

R. v. Gellenbeck, 2007 NWTSC 72

S-1-CR2006000083

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

SANDRA JOLENE GELLENBECK

Transcript of the Reasons for Sentence by The Honourable
Justice J.E. Richard, at Yellowknife in the Northwest
Territories, on September 6th A.D., 2007.

APPEARANCES:

Ms. S. Tkatch:

Counsel for the Crown

Mr. A. Pringle, Q.C.:

Counsel for the Accused

Charge under s. 5(2) Criminal Code of Canada

1 THE COURT: As most, if not all, of the
2 people in this courtroom know, the courts of this
3 jurisdiction have had to deal with many cases
4 involving the illegal cocaine trade in
5 Yellowknife over the past number of years. In
6 virtually every case, there is a reference to the
7 devastation that has been caused to the social
8 fabric of this community by cocaine, and how it
9 has destroyed people's lives. Today's sentencing
10 hearing is further confirmation of that
11 statement. By her own admission, Sandra
12 Gellenbeck's life has been destroyed by her
13 involvement with cocaine.

14 Ms. Gellenbeck's case is the latest in a
15 series of cases which have come before the courts
16 as a result of a major RCMP investigation a few
17 years ago into the illegal cocaine trade here in
18 Yellowknife. This major police investigation was
19 no doubt undertaken, in part, because of the many
20 social problems that existed in our city and that
21 were directly related to the trafficking and use
22 of cocaine and crack cocaine.

23 Large segments of the population of our
24 community have been affected by the snowball
25 effect of the cocaine trade, whether they are
26 home owners or business owners who have been
27 victims of B&Es or thefts committed by people

1 committing crimes to finance their cocaine
2 addictions, whether they are victims of assaults,
3 domestic violence, homicides - all related to
4 cocaine addiction or the cocaine trade; or
5 relatives or friends of those whose lives have
6 been destroyed because of their addiction to
7 cocaine or their involvement in the cocaine trade
8 in this city in the past number of years.

9 The major police investigation that I
10 referred to was entitled Project Gunship, and it
11 culminated in October 2005 with the arrest of
12 several people, including this offender Sandra
13 Gellenbeck, and in many charges under the
14 Controlled Drugs and Substances Act and the
15 Criminal Code. Many of these charges have
16 already been disposed of by the courts, and there
17 are some charges which are still pending before
18 the courts.

19 One of the primary targets in this police
20 investigation was a Mr. Wong. The investigation
21 indicated that Mr. Wong was a major player in the
22 illegal cocaine trade in Yellowknife. The police
23 obtained judicial authorizations to intercept
24 Mr. Wong's private communications, commonly
25 referred to as wiretaps. The police intercepted
26 Mr. Wong's communications at his home here in
27 Yellowknife and on his phones and on his cell

1 phones. In this manner, the police were able to
2 gather evidence of the interaction of this
3 offender Sandra Gellenbeck with Mr. Wong in the
4 trafficking of cocaine in our community.

5 Evidence before the Court on this sentencing
6 hearing indicates that in September 2005,
7 Ms. Gellenbeck attended at Mr. Wong's residence
8 and, there, had discussions with Mr. Wong about
9 the supply of cocaine by Mr. Wong to
10 Ms. Gellenbeck.

11 In particular, the police, by their
12 surveillance, were aware that on September 27th,
13 2005, Ms. Gellenbeck attended at Mr. Wong's
14 residence and gave him a certified cheque on her
15 business account in the amount of \$20,000. And
16 in return, Mr. Wong supplied her with ten ounces
17 of cocaine. The police followed her when she
18 left Mr. Wong's residence, arrested her, and
19 found on her person the ten ounces of cocaine
20 wrapped in ten separate baggies of one ounce
21 each. Today, Ms. Gellenbeck pleads guilty to
22 being in possession of that cocaine on September
23 27th, 2005 for the purpose of trafficking. This
24 is a large quantity of cocaine as evidenced by
25 the price that she paid for it.

26 The material before the Court indicates that
27 in September 2005, Ms. Gellenbeck was seriously

1 addicted to cocaine. She was at that time
2 purchasing large quantities of cocaine for
3 herself and also for her common-law spouse and
4 also for other acquaintances. She says, through
5 her lawyer, that she was not making any profit on
6 the sale of cocaine and the Crown prosecutor
7 concedes that that statement is consistent with
8 the conclusions drawn by the police investigators
9 at the time. However, her activity still amounts
10 in law to possession for the purpose of
11 trafficking.

12 Mr. Wong appeared in this courtroom earlier
13 this year and pleaded guilty to a conspiracy
14 charge; in particular, that he conspired with
15 five separate named individuals, including this
16 offender Sandra Gellenbeck, to commit the
17 indictable offence of trafficking in cocaine in
18 Yellowknife between July and October of 2005.
19 Mr. Wong received a sentence of five years
20 imprisonment as part of a six-year global
21 sentence for the conspiracy charge and some other
22 charges.

