

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

DAVID SIMPSON

Transcript of the Reasons for Sentence delivered by The Honourable Justice D. M. Cooper, sitting in Yellowknife, in the Northwest Territories, on the 7th day of November, A.D. 2008.

APPEARANCES:

Mr. J. MacFarlane: Counsel for the Crown

Ms. C. Wawzonek: Counsel for the Accused

(Charge under s. 5(1) Controlled Drugs and Substances Act)

1 THE COURT: David Simpson was convicted by
2 me on a charge of trafficking in cocaine contrary
3 to the Controlled Drugs and Substances Act after
4 a one-day trial.

5 The facts are set out in my Reasons for
6 Judgment and I will not review them in any detail
7 but rather provide a short summary.

8 On June 23rd, 2007, Mr. Simpson offered to
9 sell a gram of cocaine to an undercover officer
10 for \$120 and over the next two and a half hours
11 seemingly did his utmost to find a dealer who
12 could provide the drugs. Ultimately, the search
13 was unsuccessful. Mr. Simpson retained the money
14 the officer had given him but the transaction was
15 never consummated. I convicted the accused based
16 of his having offered to do one of the things set
17 out in Section 2(a) of the Act.

18 In approaching the question of a fit and
19 proper sentence in this case, I must be guided by
20 certain principles as prescribed in the
21 Controlled Drugs and Substances Act, the Criminal
22 Code, and in the case law. (S. 10):

23 The fundamental purpose of any
24 sentence for an offence [such as
25 this] is to contribute to the
26 respect for the law and the
27 maintenance of a just, peaceful

1 and safe society while
2 encouraging rehabilitation, and
3 treatment in appropriate
4 circumstances, of offenders and
5 acknowledging the harm done to
6 victims and to the community.

7 It has been said by courts in the Northwest
8 Territories and others on many occasions that the
9 primary principles of sentencing in trafficking
10 cases are deterrence, detention, acknowledgment
11 of the harm done to the community, and protection
12 of the public. Courts are instructed to impose
13 sentences that are proportionate to the gravity
14 of the offence and the degree of responsibility
15 of the offender. As well, sentences should be
16 similar to those imposed on similar offenders in
17 similar circumstances.

18 Defence counsel acknowledged the many
19 pronouncements of our courts on the
20 inappropriateness of a conditional sentence but
21 asks for a sentence in the range of 10 to 12
22 months. The Crown says a sentence of 15 to 18
23 months would be appropriate.

24 The accused is a 45-year-old crack cocaine
25 addict who has been involved in drugs since the
26 1980s. His downward spiral in 1997 was brought
27 on by his divorce and the death of his father.

1 His recreational use then became habitual and he
2 left his family in British Columbia. He has one
3 daughter, who just turned 18, and a grandson.

4 He has at times worked as a truck driver and
5 heavy equipment operator but always at a remote
6 location away from Yellowknife.

7 His counsel advises that his plan upon
8 release would be to return to British Columbia,
9 begin apologizing, and try to resurrect his life.
10 He is willing to take treatment if the Court so
11 orders. On this point, I would say that ordering
12 someone to take treatment seldom produces the
13 desired results. It will be for Mr. Simpson to
14 decide if he should seek help and, if he does, he
15 will have to be truly committed and invested in
16 the treatment process.

17 The accused's criminal record dates to 1988
18 when he was convicted of refusing to provide a
19 breath sample. He has two previous convictions
20 for theft, one in 2007, a spousal assault in
21 1996, and four convictions for failing to attend
22 court. Although his record is not enviable,
23 notably, the accused has no previous related drug
24 convictions. Although he has been incarcerated
25 at different periods on remand, according to his
26 counsel, this would be the first occasion on
27 which he will actually do time as a result of

1 being convicted of an offence. The accused is on
2 remand now and has been since September 3rd,
3 2008, on charges scheduled to be dealt with in
4 Territorial Court in December. One of those
5 charges, I apprehend, is for breaching his
6 recognizance entered into in relation to the
7 offence we are dealing with. His counsel asks
8 that he be given at least two months' credit for
9 time served.

