***R v Oake*, 2020 NWTSC 32 S-1-CR-2018-000005**

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**-v-**

**DARCY OAKE**

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**Transcript of the Reasons for Sentence delivered by the Honourable Justice S. H. Smallwood, sitting in Yellowknife, in the Northwest Territories, on the 30th day of June, 2020.**

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**APPEARANCES:**

**D. Praught: Counsel for the Crown**

**K. Oja: Counsel for the Defence**

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**Charges under s. 6(1), 5(1), 5(2) *Controlled Drug and Substances Act*,**

and s. 221 of the *Criminal Code*

**I N D E X**

**PAGE**

**REASONS FOR SENTENCE 1**

(TELECONFERENCING COMMENCES)

(VIDEOCONFERENCING COMMENCES)

THE COURT: Okay. All right. Good afternoon. Okay. Mr. Oake, do you have anything to say before I pass sentence?

THE ACCUSED: No, I don’t.

(REASONS FOR SENTENCE)

THE COURT: Okay. So Darcy Oake was convicted after trial of four offences: importing furanylfentanyl into Canada contrary to s. 6(1) of the *Controlled Drugs and Substances Act*, trafficking in furanylfentanyl contrary to s. 5(1) of the *Controlled Drugs and Substances Act*, possession of furanylfentanyl for the purposes of trafficking contrary to s. 5(2) of the *Controlled Drugs and Substances Act*, and criminal negligence causing bodily harm by providing furanylfentanyl to Courtney Janes contrary to s. 221 of the *Criminal Code.* The trial was held before me in August and December 2019. At the outset of the trial, Darcy entered a guilty plea to trafficking in furanylfentanyl and pled not guilty to the other offences. Following the trial on March 11, 2020, I found Darcy Oake guilty of importing furanylfentanyl, possession of furanylfentanyl for the purpose of trafficking, and criminal negligence causing bodily harm.

Sentencing was adjourned for the preparation of a pre-sentence report. There were some delays in proceeding in sentencing in part due to the coronavirus pandemic. Mr. Oake also switched counsel following his conviction. Counsel made their submissions on sentence on June 24, 2020, and I adjourned to today to consider the sentence.

Position of the Parties

The Crown is seeking a global sentence of nine years imprisonment, less credit for remand time. In coming to that position, the Crown is proposing eight years imprisonment for the importation of furanylfentanyl, six years imprisonment concurrent for the possession of furanylfentanyl for the purpose of trafficking, three years imprisonment for trafficking in furanylfentanyl consecutive to the possession for the purpose of trafficking, and two years imprisonment for criminal negligence causing bodily harm consecutive, that would amount to an 11 year sentence which the Crown proposes should be reduced to 9 years imprisonment on the basis of totality.

The defence is seeking a sentence of five to six years imprisonment, less credit for remand time. For each offence, the defence is seeking a sentence of five to six years imprisonment for the importation of furanylfentanyl, four years imprisonment for the possession of furanylfentanyl for the purpose of trafficking, three years imprisonment for criminal negligence causing bodily harm, and two and a half to three years imprisonment for trafficking in furanylfentanyl.

The defence argues that concurrent sentences are appropriate for all of the offences because there was a strong nexus between all offences and concurrent sentences would properly address the issue of totality.

Mr. Oake has been in custody for this offence. While he had initially been held in custody, he was eventually released on a recognizance for a period of time before being re-arrested and detained again. In total, he has been in custody for 1,083 days to today’s date.

On March 23, 2018, Mr. Oake was sentenced for possession of a scheduled substance pursuant to s. 4(1) of the *Controlled Drugs and Substances Act*. He received a sentence of 60 days pre-sentence custody which equates to 40 days at one and a half days for every day spent in custody, so 40 days will be deducted from Mr. Oake’s remand time, leaving 1,043 days.

While there have been some issues with Mr. Oake while he has been in custody as outlined in the pre-sentence report, the Crown is not seeking that he receive less than one and a half days credit for every day held in custody. I am satisfied that the circumstances justify Mr. Oake receiving enhanced credit of one and a half days for each day spent in custody pursuant to s. 719 (3.1) of the *Criminal Code* and the principles set out in *R. v. Summers*, 2014 SCC 26. Therefore, 1,565 days or 4 years and 3 months will be deducted from the sentence I impose on Mr. Oake.

