

S-1-CR2008000033

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

VINCENT GORDON GOSSELIN

Transcript of the Reasons for Sentence by The Honourable
Justice L. A. Charbonneau, at Yellowknife in the Northwest
Territories, on March 6th A.D., 2009.

APPEARANCES:

Ms. J. Walsh: Counsel for the Crown
Mr. D. Rideout: Counsel for the Accused

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

1 THE COURT: On January 28th, 2009, just
2 over a month ago, a Yellowknife jury found Mr.
3 Gosselin guilty on a charge of trafficking in
4 cocaine and today it is my difficult
5 responsibility to decide what sentence should be
6 imposed on Mr. Gosselin for this crime.

7 In any sentencing, a Court has to take into
8 account the circumstances of the offence, the
9 circumstances of the person who has committed the
10 offence, and provisions of the Criminal Code that
11 talk about the purposes and goals of sentencing.
12 A sentencing Court's task is to balance all of
13 these factors to arrive at what is a fit and just
14 sentence.

15 In every case there are broad general
16 principles of law that have to be taken into
17 account. But in every case there are also
18 circumstances specific to that case that must
19 also be factored in. And because there are many
20 variables, sentencing Judges do not use formulas;
21 they do not use rigid approaches, pre-determined
22 sentences for this or that type of crime.
23 Sentencing is a fundamentally individualized
24 process and one that must be done on a
25 case-by-case basis. And so that is how I have
26 approached the question of what sentence should
27 be imposed on Mr. Gosselin.

1 I will talk first about the circumstances of
2 the offence.

3 This trial lasted only a few days. The
4 facts that led to Mr. Gosselin's arrest are
5 relatively simple. The RCMP received information
6 from their counterparts in the United States that
7 a Fed-Ex package originating from Costa Rica was
8 destined to a Yellowknife address and had been
9 identified as suspected of containing drugs. The
10 RCMP in Canada developed an operational plan to
11 take control of that package. It was forwarded
12 by US authorities by air to the Vancouver airport
13 where RCMP officers took control of it.

14 The investigation showed that the Fed-Ex box
15 contained candles and that cocaine had been
16 hidden in some of these candles. Holes were made
17 from the bottom of the candles, wax was removed,
18 the cocaine was placed inside, and the candles
19 were resealed with wax with a sticker placed on
20 top of the seal presumably to try to conceal the
21 fact that the candles had been tampered with. In
22 total, 146.5 grams of cocaine were found in that
23 package.

24 The Crown's expert testified at trial that
25 this was a significant quantity of cocaine for a
26 city the size of Yellowknife. He testified that
27 the street value of powdered cocaine was \$120 per

1 gram which means that the street value of what
2 was seized is over \$17,000 if sold by the gram.
3 The expert also testified that cocaine is often
4 mixed with other substances before it is sold and
5 if that had been done, then the cocaine seized
6 could potentially have generated even more money
7 than \$17,000. All this to say the quantity of
8 cocaine seized in this case was significant.

9 Once they took control of the package and
10 its contents, the RCMP implemented a well thought
11 out plan to arrange for the controlled delivery
12 of this package. A trafficking device was
13 installed in the package to allow officers to
14 know when the package was being moved. An alarm
15 was installed inside the package so that the
16 police would be alerted when the package was
17 opened. A special dye was applied on items
18 inside the package so that if a person touched
19 the objects in the package, their hands would
20 turn green.

21 The police also organized surveillance on
22 the residence that the package was addressed to.
23 An undercover police officer posing as a Fed-Ex
24 employee delivered the package to that address.
25 Mr. Gosselin was not home at the time so someone
26 else signed for the package. Sometime after he
27 arrived at the house, was inside for a short time

1 and then came out with a bag with the package in
2 it. He waited on the sidewalk for a short while
3 and was picked up by a vehicle. That vehicle was
4 intercepted by the RCMP a very short time later
5 and the occupants were arrested.

6 Mr. Gosselin provided a statement to the
7 police. That statement was recorded and made an
8 exhibit at trial. I do not propose to refer to
9 the statement at length.