10 In the case of R. v. Desjarlais, [2007]
11 N.W.T.J. No. 23, Richard, J. eloquently and at
12 length described a picture of devastation that
13 has been visited on the community of Yellowknife
14 as a result of the scourge of drugs and drug
15 trafficking. I fully endorse his views and
16 observations. Anyone coming before a court in
17 this jurisdiction convicted of trafficking in a
18 controlled substance such as crack cocaine can
19 expect to receive a meaningful sentence which
20 usually translates to a significant period of
21 incarceration.

22 In the Desjarlais case, the accused was
23 sentenced to one year in prison. He had pleaded
24 guilty to possession for the purpose of
25 trafficking and, although not a high-end dealer,
26 he was above street level having had 21 separate
27 one-gram pieces of crack cocaine and \$2,000 in

1 his possession. He was 63 years old with no
2 prior criminal record and had been considered a
3 respectable and hard-working member of the
4 community for 30 years.

5 In R. v. Basson, [2000] N.W.T.J. No. 20, the
6 accused was party to the offence of trafficking
7 by having driven the actual trafficker to the
8 place where the trafficking occurred. He was
9 sentenced to seven months in jail, but he had no
10 criminal record and was only 23 of years of age
11 and had been gainfully employed with no evidence
12 he was regularly involved in the drug trade.

13 In a similar case, R. v. Jama, [2000]
14 N.W.T.J. No. 19, an accused taxi driver
15 facilitated the sale of cocaine by putting two
16 undercover officers in touch with the actual drug
17 trafficker where one gram of cocaine was sold.
18 There was no evidence that Mr. Jama received any
19 reward for his involvement or that he was
20 involved in an ongoing commercial enterprise. He
21 was a first offender who had a prior record of
22 hard work and good character and who would lose
23 his livelihood as a taxi driver upon conviction.
24 He also received a sentence of seven months.

25 In R. v. Chamberlin, [2000] N.W.T.J. No. 25,
26 a 20-year-old first-time offender, after pleading
27 guilty, was sentenced to ten months in jail for

1 selling one gram of cocaine to an undercover
2 officer.

3 In R. v. Turner, [2006] N.W.T.J. No. 76, a
4 22-year-old Metis man who grew up in Yellowknife
5 pleaded guilty to trafficking in one gram of
6 cocaine. He had no criminal record and was
7 sentenced to 11 months in jail.

8 Both counsel referred me to the case of
9 R. v. Hajcik, [2007] N.W.T.J. No. 85. There, the
10 accused, a middle-aged woman, pleaded guilty to
11 trafficking in a small amount of cocaine to an
12 undercover officer on June 21st, 2007. From the
13 evidence he gave at trial, it would appear that
14 the officer in question was none other than
15 Constable Weatherbie who dealt with the accused
16 here. In any event, despite having two previous
17 convictions for possession of cocaine and
18 committing the offence of trafficking four months
19 after her release from jail for simple
20 possession, she was sentenced to ten months of
21 incarceration. A pre-sentence report indicated
22 that Ms. Hajcik was a drug addict who had
23 trafficked to support her habit. The report set
24 out difficulties she had encountered in her life
25 but "on the whole [was] a fairly positive report
26 indicating Ms. Hajcik [had] a supportive family
27 and other supports in the community as well." No

1 doubt the Court was influenced in its decision by
2 the fact the Crown was only asking for a sentence
3 in the range of three to four months and the
4 defence for a suspended or conditional sentence.
5 Despite the relatively positive pre-sentence
6 report, the sentence in this case would seem to
7 be at the low end of the spectrum.