Facts

Turning to the facts of the offences, I do not intend to review the facts of the offences in great detail as my reasons for decision at 2020 NWTSC 17 detail the fact of the offences more fully. The facts of the offences in brief are on November 25, 2016, Darcy Oake overdosed at his father’s home in Yellowknife for the second time in three days. The paramedics and RCMP were called, and they responded.

The RCMP were given permission by his father to search his bedroom and the garage at the residence. In Darcy Oake’s bedroom, the police found a bag containing four grams of furanylfentanyl in his dresser. In the garage, the police found an envelope addressed to Darcy Oake with a label stating Hong Kong on it.

Darcy Oake had overdosed on furanylfentanyl that he ordered off the Internet. When he ordered the furanylfentanyl, he also purchased Xanax and cigarettes. The furanylfentanyl was shipped from Hong Kong and sent to Darcy Oake’s father’s mailbox.

The package of Xanax arrived a week and a half after Mr. Oake placed the order. The third and fourth week, after placing the order, Mr. Oake had not received the furanylfentanyl and contacted the seller. The seller advised him to wait a few more days, which he did, but he still had not received the furanylfentanyl and contacted the seller again. The seller responded by sending a replacement package.

On November 23, 2016, the original package of furanylfentanyl arrived. The cigarettes that he had ordered also arrived the same day. The second package of furanylfentanyl was seized by the Canadian Border Services Agency on November 27, 2016. A plastic bag containing furanylfentanyl was located weighing eleven and a half grams. So accounting for the weight of the packaging, the second package contained approximately 10 grams of furanylfentanyl.

Shortly after receiving the package of furanylfentanyl on November 23, 2016, Darcy Oake took some. He then collapsed while walking his dog. He was taken to the hospital where he was treated and spoke to a doctor about the dangers of fentanyl. Once he was released from the hospital, Darcy Oake continued to take the furanylfentanyl and gave some to others, including Courtney Janes.

Mr. Oake was using the furanylfentanyl personally, as the two overdoses he experienced show, but he also had another purpose in possessing the furanylfentanyl. While Mr. Oake had ordered the furanylfentanyl to get drugs cheaper than buying from a dealer locally, in addition to supplying himself with furanylfentanyl, he also intended to sell some of it. The text exchanges with Big, Tamara Marie, and his conversations with Courtney Janes, showed he was also motivated by making some money.

Mr. Oake was addicted, and while he planned on consuming the furanylfentanyl himself, he also planned on selling some of it. Given his addictions, it’s likely that the money that was made from selling furanylfentanyl would have been used to purchase other drugs.

Courtney Janes went to Mr. Oake’s residence and snorted the furanylfentanyl in Darcy Oake’s garage before going home. Before she left, Mr. Oake gave her more furanylfentanyl that she put in her purse. This was later found by her mother and turned over to the police.

Once Courtney Janes got home, she went in the kitchen and then sat on the couch in the living room. There she slumped over and was unconscious until the next evening. When Ms. Janes regained consciousness, she could not walk without assistance. She was taken to the hospital that evening where she was diagnosed and hospitalized for Rhabdomyolysis, a breakdown of muscles resulting from a long period of immobility. Ms. Janes suffered the effects of Rhabdomyolysis for several months afterwards.

Victim Impact Statement

Ms. Janes was advised of the opportunity to complete a victim impact statement but has not done so. She did speak to the writer of the pre-sentence report, and she testified during the trial about the effects that this incident has had on her life. It is apparent that it had a significant impact on Ms. Janes’ life. It is perhaps a situation of something good coming out of something bad which is very lucky. This could have been a situation where Ms. Janes did not survive what happened.

Ms. Janes described this incident as being a turning point in her life. Like Mr. Oake, she was a drug addict. Following this incident, she was scared and realized how close she had come to dying. She has since taken treatment and counselling and now has a stable lifestyle and a job. She also feels guilt at Mr. Oake’s situation but knows that she made the right choice.