23 One of the other persons that Mr. Wong
24 conspired with was one Mudaliar. Wong and
25 Mudaliar conspired together to purchase one
26 kilogram of cocaine from a British Columbia
27 supplier for \$30,000, the intention being to

1 bring this cocaine to Yellowknife for resale
2 here. Earlier this year, Mr. Mudaliar pleaded
3 guilty to this conspiracy. Mr. Mudaliar had a
4 negligible criminal record. He was sentenced to
5 three years imprisonment, less credit for time
6 spent in pre-trial custody.

7 Another of the persons that Mr. Wong
8 conspired with was one Fraser. Mr. Wong arranged
9 to sell crack cocaine to Mr. Fraser in quantities
10 of one ounce or less which Fraser would then
11 resell to his customers on the streets of
12 Yellowknife. Fraser, who had a related criminal
13 record, pleaded guilty to that conspiracy earlier
14 this year, and also pleaded guilty to another
15 unrelated offence. The Court determined an
16 appropriate sentence on the drug conspiracy
17 charge as two years imprisonment. However,
18 because of the other matter, he received a global
19 sentence of two and a half years imprisonment,
20 following a joint submission from Crown counsel
21 and defence counsel in that case.

22 It is often said that sentencing is an
23 individualized process. However, I mention these
24 other cases arising out of Project Gunship as
25 part of the context for the determination of an
26 appropriate sentence for Ms. Gellenbeck. No two
27 cases are alike but the law does require parity

1 in sentencing.

2 On the evidence before the Court,
3 Ms. Gellenbeck was not as major a player as Ken
4 Wong. However, her crime is much more serious
5 than that of, say, one Desjarlais, a local
6 well-respected citizen who also got himself
7 involved in Ken Wong's cocaine business and who
8 was sentenced to 12 months imprisonment. Mr.
9 Desjarlais was found in possession of 21 separate
10 one gram pieces of crack cocaine and \$2000 in
11 cash that was offence-related.

12 This offender, Sandra Gellenbeck, is now 46
13 years of age and is a life-long resident of
14 Yellowknife. She has a college education, and it
15 seems led a productive life prior to her
16 involvement with cocaine in the year 2003.

17 The letters of reference, filed on her
18 behalf, characterize her as a good person and I
19 take it those are references to her life and her
20 lifestyle prior to the year 2003.

21 I am told that Ms. Gellenbeck has been
22 married or in a common-law relationship with five
23 different partners over the years. She is the
24 mother of four children; the youngest being 16
25 years of age.

26 Ms. Gellenbeck's father, prior to his death
27 in 2002, ran a successful and highly-regarded

1 business in Yellowknife for a long time. And
2 over the years, Ms. Gellenbeck worked in that
3 family business and on her father's death she
4 took over the operation of that business.

5 Unfortunately for her, in 2003, while she
6 was apparently still grieving the loss of her
7 father, she became involved, I am told, in a
8 romantic relationship with a man who subsequently
9 introduced her to the world of cocaine. She
10 became addicted to the point where she was
11 apparently using as much as five grams a day, and
12 dissipating the substantial assets that she had
13 accumulated herself and also inherited from her
14 father.

15 Ms. Gellenbeck, in her conversations with
16 her lawyer and also with the forensic
17 psychologist who examined her last month,
18 candidly acknowledges that she destroyed her life
19 by her involvement with cocaine. She suffers
20 from episodes of acute emotional distress and
21 depression which reflect her feelings of guilt,
22 regret, and remorse.

23 As her father was a well-respected member of
24 this community, it is not surprising that she
25 feels a great deal of shame at the dishonor that
26 she has brought to the family. I accept that
27 these emotions, which are reflected in the

1 psychological report and in her lawyer's
2 submissions, are genuine.

3 Ms. Gellenbeck has no previous criminal
4 record.

5 She was arrested on this charge in October
6 2005 and spent approximately two months in
7 custody before obtaining her release on bail
8 pending the resolution of her charges. I will
9 give her credit for that pre-trial custody in
10 accordance with the usual practice of the Court
11 and binding case law.

12 Ms. Gellenbeck's guilty plea, today, acts in
13 mitigation of sentence although it cannot fairly
14 be said to be an early guilty plea or a plea at
15 the first reasonable opportunity.

16 In the determination of the degree or level
17 of Ms. Gellenbeck's moral culpability, I take
18 note of the fact that at the date in question
19 Ms. Gellenbeck was indeed addicted to cocaine, as
20 that fact distinguishes her case from many other
21 cases where the offender's motivation was simply
22 greed.

23 Ms. Gellenbeck's case is not unlike that of
24 another Yellowknife woman, Daisy Posegate, who
25 was also addicted to cocaine and who was
26 sentenced, for a crime very similar to that of
27 Ms. Gellenbeck, to two and a half years

1 imprisonment in November 2004.

