

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

KYLE MATTHEW BESSETTE

Transcript of the Reasons for Sentence delivered by The Honourable Justice V.A. Schuler, sitting in Yellowknife, in the Northwest Territories, on the 27th day of November, A.D. 2013.

APPEARANCES:

Ms. K. Lakusta: Counsel for the Crown

Ms. C. Wawzonek: Counsel for the Accused

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

1 MS. LAKUSTA: Good afternoon, Your Honour.
2 MS. WAWZONEK: Good afternoon, Your Honour.
3 THE COURT: Good afternoon. Is there
4 anything that Crown counsel would like to address
5 before I sentence, Mr. Bessette?
6 MS. WAWZONEK: No, Your Honour. Thank you.
7 MS. LAKUSTA: No thank you.
8 THE COURT: All right.

9 Kyle Matthew Bessette has been convicted of
10 trafficking in cocaine, contrary to Section 5(1)
11 of the Controlled Drugs and Substances Act. He
12 has admitted in an Agreed Statement of Facts,
13 filed as Exhibit 1 in these proceedings, that on
14 November 20, 2010, outside the Raven Pub here in
15 Yellowknife, he sold two spitballs or packages of
16 cocaine consisting of 0.7 grams each to an
17 undercover police officer for \$200.

18 Mr. Bessette argued that he was entrapped by
19 the police; however, that argument was found to
20 be without merit in a decision I delivered on
21 July 16, 2013. I will not go into all the
22 background that is set out in that decision.

23 It will suffice to say that the
24 circumstances of the sale are that on the night
25 in question, the RCMP, as part of an operation
26 aimed at street-level trafficking in Yellowknife,
27 had undercover officers in the Raven Pub, a bar

1 known as a place where drug transactions
2 occurred.

3 Although there were a number of individual
4 targets who were the subject of the operation,
5 Mr. Bessette was not one of the targets. The
6 undercover officers were asking various
7 individuals, at random, about drugs, and as
8 Mr. Bessette was walking by the table where the
9 undercover officers were sitting, one of them
10 asked him, "Do you have any party favours? which
11 the undercover officer testified is a term used
12 for drugs here in Yellowknife. Mr. Bessette
13 asked, "What kind?" The undercover officer said,
14 "White," which he testified is a term for
15 cocaine. Mr. Bessette asked, "You want one?"
16 which the undercover officer understood to be one
17 gram, and he replied, "Actually, I want two. One
18 for me and one for my girlfriend." Mr. Bessette
19 then said, "Okay, I'll hook you up," went to the
20 bathroom area of the pub, and, after a while, he
21 and the two undercover officers went outside and
22 he produced the cocaine and received the money.

23 One of the undercover officers testified
24 that Mr. Bessette gave him his telephone number.
25 The other undercover officer said that the first
26 undercover officer asked Mr. Bessette for his
27 telephone number. So there was a conflict in the

1 evidence about that, but the evidence was that
2 there was some discussion between Mr. Bessette
3 and the undercover officer about later contact by
4 text.

5 The pre-sentence report relates that
6 Mr. Bessette says he was drunk. He used the word
7 "hammered" to the author of the pre-sentence
8 report. So he stated that he was in that
9 condition when he committed the offence and that
10 he did not know what "party favours" meant and,
11 being drunk, he just wanted to help out. But
12 based on the evidence that I have just reviewed,
13 which is the only evidence before me about the
14 conversation, I really cannot accept that
15 Mr. Bessette did not know what "party favours"
16 meant. That simply does not fit at all with the
17 conversation that the police officer testified
18 took place. I can accept that Mr. Bessette was
19 drinking because he was, after all, in a bar, but
20 I am not able to make any finding on the evidence
21 as to the extent of his intoxication. In any
22 event, he was able to obtain cocaine within a
23 very short period of time.

24 In this case, I do have the benefit of a
25 very thorough and a positive pre-sentence report.
26 It indicates that Mr. Bessette is now 25 years
27 old. So he would have been 22 at the time of the

1 offence. His parents are very supportive of him.
2 He was born in Saskatchewan but has lived in
3 Yellowknife since he was in Grade 3. He now
4 lives in Alberta with his fiancée and her
5 daughter, and the pre-sentence report indicates
6 that it is his intention to stay there.