She and Mr. Oake had been lifelong friends, and they had used drugs together before this incident. They were very close. Ms. Janes stated in the pre-sentence report, “I have a guilty conscience about his situation. He was a drug addict just like I was. He’s a really nice guy who went down the wrong path.” And I think that is probably very true. Addiction can have a profound effect on someone, on their life, on their family, on their relationships, on their employment. Addiction will touch every aspect of your life. It will influence the choices that you make and not in a positive way.

Pre-Sentence Report

A pre-sentence report was completed. In it, Mr. Oake takes some responsibility for his actions. However, he also seems to blame Courtney Janes and denies that he intended to traffic the furanylfentanyl. It is apparent that Mr. Oake was motivated by his addictions. His drug use consumed his life. He started consuming marijuana and alcohol when he was 12. He eventually started using MDMA and cocaine before progressing to fentanyl.

He did attend treatment following his arrest on these charges when he was on release, going to the Edgewood Treatment Program in Nanaimo in June 2017. He did not complete the program and was removed for non-compliance with the rules. Mr. Oake, continued with counselling following this. Mr. Oake has the support of his mother which is good because he will need her support if he is to continue with his recovery.

Now that Mr. Oake has been in custody, he says that his goals have changed, and his attitude has changed. He has completed his high school GED in custody and has plans of pursuing a career involving computer networking. I hope that Mr. Oake has made a turning point with his addictions and is able to continue with his recovery. Continuing down the path of fentanyl use is only going to risk his life.

Sentencing Principles

So looking at the sentencing principles. The fundamental purpose of sentencing is to protect society and to contribute to respect for the law and maintenance of a just, peaceful, and safe society. This is achieved through the imposition of sanctions that consider the objectives of denunciation, deterrence, separation of offenders from society, rehabilitation, providing reparations for harm done, and promoting a sense of responsibility in offenders, and acknowledging the harm done to victims or to the community.

A fundamental principle of sentencing is that the sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

A primary objective in sentencing for trafficking in fentanyl is deterrence and denunciation. Denunciation meaning to denounce unlawful conduct and the harm done to victims or to the community that is caused by that conduct. Deterrence is to deter the specific offender and other persons generally from committing similar offences. In trafficking cases, the focus is on imposing sentence that will deter other persons who might be tempted to traffic in elicit substances.

Starting Points

In the past few years, there have been an increasing number of decisions that deal with sentencing for possession for the purpose of trafficking or trafficking in fentanyl. These decisions and appellate guidance from the Alberta Court of Appeal have established starting points for these types of offences. A starting point is not a sentence that is set in stone or a minimum sentence. As stated in *R. v. Ostertag*,2000 ABCA 232 at paragraph 12:

Starting-point sentencing does not create minimum sentences as a by-product of aiming at trying to achieve greater uniformity of treatment of offenders. The language of the decisions is clear: when following such guidelines, the sentencing judge should adjust the sentence both upwards, to account for aggravating factors, and downwards, to account for mitigating factors.

Starting points have been established for trafficking and possession for the purpose of trafficking in fentanyl. For the offence of importation of fentanyl and criminal negligence causing bodily harm involving fentanyl, there are no starting points but a review of the case law establishes an acceptable range of sentence. I will deal with the range of sentence for each offence. Each offence has its own appropriate range of sentence or starting point and factors to consider.

Counsel have very helpfully provided cases which have guided my consideration of the appropriate sentences. It is important to remember that none of these cases is exactly the same as Mr. Oake’s case, and they are not readily comparable, for example, comparing the *Dube* case to Mr. Oake’s.

Todd Dube was convicted of conspiracy to traffic in several drugs, including fentanyl, as well as possession of the proceeds of crime and conspiring to commit aggravated assault. He was the head of a relatively sophisticated drug trafficking network in Yellowknife, with multiple other people who worked for him but he did not import fentanyl which is an offence that carries its own range of sentence and considerations that were not present in the *Dube* case. Mr. Oake, for his part, imported fentanyl but he was not the head of any kind of drug network and did not have anyone working for him.

Trafficking and Possession for the Purpose of Trafficking in Fentanyl

The Alberta Court of Appeal recently established a starting point for trafficking in fentanyl in *R. v. Felix*, 2019 ABCA 458. Decisions of the Alberta Court of Appeal with respect to starting points and in general are persuasive as our Court of Appeal is primarily composed of justices from the Alberta Court of Appeal. The range of sentences imposed in Alberta are often similar to those imposed in the Northwest Territories.