10 Essentially Mr. Gosselin admitted that the
11 package was delivered to him but denied knowing
12 what was in it. He said that at the time of his
13 arrest, he was on his way to meet friends at a
14 local restaurant and was bringing the package to
15 one of them. Asked about the circumstances of
16 the package being sent to him, he said that he
17 was told by this friend that a package would be
18 mailed to him at his address and that he agreed
19 to let that happen because he wanted to help his
20 friend out. He would not tell the police who
21 this person was. Mr. Gosselin was pressed on
22 this issue during the interview with the police
23 but he maintained even if he was upset at his
24 friend for putting him in this position, he was a
25 loyal person and he would not "rat" on anyone.

26 When the package was seized in the vehicle
27 where Mr. Gosselin was arrested, it had not been

1 opened. There is no evidence that Mr. Gosselin
2 did anything with the package except transport
3 it. There is also no evidence that he stood to
4 make any kind of financial gain out of this whole
5 matter. The only evidence about his involvement,
6 which comes from his own statement, is that he
7 agreed to receive this package to do this
8 so-called friend a favour. The Crown concedes
9 that there is no evidence suggesting that
10 Mr. Gosselin's involvement was any more than
11 that. The only real issue at the trial was
12 Mr. Gosselin's knowledge of the contents of the
13 package and by their verdict, the jury decided
14 that Mr. Gosselin either knew or was willfully
15 blind to what was in that package. Those are the
16 circumstances of the offence.

17 I turn next to the circumstances of Mr.
18 Gosselin.

19 In addition to the submissions of counsel at
20 the sentencing hearing, I have the benefit of a
21 pre-sentence report that goes over Mr. Gosselin's
22 personal background and history. He is 23 years
23 old and he does not have a criminal record. As a
24 child, he had a difficult family life. His
25 mother was an alcoholic and had a number of
26 relationships with boyfriends who were either
27 abusive or violent or both. His mother

1 eventually overcame her addiction and has been
2 sober for many many years but there is no doubt
3 that Mr. Gosselin's circumstances growing up were
4 challenging. Yet despite some of the
5 difficulties in the family situation, Mr.
6 Gosselin's mother told the author of the report
7 that he was not a difficult child to raise. He
8 was a free-spirited, nice, and easy-going child.
9 The family moved to Yellowknife when Mr. Gosselin
10 was quite young and lived here for about nine
11 years. The family then moved to British
12 Columbia. Mr. Gosselin completed high school in
13 Nelson, BC. He then travelled around for a
14 number of years and came back to live in
15 Yellowknife just over two years ago. Here, he
16 developed a network of friendships and
17 connections and held various jobs.

18 The picture of Mr. Gosselin that emerges
19 from the pre-sentence report, from the
20 submissions of counsel, and from the three
21 letters of support filed at the sentencing
22 hearing is that notwithstanding some of the
23 struggles that he faced growing up, he is seen as
24 friendly, kind and generous person by those who
25 know him, someone who helps others when they are
26 in need.

27 I, just like the jury, saw the recording of

1 the police interview with Mr. Gosselin.
2 Admittedly this is not the best set of
3 circumstances in which to assess someone's
4 personality but I have to say, in that interview,
5 Mr. Gosselin did not come across as a hardened
6 criminal. He seemed upset about the situation
7 and scared about what the consequences to him
8 might be and those are not unreasonable things to
9 feel under the circumstances.

10 There is, as Crown counsel pointed out, an
11 inconsistency between what Mr. Gosselin said in
12 his statement to the police and what he told the
13 author of the pre-sentence report about how long
14 in advance he knew this package was coming. In
15 the statement to the police, which I have
16 reviewed in my deliberations, he talked about
17 being told about three weeks beforehand that this
18 package would be coming, and then hearing
19 sometime later that the package was in Edmonton
20 and would arrive soon. From the pre-sentence
21 report, he appears to have told the author of the
22 report that he knew nothing about this until just
23 a few days before the package arrived.