7 He related to the author of the pre-sentence
8 report that he had a stable upbringing with no
9 alcohol or drug abuse in the home and that his
10 parents were supportive and took an interest in
11 their large family, and I have noted that they
12 have been here in court with him and that they
13 have been supportive during these proceedings.

14 Mr. Bessette has a Grade 11 education. He
15 is interested in vehicles and apparently it is
16 his goal to open his own garage and operate a
17 motor vehicle business or a business as a
18 millwright. He has worked consistently since
19 leaving high school and is currently employed
20 with a company for which he has worked for almost
21 a year. He has been with his fiancée for two
22 years. When interviewed by the probation
23 officer, the fiancée indicated that she has never
24 known Mr. Bessette to use drugs. She also
25 described him as a wonderful father to her
26 daughter and indicates that he has assisted in
27 supporting them both financially and emotionally.

1 The pre-sentence report also indicates that
2 Mr. Bessette's current supervisor at work speaks
3 very positively of him, and it appears that he
4 will still have a job there despite his
5 conviction for this offence.

6 Mr. Bessette has had some problems. He told
7 the author of the pre-sentence report that he
8 began drinking at the age of 14 and was drinking
9 on a weekend basis throughout high school. It
10 seems, however, that he rarely drinks at present.
11 This is confirmed by information from his mother
12 who indicated to the probation officer that she
13 had concerns at one time about his binge
14 drinking, but she no longer sees him doing that,
15 and it is also confirmed by the information from
16 his fiancée. He has experimented with illegal
17 drugs in the past.

18 It is indicated in the pre-sentence report
19 that his mother left Mr. Bessette's biological
20 father when Mr. Bessette was quite young and that
21 the biological father was abusive to both
22 Mr. Bessette and his mother.

23 Mr. Bessette is of Metis descent. His
24 grandfather attended residential school and there
25 was alcohol and abuse in his home when
26 Mr. Bessette's mother was growing up there,
27 which, according to the information in the

1 pre-sentence report, led to his mother taking
2 precautions for Mr. Bessette's safety when in the
3 presence of the grandfather when Mr. Bessette was
4 a child.

5 The author of the pre-sentence report notes
6 that Mr. Bessette appears now to be on a positive
7 path and I accept that assessment. Certainly all
8 of the information that has been placed before me
9 indicates that.

10 Mr. Bessette does have a criminal record
11 which consists of convictions in June, 2009, for
12 driving with over 80 milligrams of alcohol in his
13 blood and failing to appear in court and, in
14 November 2009, convictions for driving while
15 disqualified and failing to attend court. He
16 received one day in jail for driving while
17 disqualified and fines for the other offences.

18 There is of course no Victim Impact
19 Statement in this case, but as has been pointed
20 out in other cases, trafficking in cocaine is not
21 a crime without a victim. This community is
22 littered with victims of the drug trade, people
23 who have lost money, lost employment, their homes
24 and sometimes their families because of addiction
25 to cocaine, people who have been beaten or killed
26 because they were involved in the drug trade or
27 because they were seen as a threat to those

1 involved in the drug trade, and it is only ten
2 years ago that a young man was beaten and his
3 body burned out by Yellowknife River because of
4 his involvement in the drug trade. The list goes
5 on and on and references to the consequences of
6 the drug trade, particularly the trade in
7 cocaine, can be found in innumerable cases
8 decided in this court.

9 We do not hear about the devastating effects
10 of cocaine only in criminal court, we also hear
11 about it in family court. We often hear from one
12 parent that the other parent is hooked on cocaine
13 and, because of it, cannot properly care for the
14 children or is a danger to the children or
15 becomes violent when they are on cocaine.

16 Mr. Bessette heard Crown counsel read a
17 quote from the Turner case, decided by Justice
18 Richard in 2006, in which he said, "Those who are
19 involved in the supply and sale and trafficking
20 of cocaine are like vultures or predators who are
21 preying upon those weak members of the community
22 who are addicted to this drug." And I need not
23 repeat that quote in detail, but I hope that
24 Mr. Bessette was listening.