A starting point reflects the seriousness of the crime and its increasing prevalence in Alberta and this jurisdiction and the need to impose deterrence sanctions. It also reflects the moral blame worthiness of those who traffic in ilicit substances on a significant scale.

From the starting point, the sentence is adjusted to reflect the mitigating and aggravating factors of each case, taking into account the circumstances of that offence and of that offender. A starting point presumes an offender with no criminal record who is of prior good character and who has been found guilty after trial. The starting point applies to trafficking and possession for the purpose of trafficking of fentanyl and its analogues. The starting point is defined by the dangerousness of the drug and the scale of the offender’s involvement: *Felix*, paragraph 45.

While this Court has for many years dealt with sentencing offenders for offences like trafficking in cocaine and possession for the purpose of trafficking in cocaine, it has only recently begun to see cases involving trafficking or possession for the purpose of trafficking in fentanyl and its analogues: furanylfentanyl and carfentanyl. In imposing sentences for these cases, our Court has open remained open to the possibility that a higher starting point for trafficking in fentanyl may be necessary. The *Felix* case provides helpful guidance in that regard. The increasing trend is that courts across Canada have begun to accept that fentanyl is more dangerous than heroin and more destructive of human lives and potential. Where a drug is more dangerous, the gravity of the trafficking is increased: *Felix* paragraph 49, 50.

During the trial, the Crown called Dr. Graham Jones who is a forensic toxicologist and was qualified as an expert in forensic toxicology. Dr. Jones testified that fentanyl is a synthetic opioid analgesic used as a painkiller or an anaesthesia in medical settings. Fentanyl can induce sedation to the point of anaesthesia if the doze is sufficient.

Fentanyl is 50 to 100 times more potent than morphine and 25 to 50 times more potent than heroin. The higher the potency will initially cause sedation. If a dose is high enough, unconsciousness or coma and ultimately death can occur. Death is caused usually either because respiration is slowed to a lower rate than is sufficient to maintain the required level of oxygen in the blood or it decreases the sensitivity of the body to a buildup of carbon dioxide. Normally, the buildup the carbon dioxide will trigger an increase in respiration to increase the rate of breathing to blow off the carbon dioxide and increase the level of oxygen.

Dr. Jones described furanylfentanyl as an analogue, a chemical derivative of fentanyl. Furanylfentanyl has not been studied in humans but his experience was that furanylfentanyl had similar effects and would be expected to have similar effects to fentanyl. Anecdotal reports indicated that furanylfentanyl may be up to about five times less potent that fentanyl. Other reports indicated that it may be roughly equivalent to fentanyl. Overall, Dr. Jones’ opinion was that furanylfentanyl was a potent opioid which would probably be no more than about five times less potent than fentanyl.

In this case, Dr. Oake overdosed twice on the drug, and Courtney Janes was rendered unconscious by furanylfentanyl, whether it was alone or in combination with another drug, for approximately 24 hours. Constable Gallant, an RCMP officer who had contact with the bag of furanylfentanyl while searching Darcy Oake’s residence, began to feel the effects of the drug and had to be taken to the hospital. It is clear that the furanylfentanyl was a potent opioid and was very dangerous.

The dangers of the use of fentanyl are well-known today. But as early as February 2015, the dangers of fentanyl use became known to the public. On February 16, 2015, the chief public health officer issued a public health advisory regarding the dangers of using fentanyl. The advisory stated that fentanyl is very toxic and even small quantities of the drug can cause death. I accept that at the time of offences in October and November 2016 the dangers of fentanyl were known generally.

The dangers of furanylfentanyl were also known to Darcy Oake at the time of the offence. When he received the package of furanylfentanyl, he immediately took some and overdosed. If he did not know about the dangers of furanylfentanyl before his overdose, he certainly did after. Following this, he continued to consumed the furanylfentanyl and give it to others, including Courtney Janes.

Fentanyl today continues to be a concern. In Alberta, 142 people died from opioid poisoning in the first three months of 2020, and in the last three months of 2019, there were almost 2,500 emergency and urgent care visits related to opioids and other drug use. I do not know what the comparable statistics are for the Northwest Territories but as recently as June 17, 2020, the RCMP issued a warning about fentanyl in the Northwest Territories after two recent overdoses.