24 I do not make much of this inconsistency
25 other than to observe that maybe Mr. Gosselin,
26 even to this day, and while accepting
27 responsibility for this, is still to an extent

1 trying to distance himself from what happened and
2 minimize his role in it. But in any event, it is
3 clear from the pre-sentence report that he now
4 acknowledges that he should have asked more
5 questions and that he suspected there might be
6 something more to this.

7 Those are the circumstances of Mr. Gosselin,
8 the offender. So I now turn to the legal
9 principles that are engaged in sentencing
10 generally and more specifically in sentencing for
11 this type of crime.

12 The maximum sentence for trafficking in
13 cocaine is life imprisonment. That shows how
14 seriously the law makers in Canada view this
15 crime. As I said at the outset, sentencing is a
16 very individualized process but the Criminal Code
17 does provide a comprehensive framework in which
18 this process must take place. The Code sets out
19 what the principles and goals of sentencing are
20 at Section 718 and following sections. I am not
21 going to quote from the sections but I have
22 considered them.

23 The objectives of sentencing that I find
24 most relevant to this case are deterrence, which
25 is the need to discourage the offender and other
26 people from committing offences; denunciation,
27 which is the expression of society's disapproval

1 of the conduct; as well as the promotion of a
2 sense of responsibility in offenders and an
3 acknowledgment of the harm done to victims and to
4 the community.

5 Another objective that cannot be overlooked
6 because of Mr. Gosselin's young age is the goal
7 of assisting him in his rehabilitation.

8 Another important sentencing principle that
9 is engaged in this case is the principle of
10 parity; that is, that similar offences committed
11 by similar offenders should lead to the
12 imposition of similar sentences. There should
13 not be wide and unexplainable disparities between
14 sentences imposed to people who have similar
15 circumstances and who have committed similar
16 offences. Obviously with all of the variables at
17 play, it is very rare to find two cases that are
18 identical or two offenders who have identical
19 circumstances.

20 Counsel have filed several cases from this
21 jurisdiction dealing with charges of trafficking
22 in cocaine, and I have reviewed them all
23 carefully. Just for the benefit of the record, I
24 will just say what those cases are.

25 I have considered the cases of R. v. Hudson,
26 [1997] N.W.T.J. No. 122 (N.W.T.SC); R. v.
27 Steiner, [1999] N.W.T.J No. 131 (N.W.T.SC);

1 R. v. Chamberlin, [2000] N.W.T.J. No.25 (N.W.T.SC);
2 R. v. M.(D.E.), [2002] N.W.T.J. No. 106 (N.W.T.SC);
3 R. v. Huynh,[2003] N.W.T.J. No. 26 (N.W.T.SC);
4 R. v. Turner, [2006] N.W.T.J. No. 76 (N.W.T.SC);
5 R. v. Draskoczi, [2008] N.W.T.J. No. 67
6 (N.W.T. Terr.Ct); R. v. Fabien, [1999] N.W.T.J.
7 No. 100 (N.W.T.SC); R. v. Toth, [2005] N.W.T.J.
8 No. 101 (N.W.T. Terr.Ct); R. v. Hajcik, [2007]
9 N.W.T.J. No. 85 (N.W.T. Terr.Ct); R. v. Gellenbeck
10 [2007] N.W.T.J. No. 76 (N.W.T.SC); R. v. Simms
11 2003 N.W.T.SC 15; R. v. Larabie 2002 N.W.T.SC 28;
12 and R. v. Dawe 1996 N.W.T.SC [CR 03004].

13 These cases demonstrate a wide range of ways
14 that the offence of trafficking can be committed.
15 It can be done by selling drugs on the street at
16 the gram level. It can be done by buying larger
17 quantities and then dividing them for resale. It
18 can be done by operating a drug business out of a
19 crack house. It can be done facilitating sales
20 by helping putting customers in contact with
21 traffickers. It can be done by being a courier,
22 transporting large quantities of drugs from one
23 point to another or by holding large quantities
24 of drugs for someone else.

25 The cases also show that people traffic for
26 all sorts of different reasons. Some offenders
27 are addicts who traffic to support their habits.

1 Others are not addicts at all; they simply do it
2 to make money - sometimes as a regular way of
3 making money, sometimes as a one-off. Others do
4 it to do friends a favour.