25 I do have some concern about Mr. Bessette's
26 attitude to what he did. As I said, the
27 pre-sentence report indicates that he says he was

1 drunk; he did a stupid thing; he was just trying
2 to help out. Yes, it was stupid. It was also
3 criminal. And who was he trying to help out? A
4 drug dealer who does not care whose life is
5 ruined so long as he makes money? The undercover
6 police officer who was posing as a guy looking
7 for drugs, a guy who, for all Mr. Bessette knew
8 at the time, could have been spending his money
9 on cocaine, leaving his kids without enough food.
10 Those are things Mr. Bessette needs to think
11 about, and I am sure did not think about on the
12 night in question. On the other hand,
13 Mr. Bessette is clearly sorry for the
14 consequences that his offence has had for his
15 family. So he recognizes that he is not the only
16 one who is affected by what he did.

17 The law provides that for trafficking in
18 cocaine, the maximum sentence that the Court can
19 impose is life imprisonment. So it is one of the
20 most serious offences in our law and that is
21 reflected in the way that drug trafficking has
22 been dealt with by this court and other courts
23 across Canada when sentencing for it.

24 In the Desjarlais case, 2007 NWTSC 23, at
25 tab 1 of the Crown's authorities filed in this
26 matter, Justice Richard noted that the range for
27 cases of trafficking in cocaine here in the

1 Northwest Territories is between nine months and
2 three and a half years imprisonment in cases
3 involving low to mid-level trafficking. It
4 always depends, of course, on the circumstances
5 of the offence and the offender. And the other
6 cases that are relied upon by the Crown certainly
7 fall into that category. There are many, many
8 cases from this court going back to at least the
9 1980s that talk about how drug trafficking is a
10 serious problem in this community and that those
11 who traffic in cocaine must expect significant
12 sentences.

13 In 2010, in the Kara Dennill, case, I said
14 that "sentences that have been imposed for drug
15 trafficking do not seem to have discouraged drug
16 trafficking in this community" and that "It may
17 be a reason to start imposing even longer
18 sentences in appropriate cases. At the same
19 time", and again this is something that I said in
20 the Dennill case, "the Court has to bear in mind
21 the principle of parity - that sentences imposed
22 on similar offenders for similar offences should
23 not be so different as to result in a perception
24 that people are not being treated equally or
25 fairly."

26 Defence counsel relied on two authorities
27 for the submission that a non-custodial sentence

1 should be imposed in this case. The first is the
2 Jaber case, 2007 A.J. No. 1320, a decision of the
3 Alberta Court of Appeal, which says there is no
4 presumption against imposing a conditional
5 sentence for a cocaine trafficker assuming, of
6 course, that all the statutory prerequisites have
7 been met. Nor, the case says, is there a
8 presumption in favour of a conditional sentence.
9 In that case, the Court of Appeal said that
10 having regard to the accused's guilty plea, his
11 positive pre-sentence report, his unrelated
12 record, the minimal level of trafficking (which
13 was the sale of .8 of a gram of crack cocaine to
14 an undercover officer), strong family support, in
15 light of all those factors, a conditional
16 sentence that carries strict conditions was
17 appropriate. And of course the Northwest
18 Territories Court of Appeal is largely made up of
19 members of the Alberta Court of Appeal, so that
20 decision does carry significant weight. It may
21 of course be affected in terms of its adoption by
22 local conditions, but clearly it says that a
23 conditional sentence can be appropriate in some
24 cases.

25 Defence counsel also relied on a 2013
26 decision by -- actually, I think it was 2012, the
27 decision itself, but it is reported at 2013 NWTSC

1 02, and that is the case of Taggart, and that
2 case involved a joint submission by Crown and
3 defence. I note that Justice Charbonneau
4 expressed some reservations about agreeing with
5 it, but she did, in the end, accept it and
6 sentenced Mr. Taggart to two years less a day to
7 be served in the community on strict conditions.

8 Mr. Taggart was targeted, apparently, in the
9 same operation that was undertaken here. He was
10 targeted because he was involved in selling
11 cocaine in a dial-a-dope operation. On two
12 separate occasions, he sold to an undercover
13 officer, first 200 grams, then 300 grams. He
14 pled guilty to two counts of trafficking in
15 cocaine, he had no criminal record, and he was 19
16 years old when he committed the offences. So in
17 that case there was a guilty plea and a joint
18 submission, which is quite significant. However
19 the circumstances of that offence, in my view,
20 are also more serious than the circumstances of
21 the offence Mr. Bessette committed.