The effects of drug trafficking in the Northwest Territories have been commented on by the courts for many years. Cocaine has been prevalent and has had a devastating affect on the people in Yellowknife and elsewhere in the Northwest Territories. Fentanyl has the potential to be even more devastating. It is cheap, and it is dangerous, and the risk of overdose is always present. The most vulnerable in society are at risk to fentanyl. I accept that fentanyl continues to be a concern and is a danger to the public of the Northwest Territories.

In *Felix*, a starting point sentence for wholesale fentanyl trafficking was established of nine years imprisonment. As stated in *Felix* at paragraph 2,

[A] ‘wholesale’ operation is one that traffics large amounts of one or more drugs, or that distributes drugs on a large scale, possibly for resale. Individuals who advance the wholesale aims of these operations, for instance by trafficking wholesale amounts, selling for resale, or directing the activities of other traffickers, are subject to the wholesale starting point.

Counsel have provided several cases of sentences involving trafficking or possession for the purpose of trafficking in fentanyl. Each case is unique in its facts and the circumstances of the offender. Some cases involve guilty pleas, others are after trial. There are several cases which involve joint submissions.

Cases where there was a joint submission are often of limited precedential value. Judges are required to impose joint submissions even when they feel that the sentence requested is demonstrably unfit. Counsel agree to joint submissions for a variety of reasons, and they do have a valid purpose, and the required acceptance of joint submissions allows cases to be resolved and frees up judicial resources. A frequent result is that sentences are often lower than what would be otherwise imposed in that situation.

The cases provided established that there is a broad range of sentence for trafficking or possession for the purpose of trafficking in furanylfentanyl ranging from two and a half years to nine years. The case of *Dube* from this jurisdiction where a nine year sentence was imposed can be considered in line with the wholesale trafficking starting point established in *Felix*. At the low end was a sentence of two and a half years for trafficking in one pill of fentanyl in *R. v. Fyfe*, 2017 SKQB 5. In between those two points are a range of sentences.

In the Northwest Territories, the sentences imposed have been, in the case of *Hein* which involved a guilty plea, a joint submission for three years imprisonment. In the case of *Moore*, a guilty plea as well, a sentence was imposed of three and a half years imprisonment. In the case of *Castro*, another guilty plea, a sentence of six years imprisonment was imposed. The amounts of fentanyl involved in each of these cases varied.

In determining whether trafficking is commercial or wholesale, there are typical indicators which can determine the scale of the trafficking operation such as the amount of drugs being trafficked and the nature of the operation. The offender’s role in the operation is also relevant. The wholesale trafficking starting point only applies to those involved at the wholesale level; *Felix*, paragraph 58.

There is often no clear distinction between commercial and wholesale trafficking. A case can have features of both wholesale trafficking and commercial trafficking. In this case, the amount of drugs was not significant; although, it is not clear from the evidence what the end result could have been in terms of the number of pills that could have been made or the number of units of furanylfentanyl that could have been sold.

While Mr. Oake exchanged text messages with Big about selling the furanylfentanyl to him, there is no evidence that he did sell furanylfentanyl to Big. He provided furanylfentanyl to his friend Lance Christensen, he provided a sample to Big, and he traded Clonazepam for furanylfentanyl with Courtney Janes.

In terms of an operation, there really was no operation. Mr. Oake was using furanylfentanyl and casually trafficking. He had plans to do more, but it is not apparent that he did so. It seems that he was, in the throes of his addiction, too busy using the furanylfentanyl to implement his plans. While given time this may have turned into more of a commercial or wholesale operation, I conclude that Mr. Oake was a low level trafficker of fentanyl.

Importing Furanylfentanyl

Looking at the importation of fentanyl, there are fewer cases which consider importation. The case law that has been provided has sentences which range from seven and a half to fifteen years imprisonment. It appears that sentences for offenders who import furanylfentanyl have been treated more harshly than those who traffic in fentanyl, and the importation of fentanyl has been viewed as more serious than the importation of cocaine or heroin because of the acknowledged increased potency of fentanyl and the dangers associated with its use. Often people who import the drug are higher up in a drug trafficking organization, and the sentences have reflected this as well.

