

1 THE COURT: Mr. Mohammed has pleaded
2 guilty to a charge of possession of cocaine for
3 the purpose of trafficking and to a charge of
4 failing to comply with an undertaking. This
5 afternoon, it is my responsibility to decide what
6 his sentence should be for those offences.

7 Sentencing is a highly discretionary, highly
8 individualized process which requires the Court
9 to take into account many things and address
10 interests and objectives that are often competing
11 ones. For that reason, it is often said that it
12 is one of the most difficult tasks that a judge
13 faces.

14 In this case, my task is rendered much
15 easier because I have been presented with a joint
16 submission as to what the appropriate range of
17 sentence is. It is obvious to me that this joint
18 submission is the product of a lot of work on the
19 part of counsel and of discussions that went on
20 for some time.

21 Counsel for the Crown and for the defence
22 have done an exemplary job of explaining the
23 reasons why they say this range is a fit one, and
24 as I said before we adjourned this morning, I
25 have no difficulty at all accepting that this
26 range is appropriate. The only issue for me to
27 decide is where within that range the sentence

1 should be. Counsel have suggested that a range
2 of two and a half to three years' imprisonment,
3 globally, is appropriate for these offences.
4 Because Mr. Mohammed has been in custody since
5 March 2015, I also have to decide how much credit
6 he should receive for the time he has spent on
7 remand.

8 I will summarize the main features of the
9 facts of the offences just to put my sentencing
10 comments in context.

11 The first charge stems from the execution of
12 a search warrant at an apartment in Yellowknife
13 back in November 2013. Mr. Mohammed was found in
14 the apartment when the search took place. He was
15 in the bathroom and there was a small suitcase in
16 that room. That suitcase contained crack
17 cocaine, money, travel documents in his name, and
18 various identification documents of his. Money
19 was also found in his pants and in a wallet that
20 was also in the suitcase. The total amount of
21 cash seized was \$12,110. The total quantity of
22 crack cocaine seized was 55.2 grams, packaged in
23 two separate packages of about one ounce each.
24 The value of that cocaine, if sold by the half
25 gram on the streets of Yellowknife would be
26 between about \$7,000 and \$11,000. If sold by the
27 ounce, its value would be between \$4,400 and

1 \$5,600. Various things were also seized that day
2 which Mr. Mohammed acknowledges should be
3 forfeited, including several phones, a scale,
4 crack pipes, and other offence-related property.

5 Mr. Mohammed was released on a recognizance
6 on November 27th, 2013. One of the conditions of
7 that recognizance was that he report to the RCMP
8 three times a week. He complied with this
9 condition from November 2013 until April 2014.
10 He failed to report five times that month. He
11 reported again on May 2nd but did not report at
12 all after that. He was arrested by police on
13 March 12th, 2015, and charged with various
14 offences, including the breach. As it turns out,
15 the breach is the only charge the Crown is
16 proceeding on. Mr. Mohammed has been in custody
17 since his arrest.

18 Counsel have identified all the relevant
19 legal principles that apply in this case. The
20 defence acknowledges that Mr. Mohammed was
21 involved in cocaine trafficking on more than a
22 minimal scale, and that is plain and obvious when
23 considering the quantity of drugs seized, the
24 amount of cash seized, and the various other
25 items that were seized.

26 As counsel noted, in *R. v. Maskill*, 1981
27 ABCA 50, the Court of Appeal of Alberta said that

1 for this type of offence, the starting point in
2 sentencing is three years' imprisonment. That
3 decision is over 30 years old but has been
4 reaffirmed more recently in R. v. Rahime, 2001
5 ABCA 203. The Alberta Court of Appeal has
6 specifically refused to reconsider it in R. v.
7 Melnyk, 2014 ABCA 313. The Maskill case, and the
8 principles that it stands for, have been followed
9 in this jurisdiction for many years. There is no
10 reason to treat drug trafficking in the Northwest
11 Territories any more leniently than it is treated
12 in Alberta. Quite the contrary.