5 What is common to all of the cases filed is
6 how the Courts have approached sentencing of
7 cocaine traffickers and what is said about the
8 impact of this crime, which is far far from being
9 a victimless crime. Cocaine trafficking has had,
10 and continues to have, a devastating impact on
11 our communities. It is an extremely serious
12 problem. It is a very lucrative business run by
13 people who are prepared to enrich themselves by
14 preying on other people who, for whatever reason,
15 become addicted to the drug. Those who do become
16 addicted to this drug often see their lives
17 rapidly unravel. There are several examples of
18 this in the community of Yellowknife and other
19 communities in the Northwest Territories. So it
20 has consistently been said by our Courts, and
21 others, that in dealing with these cases, the
22 sentencing objectives that are to be given the
23 most weight are deterrence and denunciation.

24 In this case, another important objective is
25 promoting a sense of responsibility in offenders
26 for the harm done to the community because some
27 people, who like Mr. Gosselin become involved

1 peripherally in this activity, must be
2 accountable for the part they play because it is
3 such a destructive activity. There are crimes
4 that otherwise law-abiding people would never
5 even think of committing just to do a favour for
6 someone else. I doubt very much that if Mr.
7 Gosselin's acquaintance had asked him to go beat
8 someone up or damage someone's property as a
9 favour that he would have agreed to do it. Yet a
10 surprising number of otherwise law-abiding people
11 agree to facilitate the commission of the offence
12 of drug trafficking. Maybe it is because it is
13 easy for some people to lose sight of the harm
14 that comes from this type of crime. Mr. Gosselin
15 said in his statement to the police that he was
16 against cocaine, that he has lost friends to it,
17 that he knows it is a destructive drug. He said
18 to the author of the pre-sentence report that he
19 feels like cocaine has "corrupted the town of
20 Yellowknife". He is right. Yet because of his
21 willingness to allow his name and address to be
22 used for this delivery, if the police had not
23 been able to intercept this package, a
24 significant amount of cocaine, the very drug he
25 despises, would have hit the streets of
26 Yellowknife. People would have bought it. They
27 may have broken into homes to get money to buy

1 it. They may have assaulted someone on the
2 street if they were desperate enough to get it.
3 They might have, as some did in Yellowknife just
4 a few years ago, tied people up in their own
5 homes terrorizing them to get their bank cards
6 and pin numbers to access money to buy the drugs.
7 Some of these people are the ones who would allow
8 long-time respectable business to be destroyed or
9 allow their families to be destroyed or neglect
10 their own children to the point that those
11 children have to be apprehended by Social
12 Services and put in foster care. Or someone may
13 have ended up dead and their half-burned body
14 left at the Yellowknife River; because that too
15 has happened in this city in circumstances
16 involving the use and sale of cocaine. Those are
17 the types of consequences that might have come
18 from those 146.5 grams of cocaine hitting the
19 Yellowknife streets.

20 I don't say this to be melodramatic. I say
21 it because it simply is reality - the reality
22 this Court and the Territorial Court hear about
23 on a regular basis about the impact of this drug
24 in our communities. Mr. Gosselin and other
25 people who, like him, make the wrong choice when
26 approached to play even a limited role in this
27 activity become an integral part of this serious

1 problem. You don't have to be selling to be part
2 of the problem. You don't have to be making
3 money.

4 I agree with what the Crown prosecutor said
5 in her submissions. Couriers, or people who
6 facilitate the movement of these substances, are
7 all part of the chain that allows this to
8 continue. Without those willing to act as
9 runners or willing to allow their good name to be
10 used in the hopes that it will avert suspicion,
11 people more closely involved with the selling and
12 with the making of the money would run a much
13 higher risk of getting caught.

14 Unfortunately some of the features about Mr.
15 Gosselin - a young man with no criminal record,
16 seen by others as basically an easy-going nice
17 guy - matches the profile of the types of people
18 that are asked often to be couriers or are
19 otherwise used in the movement of large
20 quantities of illegal substances. For this
21 business to thrive in Yellowknife, the cocaine
22 first has to be brought in here from somewhere
23 else. This has to be done with a minimal risk of
24 detection so using a young person who does not
25 have a record and is not involved in criminal
26 activity, someone who has a good reputation, is
27 an ideal way to do it. And even Mr. Gosselin

1 seem to recognized this in his statement when he
2 said that this was probably why these people
3 picked him because he would not be likely to be
4 involved in this type of thing.

