

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

TOM DESJARLAIS

---

Transcript of the Reasons for Sentence delivered by The Honourable Justice J.E. Richard, sitting in Yellowknife, in the Northwest Territories, on the 12th day of March, A.D. 2007.

---

APPEARANCES:

Mr. S. Hinkley,  
(for Ms. S. Tkatch): Counsel for the Crown

Ms. K. Payne  
(for Mr. G. Boyd): Counsel for the Accused

(Charge under s. 5(2) of the Controlled Drugs and Substances Act)

Official Court Reporters

1 THE COURT: The offender before the Court  
2 to be sentenced today is Tom Desjarlais, and he  
3 has pleaded guilty to possession of cocaine for  
4 the purposes of trafficking, contrary to Section  
5 5(2) of the Controlled Drugs and Substances Act.  
6 This offence carries a maximum sentence of life  
7 imprisonment, and so it is considered by those  
8 who make the laws in this country to be a serious  
9 offence.

10 In the Province of Alberta, for many years a  
11 sentence of three years' imprisonment has been  
12 considered the starting point for judges when  
13 determining the appropriate sentence for  
14 offenders involved in cocaine trafficking on more  
15 than a minimal scale. Both counsel in this case  
16 have referred to the Rahime group of cases in  
17 that regard.

18 The illegal trafficking in cocaine has  
19 caused huge social problems in our community in  
20 the past several years. In 2005 the RCMP  
21 conducted a major investigation into the  
22 commercial trafficking of cocaine in Yellowknife,  
23 culminating in the arrest of several people in  
24 October 2005 and many charges under the  
25 Controlled Drugs and Substances Act, and many of  
26 those matters are still before the courts. This  
27 major RCMP investigation has been referred to as



1 Project Gunship in the cases that have come  
2 before the courts, including the present case.

3 Counsel on this sentencing hearing have  
4 described Tom Desjarlais, or his role in the  
5 commercial trafficking enterprise that was  
6 uncovered by Project Gunship as that of a minor  
7 player, and I suppose, in any commercial  
8 enterprise, there are major players and minor  
9 players. However, the fact remains that Tom  
10 Desjarlais was a player, that he had his part in  
11 the enterprise and others had their part, and in  
12 this way, the commercial enterprise flourished,  
13 with those involved in cocaine trafficking for  
14 profit preying upon vulnerable people addicted to  
15 cocaine and crack cocaine with the resulting  
16 devastation on the social life of our community.  
17 We know this because of the details and the  
18 circumstances of cases that have come before the  
19 Court in the past few years.

20 Mr. Desjarlais pleads guilty to being in  
21 possession of crack cocaine for the purpose of  
22 trafficking on October 13th, 2005, here in  
23 Yellowknife. At that time, an RCMP team was in  
24 the course of executing a search warrant at the  
25 apartment of one of their primary targets in  
26 Project Gunship. While the police were there,  
27 Mr. Desjarlais appeared and knocked at the door.



1 The police invited him in and detained him in  
2 connection with their continuing cocaine  
3 trafficking investigation. He was given his  
4 Charter warnings and then, at the police request,  
5 he emptied his pockets. He had on his person 21  
6 separate one-gram pieces of crack cocaine. He  
7 also had on his person approximately \$2,000 in  
8 cash that was wrapped by elastics in two distinct  
9 bundles. On this sentencing hearing,  
10 Mr. Desjarlais concedes that this cash was  
11 offence-related.

12 It is the Crown's allegation, admitted by  
13 the offender, that he was holding this crack  
14 cocaine and this money for another person who was  
15 involved in the trafficking enterprise.