13 The North is a very tempting market for drug
14 traffickers, and judging by the number of drug
15 cases that have been heard by the Territorial
16 Court and this court over the last few decades,
17 it is apparent that there continues to be a need
18 to impose sentences that denounce this conduct
19 and send a clear message that when people do get
20 caught, they will face stern sentences no matter
21 how young they are or no matter how good their
22 background might otherwise be. Sadly, there are
23 quite a few young people in the Northwest
24 Territories who have learned that lesson the hard
25 way.

26 The reason why courts have to be firm in
27 their sentencing practices is very simple and was

1 referred to this morning. Cocaine causes ravages
2 and devastation in our communities. Yellowknife
3 has seen its fair share of the collateral damage
4 that crack cocaine has caused. The people who
5 become addicted to this drug harm themselves of
6 course. They sometimes lose everything to it,
7 their families, their work, and their health, but
8 they also often harm others. Houses get broken
9 into, people commit robberies, sometimes on the
10 street in broad daylight or in small convenience
11 stores or gas stations to get money to buy more
12 drugs, or they break into homes and steal
13 property. And they steal, in addition to
14 property, the occupants' sense of safety in their
15 own home, sometimes for a very long time. Some
16 addicts get to the point of being so
17 dysfunctional that they neglect their own
18 children.

19 We do not just hear about cocaine in the
20 criminal courts. We hear about cocaine in family
21 court frequently, and the Territorial Court hears
22 about it in child welfare court frequently.

23 It is interesting to re-read the Maskill
24 decision because back in 1981, cocaine was not as
25 well known a drug as it is today. If anything,
26 the passage of time has confirmed that the
27 Alberta Court of Appeal was very right to treat

1 it as a highly addictive, highly dangerous, and
2 highly destructive drug.

3 For all those reasons, denunciation and
4 deterrence are the paramount sentencing
5 considerations on this sentence even though I am
6 dealing with a youthful offender. His
7 rehabilitation is not irrelevant, but it cannot
8 be the Court's primary focus.

9 Still, having heard about Mr. Mohammed's
10 personal circumstances, there is much reason to
11 have hope for him. He knows he has brought shame
12 on his family, and I completely accept what his
13 lawyer has said about his potential and about
14 some of the changes that seem to have occurred
15 over the last few months.

16 I am forced to conclude that until he was
17 rearrested in March 2015, Mr. Mohammed failed to
18 appreciate the seriousness of his situation and
19 what he was facing. His compliance with his
20 reporting condition was dismal from May 2014
21 onward. Property was seized at the time of his
22 arrest in March which he now acknowledges is
23 offence-related property as defined in the
24 Controlled Drugs and Substances Act, which means
25 it was used or intended to be used in connection
26 with the commission of an offence under that Act
27 or was property by means of which or in respect

1 of which an offence was committed.

2 I am glad to hear that Mr. Mohammed, in more
3 recent times, has seemed to come to grips with
4 the seriousness of his situation, and I am glad
5 to hear that he is in contact with his family and
6 that he wants to get this part of his life dealt
7 with and move on for better things in the future.
8 For sure, he has a lot of time ahead of him in
9 his life if he wants to change his path.

10 I have said that a starting point of three
11 years applies in this case. This, of course, is
12 not to be treated as a minimum sentence. It is,
13 as the word suggests, a starting point that
14 reflects the seriousness of the offence of
15 trafficking in cocaine on a level more than a
16 minimal scale. From that starting point, the
17 Court has to work either by increasing the
18 sentence or decreasing the sentence, taking into
19 account whatever aggravating or mitigating
20 factors there might be.

21 Here, there really are no aggravating
22 factors. The starting point already reflects the
23 fact that this was commercial activity at a more
24 than minimal scale. It already reflects the
25 seriousness of this type of trafficking and the
26 ravages that cocaine trafficking causes.