5 One thing that does trouble the Court is
6 that Mr. Gosselin has said in no uncertain terms
7 in his statement to the police that he despises
8 cocaine. As I said before, that he has lost
9 friends to it, and knows the harm that it can
10 cause. He said that if he had known that this
11 was what was in the package he would have
12 destroyed it and yet, supposedly out of loyalty,
13 he would not cooperate in identifying those who
14 set this whole thing up. I realize there might
15 be reasons for that other than the ones Mr.
16 Gosselin gave. I realize there may be other
17 things going on and I cannot speculate about
18 those matters because they are not before the
19 Court. But I will just say if Mr. Gosselin's
20 motivation was loyalty to his so-called friend,
21 it is highly misplaced loyalty. There is nothing
22 honorable about protecting those who involve
23 themselves in this type of activity.

24 Both counsel acknowledged in their
25 submissions that the only response that the Court
26 can have when people are caught doing this is to
27 impose significant jail terms, even when the

1 offender has no prior record, even when the
2 offender is a young person, even when the
3 offender seems to be a fundamentally nice person.
4 Because sentencing generally, and especially
5 sentencing in serious matters like this, is not
6 just about the offender before the Court. This
7 is not just about Mr. Gosselin. It is about the
8 community at large. It is about others who may,
9 like him, be asked to do someone a favour or who
10 might be tempted by the prospect of making easy
11 quick money. The Court cannot single handedly
12 stop this. That is obvious from the series of
13 cases over the last decade, and more, in the
14 Northwest Territories, where offenders have been
15 sentenced to jail terms in cocaine trafficking
16 cases. Courts keep imposing jail terms and yet
17 the activity continues to happen. All the Court
18 can do is do its part and continue to send a
19 deterrent denunciatory message.

20 The question that I must answer today is
21 just how significant should this jail term be. I
22 have given this question considerable and anxious
23 thought.

24 Defence counsel argues that a sentence of 18
25 months to two years less a day would achieve the
26 goals of deterrence and denunciation while also
27 addressing rehabilitation. The Crown argues that

1 the range of sentence for this offence is between
2 two and three years and asked essentially that I
3 impose a sentence in the middle of that range.

4 I think the Crown's assessment about this
5 range is fair. It is certainly not overstated.
6 To illustrate this, I refer to the case of
7 R. v. Hernot [2006] N.W.T.J. No. 46, a decision
8 of this Court which was not referred to by
9 counsel but that I think Mr. Gosselin and others
10 need to be aware of.

11 Mr. Hernot was convicted after trial in
12 trafficking in cocaine. He had also pleaded
13 guilty to trafficking in marijuana. What he had
14 done was transport to Yellowknife 7 kilos of
15 marijuana and 350 grams of cocaine. He had no
16 criminal record and he was in his early 20s. He
17 apparently did this because he needed money. He
18 was sentenced to four years in the penitentiary.
19 Four years. Granted, there are some differences
20 between his case and this one. Mr. Hernot
21 transported two types of drugs and in larger
22 quantities, and there was evidence he did this to
23 make money. But still, this case shows, I think,
24 that the range that the Crown has put forward is
25 not exaggerated.

26 That said, I agree with counsel that the
27 Hudson case, one of the ones that were filed, is

1 the one that is most similar to this one.

2 Mr. Hudson was 20 years old. He transported
3 nine ounces of cocaine - so a little bit more
4 than what was seized in this case. He did not
5 apparently stand to make a profit out of it. He
6 pleaded guilty and was sentenced to 16 months in
7 jail. If I consider that guilty pleas generally
8 bring about a reduction of about one-third in the
9 sentence, and assuming this is the type of credit
10 Mr. Hudson got for his guilty plea, it means a
11 sentence after trial would have been in the range
12 of a two-year sentence. The Hudson case is
13 somewhat dated - it is from 1997. We knew then
14 that cocaine had devastating impacts on the
15 community but now we have another 11 years or so
16 of demonstration in the courts of how serious
17 this problem has become. It is not getting any
18 better. There certainly is no reason to reduce
19 the range of sentences imposed for these types of
20 crimes. If anything, there would be cause to
21 increase it.

