R. v. Mohammed, 2015 NWTSC 38 S-1-CR-2014-000045

 IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

 IN THE MATTER OF:

 HER MAJESTY THE QUEEN

 - v -

 LIBAN MOHAMMED

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 Transcript of the Reasons for Sentence delivered by The

 Honourable Justice L. A. Charbonneau, sitting in Yellowknife,

 in the Northwest Territories, on the 27th day of July, 2015.

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 APPEARANCES:

 Ms. J. Porter and

 Ms. A. Paquin Counsel for the Crown

 Mr. J. Stuffco: Counsel for the Accused

 (Charges under s. 5(1) of the Controlled Drugs and

 Substances Act and s. 145(3) of the Criminal Code of Canada)

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 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

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 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

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 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

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 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

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 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

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 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

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 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,

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 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

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 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

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 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

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 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

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 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.

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 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

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 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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 1 having received your submissions. So I really

 2 appreciate your submissions.

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 6 Certified Pursuant to Rule 723

 of the Rules of Court

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 Jane Romanowich, CSR(A)

 10 Court Reporter

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