27 There are mitigating factors to consider,

1 however. The guilty plea is the main one. It
2 was not entered at an early opportunity with
3 respect to the cocaine charge. The matter
4 proceeded to the point that a trial date had been
5 set, but I did hear that the guilty plea, even if
6 it came when it did, did save a lot of resources
7 because several police witnesses who are no
8 longer stationed here would have been required to
9 travel back to Yellowknife if this matter had
10 gone ahead.

11 The youth and prospects for rehabilitation
12 for Mr. Mohammed must be taken into account as
13 well, but for the reasons I have already given,
14 they cannot outweigh other sentencing objectives.

15 I have to say I find it exceedingly
16 unpleasant to sentence a young, intelligent man
17 with good potential to a lengthy jail term, but
18 this sentencing is not just about Mr. Mohammed.
19 It is also about all the other intelligent, young
20 people out there who have good prospects, too,
21 but who may be tempted, just like he was, to turn
22 to this type of activity to make quick money.

23 The cases that the Crown has filed, as well
24 as other decisions from this jurisdiction that I
25 am familiar with, amply support the range that is
26 being sought here. I thought about the
27 principles of parity and I thought about the

1 principle of restraint which is always important.
2 No jail term should ever be longer than what is
3 required to achieve the goals of sentencing.
4 But, of course, deciding what that means in any
5 given case is not an exact science.

6 As far as the breach charge, Mr. Mohammed
7 did plead guilty to it as well. I have given him
8 credit for that. I have also realistically take
9 into account that this is the type of offence
10 that is not particularly hard to prove. On the
11 other charge, I accept that there were triable
12 issues. I accept that. On the breach, perhaps
13 less so, especially when there were as many
14 breaches as there were here. It is aggravating
15 that the conduct was repeated numerous times over
16 a long period of time. Mr. Mohammed did comply
17 for a period of time, so he understood his
18 obligations; he just simply stopped complying.
19 That conduct has been to be deterred as well
20 because the courts rely on undertakings and
21 promises virtually every day when releasing
22 people on bail. The breach charge calls for a
23 jail term, obviously less significant than the
24 other charge, but a jail term nonetheless. The
25 point has to be made that court orders have to be
26 respected.

27 I have given the issue of remand time quite

1 a bit of thought. The Crown has fairly noted
2 that because the process that Mr. Mohammed was on
3 was never cancelled, I have discretion to give
4 him enhanced credit for his time on remand up to
5 a ratio of 1.5 to 1. Having the discretion does
6 not mean I am required to do so in every case,
7 though. The Supreme Court of Canada has made it
8 clear in R. v. Summers, 2014 SCC 26 that
9 ordinarily the fact that remand prisoners do not
10 earn remission is sufficient to justify enhanced
11 credit being given on a ratio of 1.5 to 1.

12 Here, I cannot ignore that Mr. Mohammed had
13 been released on the drug charge and it was only
14 upon being charged with these other things,
15 including his failure to comply with his
16 recognizance, that he ended up in remand. For
17 that reason, while I am prepared to give him
18 enhanced credit for his remand time, I do not
19 think it would be appropriate to do so on the
20 maximum ratio.

21 The Crown has asked for a number of
22 ancillary orders and I will deal with those
23 first. There will be a firearms prohibition
24 order pursuant to Section 109 of the Criminal
25 Code. It will commence today and expire ten
26 years after Mr. Mohammed's release from
27 imprisonment. Given that he is in custody, I

1 assumed he is not in possession of any firearms.
2 So the surrender order will be that he surrender
3 his firearms forthwith.

4 There will be a DNA order. It is a
5 discretionary order, this being a secondary
6 designated offence. The defence is not opposed
7 to this application and, having considered it, I
8 am satisfied that given the circumstances of the
9 commission of the offence and the minimal impact
10 that taking a bodily sample will have on
11 Mr. Mohammed's privacy, a DNA order should be
12 made.

13 The forfeiture order that the Crown
14 submitted will also issue in its current form.
15 Madam Clerk, I have signed it, but you will need
16 to enter the actual sentence imposed.