22 Mr. Bessette did not plead guilty in this
23 case, although he did admit that he sold the
24 drugs to the undercover officer. He sought a
25 stay of the conviction on the basis of police
26 entrapment, which, as I have noted, was not a
27 successful argument. I do acknowledge of course

1 that he is not to be more harshly punished just
2 because he did not plead guilty. Defence counsel
3 submitted that his acknowledgment, his admission,
4 of the offence itself is the equivalent of a
5 guilty plea. I was inclined to think that it is
6 not, but having thought about it some more, I
7 have concluded that in the circumstances of this
8 case, it is very close to a guilty plea because
9 Mr. Bessette did admit the offence. His position
10 was simply that he should not be convicted
11 because of the circumstances in which the police
12 undercover officers approached him; and as I say,
13 in his argument, that amounted to entrapment,
14 although that argument was not accepted. So in
15 the end, on balance, I have concluded that indeed
16 there should be mitigation in his admission of
17 the offence itself.

18 There are really no aggravating factors in
19 this case except that the offence was committed
20 only about a year after Mr. Bessette had been
21 sentenced for the unrelated offences on his
22 record.

23 The principles of sentencing that this court
24 and others have said are of paramount importance
25 in cases of drug trafficking are denunciation,
26 first of all, and that simply means expressing
27 the community's condemnation and rejection of

1 drug trafficking, and deterrence, meaning that
2 the sentence should be significant enough that it
3 would discourage other people from trafficking in
4 drugs.

5 I also have to bear in mind the principle of
6 proportionality, and that means that a sentence
7 should reflect the seriousness of the offence and
8 the degree of responsibility of the offender.

9 There is no question that trafficking in cocaine
10 is serious. This court has said that many times.

11 As far as Mr. Bessette's degree of
12 responsibility, I am satisfied that he knew what
13 he was doing, however much he had had to drink.
14 Even if he was not otherwise involved in the drug
15 trade, he knew how to get cocaine fairly quickly
16 and he was willing -- or said he was willing to
17 at least arrange a line of communication with the
18 undercover officer by providing his telephone
19 number. The only thing that makes Mr. Bessette's
20 degree of responsibility, or what we sometimes
21 call moral blameworthiness, somewhat less than in
22 other cases is that the police approached him at
23 random and he did not approach them and was not
24 actively engaged in -- he was not engaged in drug
25 trafficking when the police observed him.

26 Since Mr. Bessette is aboriginal, Section
27 718.2(e) of the Criminal Code requires that I

1 give particular consideration to whether a
2 sanction other than imprisonment would be
3 reasonable in the circumstances. Other than the
4 issues involving his grandfather and his
5 biological father, whom I have already referred
6 to (and his biological father was not present in
7 his life for very long), Mr. Bessette's family
8 background seems to have been free of the
9 difficulties that are often present in aboriginal
10 families, such as alcohol abuse and family
11 violence, and, instead, he has received
12 consistent support from his family and looks back
13 on his upbringing as positive. So the issues
14 that are often at the forefront under Section
15 718.2(e) do not appear to have played a role in
16 Mr. Bessette having committed this offence.

17 It is often said that sentencing is one of
18 the hardest and perhaps the hardest task that a
19 judge has, and this case illustrates that quite
20 well.

21 Mr. Bessette comes before the Court as
22 someone who, from all accounts, has really turned
23 his life around; he has matured; he has taken on
24 family responsibilities, and I accept that in
25 many ways he is no longer the young man that he
26 was in November 2010. So I have to consider that
27 on the one hand. On the other hand, I have to

1 consider the long-standing practice in this court
2 for the offence that Mr. Bessette committed, for
3 that type of offence, and the reasons for that
4 practice.