22 I want to address some specific factors that
23 counsel have made reference to in their
24 submissions. The first is the remand time.

25 A warrant was issued for Mr. Gosselin's
26 arrest after he failed to appear at the start of
27 the trial the week before jury selection for a

1 voir dire that had been scheduled into the
2 admissibility of his statement. He turned
3 himself in and after that appearance agreed to
4 remain in custody. He remained in custody as
5 well after the jury found him guilty. It's true
6 he never applied for release. But in all candor
7 I must say that had he applied for release, I
8 would have been very reluctant to grant him
9 release after his failure to appear and I would
10 also have been very reluctant to release him
11 after his conviction.

12 How much credit a person gets for remand
13 time is discretionary. Under the circumstances
14 of this case, I think the most credit that Mr.
15 Gosselin should get for his time on remand is
16 credit calculated on a ratio of 1-to-1.5. That
17 is simply a recognition that a person on remand
18 does not earn remission and does not benefit from
19 the other legislative reductions in sentences
20 that are available to serving prisoners. But in
21 my view this is not a case where credit on a
22 two-for-one ratio should be given. So for the
23 time Mr. Gosselin has spent on remand, just over
24 40 days, I think he should be given credit for
25 two months.

26 The other submission that was made by
27 defence counsel is that although Mr. Gosselin

1 obviously cannot get the benefit of having
2 pleaded guilty to this charge, I should take into
3 account the context of the trial, more
4 specifically that it was run on one issue, the
5 issue of knowledge.

6 Mr. Gosselin exercised his right to have a
7 trial, but he made a considerable number of
8 admissions. Based on what I heard, if the Crown
9 had been required to prove continuity of the
10 exhibits for example, many more witnesses would
11 have had to have been called, including some from
12 outside of this jurisdiction. Similarly, had the
13 voir dires into the admissibility of Mr.
14 Gosselin's statement proceeded as a contested
15 hearing, several police officers would have had
16 to have been called that were not required
17 because Mr. Gosselin waived the voir dire before
18 we started the trial. So because of Mr.
19 Gosselin's admissions about these issues and
20 other issues, the trial was shortened
21 considerably. Significant expenses associated to
22 calling additional witnesses were avoided and the
23 issue was much more streamlined for the jury.
24 And I agree with defence counsel that it is
25 something that should be taken into account in
26 assessing what a fit sentence is for this crime.

27 As I have said, I agree that the range

1 identified by the Crown is appropriate. I also
2 think that the Crown is being very fair in saying
3 that a fit sentence for this crime, or a starting
4 point, should be one in the middle of the range
5 that the Crown has identified. When the Crown
6 talked about the lower half of the range and the
7 higher half of the lower end, that really means
8 that the Crown is saying that a sentence in the
9 range of two and a half years would be
10 appropriate.

11 If I start there and I give Mr. Gosselin
12 credit for two months because of the remand time,
13 it would bring the sentence down to the range of
14 28 months. If I then take into consideration the
15 context in which the trial was run, the manner in
16 which Mr. Gosselin instructed his counsel to run
17 the trial, and the admissions that he made that
18 shortened the trial and made it less time
19 consuming and costly, that would probably place
20 the sentence to be imposed still in the
21 penitentiary range but closer to the bottom of
22 the two to three-year range suggested by the
23 Crown. Bringing the sentence further down to
24 enable Mr. Gosselin to serve it in a territorial
25 facility in this community, where he evidently
26 still has support and friends, would no doubt be
27 better for him than being sent to a penitentiary

1 in southern Canada. It would also allow the
2 Court to add a probation period to his sentence
3 so that after his time in custody he has the
4 benefit of supervision and support from Probation
5 Services as he undertakes his reintegration in
6 the community, whether it is Yellowknife or
7 somewhere else. On the other hand, there is no
8 doubt that a sentence in the penitentiary range
9 would send precisely the strong deterrent and
10 denunciatory message the Court is trying to send.
11 The fear of receiving a penitentiary term may be
12 for some a powerful deterrent. But I must bear
13 in mind that the sentence of the Court cannot
14 ignore the objective of rehabilitation when
15 dealing with a youthful first offender.