In this case, Mr. Oake imported furanylfentanyl from Hong Kong essentially on two occasions. The first package that he ordered did not arrived, and he contacted the seller twice before a replacement package was sent. The original package did arrive while the replacement package was seized by the CBSA. Each package contained approximately 10 grams of furanylfentanyl.

While this was not a large-scale operation nor a sophisticated network, there was a significant degree of planning and sophistication required to do this to order the furanylfentanyl. Mr. Oake researched the purchase on the Internet. He accessed the darkweb. He downloaded a Tor browser. He engaged in a Bitcoin transaction in order to purchase the furanylfentanyl. He took a number of steps to complete this purchase. So it wasn’t just a case of ordering from Amazon. I expect that the average person would not have been able to carry out this operation.

Criminal Negligence Causing Bodily Harm

There are even fewer cases which involve the sentencing for criminal negligence causing bodily which involve fentanyl. Some cases involve criminal negligence causing death. None of the cases that were provided are very similar to this case. The cases that were provided do suggest a range of sentence between two and five years imprisonment. That range is dependent on whether the offence is criminal negligence causing death or bodily harm, whether there was a guilty plea, whether there was a joint submission, the number of counts, the circumstances of the offence, and the personal circumstances of the offender.

In this case, Mr. Oake provided furanylfentanyl to Courtney Janes. He provided her with a drug that he ordered off the darkweb. At trial, Darcy Oake was not sure of the name of the website, and he had no familiarity with the supplier. He had no assurance about the quality of the product he was receiving from this supplier. When the package arrived, he had no idea what he actually received from the supplier.

Mr. Oake provided the furanylfentanyl to Ms. Janes knowing how dangerous it was. He had overdosed on the furanylfentanyl earlier that day, and he had been advised about the general risks of fentanyl at the hospital. Mr. Oake was an experienced drug user, and he and Courtney Janes had used drugs together before.

While he told Courtney Janes to be really careful with the furanylfentanyl, he was essentially rolling the dice with her life. He gave Courtney Janes a drug that was dangerous and capable of causing her death or serious bodily harm. He knew there was a very real risk that she could overdose, and he knew this because he himself had overdosed on the same drug less than 12 hours before.

Despite this, Mr. Oake provided Ms. Janes with furanylfentanyl. He warned her about the furanylfentanyl but ultimately he prepared a line for her that she snorted. He gave her more furanylfentanyl to take with her, and he let her walk out of his garage, taking no steps to ensure that she was okay before she did so.

One of the things Mr. Oake said in the pre-sentence report was that he cautioned Ms. Janes about the drug. He also said that he knew that he contributed but asked why there was no blame on her. The evidence was clear that Courtney Janes was eager to use the drugs and that Mr. Oake had warned her about the drug. She acknowledged in her testimony that he had warned her.

But this is not a situation about whether she should share in the blame. She is not the one who provided a dangerous drug to her friend. If you supply a potentially deadly drug to someone knowing the risks of taking that drug, it does not reduce your culpability to claim that they were eager, that they pressured you to give them the drug or that you warned them. Addicts are eager to use a drug and they may ignore warnings. Supplying Courtney Janes with furanylfentanyl had consequences which Mr. Oake must accept.

Ultimately, Courtney Janes suffered bodily harm as a result of taking the furanylfentanyl. She was unconscious for approximately 24 hours and was diagnosed with Rhabdomyolysis when she was taken to the hospital. She had a severe muscle injury which was caused by being immobile for a lengthy period of time.

The breakdown of muscle cells can cause a release of potassium which can be toxic to the heart. She required treatment for this. It can also cause kidney failure because a product of cell breakdown is myoglobin which is toxic to the kidneys. Ms. Courtney Janes was hospitalized for this and received treatment. She testified that she was weak and suffered pain and that she suffered the effects of this condition for months afterwards.

It is mitigating that Mr. Oake entered a guilty plea to trafficking in furanylfentanyl. He acknowledged that he trafficked furanylfentanyl to Courtney Janes. The guilty plea cannot be considered an early guilty plea, and it did not significantly save judicial resources as the other matters did proceed to trial, and Ms. Janes still had to testify. But it is a guilty plea, it is an acknowledgment of responsibility, and it is worthy of credit.