5 Crown counsel is seeking a sentence of 12 to
6 15 months in jail to be followed by probation of
7 up to 18 months, and there is no question that
8 that falls within the usual range of sentences
9 for this type of offence. Defence counsel does
10 not take issue with the length of the sentence
11 sought by the Crown or the probation, but says
12 that a conditional sentence - in other words, a
13 sentence to be served in the community - would be
14 appropriate in this case. Since parity - in
15 other words, in order to treat Mr. Bessette on an
16 equal basis with others who have committed a
17 similar offence - makes a sentence of less than
18 two years appropriate in this case, then the next
19 step in terms of considering whether there should
20 be a conditional sentence is to consider whether
21 there would be a danger to the community if
22 Mr. Bessette were to serve his sentence in the
23 community and then whether a conditional sentence
24 would be consistent with the fundamental purpose
25 and principles of sentencing; and the fundamental
26 purpose of sentencing is to contribute to respect
27 for the law and the maintenance of a just,

1 peaceful, and safe society by imposing just
2 sanctions. So I will deal, first, with danger to
3 the community.

4 Based on the information before me, I am
5 confident that Mr. Bessette does not pose a
6 danger to the community. There is no reason to
7 think that he will reoffend. There are reasons
8 to think that he will not reoffend, because from
9 all reports he has matured, he has taken on new
10 responsibilities and is fulfilling them, as I
11 have said. So there are indications that he has
12 changed his life. So the real issue is whether a
13 conditional sentence would be consistent with the
14 fundamental purpose and principles of sentencing,
15 and of course the principles that are of most
16 concern are denunciation and deterrence.

17 Since we were here in court yesterday, I
18 have done what I think and I hope is a fairly
19 thorough review of cases in this court going back
20 to the 1980s where an offender was sentenced for
21 trafficking in cocaine, and unlike most, if not
22 all, of those other cases, as I have said,
23 Mr. Bessette was not targeted by the police; he
24 was randomly selected. And although, as I have
25 found, the police did nothing wrong, that fact -
26 in other words, that they picked him out; he did
27 not approach them - is a distinguishing factor.

1 In the other cases that I have reviewed, either
2 the offender was targeted or the case is silent
3 on that point, but the circumstances suggest that
4 the police had prior knowledge or information
5 that the offender was involved in drug activity.
6 So here the evidence is that Mr. Bessette was
7 presented with an opportunity and he took it.

8 He knew the drug lingo, he knew where to get
9 cocaine, but there is no evidence that he was
10 actually involved in drug trafficking prior to
11 this offence, and it is certainly conceivable
12 that he knew about drugs and the language from
13 friends who were drug dealers or from hanging
14 around at the Raven, which, from the evidence of
15 the police officers on the entrapment hearing,
16 certainly at that time had a good share of drug
17 activity going on in it.

18 So as I have said, there is no evidence that
19 Mr. Bessette had any prior involvement in drug
20 dealing. The evidence about providing his
21 telephone number simply amounts to an indication
22 that he was perhaps leaving the door open to
23 considering another transaction with the
24 undercover officer.

25 I will say that I am somewhat puzzled, and I
26 am hoping that is not too strong a word, by the
27 difference in the position taken by the Crown in

1 this case as compared to the Taggart case.
2 Mr. Taggart was, from my reading of that case,
3 operating a dial-a-dope business as opposed to
4 Mr. Bessette who, in this case, was simply
5 randomly selected. So notwithstanding the
6 various considerations that were presented by the
7 Crown as reported in the Taggart case in support
8 of a conditional sentence, I find the activity in
9 the Taggart case more serious than in this case.

10 Crown counsel submitted that because of his
11 convictions for failing to comply with court
12 process or orders in 2009, the Court should be
13 concerned about whether Mr. Bessette will obey a
14 conditional sentence order, and Crown counsel
15 also pointed to Mr. Taggart's situation and says
16 that he has breached his conditional sentence
17 order since it was imposed. I do not think it
18 would be appropriate for me to take Mr. Taggart's
19 situation and say that necessarily Mr. Bessette
20 would act the same way. I certainly do not know
21 enough about Mr. Taggart's situation. But I am
22 persuaded, based on all the information before
23 me, that Mr. Bessette has changed his ways since
24 2009 and 2010; and I am not persuaded of that
25 simply because he is saying that he has changed
26 or that he wants to change or that he will
27 change, but, in fact, there is evidence that he

1 has made changes. As I said, he has taken on
2 family responsibilities; he's doing well at his
3 job; he's very involved with his new fiancée and
4 her child. So from all appearances, he has made
5 a break with the Yellowknife bar and drug scene.

