

R. v. Mullins, 2007 NWTSC 74

S-1-CR2007000028

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

PHILLIP EDWARD MULLINS

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Transcript of the Reasons for Sentence by The Honourable  
Justice J.Z. Vertes, at Yellowknife in the Northwest  
Territories, on September 18th A.D., 2007.

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APPEARANCES:

Ms. S. Tkatch:

Counsel for the Crown

Mr. J. Brydon:

Counsel for the Accused

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Charge under s. 465(1)(c) Criminal Code of Canada  
Charge under s. 5(1) Controlled Drugs and Substances Act

1 THE COURT: Phillip Edward Mullins has  
2 entered guilty pleas to two charges: one of  
3 conspiracy to traffic in cocaine; the other of  
4 trafficking in marijuana.

5 The charges arose from an extensive  
6 undercover police operation in 2005. The accused  
7 was part of an ongoing commercial drug supply  
8 network involving a number of other individuals  
9 and centered around an establishment in  
10 Yellowknife known as "The Right Spot" bar. The  
11 details of the activity and the undercover  
12 operation are set out in an agreed statement of  
13 facts. The accused was not the major player in  
14 this drug trafficking ring but he was a key  
15 component of it. He acted as a middleman between  
16 the supplier of the cocaine and the eventual  
17 seller and, with respect to the marijuana charge,  
18 he participated in the actual sale to other  
19 dealers.

20 This accused is one of a number of people  
21 already sentenced for their part in this criminal  
22 enterprise. They have all received significant  
23 sentences. As many of those cases highlighted,  
24 crack cocaine in particular has become a blight  
25 on this community. And these people played a  
26 significant part in the spread of this blight, a  
27 part played out because of their own greed and

1           lack of concern for others.

2           The accused is 29 years old. He has a  
3           history of odd jobs. He is not originally from  
4           this community. He also has a criminal record.  
5           In the past nine years, he has been convicted of  
6           eight offences, six of them for possession of  
7           drugs. In 2000 he was convicted, in Edmonton, of  
8           trafficking and sentenced to 12 months in jail.  
9           None of this seemed to have had an effect on him.

10           I take into account as a mitigating factor  
11           the accused's guilty plea. While it does not  
12           come at an early stage, it is still worthy of  
13           credit since it saves the administration of  
14           justice a considerable amount of time and expense  
15           in processing him through a trial.

16           The Crown has recommended a sentence of five  
17           to six years. Crown counsel has however left to  
18           my discretion the amount of time to be credited  
19           toward time spent in pre-sentence custody. That  
20           issue requires some explanation.

21           The accused was originally arrested on  
22           October 13th, 2005. In January 2006, he was  
23           granted bail. At that time his counsel, not his  
24           counsel here today but his counsel at that time,  
25           made a strong argument in favour of bail so that  
26           the accused could receive treatment for what was  
27           termed his drug addiction problems. Arrangements

1           were made at a residential treatment program in  
2           Edmonton. The accused was eventually released to  
3           that treatment program when a bed became  
4           available in April of 2006. In July, he breached  
5           the terms of his bail conditions. The treatment  
6           centre was going to reject him from the program.  
7           He then took off. He was subsequently rearrested  
8           in September of 2006. When he was, he was found  
9           with a quantity of crack cocaine and marijuana on  
10          him.

11                 The total pre-sentence custody amounts to  
12          574 days, or the equivalent of approximately 19  
13          months.

14                 Case law has long recognized that, as a rule  
15          of thumb, pre-sentence custody should be credited  
16          at a rate of two-for-one because people serving  
17          in pre-sentence custody, awaiting trial, are not  
18          eligible for statutory remission, nor in most  
19          cases are they eligible to participate in the  
20          various programs provided to sentence-serving  
21          inmates. But that rule of thumb is just as I  
22          described it - a rule of thumb. It is a  
23          discretionary exercise, one that has to take into  
24          account all of the relevant factors.

25                 The accused's counsel has argued that the  
26          usual approach should be applied in this case.  
27          With respect, I do not agree.

1           The reason this accused spent the last 12  
2 months in custody is because of his own  
3 deliberate violation of his bail conditions. In  
4 that circumstance, I fail to see why he should be  
5 credited at two-for-one for this time period. I  
6 do recognize that he should be given some credit,  
7 but I am not prepared to credit him for the full  
8 two-for-one for the period of time since his  
9 rearrest. He made a choice. He knew what the  
10 risks were when he took off. No one can say what  
11 would have happened if he had been either  
12 rejected from the program or if, in the first  
13 place, he had followed the rules of the program.  
14 He has not been charged for that breach. No  
15 sentence has been imposed on him for that breach  
16 so it is not a question of double punishment.

17           I will give him credit for these 12 months  
18 but not at the full two-for-one. In the exercise  
19 of my discretion, I will credit the accused with  
20 the equivalent of 30 months, two and a half  
21 years, for the 19 months of pre-sentence custody.

22           In my opinion, the only mitigating factor  
23 present here is the guilty plea. This accused,  
24 someone who has been punished previously for  
25 similar crimes, played an extensive role in a  
26 long-running criminal operation. He was not the  
27 mastermind but his role was significant

1           nevertheless.

2                     The principles of sentencing, as applied to  
3           this case, call for a sentence that emphasizes  
4           deterrence and denunciation.

5                     I have concluded that an appropriate  
6           sentence would be on Count 3, the conspiracy  
7           charge, three years imprisonment; on Count 4, the  
8           trafficking charge, two years to be served  
9           consecutively. That is a total of five years  
10          imprisonment. From that, I deduct the 30 months  
11          credit that I have already indicated I would for  
12          pre-sentence custody. The net sentence that I  
13          impose is therefore one of two and a half years,  
14          or 30 months imprisonment.

15                    In addition there will be the usual order,  
16          pursuant to Section 109 of the Criminal Code,  
17          prohibiting the accused from having in his  
18          possession or control any firearms for a period  
19          of no less than ten years.

20                    Is there anything else that is required, Ms.  
21          Tkatch?

22          MS. TKATCH:                    No, Your Honour.

23          MR. BRYDON:                    Victims of Crime surcharge to  
24          be waived?

25          THE COURT:                    The Victim of Crime fine  
26          surcharge is waived, yes, under the  
27          circumstances.

1 THE CLERK: The firearm prohibition is ten  
2 years from release, sir?

3 THE COURT: In the usual terms of the  
4 order, Madam Clerk.

5 Thank you, counsel, we will close court.

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9 Certified to be a true and  
10 accurate transcript pursuant  
11 to Rules 723 and 724 of the  
12 Supreme Court Rules,  
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15 Lois Hewitt, CSR(A), RPR, CRR  
16 Court Reporter  
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