

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

RICHARD DONALD BAIN

Transcript of the Reasons for Sentence delivered by The Honourable Justice K. Shaner, in Yellowknife, in the Northwest Territories, on the 10th day of February, 2014.

APPEARANCES:

Ms. J. Bond: Counsel on behalf of the Crown

Mr. T. Boyd: Counsel on behalf of the Accused

Charge under s. 5(1) CDSA

1 THE COURT: Mr. Richard Donald Bain pled
2 guilty to the following charge:

3 On or between the 10th day of March,
4 2012, and the 11th day of March,
5 2012, at or near the City of
6 Yellowknife, in the Northwest
7 Territories, did traffic in a
8 substance included in Schedule 1, to
9 wit cocaine, contrary to section
10 5(1) of the Controlled Drugs and
11 Substances Act.

12 It is not going to come as a surprise to
13 anyone in this courtroom that drugs have ravaged
14 our communities in the Northwest Territories, and
15 crack cocaine has been particularly insidious.
16 Families have been torn apart, their security
17 threatened, children's security threatened,
18 marriages torn apart, friendships, and then we
19 have the spin-off of addiction. We have unsafe
20 streets, unsafe communities, theft, break and
21 enters. It has a profound impact on our
22 communities. That it is so insidious and so
23 dangerous is actually borne out in Mr. Bain, who
24 appears here today as a 55 year old man who,
25 sadly, has almost nothing to show for all of his
26 years. It is for this reason that the law treats
27 trafficking in cocaine very, very seriously.

28 The Crown is seeking a year of custody in a
29 jail for Mr. Bain, and his counsel argues that he
30 should have a conditional sentence.

31 As I said earlier, Mr. Bain is a 55 year old

1 man, he is a recovering addict, and, according to
2 the presentence report, he has led a life that
3 has been plagued by addiction. As Crown counsel
4 pointed out, he has the criminal record of an
5 addict.

6 The bright light in all of this is that, Mr.
7 Bain, you did seek counselling. The counselling
8 that you sought, you took those steps late in the
9 game so to speak, but you have taken them. From
10 what I read and heard today, they are very
11 concrete steps. This is not a case of an
12 individual who at the eleventh hour decides it
13 will look good for the judge if they go and say
14 they have arranged for counselling. Mr. Bain is
15 actually in counselling in a serious residential
16 program and, by all accounts, he is trying very
17 hard and he is succeeding. So this is not a case
18 where there is uncertainty about the nature of
19 the treatment or if he is in the program. He is
20 in it, and he is working hard.

21 I agree with the Crown that denunciation and
22 deterrence are extremely important factors for
23 the Court to consider. Traditionally, this Court
24 has placed a great deal of emphasis on them and,
25 based on what I said earlier, rightly so.
26 However, society has an interest in Mr. Bain
27 getting better. In my view, sending him to jail

1 now, in light of his current circumstances and
2 the work that he has done to date, would
3 certainly result in an interruption of his
4 treatment and in all likelihood result in a
5 setback. In the circumstances, it is my view
6 that it is important that the Court does what it
7 can to encourage rehabilitation.

8 It is my view that a conditional sentence
9 order is appropriate in these circumstances. I
10 am not concerned about Mr. Bain posing a danger
11 to the community, particularly if he is in a
12 residential treatment program.

13 I will pause to note that a conditional
14 sentence order, while it may seem less harsh on
15 the outside, in this case it is not as though Mr.
16 Bain is serving a sentence where he can languish
17 around in a luxurious home or apartment and do
18 nothing about his current circumstances. He is
19 going to be working on his addiction, just as he
20 would be, hopefully, doing if he was sentenced to
21 serve his time in jail.

22 It is also important to note that the
23 restrictions that are imposed on an individual
24 under a conditional sentence order are, in many
25 respects, just as restrictive as what would be
26 imposed in a prison.

27 And finally, I will indicate that if a

1 person who is sentenced to a conditional sentence
2 order breaches the conditions of that conditional
3 sentence order, it is over - they go to jail.

4 So I am going to impose a conditional
5 sentence order.

6 Mr. Bain, stand up.

7 Mr. Bain, I sentence you to a term of one
8 year to be served in the community.

9 You can sit down.

10 I am going to go through the conditions. If
11 at any point you have any questions, please let
12 your counsel know so that I can clarify them
13 because it is extremely important that you
14 understand all of the terms and conditions of
15 this order. As I said, if you breach any of
16 these terms and conditions, you will go back to
17 jail.

18 There are mandatory conditions that are set
19 out in section 742.3 of the Criminal Code:

20 You have to keep the peace and be of good
21 behaviour.

22 You have to appear in court when required.

23 You are to report to a conditional sentence
24 order supervisor here in Yellowknife within two
25 working days of the date of this order and then
26 as required and directed by that supervisor.

27 You will inform the court or the supervisor

1 in advance of any change in your name or address,
2 and you must also promptly notify the court or
3 the supervisor in the event that you change your
4 employment or occupation. I realize that that
5 may be down the road for you at this point given
6 your circumstances, however you do have to bear
7 that in mind that you have to let your supervisor
8 know.