16 The court file indicates that after several  
17 appearances in Territorial Court, Mr. Desjarlais  
18 elected trial by judge and jury and requested a  
19 preliminary hearing in Territorial Court. That  
20 preliminary hearing was set for a date in July  
21 2006. On the scheduled date, Mr. Desjarlais  
22 waived his right to a preliminary hearing and he  
23 was committed for trial in this court. In August  
24 and September 2006, Mr. Desjarlais attended by  
25 counsel in this court and indicated that he  
26 wished to have a trial in this court, a trial by  
27 judge alone. The trial was set for a date in





1           January 2007, and on that date, Mr. Desjarlais  
2           attended and advised that he wished to plead  
3           guilty to the charge of possession of cocaine for  
4           the purpose of trafficking.

5           I recite this brief history of this court  
6           file as it simply cannot be said that  
7           Mr. Desjarlais' guilty plea is an early guilty  
8           plea or a plea of guilty at the earliest  
9           reasonable opportunity.

10          I note in one of the character references  
11          that has been submitted to the Court that there  
12          is an indication that Mr. Desjarlais sought a  
13          delay in these court proceedings for important  
14          family reasons, and that is fine; however, one  
15          cannot have it both ways - one is certainly  
16          entitled to rely on the presumption of innocence  
17          and request a full preliminary hearing and a  
18          trial in the Supreme Court and contest the  
19          legality of the arrest and the seizure or the  
20          search of one's person, but one cannot at the  
21          same time be heard to say I have pleaded guilty  
22          to the charge against me and acknowledged  
23          responsibility for my wrongdoing at the earliest  
24          reasonable opportunity and I would like that  
25          taken into consideration in the determination of  
26          sentence.

27          In any event, Mr. Desjarlais has pleaded



1 guilty to the charge and now accepts  
2 responsibility for his conduct and states through  
3 his counsel that he is glad that this court  
4 proceeding is coming to a conclusion and that he  
5 is now ready to face the consequences of his  
6 actions.

7 As a judge, I have often said that  
8 sentencing is the most difficult of a judge's  
9 responsibilities, and this case certainly  
10 confirms that view once again.

11 One of the main factors in this case, this  
12 sentencing decision, is Tom Desjarlais' previous  
13 good character. He has no criminal record. He  
14 is 63 years old. He has been a well-respected  
15 member of this community for more than 30 years.  
16 He has a loving and supportive family. He has  
17 worked diligently and successfully in his chosen  
18 fields of carpentry and construction and has held  
19 supervisory positions. At the time of his  
20 arrest, he had been employed for a number of  
21 years as the building superintendent or the  
22 property maintenance manager in the apartment  
23 complex where he was arrested on October 13th,  
24 2005. All of those people who wrote letters of  
25 reference on his behalf are of the view that his  
26 involvement in cocaine trafficking is completely  
27 out of character.



1           It is to Tom Desjarlais' credit that people  
2           such as Mr. and Mr. Friesen and Bishop Sperry and  
3           Don Briggs and Frank Becker and others speak so  
4           highly of him.

5           However, this sentencing decision is not  
6           just about Tom Desjarlais; it is also about the  
7           community. This is not a victimless crime.

8           Cocaine trafficking has had a devastating  
9           effect on the citizens of this community in  
10          recent years, whether they are addicts, family  
11          members or dependents of addicts, recreational  
12          users, victims of violence, or just innocent  
13          property owners. I am going to repeat again what  
14          has been said in other recent cases in this  
15          courtroom:

16                 The illegal trade in cocaine and  
17                 crack cocaine in Yellowknife has  
18                 had a devastating effect on the  
19                 people and on the social life of  
20                 our community. We know this  
21                 because of the many cases that  
22                 come before the courts where we  
23                 see the snowball effect of the  
24                 commission of crimes in this  
25                 community. We see thefts,  
26                 B and E's, assaults, domestic  
27                 violence, and we have seen



1                   homocides, all related to cocaine  
2                   addiction. We have seen broken  
3                   families. We have seen destroyed  
4                   lives.