8 The case of R. v. Draskoczi, [2008] N.W.T.J.
9 No. 67, was cited by the Crown as having facts
10 very similar to those in this case. The accused
11 agreed to sell one gram of crack cocaine to an
12 undercover officer for \$120. He took the money,
13 entered a known drug house while the officer
14 waited but did not return. If the manner in
15 which this transaction occurred is familiar, it
16 would be because it was the same officer again,
17 Constable Weatherbie, who was involved within a
18 matter of hours after having left the company of
19 David Simpson. The accused had what the Court
20 referred to as a "terrible criminal record" with
21 15 entries on his youth docket and another 20
22 adult convictions including a number of
23 drug-related offences for which he had been
24 sentenced to a total of five years in prison
25 dating from the year 2000. On the charge of
26 trafficking before the Territorial Court, he was
27 sentenced to 18 months' imprisonment.

1 Counsel for the defence, rightly,
2 distinguishes Draskoczi from the case at bar
3 based on the respective criminal records of the
4 accused. She also reminds this court that courts
5 have held that it is an error in principle to
6 equate the offence of actually trafficking with
7 offering to traffic. In the passage referred to
8 in Draskoczi, three cases are reviewed where the
9 facts were that the substance held out to be a
10 controlled drug was, in fact, not and the courts
11 seem to equate the offence as much to fraud as to
12 trafficking.

13 In this case, from the evidence at trial,
14 the fact that no drugs changed hands was
15 seemingly due to the fact that none were
16 available. I would repeat that, from the
17 evidence at trial, it would seem that no drugs
18 changed hands because none were available. I
19 would not have found on the facts that
20 Mr. Simpson intended to defraud or scam the
21 officer. On the contrary, he made some sincere
22 and strenuous efforts to keep his part of the
23 bargain, which was frustrated. Regardless, I
24 will take into account that Mr. Simpson has been
25 convicted of offering to sell as opposed to
26 selling.

27 Having reviewed many of the relevant cases

1 and having regard to Mr. Simpson's record and his
2 personal circumstances and to the facts in this
3 case, I have determined that a sentence to a
4 significant term of imprisonment is required.

5 Mr. Simpson, somewhere along the way you
6 lost your way and became a victim of the curse
7 that is the addiction to crack cocaine. That you
8 turned to trafficking to support your habit is
9 not surprising. I have watched you during this
10 trial, and from what your counsel has ably said
11 about you in her presentation to this court about
12 your desire to reunite with your daughter and to
13 start over again in British Columbia, I sense
14 that you are a decent person who has for a time
15 lost control of his life but who does know right
16 from wrong and that with some help, but, above
17 all, your own personal determination, you can
18 redeem your life and make a positive contribution
19 to society. You appear to be remorseful and
20 taking a new look at the future and you want to
21 change your life. It is my sincere hope that you
22 do so.

23 Before I pass sentence is there anything you
24 would like to say?

25 THE ACCUSED: Just thank you very much for
26 hearing this, and especially to you. Basically
27 it's time to pay my dues here.

1 THE COURT: Beg your pardon?

2 THE ACCUSED: It's time to pay my dues here.

3 Thank you for hearing this.

4 THE COURT: Could you stand up, please.

5 On the charge of trafficking in cocaine by offer,

6 I consider a term of 13 months in prison would be

7 appropriate, but taking into account time served

8 of two months, will sentence you to a term of 11

9 months. You can sit down.

10 There will be a Section 109 firearms

11 prohibition order for a period of ten years. I

12 decline to make the DNA order in this case and,

13 given the circumstances, will waive the victim's

14 fine surcharge.

15 Is there anything else, Counsel?

16 MS. WAWZONEK: No, Your Honour.

17 MR. MACFARLANE: No thank you, Your Honour.

18 THE COURT: Mr. MacFarlane?

19 MR. MACFARLANE: No, sir.

20 THE COURT: Again, Mr. Simpson, it is very

21 unfortunate that you find yourself in this

22 position. I wish you well.

23 THE ACCUSED: Thank you.

24 THE COURT: I wish you well.

25 I would like to thank you counsel again for

26 their efforts in this case, as well as my court

27 staff.

1 THE COURT CLERK: Thank you, sir.

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5 Certified Pursuant to Rule 723
6 of the Rules of Court

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9 Jane Romanowich, CSR(A), RPR
10 Court Reporter

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