6 He was very emotional when he spoke
7 yesterday, and I am satisfied that he takes
8 seriously the impact that his actions in November
9 2010 have had and will yet have on his life and
10 the lives of those he cares for. So, in this
11 case, I do not view the prior convictions on his
12 records as a bar to a conditional sentence order,
13 nor do I view them as an indication that he is
14 not likely to follow conditions.

15 The new life that Mr. Bessette has made for
16 himself is in Alberta. As I understand it from
17 the pre-sentence report, his residence is in
18 Devon, a community of approximately 3,000 people.
19 The pre-sentence report indicates that community
20 has the resources to monitor a conditional
21 sentence order. In that small town, I would
22 expect that it is likely that Mr. Bessette will
23 be more visible, his status as an offender on a
24 conditional sentence order more widely known, and
25 his activities under more scrutiny than even here
26 in Yellowknife; and, in fact, I have to say it
27 seems to me that it would be far better for

1 Mr. Bessette to be there in Devon doing what he
2 is doing there than here in Yellowknife where
3 there is always a risk of him getting involved
4 with or being influenced by his old associates.

5 So stand up please, Mr. Bessette. I have
6 balanced all the factors that I have to in this
7 case and I have decided, Mr. Bessette, to take a
8 chance on you. I have decided that the
9 principles of denunciation and deterrence can be
10 adequately served in your case and that it would
11 be in accordance with the fundamental principles
12 of sentencing to put you on a conditional
13 sentence. But, and you heard this said
14 yesterday, there has to be a punitive effect. In
15 other words, it is not a get-out-of-jail-free
16 card, so to speak. There are going to be strict
17 conditions. They are going to mean that you
18 simply will not be able to do a lot of the things
19 that you are used to doing, even with your
20 family, and you may even at some point think,
21 well, maybe it would have been easier to go to
22 jail. But I am going to give you a chance
23 because I think you have shown that you can turn
24 things around. So I am going to -- I am
25 imposing a sentence on you of 15 months. It is a
26 jail sentence, but it will be served in the
27 community subject to the conditions of a

1 conditional sentence order, and they are fairly
2 lengthy, so you can have a seat, but I want you
3 to listen very carefully.

4 THE ACCUSED: Yes, Your Honour.

5 THE COURT: First of all, there will be
6 the mandatory conditions that have to be in every
7 conditional sentence order. So, first, you will
8 keep the peace and be of good behaviour. I am
9 sure you understand what that means.

10 THE ACCUSED: Yes.

11 THE COURT: You do not get into any
12 trouble. You will appear before the Court when
13 required to do so. You will report to a
14 conditional sentence supervisor here in
15 Yellowknife within two working days after the
16 making of this order and thereafter when required
17 by the supervisor and in the manner directed by
18 the supervisor.

19 The next condition is also a mandatory
20 condition, although in light of the fact that
21 Mr. Bessette has been living and working in
22 Alberta, I will address it further on, but for
23 now, the mandatory condition is: You will remain
24 within the jurisdiction of the Court - in other
25 words within the Northwest Territories - unless
26 written permission to go outside the Northwest
27 Territories is obtained from the Court or the

1 supervisor. Number 5, you will inform the Court
2 or the supervisor in advance of any change of
3 name or address and promptly notify the Court or
4 the supervisor of any change of employment or
5 occupation.

6 So now the optional conditions. In other
7 words, these are the conditions that I have
8 decided to impose. So this is condition number 6
9 in the order. You will perform 160 hours of
10 community service work within one year to the
11 satisfaction of the conditional sentence
12 supervisor and at a rate satisfactory to the
13 supervisor. You will also provide proof of
14 completion of the community service hours at such
15 times and in such form as directed by the
16 supervisor. Number 7, you will participate in
17 any counselling or treatment programs recommended
18 by your supervisor. Number 8, you will reside
19 only where approved by your supervisor. Number
20 9, and this is a house arrest condition, you will
21 remain in your residence or on its grounds at all
22 hours except: when at your place of employment
23 for purposes of work - that is the first
24 exception; for travelling directly to or from
25 work; for performing your community service hours
26 and for travelling directly to and from your
27 residence for that purpose; when authorized by