5                   It has been said many times in  
6                   this courtroom that the illegal  
7                   cocaine trade is like a plague  
8                   which has infested the social  
9                   fabric of our community. Those  
10                  who are involved in the supply  
11                  and sale and trafficking of  
12                  cocaine are like vultures or  
13                  predators who are preying upon  
14                  those weak members of the  
15                  community who are addicted to  
16                  this drug. The traffickers are  
17                  doing this presumably for profit,  
18                  for money. They apparently have  
19                  no scruples about preying upon  
20                  vulnerable people. For this  
21                  reason alone, they ought to be  
22                  punished. They are doing so even  
23                  though there is a risk that they  
24                  will end up in jail for a  
25                  substantial period of time.

26                  The courts of this jurisdiction have long  
27                  taken the position that those who are convicted





1 for their involvement in cocaine trafficking can  
2 expect to receive a meaningful jail term. This  
3 has been felt to be necessary with a view to  
4 deterrence and, also, to denounce the continuing  
5 harm that is done to victims and to this  
6 community.

7 About one year ago in this courtroom, the  
8 Court was required to impose sentence in a murder  
9 case, a horrific crime that shocked the entire  
10 community. One of the circumstances of that case  
11 was that on the day that he committed the murder,  
12 the offender had been using crack cocaine.

13 There was another case in recent years where  
14 four young men committed a so-called home  
15 invasion here in Yellowknife in which they  
16 unlawfully entered residential premises and  
17 terrorized the occupants and stole from them.  
18 The four young men were using crack cocaine both  
19 before and after the robbery and committed the  
20 robbery to finance their cocaine use.

21 Yet another case comes to mind, that of an  
22 offender who was, like Tom Desjarlais, a mature  
23 family-man who had a busy career in the  
24 construction field and who succumbed to an  
25 addiction for crack cocaine, and who, as a  
26 result, turned to a life of theft and fraud to  
27 finance his addiction and lost his wife, his



1 family, his house, his job, and who ended up  
2 going to jail.

3 I mention these cases merely to illustrate  
4 the point that cocaine trafficking is not a  
5 victimless crime. Quite the contrary.

6 In making a decision on an appropriate  
7 sentence in each individual case, the Court is  
8 bound by the law. Parliament has stated in the  
9 Criminal Code that the fundamental purpose of  
10 sentence is to contribute to respect for the law  
11 and the maintenance of a peaceful and safe  
12 community. The courts are instructed to impose  
13 sentences that have certain objectives such as  
14 deterrence, denunciation, and an acknowledgment  
15 of the harm done to victims and to the community.

16 Any sentence that is imposed must be  
17 proportionate to the gravity or the seriousness  
18 of the crime and the degree of responsibility of  
19 the offender. And another important sentencing  
20 principle that is relevant here is parity. That  
21 is, a sentence ought to be similar to sentences  
22 that have been imposed on similar offenders who  
23 have committed similar crimes. I say that parity  
24 is relevant here because, sadly, the courts of  
25 this jurisdiction have had to sentence other  
26 offenders for their involvement in the  
27 trafficking of cocaine and crack cocaine.



1           When I consider all of the circumstances of  
2           this case, including the previous good character  
3           of this offender and his guilty plea, and the  
4           seriousness of the offence, the prevalence of the  
5           illegal cocaine trade in the community and the  
6           related criminal activity, the important  
7           objectives of denunciation and deterrence, and  
8           the sentencing principles of proportionality and  
9           parity in particular, I am of the view that an  
10          appropriate sentence for Mr. Desjarlais is 12  
11          months' imprisonment.

12           In this case I am asked to consider the  
13          imposition of a conditional sentence pursuant to  
14          the provisions of Section 742.1 of the Criminal  
15          Code. Indeed, it is a joint submission from  
16          Crown counsel and defence counsel.

17           The Criminal Code does give the Court a  
18          discretion to allow an offender to serve his  
19          sentence in the community under supervision, but  
20          the Court can only do so if the Court is  
21          satisfied that to do so (a) would not endanger  
22          the safety of the community, and (b) would be  
23          consistent with the fundamental purpose and  
24          principles of sentencing set out in the Criminal  
25          Code.