9 Now, it is a mandatory condition in the
10 Criminal Code that you remain within the
11 jurisdiction of the court, that is, in the
12 Northwest Territories, unless you have the
13 supervisor's permission or the court's permission
14 to reside elsewhere. On this point, the Criminal
15 Code does allow for the order to be transferred
16 to another jurisdiction and so this order could
17 be made effective in Alberta. What I will ask
18 you to do, Mr. Bain, is for you and your counsel
19 to discuss that with your conditional sentence
20 order supervisor when you go to meet with that
21 person within the next two days.

22 The Criminal Code also allows me to impose
23 other conditions that you have to follow. So
24 even though these are not spelt out in the
25 Criminal Code, these are just as important as the
26 ones I just told you about.

27 The first is that you will participate in

1 the Fresh Start residential treatment program in
2 which you are currently registered, or any other
3 treatment program or counselling program that
4 your supervisor directs.

5 You will advise your supervisor immediately
6 if you stop attending the Fresh Start residential
7 treatment program for any reason, or any other
8 program that you are directed to attend.

9 You will abstain from consuming alcohol,
10 intoxicating substances, or drugs except in
11 accordance with the direction and/or prescription
12 of a licenced medical practitioner.

13 You will make restitution for society, in
14 part, by performing 150 hours of community
15 service work over the next year in a capacity
16 that is approved by your conditional sentence
17 supervisor. So you have to make sure that
18 whatever you choose to do for community service
19 work is approved by the supervisor; and if it is
20 not, then you will have to find something else.

21 Outside of your treatment program at Fresh
22 Start, you will reside only where approved by
23 your supervisor. You will remain in your
24 residence or on its grounds at all times except
25 for the following circumstances:

26 If you get a job and you need to travel
27 directly to and from work, you can leave for that

1 purpose, however you must provide a copy of your
2 work schedule to your conditional sentence
3 supervisor;

4 To attend court as required;

5 For medical emergencies;

6 For treatment or counselling;

7 To complete your community service work.

8 And again, you will need to provide your
9 conditional sentence supervisor with the hours
10 and schedule for your community service work;

11 For the purposes of purchasing groceries,
12 toiletries or other necessities of life, and in
13 such case provided the time you use to do this
14 does not exceed four hours in one week and it is
15 approved in advance by your supervisor;

16 And finally, you can leave when you need to
17 report to your supervisor in person if that is so
18 required.

19 You will be required to present yourself at
20 the door of your residence or the treatment
21 centre where you are staying as requested, and
22 you will answer your telephone when your
23 supervisor calls. This is so that compliance
24 with the order can be monitored.

25 What I hope to achieve with this, Mr. Bain,
26 is to send a message to you and to society that
27 trafficking in drugs is never acceptable, and it

1 does a great deal of harm to our society. But I
2 also want to recognize that it is important for
3 people to seek treatment, and it is important
4 that treatment be provided and supported.
5 Ultimately, it is my hope that you will
6 rehabilitate yourself, get on a different path,
7 and live the rest of your life, you are still a
8 relatively young man, and hopefully you will live
9 that on the straight and narrow and not get into
10 trouble and have a more fulfilling life.

11 The Crown also asked for some ancillary
12 orders. Among these was the firearms
13 prohibition, which is mandatory. So that is
14 granted.

15 I considered whether or not a DNA order,
16 that is, an order requiring Mr. Bain to submit to
17 the collection of bodily fluids for DNA analysis,
18 should be granted. In this case it is
19 discretionary. Mr. Bain, your criminal record is
20 not insignificant, but it is also not amongst the
21 longest or most serious that this court has seen.
22 DNA analysis is a fairly significant invasion of
23 privacy and security, and in all of the
24 circumstances I am really not satisfied that it
25 is in the interest of the administration of
26 justice to order this so I decline to do so.

27 And finally, this offence took place prior

1 to the amendments to the Criminal Code respecting
2 the victims of crime surcharge and accordingly,
3 given your circumstances, Mr. Bain, I order that
4 it be waived.

5 THE COURT CLERK: The firearms is for ten years,
6 Your Honour?

7 THE COURT: The firearms prohibition order
8 is for ten years, yes.

9 THE COURT CLERK: Thank you.

10 THE COURT: Counsel, is there anything
11 else?

12 MS. BOND: Nothing I can think of. Thank
13 you, Your Honour.

14 MR. BOYD: Nothing from defence. Thank
15 you, ma'am.

16 THE COURT: Thank you very much.

17 Mr. Bain, I do wish you the very best. Work
18 very hard. I am pleased to see how far you have
19 come, and I really do hope that you manage to
20 remain in recovery.

21 THE ACCUSED: Thank you, Your Honour.

22 THE COURT: We're adjourned.

23

24 Certified to be a true and
25 accurate transcript pursuant
26 to Rule 723 and 724 of the
Supreme Court Rules of Court.

27

Annette Wright, RPR, CSR(A)
Court Reporter