16 So on balance, and after some hesitation and
17 much thought, I have concluded that in all of the
18 circumstances it is appropriate to keep the jail
19 term in the territorial range and have it be
20 followed by a lengthy probation order with both
21 punitive and rehabilitative elements to it.

22 Stand up, please, Mr. Gosselin.

23 Mr. Gosselin, on the charge of trafficking
24 in cocaine, it is the sentence of this Court that
25 you be sentenced to a jail term of two years less
26 one day. That sentence will be followed by a
27 period of probation of three years. That's the

1 maximum length that I can impose under the law.
2 This means that for three years after your
3 release, you will be under the supervision of a
4 probation officer. The conditions of the order
5 will be that you keep the peace and be of good
6 behaviour, that you appear before the Court when
7 you are required to do so, that you report to
8 Probation Services in Yellowknife within 48 hours
9 of your release and thereafter as they require
10 you to report, that you advise your probation
11 officer of any changes in your address or
12 employment, that you take counselling when and as
13 directed by your probation officer, and that you
14 perform within the first 18 months of that
15 probation 240 hours of community service work.
16 That's also the maximum number of community
17 service work that I can order. If you do decide
18 to relocate somewhere else after your release,
19 you will have to speak to your probation officer
20 and make arrangements for this order to be
21 transferred to the location where you will live
22 because it is very important that this order be
23 complied with.

24 You can sit down now.

25 THE ACCUSED: Thank you, Your Honour.

26 THE COURT: Now in addition to this, there
27 will be an order under Section 109 of the

1 Criminal Code. It is a firearms prohibition
2 order which is mandatory in a case like this.
3 The order will begin today and continue for a
4 period of ten years after Mr. Gosselin's release.

5 Does your client own any firearms, Mr.
6 Rideout?

7 MR. RIDEOUT: No.

8 THE COURT: All right, so any firearms
9 will be surrendered forthwith.

10 There will be an order for the destruction
11 of the drugs seized.

12 During submissions, the Crown advised that
13 there was some money seized from Mr. Gosselin and
14 although there was initially reference to an
15 application for forfeiture of that money, the
16 Crown has withdrawn that application. So that,
17 and any other items seized from Mr. Gosselin
18 which he is lawfully entitled to possess, are to
19 be returned to him.

20 On that note, pursuant to Section 737 of the
21 Code, Mr. Gosselin will have to pay a Victim of
22 Crime surcharge in the amount of \$100. That is
23 an amount that is set by the Criminal Code that
24 can be imposed when a person is convicted of an
25 indictable offence, which this is. I will give
26 you 30 days to pay that, Mr. Gosselin. Since you
27 will be getting some money back, that should not

1 be a problem. This money goes into a fund that
2 is used to provide assistance to Victims of
3 Crime, and as I have said already, cocaine
4 trafficking is not a victimless crime and so for
5 that, I do not see why I should be waiving
6 payment of the surcharge in this case.

7 The last issue is the application by the
8 Crown for a DNA order. This is a secondary
9 designated offence and Section 487.051 of the
10 Criminal Code applies to it. It says that the
11 Court may, on application by the Crown, make this
12 order if the Court is satisfied that it is in the
13 best interests of the administration of justice
14 to do so. The section goes on to say that the
15 Court is to consider the offender's criminal
16 record, whether they have been convicted
17 previously of a designated offence, the nature of
18 the offence, the circumstances of its commission,
19 and the impact that the order would have on the
20 offender's privacy. That provision is
21 permissive, unlike the one that deals with
22 primary designated offences.