26           Counsel have referred me to the seminal  
27          decision of the Supreme Court of Canada on



1 conditional sentences, R. v. Proulx. In that  
2 decision, it was confirmed that conditional  
3 sentences are available for all offences, except  
4 those that carry a minimum term of imprisonment.  
5 The Court, in Proulx, also gave some guidance to  
6 sentencing judges in the analysis to be  
7 undertaken in the determination of whether a  
8 conditional sentence is appropriate or  
9 inappropriate in a given case. The Court stated  
10 that a conditional sentence is particularly  
11 suited to express the restorative objectives of  
12 rehabilitation and reparation, but also confirmed  
13 that a conditional sentence can, in some cases,  
14 meet the objectives of denunciation and  
15 deterrence.

16 This court has acknowledged in several  
17 decisions that a conditional sentence, under  
18 Section 742.1 of the Criminal Code, is an  
19 available sentencing option for offenders  
20 convicted of trafficking in cocaine or of  
21 possession of cocaine for the purposes of  
22 trafficking. I refer in particular to R. v.  
23 Basson, R. v. Chamberlin, R. v. P.J.G., R. v.  
24 Woledge, and R. v. Turner. Yet in each of those  
25 cases, a conditional sentence was rejected by the  
26 Court as inappropriate for specific reasons  
27 stated in each individual case.





1           Counsel on this sentencing hearing referred  
2           the Court to a decision in R. v. Fraser where a  
3           conditional sentence was imposed in a cocaine  
4           case. Actually, on closer examination, the copy  
5           of the case provided to the Court is incorrectly  
6           titled R. v. Fraser. It was, in fact,  
7           Mr. Fraser's co-accused, Ms. Mackeinzo, who was  
8           given a conditional sentence, and her crime did  
9           not involve trafficking in cocaine. Her crime  
10          was simple possession of cocaine.

11          Although a joint submission from counsel in  
12          a case is not binding on the sentencing judge, I  
13          am required by law to give it serious  
14          consideration. Previous decisions of this court  
15          and of the Court of Appeal indicate that a  
16          sentencing judge should depart from the joint  
17          submission only if there are cogent reasons for  
18          doing so; for example, if the sentence being  
19          recommended is unfit or unreasonable or contrary  
20          to public interest. I have therefore considered  
21          carefully the notion of a conditional sentence in  
22          this case and I have re-looked at the analysis  
23          and the discussion in the Proulx decision by the  
24          Supreme Court of Canada. In all of the  
25          circumstances, I cannot say that a conditional  
26          sentence served in the community, even with house  
27          arrest for 12 or 18 or 24 months, can adequately



1 express our community's condemnation of this  
2 offender's conduct or the objectives of  
3 denunciation and general deterrence.

4 The Proulx decision also speaks of a  
5 situation where the punitive objectives and the  
6 restorative objects are equally applicable to the  
7 circumstances of a particular case. Upon careful  
8 consideration, I cannot say that about the  
9 circumstances of this case. In other words, in  
10 my view, the more punitive objectives of  
11 denunciation and deterrence weigh more heavily in  
12 the circumstances of this case. I am also  
13 concerned that a conditional sentence would not  
14 be consistent with the sentencing principles of  
15 proportionality and parity.

16 Mr. Desjarlais' role in the cocaine  
17 trafficking enterprise is described as that of a  
18 minor player. With respect, however, that is  
19 merely a relative term. The existence of a  
20 cocaine trafficking enterprise in this community  
21 is a serious matter, and Mr. Desjarlais was part  
22 of it.

