

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

BRAD WARREN BAKER

Transcript of the Oral Reasons for Sentence delivered by
The Honourable Justice L.A. Charbonneau, sitting in
Yellowknife, in the Northwest Territories, on the 30th day
of November, A.D. 2009.

APPEARANCES:

Mr. G. Boyd: Counsel for the Crown

Mr. J. Stuffco: Counsel for the Accused

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

1 THE COURT: Brad Baker has pleaded guilty
2 to a charge of possession of cocaine for the
3 purposes of trafficking, and it is now my
4 responsibility to sentence him for that crime.

5 At the time this offence was committed,
6 Mr. Baker owned and operated the restaurant
7 located at the Yellowknife airport. He agreed to
8 store some drugs in the restaurant's storage area
9 in the basement of the airport. An acquaintance
10 or friend of his had asked him to do so, and what
11 I have heard this morning was that Mr. Baker was
12 supposed to receive \$5,000 in return for doing
13 this.

14 Mr. Baker was caught because the RCMP
15 received information that there was something
16 suspicious hidden in the storage area. They went
17 and looked. They found 1,016 grams of cocaine
18 hidden in the ceiling of the storage room. They
19 replaced the package that was there with a decoy
20 package and set up video surveillance in the
21 area. So when Mr. Baker went to retrieve the
22 package, he was essentially caught on film and
23 identified relatively easily afterwards.

24 Mr. Baker was arrested and he was
25 cooperative. He provided a warned statement
26 where he admitted what he had done. He
27 identified the man that he had agreed to store

1 the drugs for. That person was arrested and
2 provided information that confirmed several of
3 the things that Mr. Baker had told the police. I
4 was told this morning that this second person was
5 also charged and that his matter is still pending
6 in the courts.

7 Mr. Baker was charged, and this was back in
8 December of last year, for this offence. Since
9 then he has been at large on process with
10 conditions, which I am told he has respected and
11 abided by during that time. Sometime in the late
12 spring, he relocated to Kelowna and he has found
13 employment there.

14 He has extensive support from his family and
15 from other community members. Several of them
16 wrote letters to the Court which were filed ahead
17 of time - by this, I mean ahead of this hearing -
18 and have now been made exhibits on the sentencing
19 hearing, and I have read all of those letters
20 very carefully. There are also a number of
21 people who have attended court today to show
22 their support to Mr. Baker, who I think is very
23 fortunate to have such wide support and loyalty
24 from people in his life.

25 Based on the submissions I have heard and on
26 the reference letters that I have read, it does
27 seem very surprising that Mr. Baker should find

1 himself entangled in something like this. The
2 word "perplexing" was used both by the Crown
3 prosecutor and by Mr. Baker's counsel, and it
4 seems to be a very fitting word.

5 By all accounts, Mr. Baker has worked
6 steadily and has been a productive member of
7 society all his life. Over the last few years,
8 he had established himself and his business here
9 in Yellowknife. He is described by people as a
10 hard-working, kind, and generous person. So, in
11 many ways, he is the last person anyone would
12 expect to become involved in any way in as
13 destructive and as reprehensible an activity as
14 the cocaine trade.

15 Now he has lost a lot - his reputation, his
16 business - and he has caused his loved ones a lot
17 of anguish and disappointment. I have no doubt
18 that this has been a very immediate and stern
19 punishment indeed for him and that it has had
20 some deterrent impact on him. But, of course, as
21 this court has said time and again, in sentencing
22 people for this type of crime, the sentencing is
23 not just about the person who is before the
24 Court. This sentencing is not just about
25 Mr. Baker even though he is obviously at the
26 centre of it.

27 The Criminal Code sets out the objectives of

1 sentencing and sentencing principles that provide
2 a legal framework within which all sentencing
3 decisions must be made. The most important
4 sentencing principles in cases like this are
5 deterrence and denunciation, and that is why even
6 if, as one can only hope, Mr. Baker has learned
7 his lesson and will never think of doing anything
8 like this again, the Court still has to think
9 about the message that must be sent to others
10 about the consequences of getting involved in
11 this kind of activity. That is because drug
12 trafficking is a very lucrative business. Those
13 who do it make a lot of money from it and need
14 the involvement of people at all sorts of levels.
15 They need people to act as couriers, they need
16 people to stash their drugs safely, to avoid
17 detection, and often they try to use as couriers
18 and stashers people who have no criminal records,
19 who are respectable members of the community,
20 people who are not likely to come under any kind
21 of suspicion. People just like Mr. Baker.

22 When someone agrees to take any part in that
23 chain that takes this very dangerous drug from
24 the suppliers to the users, they do become part
25 of the problem and they must be held accountable.

26 It has been argued that Mr. Baker did this
27 to help his friend or acquaintance. There is

1 more to it than that in this case because I did
2 hear that he stood to make some money. It
3 probably does not seem like a lot of money now
4 considering what the consequences have been. At
5 the time, though, it probably seemed like it
6 could be quick and easy money.

7 The blameworthiness of anyone who gets
8 involved in this kind of activity is high. By
9 agreeing to play this part and hide this large
10 quantity of cocaine, Mr. Baker became a
11 participant in an activity that has caused and
12 continues to cause complete devastation in our
13 communities, an activity that literally sometimes
14 destroys lives.