23 Parliament has created basically three
24 categories of offences for the purposes of these
25 applications. For some primary designated
26 offences, the Court does not have any discretion
27 and must make the order in every case. For

1 another group of primary designated offences, the
2 Court must make the order unless the offender
3 satisfies the Court that it should not be made.
4 And for the third category, secondary designated
5 offences, which this offence is, the Crown has to
6 apply for the order and the Court has to consider
7 the test that I have already referred to.

8 This section has been interpreted to mean
9 that as the party applying for the order, the
10 Crown bears an evidentiary burden to demonstrate
11 that it is in the best interests of justice to
12 make the order.

13 There was a case called R. v. Hendry (2001),
14 161 CCC (3d) 275 (Ont CA). In the same case, the
15 Ontario Court of Appeal provided guidance on how
16 Courts should approach the assessment of whether
17 it is in the best interests of justice to make
18 the order. The Court talked about the objectives
19 of the legislation, the minimal intrusiveness in
20 most cases of the procedure of collecting a
21 person's DNA and concluded that it will usually
22 be in the best interests of justice to make the
23 order.

24 It is also clear that these types of orders
25 are sometimes sought in trafficking cases. There
26 are examples in the case law of situations where
27 the order was granted and cases where the

1 application was denied. Just as a few examples,
2 I have reviewed the cases R. v. Boskoyous [2008]
3 A.J. No. 1159 (Alta Ca) (QL); R. v. Smith [2008]
4 MBQB 128; R. v. Ali [2008] B.C.J. No. 980 (QL);
5 and R. v. Harris [2008] O.J. No. 1976 (QL). I
6 note that although most of the cases filed at
7 this sentencing hearing involve sentencings for
8 cocaine trafficking in matters that occurred
9 after the DNA legislation came into effect, there
10 does not appear to be any of these cases where
11 the DNA order was made. It is not that the
12 application was made and denied by the Court. In
13 fairness, it seems to be more situations where
14 the application was not made because the
15 decisions do not talk about DNA orders at all.

16 The submissions of the Crown in support of
17 its application in this case were focused on the
18 seriousness of the offence of trafficking in
19 cocaine, and I do acknowledge that this is a
20 consideration. But the Code provision also
21 mandates consideration of a person's record and
22 whether they have been convicted of a designated
23 offence before. It also mandates consideration
24 for the circumstances of the commission of the
25 offence. So under the circumstances, and even
26 though I accept that the level of intrusiveness
27 of the collection of blood for DNA sampling is

1 minimal, I am not satisfied that the order should
2 be made in this case because Mr. Gosselin has no
3 record. And although because he is convicted of
4 trafficking, the circumstances of this case are
5 not as serious as in several others that were
6 filed and where no DNA order was made. So for
7 those reasons, I deny the Crown's application for
8 a DNA order.

9 Is there anything, counsel, that I have
10 overlooked? Ms. Walsh?

11 MS. WALSH: Your Honour, just the return
12 of the exhibits at the conclusion of the appeal
13 period.

14 THE COURT: So the drugs are to be
15 destroyed. Other exhibits I will leave it to
16 either be returned to their lawful owners or
17 destroyed.

18 MS. WALSH: Correct, thank you.

19 THE COURT: Anything further else from
20 you, Mr. Rideout?

21 MR. RIDEOUT: Nothing further, Your Honour.

22 THE COURT: Before we close court, I want
23 to commend you both, counsel, for your conduct of
24 this case.

25 And Mr. Gosselin, I am sure there are people
26 who will think that I should have actually
27 imposed a much longer sentence on you today,

1 something more in the higher end of the range
2 that the Crown was suggesting, maybe even more.
3 I read the pre-sentence report more than once,
4 and I read the three letters of support more than
5 once. And it's clear to me that there are
6 people, who know you, who think that you are
7 basically a good person and that this was really
8 truly out-of-character for you. And only time
9 will tell. And when you are released from
10 custody, it will be up to you to prove these
11 people right. And it is the Court's hope that
12 you will prove these people right and at the same
13 time prove the Court right for having exercised
14 restraint today and for not having sent you to
15 the penitentiary.

16 THE ACCUSED: Thank you, Your Honour.

17 THE COURT: Close court.

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

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