2 Although there is no shortage of previous
3 sentencing decisions of the courts of this
4 jurisdiction, reference is also made quite
5 regularly to the jurisprudence from the Alberta
6 courts, in particular, the Alberta Court of
7 Appeal.

8 In a case called Maskell in 1981, the
9 Alberta Court of Appeal established a starting
10 point sentence of three years imprisonment for
11 offences involving trafficking in cocaine on more
12 than a minimum scale. This three-year starting
13 point sentence was reaffirmed 20 years later in a
14 group of cases referred to as Rahime. In another
15 case entitled Honish in 1989, the Alberta Court
16 of Appeal endorsed a starting point sentence of
17 four and a half years in cases demonstrating
18 wholesale commercial trafficking.

19 In all of these decisions by the courts in
20 Alberta and the Northwest Territories, it has
21 been made clear that unless there are unusual
22 circumstances, a significant term of imprisonment
23 will be imposed for trafficking in cocaine in
24 order to satisfy the objectives of denunciation,
25 deterrence, and the acknowledgment of the real
26 harm that is done to the community and its
27 citizens.

1 I find that the possession of ten ounces of
2 cocaine for trafficking in Yellowknife, whether
3 for profit or not, to be a very serious crime
4 given the devastation which cocaine has caused in
5 recent years to citizens of this community,
6 whether they are addicts, recreational users, or
7 just innocent property owners.

8 Ms. Gellenbeck comes to court today and
9 pleads guilty and states through her lawyer that
10 she is ready to accept responsibility for her
11 actions. This is to her credit.

12 In a statement prepared for her lawyer, she
13 does blame her former common-law spouse for
14 introducing her to cocaine but in the final
15 analysis she says "I was the one who let it all
16 happen". This indicates genuine self-reflection
17 and self-understanding on her part.

18 Taking into consideration the purpose and
19 objectives of the sentencing process, taking into
20 consideration previous decisions of the Court,
21 including those arising out of Project Gunship,
22 and taking into consideration Ms. Gellenbeck's
23 personal circumstances and the circumstances of
24 her crime, I find that an appropriate resulting
25 sentence is one of two and a half years
26 imprisonment.

27 Please stand, Ms. Gellenbeck.

1 Sandra Gellenbeck, for the crime that you
2 have committed, possession of cocaine for the
3 purpose of trafficking contrary to Section 5(2)
4 of the Controlled Drugs and Substances Act, it is
5 the sentence of this Court that you serve a term
6 of imprisonment of two and a half years.

7 In addition, there will be the mandatory
8 firearms prohibition order under Section 109 of
9 the Criminal Code for a period of ten years.

10 In the circumstances, there will be no
11 Victim Fine surcharge.

12 Now, Ms. Gellenbeck, from what I have read
13 about you today in these papers here and what Mr.
14 Pringle has said, it seems that through your own
15 self-reflection that you have a good chance of
16 recovery, and that you are capable of turning
17 your life around, to what it was before. And I
18 am sure that your father would want you to try
19 very hard to do that. I wish you good luck in
20 those efforts.

21 Please be seated.

22 Counsel, is there anything further on this
23 case?

24 MS. TKATCH: Yes, Your Honour, I am not
25 quite sure if I remembered to do this, on
26 Count 1, with respect to Ms. Gellenbeck if I
27 directed a stay of proceedings?

1 THE COURT: Yes.

2 MS. TKATCH: Then also I would like to
3 direct a stay of proceedings with respect to
4 Mr. Ngo on Count 3 and Mr. Vermeulen on Count 4,
5 and I will also provide filed stays for the
6 Court. If I could get that directed then I would
7 advise the Registry to strike those matters from
8 the docket on Monday.

9 THE COURT: You have that, Madam Clerk,
10 Mr. Ngo and Mr. Vermeulen? And I will ask you to
11 do the proper paperwork on that.

12 MS. TKATCH: I will have that filed but if
13 I could direct the stay here then at least we can
14 get it off the docket for Monday. And those are
15 the only other matters that I have.

16 THE CLERK: Sir, the firearms prohibition
17 is ten years from release or ten years from
18 today?

19 THE COURT: Commencing on today's date
20 and expiring on a date ten years after your
21 release from prison.

22 THE CLERK: Thank you, sir.

23 THE COURT: Anything further from you, Mr.
24 Pringle?

25 MR. PRINGLE: Your Honour, I want to be
26 clear, because I practice in different
27 jurisdictions and it is done different ways, I

1 assume from your judgment that the time in
2 custody was considered and the final result is
3 two and a half years, is that correct?

4 THE COURT: Yes.

5 MR. PRINGLE: Thank you.

6 THE COURT: Thank you, we will close
7 court.

8 -----

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Certified to be a true and
accurate transcript pursuant
to Rules 723 and 724 of the
Supreme Court Rules,

Lois Hewitt, CSR(A), RPR, CRR
Court Reporter