17 THE COURT CLERK: Thank you, Your Honour.

18 THE COURT: There will be no victim of
19 crime surcharge for the 2013 offence because,
20 unless I am mistaken, that date of that offence
21 is before the amendments that make the surcharge
22 mandatory.

23 On the breach charge, I do not think I have
24 any discretion and so I will order the payment of
25 the victim of crime surcharge in the amount of
26 \$200, which is also specified in the Criminal
27 Code and something about which I have no

1 discretion.

2 Stand up, please, Mr. Mohammed. Mr. Mohammed,
3 I have listened carefully to what I heard this
4 morning. I do have to impose a significant jail
5 term to you. I know you understand that. For
6 the charge of possession of cocaine for the
7 purposes of trafficking, if it had not been for
8 the time spent on remand, I would have imposed a
9 sentence of 32 months, and for the breach, I
10 would have imposed a sentence of three months,
11 consecutive. So the total would have been 35
12 months. For the 137 days that you have spent on
13 remand, I will give you credit to 180 days, which
14 is six months, essentially, and I will apply that
15 credit to the possession of cocaine for the
16 purpose of trafficking.

17 So the actual sentence I am imposing, given
18 the remand time, is going to be twenty-six months
19 on the charge of possession of cocaine for the
20 purpose of trafficking and three months,
21 consecutive, on the breach, and that is a total
22 of twenty-nine months, which is a little bit more
23 than what your lawyer was asking me to do, but I
24 assure you, it is a lot less than what you would
25 have received after trial and it is less than
26 what a court could do on these facts. So I have
27 exercised as much restraint as I can.

1 This is a sentence in the penitentiary
2 range. I will ask the clerk to endorse the
3 Warrant of Committal to reflect my recommendation
4 that you be permitted to serve your sentence in
5 an institution in Alberta so that you can more
6 easily have contact with your family members that
7 reside there.

8 You heard your lawyer speak about you,
9 Mr. Mohammed, and about your potential and you
10 heard the Crown talk about the seriousness of
11 what you have done, the seriousness of what you
12 were part of when you were doing these things. I
13 know that you understand. All you need to do
14 when you think back on all of this, if you ever
15 need to be reminded, is think about people you
16 care about and imagine them being robbed by
17 someone who is looking for money to buy cocaine;
18 or imagine their house being broken into, their
19 property being stolen, them being scared after
20 that in their own home because someone needed to
21 steal stuff to get money for cocaine; and imagine
22 houses with empty fridges and hungry kids because
23 their parents are so addicted that they do not
24 know anything better than to spend all their
25 money on cocaine. That is the truth about what
26 this does. This is what this really is. It is
27 not a victimless crime and it causes a lot of

1 harm. And I know, if you think about it, you
2 will understand this. And if you need a reason
3 not to do this again, just think of those images
4 and think of it in terms of people that you care
5 about. Sometimes we forget that this happens to
6 real people and there is somebody's sister,
7 somebody's brother, somebody's child.

8 You may come across people in jail who will
9 encourage you to get involved with this kind of
10 thing again when you get out. That could well
11 happen. It will be up to you. Nothing I say
12 today is going to change what you decide, I do
13 not think. It really is up to you. But I hope
14 that you make the right choices and I wish you
15 luck. You can sit down.

16 Is there anything that I have overlooked?

17 MS. PICHÉ: I don't believe so, Your
18 Honour. I think that's everything.

19 THE COURT: Mr. Stuffco?

20 MR. STUFFCO: No, Your Honour. Thank you
21 for your patience this afternoon.

22 THE COURT: Before we close court,
23 counsel, I want to really thank you, all three of
24 you, and commend you for your work in this case,
25 for your work in resolving this case and for the
26 very helpful submissions you presented because it
27 is truly much easier to make these decisions when

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having received your submissions. So I really
appreciate your submissions.

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Certified Pursuant to Rule 723
of the Rules of Court

Jane Romanowich, CSR(A)
Court Reporter