Mr. Hidalgo's personal circumstances militate in favour of the low of the range. Having said that, Mr. Hidalgo has once been before the court having possessed drugs for the purposes of trafficking. The consequences of this illegal behaviour should have been brought home to him. A point he either did not get or chose to ignore.

[27] The amount of methamphetamine involved suggests a longer sentence: six kilograms of methamphetamine in this community can do enormous harm.

[28] In the end, I do not agree that this case is one which justifies imposing a sentence that is below the range set by the Court of Appeal. In all the circumstances, I conclude that a sentence of nine years in prison is fair and just

and this is the sentence I impose. The sentence will be reduced by 30 months and two days as credit for pre-trial custody.

ORDER FOR FORFEITURE

[29] The Crown seeks a fine pursuant to s. 462.37(3) of the *Criminal Code* of Canada, R.S.C. 1985, c. C-46, which directs a fine in lieu of forfeiture, in the amount of \$136,500. This takes into account a credit of \$24,000, being the cash seized by police from Mr. Delacruz's residence that came from the September 3rd transaction.

[30] The defence asked that I also deduct the additional \$17,000 that was found in Mr. Delacruz's residence. Mr. Hidalgo asserts that it belongs to him. The Crown does not acknowledge this and indicated that Mr. Delacruz did not tell police that the money belonged to Mr. Hidalgo. In the absence of evidence that the monies are Mr. Hidalgo's, I am not in a position to accede to the defence request.

[31] Similarly, the defence asked that I deduct a further \$10,000, being the amount paid to Demchuk as a commission on the transactions. The agreed statement of facts does not indicate that any of the sale proceeds were directed to Demchuk. Rather, the agent had to pay Demchuk the commission in addition to the purchase price. Accordingly, I do not accede to the defence request in this respect.

[32] Finally, the defence asked that Mr. Hidalgo be given eight years following his release from prison to pay the fine. He argued that the amount is

substantial, and Mr. Hidalgo has every intention of paying the fine, so he will require this much time. The Crown asked that the time to pay be confined to the period prior to the warrant expiry so that the default of two years imprisonment can be calculated as part of his overall sentence.

[33] I take Mr. Hidalgo's assertion that he truly wishes to pay the fine at face value. If he pays \$20,000 a year it will take him something less than seven years to eliminate the fine in its totality. I think this should give him adequate opportunity to meet this obligation. Accordingly, I order that the fine is to be paid within seven years of his release from prison. And as required by s. 462.37(4), a period of two years imprisonment will be imposed in default.

[34] By way of ancillary orders, I impose a s. 110 weapons prohibition for 10 years.

[35] I also am making an order that Mr. Hidalgo provide a bodily substance sample to the police for purposes of DNA testing.

[36] The victim fine surcharge is set at \$200.

_____ J.