1 your supervisor to be absent from your residence;
2 when attending court as required; when attending
3 to medical emergencies involving yourself or your
4 immediate family; when attending for treatment or
5 counselling; and when reporting to your
6 supervisor. A further exception to this house
7 arrest provision is that you may attend a shop
8 for groceries or other necessities of life for a
9 total of no more than three hours each week.
10 Condition number 10, you will provide a copy of
11 your work schedule to your supervisor and notify
12 the supervisor immediately of any changes to that
13 schedule. Number 11, when in your residence, as
14 required by this order, you will facilitate the
15 supervision of your compliance with this order by
16 presenting yourself at the door of your residence
17 when requested to do so and by answering or
18 coming to the telephone when the supervisor
19 calls. Number 12, you will carry on your person
20 at all times when not in your residence a copy of
21 this conditional sentence order. Number 13, you
22 will abstain absolutely from the consumption of
23 alcohol. Number 14, you will abstain absolutely
24 from the consumption of drugs, except in
25 accordance with a medical prescription.

26 Now, the 15th condition that I was going to
27 put in, and I will just say, Counsel -- Is there

1 anyone here from Social Services? No. All
2 right. I certainly in the past have given a
3 conditional sentence order when the person in
4 question has not been residing in the Northwest
5 Territories, and, as you know, under Section
6 742.5 there is a provision that an order can be
7 transferred to another jurisdiction. Now, I am
8 not sure -- And I should say that I do recall in
9 a case where a conditional sentence order was
10 imposed -- It was not a case similar to this
11 one, but in any event, I recall being presented
12 at one point in time with an order that the
13 conditional sentence essentially be transferred
14 to the Province of Ontario. I am looking at page
15 4 of the pre-sentence report, and the probation
16 officer spoke to a probation officer in Alberta
17 and what she says here is that they would accept
18 this file if Kyle was to receive a
19 community-based sentence. So I do not know
20 whether that is separate and apart from
21 transferring. Are you with Social --
22 Probation --

23 PROBATION OFFICER: I'm with Probation Services.
24 Michelle Marshman, Your Honour. No, that would
25 be accepted. Conditional sentence orders are
26 transferable. They might request a
27 jurisdictional transfer, but that's separate.

1 THE COURT: Oh, that is a whole
2 separate --

3 PROBATION OFFICER: That's a separate process than
4 what you would have to be dealing with today,
5 Your Honour, and that would come from Alberta.
6 And what we would do is Mr. Bessette would be
7 meeting with me today or tomorrow and then all
8 information, including the order, would be sent
9 down over to the probation officer and
10 conditional sentence supervisor that will be
11 helping him in Alberta, and it's pretty quick and
12 simple that way.

13 THE COURT: All right. So --

14 PROBATION OFFICER: To answer your question in
15 short, it is considered to be a community-based
16 sentence, yes.

17 THE COURT: So even though the order is
18 made here in the Northwest Territories, they will
19 supervise it in Alberta without an Alberta
20 court --

21 PROBATION OFFICER: Without an Alberta --

22 THE COURT: -- adopting it?

23 PROBATION OFFICER: Yes, Your Honour. Sorry to
24 interrupt you. I will need a certified copy
25 eventually, and that is essentially what they
26 will require should he breach.

27 THE COURT: All right. Thank you.

1 Well, then I think the only thing I need to
2 do in light of the condition that he remain in
3 the jurisdiction is simply add the condition that
4 notwithstanding that clause, he may leave the
5 Northwest Territories to reside in Devon,
6 Alberta, and to work in Alberta. It seems to me
7 that way he is not in breach of the first
8 condition I mentioned about remaining within the
9 jurisdiction of the Court.

10 Now, if either of you has any concern about
11 that, please tell me. I just want to make sure
12 that it is clear he has got permission to go back
13 to Alberta. In fact, I want him to go back to
14 Alberta, but I do not want to run into a problem
15 because of that condition. So it sounds like it
16 will not be a problem from the point of view of
17 supervision of the order, and I suppose as long
18 as there is something in the order that says he
19 can go to Alberta, he is not going to be in a
20 situation where he is in breach because he leaves
21 the Northwest Territories.