23 Of the 21 pieces of crack cocaine that  
24 Mr. Desjarlais had in his possession, one can ask  
25 where was it destined? It is too simplistic to  
26 say that he was simply going to give it back to  
27 the other unnamed person who he was holding it



1 for. Was it not eventually destined to come into  
2 the hands, for example, of a young 22-year-old  
3 man like the man, initials P.T., who was  
4 sentenced last fall for selling one gram of crack  
5 cocaine to an undercover police officer and who  
6 was sentenced to 11 months in jail? Or was it  
7 destined to come into the hands of a 20-year-old  
8 like the 20-year-old, initials M.P., who, with  
9 his three friends, used crack cocaine both before  
10 and after the home invasion robbery in 2004 and  
11 who, as a 20-year-old, was sentenced to three  
12 years in penitentiary for the home invasion  
13 robbery? Or was it destined to come into the  
14 hands of someone else like the 28-year-old,  
15 initials S.E., a man with a young family, who, in  
16 2004, committed eight offences of theft, forgery,  
17 and break and enter in order to finance his  
18 addiction to crack cocaine and who was sentenced  
19 to three years in penitentiary?

20 The gravity of the criminal activity that  
21 Mr. Desjarlais participated in cannot be  
22 minimized. It is naive to consider that his  
23 limited role did not harm the community. It is  
24 because of the participation of people like Tom  
25 Desjarlais that the major players avoid detection  
26 and continue their criminal activity and that the  
27 cocaine trade is able to flourish in our



1 community. Many lives have been ruined because  
2 of the prevalence of cocaine in Yellowknife.

3 For these reasons, I conclude that to impose  
4 a conditional sentence in the circumstances of  
5 this case would not be consistent with the  
6 fundamental purpose and principles of sentencing  
7 as set out in the Criminal Code of Canada. I  
8 find, accordingly, that a conditional sentence is  
9 not available to this offender under Section  
10 742.1 of the Criminal Code. I find that the  
11 sentence proposed by counsel in their joint  
12 submission to the Court is unreasonable and, with  
13 respect, I decline to accept that recommendation.

14 I must take into account sentences imposed  
15 in this jurisdiction upon other offenders for  
16 trafficking in cocaine or for possession of  
17 cocaine for the purposes of trafficking. Each  
18 case is different. However, in the last few  
19 years, most of those sentences have fallen in a  
20 range between nine months and three and a half  
21 years.

22 If not for Tom Desjarlais' previous good  
23 character and his guilty plea, I would have been  
24 inclined to impose a sentence in the range of the  
25 starting-point sentence of three years referred  
26 to by counsel in the Rahime group of cases in  
27 Alberta. However, in this case, Tom Desjarlais'





1 previous good character and his guilty plea serve  
2 to mitigate the sentence that would otherwise be  
3 imposed.

4 Please stand now, Mr. Desjarlais. Tom  
5 Desjarlais, for the crime that you have  
6 committed, possession of cocaine for the purpose  
7 of tracking, contrary to Section 5(2) of the  
8 Controlled Drugs and Substances Act, it is the  
9 sentence of this court that you be imprisoned for  
10 a period of 12 months. In addition, there will  
11 be the mandatory firearms prohibition order,  
12 pursuant to Section 109 of the Criminal Code, for  
13 a period of ten years, and in the circumstances,  
14 there will be no victim fine surcharge. You may  
15 be seated.

16 Counsel, is there anything else with respect  
17 to this case?

18 MR. HINKLEY: Sir, according to the notes  
19 from prior counsel, I believe there was going to  
20 be a request for forfeiture of the money seized  
21 given the facts that are before the Court.

22 THE COURT: Any submission?

23 MS. PAYNE: No, sir.

24 THE COURT: Fine. The order for  
25 forfeiture will go, upon the expiration of the  
26 appeal period.

27 MR. HINKLEY: Thank you, Your Honour.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

THE COURT: We will close court.

.....

Certified Pursuant to Rule 723  
of the Rules of Court

Jane Romanowich, CSR(A), RPR  
Court Reporter