Mr. Oake does have a criminal record with two convictions on it, one for failing to comply with a recognizance and another for possession of a scheduled substance. Both convictions were entered in 2018, so after these offences. And at the time of these offences, Mr. Oake did not have a criminal record. The offences that he is facing today are by far more serious than the two offences on his criminal record. I’m cognizant that Mr. Oake is essentially a youthful, first time offender, and that the sentences that are imposed today must reflect the seriousness of the offences but must also take into account totality.

Sentence

Dealing first with the ancillary orders sought by the Crown. First, a firearms prohibition order is mandatory pursuant to s. 109 (1)(c) of the *Criminal Code*. Therefore, Mr. Oake will be prohibited from possessing firearms commencing today and for a period ending 10 years after his release from imprisonment.

Second, the drug offences are secondary designated offences pursuant to s. 487.04 of the *Criminal Code*. It is a discretionary order, and the Crown is seeking that the order be made. The defence does not strongly object to the granting of the order. Section 487.05(1) permits the court to make an order if it is satisfied that it is in the best interests of the administration of justice considering the offenders criminal record, the nature of the offence, the circumstances surrounding the commission of the offence, and the impact that an order would have on the offenders privacy and security of person.

Mr. Oake did not have a criminal record at the time of these offences. However, the offences that he has been convicted of are serious offences, and the nature of the offences, drug offences, is an area where forensic analysis could be useful. Fingerprint and DNA evidence can assist the police in solving drug crimes. Considering the circumstances of the offences, the value of DNA in solving crimes of this nature, Mr. Oake’s privacy and the minimal intrusiveness involved in collecting a DNA sample, I am satisfied that there should be an order collecting Mr. Oake’s DNA for inclusion in the DNA databank.

Third, the Crown has submitted a draft forfeiture and return order to deal with some of the exhibits seized during the investigation. Some items are classified as offence related property, and some items the Crown is seeking to have returned to their lawful owner. The defence does not take issue with the proposed order, and having reviewed the order, I am prepared to grant it. The items in Appendix ‘A’ will be forfeited to Her Majesty the Queen, and the items in Appendix ‘B’ will be returned to their lawful owner, and that order can issue as drafted.

And lastly, the victim of crime surcharge will be waived in the circumstances.

I’ve considered what an appropriate sentence is given the circumstances of the offences, Mr. Oake’s personal circumstances, and the applicable sentencing principles. Please stand, Mr. Oake.

For the offence of importing furanylfentanyl into Canada, I impose a sentence of eight years imprisonment.

For the offence of trafficking in furanylfentanyl, I impose a sentence of three years imprisonment.

For the offence of possession of furanylfentanyl for the purpose of trafficking, I impose a sentence of five years imprisonment.

And for the offence of criminal negligence causing bodily harm, I impose a sentence of two years imprisonment.

In consideration of totality, the sentences on Counts 2, 3, and 4 will be concurrent to Count 1, so a total of eight years imprisonment. Four years and three months of remand time will be deducted from the sentence, leaving a sentence of three years and nine months imprisonment to be served. You may have a seat, Mr. Oake.

Counsel, thank you. Is there anything that I have overlooked. Mr. Praught?

D. PRAUGHT: I don’t believe so, Your Honour.

THE COURT: Okay. Ms. Oja?

K. OJA: No, Your Honour, not from my perspective.

THE COURT: Okay. Thank you. All right. I want to thank counsel for their assistance during the submissions for the sentence and Ms. Oja for stepping in after Mr. Harte was discharged. And if you can pass along my thanks to Mr. Harte for his assistance during the trial, it was very helpful. And I want to thank counsel just for their conduct of the trial and for the sentencing submissions.

K. OJA: Thank you, Your Honour. I’ll pass that along.

THE COURT: Thank you. All right. We will adjourn.

**(PROCEEDINGS CONCLUDED)**

**CERTIFICATE OF TRANSCRIPT**

Neesons, the undersigned, hereby certify that the foregoing pages are a complete and accurate transcript of the proceedings transcribed from the audio recording to the best of our skill and ability. Judicial amendments have been applied to this transcript.

Dated at the City of Toronto, in the Province of Ontario, this 21st day of August, 2020.



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Kim Neeson

Principal