22 MS. WAWZONEK: I have no concerns, Your
23 Honour.

24 THE COURT: Any concerns from your point
25 of view?

26 MS. LAKUSTA: (Negative, non-verbal
27 response).

1 THE COURT: So that's fine. So,
2 Mr. Bessette, do you understand all of those
3 conditions? There are a lot of them.
4 THE ACCUSED: Do I stand up or -- Yes, I
5 understand.
6 THE COURT: All right. I am not going to
7 impose probation in this case. I think that the
8 15 months with all the conditions I mentioned
9 will be sufficient.

10 Now, I just want to make it clear that the
11 conditions that I have referred to remain in
12 place for the entire 15 months; it is just that
13 the community service work has to be completed
14 within 12 month. In other words, a year.

15 Now, in accordance with Section 742.3(3), I
16 do direct that a copy of the conditional sentence
17 order be given to Mr. Bessette.

18 I also have to advise you, Mr. Bessette,
19 that under Section 742.4 of the Criminal Code,
20 your supervisor may, on notice to you and the
21 prosecutor and under certain conditions, may
22 request a change to the optional conditions. In
23 other words, the conditions that I have put in
24 that are not the mandatory ones. If that
25 happens, there are procedures for a hearing about
26 that.

27 Under Section 742.6 of the Criminal Code,

1 breach of any of the conditions of the order may
2 result in your arrest and you may be ordered to
3 serve the rest of your sentence in jail. Just so
4 you are aware, one thing that I do remember about
5 Mr. Taggart is that he appeared here in court --
6 I do not know what happened to his breaches, but
7 he certainly spent some time in custody waiting
8 to find out what was going to happen to his
9 breach. To the breach charges, I mean. I want
10 you to be aware that that is a possibility too.
11 So the clerk will explain that further to you and
12 will also explain to you the procedure by which
13 you can apply under Section 742.4 for a change to
14 the optional conditions. In other words, how you
15 can go about making that application.

16 As to the ancillary orders, defence counsel
17 did not take issue with the ancillary orders that
18 are sought by the Crown. This is a secondary
19 designated offence, however. So as far as the
20 DNA order is concerned, I still have to consider
21 whether to make the order. I have considered
22 Mr. Bessette's criminal record. I have
23 considered the seriousness of the offence he
24 committed and the circumstances surrounding its
25 commission, and I have considered the importance
26 of DNA for the police as an investigative tool
27 and the other purposes of maintaining a DNA

1 database as set out in the Alberta Court of
2 Appeal decision in the North case that was
3 submitted. I take into account that the
4 procedure for the taking of a DNA sample involves
5 minimal intrusion and that no particular or
6 unusual impact on Mr. Bessette's privacy or
7 security of the person has been advanced. And so
8 considering the balancing that the Court said in
9 North should be undertaken, I rule that the
10 balance weighs such that the order will be made.

11 There will also be a firearm prohibition
12 order which is mandatory for this offence. It
13 will commence today and expire ten years from
14 today, and any firearms or other items covered by
15 Section 109 are to be surrendered to the RCMP
16 forthwith.

17 I am not going to waive the victim of crime
18 surcharge. Mr. Bessette is working, so he will
19 have to pay the surcharge. That is a surcharge
20 that is designed to go to a fund to assist
21 victims of crime.

22 I am going to ask that there be a transcript
23 of what I have said today and that it be
24 expedited and a copy provided to the conditional
25 sentence supervisor when it is available.

26 Is there anything else, Counsel, that I have
27 not covered that I should have?

1 MS. LAKUSTA: No. Thank you.
2 MS. WAWZONEK: No, Your Honour. Thank you.
3 THE COURT: Mr. Bessette, I hope you
4 realize I am giving you a chance here. I realize
5 that. I think that it is warranted in your
6 situation, and I really do not want to see you
7 either misuse it or abuse it. You have done some
8 good things and you need to stay on that path.
9 So if I see you back here, I hope it is only
10 because someone wants a change in one of the
11 conditions of the order and it is not something
12 controversial. All right.

13 So if there is nothing else, then we will
14 close court. Thank you.

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Certified Pursuant to Rule 723
of the Rules of Court

Jane Romanowich, CSR(A)
Court Reporter