15 People do traffic drugs for all sorts of
16 reasons. Some do it out of pure greed and are
17 prepared to make a fortune on it no matter what
18 devastation it causes. Others become addicted
19 themselves and turn to trafficking to support
20 their addictions. Others do it for the chance to
21 make quick money, or sometimes to do someone a
22 favour, sometimes a combination of both. Those
23 who do that, may do it in part because they still
24 think of drug trafficking as not such a serious
25 thing perhaps, not such a serious crime.

26 I fully expect that even for \$5,000 and even
27 as a favour to a friend, there are many crimes

1 that Mr. Baker would never have even considered
2 committing. For example, he probably would never
3 agree to go and beat up someone or break into a
4 house or steal a person's money to do a favour
5 for a friend or for \$5,000. Yet he agreed to
6 stash over \$100,000 worth of a destructive and
7 highly addictive drug, a drug that was destined
8 to be sold in his community and that would - not
9 could but would - have caused a lot of
10 significant harm if it had hit the streets.

11 Unfortunately, this court has had many
12 opportunities to comment about the destructive
13 impact that the cocaine trade has had in our
14 communities, and I think some of those things
15 must indeed be said in each and every case even
16 though it becomes, sadly, repetitive. I could
17 have found quotes to that effect in every single
18 case that counsel filed, and I will not quote
19 from all of them, but I will simply read briefly
20 from two of them. The first from R. v. Mudaliar,
21 at paragraph 8, where this court said:

22 As has been said by the Court on
23 many occasions, the illegal cocaine
24 trade in Yellowknife has been like a
25 scourge or a plague that has
26 infested the very fabric of our
27 community in recent years. Those

1 who are engaged in this illegal
2 commercial enterprise are preying
3 upon the vulnerable members of the
4 community who are addicted to
5 cocaine.

6 That was a case from 2007.

7 To similar effect, the Court said in R. v.
8 Desjarlais, at paragraph 15 -- and part of this
9 quote refers back to a case from the year before.

10 The Court said:

11 Cocaine trafficking has had a
12 devastating effect on the citizens
13 of this community in recent years,
14 whether they are addicts, family
15 members or dependents of addicts,
16 recreational users, victims of
17 violence, or just innocent property
18 owners. I am going to repeat again
19 what has been said in another recent
20 case in this courtroom. (R. v.
21 Turner [2006] N.W.T.J. No. 76):

22 The illegal trade in cocaine
23 and crack cocaine in Yellowknife
24 has had a devastating effect on
25 the people and on the social life
26 of our community. We know this
27 because of the many cases that

1 come before the Courts where we
2 see the snowball effect of the
3 commission of crimes in this
4 community. We see thefts, break
5 and enters, assaults, domestic
6 violence, and we have seen
7 homicides, all related to cocaine
8 addiction. We have seen broken
9 families. We have seen destroyed
10 lives.

11 It has been said many times
12 in this courtroom that the
13 illegal cocaine trade is like a
14 plague which has infested the
15 social fabric of our community.
16 Those who are involved in the
17 supply and sale and trafficking
18 of cocaine are like vultures or
19 predators who are preying upon
20 those weak members of the
21 community who are addicted to
22 this drug. The traffickers are
23 doing this presumably for profit,
24 for money. They, apparently,
25 have no scruples about preying
26 upon vulnerable people. For this
27 reason alone, they ought to be

1 punished. They are doing so even
2 though there is a risk that they
3 will end up in jail for a
4 substantial period of time.

5 And although I will not read it, the Court said
6 some similar things in R. v. Gosselin at
7 paragraphs 28 and 29.

8 Both in R. v. Gosselin and R. v. Desjarlais,
9 the Court referred to specific instances of
10 serious crimes committed in this community over
11 the last few years where there was a direct
12 connection to crack cocaine. One home invasion
13 where people were tied up and terrorized, forced
14 to give their bank card code numbers by people
15 who were trying to get money to support their
16 cocaine addiction was one of the cases that was
17 talked about. Another was a well publicized
18 homicide that occurred a few years ago where
19 someone's body, partially burned, was found near
20 the Yellowknife River, and as the trial
21 proceeded, it became very clear that everything
22 about that case was connected to the cocaine
23 trafficking underworld. And the examples just
24 continue on and on.

25 All this to say that this is a very serious
26 offence, and even Mr. Baker's relatively
27 peripheral level of involvement being what it is,

1 the level of moral blameworthiness that attaches
2 to this type of conduct is considerable because,
3 as I have already said, anybody who chooses to
4 take part in this is an essential part of the
5 long chain that allows this activity to continue.

6 I have talked about the aggravating features
7 or the things that made this type of offence more
8 serious, but I must also not lose sight of the
9 mitigating factors. The first one obviously is
10 the guilty plea, and based on what I have heard,
11 I am satisfied that it is a guilty plea that is
12 deserving of the maximum credit even though it
13 comes a certain number of months after the
14 events. Mr. Baker admitted his involvement in
15 this immediately when he was talked to by the
16 RCMP and a statement was taken. He chose not to
17 have a preliminary hearing, which has saved
18 resources and time and, also, indicates, as his
19 counsel has said and as the Crown as
20 acknowledged, that early on he wanted to take
21 responsibility for this. It could be argued that
22 he was almost inescapably caught given that the
23 police had him on film retrieving the decoy
24 package. But the Court knows that some people,
25 even in the face of very, very compelling
26 evidence, will try anything to avoid
27 responsibility or will wait until the very last

1 minute before acknowledging their guilt, and that
2 is not what Mr. Baker did and that is to his
3 credit. It is also to his credit that he
4 cooperated with the authorities. He had the good
5 sense of identifying the other person who was
6 involved and did not try to protect this person,
7 and his cooperation is a factor to consider.
8 And, also, obviously I have taken into account
9 his lack of any prior record and his previous
10 achievements and good character as was abundantly
11 referred to in the letters that were submitted to
12 the Court and in the things that his counsel said
13 on his behalf this morning.

14 I listened to Mr. Baker this morning when he
15 addressed the Court directly, but I also observed
16 him while submissions were being made on his
17 behalf, and I am satisfied and I accept that he
18 is truly remorseful for what he has done, that he
19 realizes the harm it has caused to himself, but
20 also to his family and to his friend. What I
21 hope is that he has also thought, and will
22 continue to think, about where that kilogram of
23 cocaine would have ended up had the police not
24 intercepted it. Who might have bought some and
25 tried it for the first time, become hooked and
26 gotten caught in that downward spiral we so often
27 hear about; which businesses or homes might have

1 been broken into by someone trying to access
2 money to buy the drugs, or who might have been
3 assaulted right on the street by someone who was
4 even more desperate to get money to buy the
5 drugs; which children might have been neglected
6 because their parents were caught in that
7 downward spiral; who might have ended up dead
8 because of some of these drugs. Those are the
9 things Mr. Baker, I hope, will think about;
10 things that anyone thinking of having any
11 involvement with this kind of activity should be
12 thinking about.

13 The question in the end is, What is a fit
14 sentence for this offence? And specifically in
15 this case, the question is whether the joint
16 submission that has been made by counsel is
17 reasonable.

18 As a starting point, and counsel mentioned
19 this this morning, people who get involved with
20 this type of crime and with this quantity of
21 drugs can expect to face a penitentiary sentence.

22 In this case, the lawyers have suggested
23 that the sentence can be kept in the relatively
24 low range of the penitentiary range, and they
25 suggested a term of imprisonment of two and a
26 half years.

27 The law is clear that a joint submission

1 must be given careful attention by a sentencing
2 judge. Counsel in this case have been thorough
3 in explaining how and why they arrived at this
4 position, and I am satisfied that a lot of
5 thought has gone into arriving at this position,
6 and if it is not an unreasonable position or one
7 that would bring the administration of justice
8 into disrepute, then it should be followed.

9 There is no question that a person caught
10 with this quantity of cocaine could be sentenced
11 to a jail term much longer than two and a half
12 years, but given the overall circumstances that I
13 have heard about, including the mitigating
14 factors and the fact that I am presented with a
15 joint submission, I do not think that the
16 suggested sentence is unreasonable or outside the
17 range and I will, for that reason, go along with
18 the suggestion of counsel.

19 For an offence like this, it is also
20 mandatory that I make a firearms prohibition
21 order pursuant to Section 109 of the Criminal
22 Code. The prohibition will commence today and it
23 will end ten years after Mr. Baker's release from
24 custody. So if there are any firearms that he
25 owns or possesses, those should be surrendered
26 forthwith. I will also say now that because of
27 the length of the sentence I am about to impose,

1 I am not going to impose a victim of crime
2 surcharge because I am satisfied that it would
3 result in some hardship.

4 Mr. Baker, can you stand, please.

5 Mr. Baker, for this crime of possession of
6 cocaine for the purpose of trafficking, as I have
7 said, I am going to agree with the suggestion
8 that the lawyers made. I am going to sentence
9 you to a term of imprisonment of two and a half
10 years. You can sit down.

11 You have a lot of support, Mr. Baker. I
12 assure you that makes you a lot luckier than many
13 other people who come to the Court to receive
14 their sentences. You are lucky that so many
15 people have faith in you, and from what you have
16 said this morning, I think you know this and you
17 are grateful for it. So the Court's hope is that
18 you will prove yourself worthy of the support and
19 you will not let these people down who still
20 believe that you can continue on the path you
21 were on before this happened.

22 Counsel, do you require an order to deal
23 with exhibits or anything else?

24 MR. BOYD: Don't believe so, Your Honour.
25 Court's indulgence.

26 No, Your Honour; I don't believe so.

27 THE COURT: All right. Well, before we

1 close court, Counsel, I want to thank you both
2 for your submissions, and the materials that were
3 filed were very helpful. Mr. Baker, good luck to
4 you. Close court.

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8 Certified Pursuant to Rule 723
9 of the Rules of Court

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11 Jane Romanowich, CSR(A), RPR
12 Court Reporter
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