

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

NATHAN LEWIS HODGES

Transcript of the Reasons for Sentence delivered by The Honourable Justice L. A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 10th day of November, 2015.

APPEARANCES:

Mr. M. Fane: Counsel for the Crown

Mr. P. Harte, agent
for Mr. J. Bran: Counsel for the Accused

(Charges under s. 5(1) x3 Controlled Drugs and Substances Act)

1 THE COURT: Mr. Hodges has pleaded guilty
2 to a count of trafficking in cocaine and one
3 count of possession of cocaine for the purpose of
4 trafficking and, today, I must sentence him for
5 that offence.

6 Once again this court has the unpleasant
7 task of sentencing to a significant term of
8 imprisonment a young man who succumbed to the
9 temptation of making quick and seemingly easy
10 money by becoming involved in the drug trade in
11 Yellowknife.

12 Mr. Hodges was caught, as so many drug
13 dealers are, as a result of an undercover
14 operation conducted by the RCMP. This operation
15 was conducted in August 2014 and targeted what is
16 commonly known as a "dial-a-dope" scheme in the
17 city. The system is fairly simple. People who
18 want to buy drugs call a cell phone number, which
19 gives them easy and quick access to the drugs.
20 In this case, to cocaine.

21 The undercover operator made two purchases
22 from Mr. Hodges, one on August 7th and one on
23 August 8th. The operator got in touch with
24 Mr. Hodges the first time by using one of the
25 cell phone numbers that was targeted in the
26 operation. By the next day, that number was no
27 longer good, but Mr. Hodges was immediately able

1 to introduce the undercover operator to another
2 man who provided him another number that could be
3 used to purchase drugs.

4 It is plain from the agreed facts that it
5 was disarmingly easy for the undercover operator
6 to make these first two purchases. It is also
7 admitted that a number of subsequent purchases
8 were made from this other man Mr. Hodges
9 introduced the undercover operator to. There
10 were four purchases between August 9th and August
11 11th.

12 These undercover operations obviously have
13 to end at some point, but the evidence that was
14 gathered during this one makes it clear that
15 Mr. Hodges and his associate had ample stock to
16 sell on the streets of Yellowknife through this
17 dial-a-dope system.

18 On August 12th a search warrant was executed
19 at Number 17 Frobisher Apartments in Yellowknife,
20 which by then had been identified as being
21 associated with Mr. Hodges. He was found there,
22 as well as a large number of items that were
23 seized, including some drugs which Mr. Hodges
24 acknowledges were in his possession for the
25 purposes of trafficking. Several items that can
26 be used to weigh and package drugs were also
27 found. Some of the drugs seized were

1 individually packaged in portions ready to be
2 sold. Other things like cell phones, score
3 sheets, were found.

4 As far as the drugs that were seized, there
5 was, in one location, 26.9 grams of crack cocaine
6 packaged individually but grouped in three
7 separate bags of a total value of \$3,500.

8 The "value", means the amount of money that
9 would be made selling them on the street at the
10 gram level.

11 In another location, 7.2 grams of powder
12 cocaine was found, and in a third location, 27.1
13 grams of powder cocaine was found, that was
14 individually packaged. The total sale value of
15 the powder cocaine was over \$4,500. So, in
16 total, the drugs seized were worth, sold on the
17 street, more than \$8,000.

18 The exchanges that took place during the
19 transactions between the undercover operator,
20 Mr. Hodges, and his associate show that:

21 1) At the time of the August 7th sale,
22 Mr. Hodges was in possession of a bag that
23 contained several bags of cocaine ready for
24 sale; 2) Mr. Hodges seemed to be well versed
25 in the cocaine trafficking activities in
26 Yellowknife. For example, he gave the
27 undercover some advice that the kids around

1 town would rip him off if he bought drugs
2 from them;

3 3) Mr. Hodges was selling not just powdered
4 cocaine but also crack cocaine;

5 4) When the undercover inquired about the
6 possibility of buying other types of drugs
7 (oxys), Mr. Hodges said he would take a look
8 and text him.

9 On the second transaction, Mr. Hodges put
10 the undercover operator in touch with this other
11 man. As I said, the cell phone number that had
12 been used the previous day was no longer good,
13 but Mr. Hodges told the undercover he would get
14 "one of his guys" to give him a new number and
15 then introduced the undercover to this other man.
16 Mr. Hodges told the other man to give the
17 undercover his cell phone number and that other
18 person did.

19 This evidence combined with the quantity of
20 drugs and the various items that were seized
21 during the search lead to one irresistible
22 inference: Mr. Hodges was not merely a delivery
23 man for the drugs, he was not merely given these
24 drugs by some higher-up and made responsible
25 strictly for selling it. He received it in
26 larger quantities and prepared it for sale. That
27 is the only inference that can be drawn from what

1 was found in his apartment. He was also giving
2 directions to this other man he introduced to the
3 undercover officer. He told the undercover
4 operator that he would get, as I said, "one of
5 his guys", in the plural, to give the undercover
6 a new cell number that he could use for future
7 purchases. All this suggests someone who is
8 running the operation at a certain level, not at
9 the very top of the ladder but not at the very
10 bottom of the ladder either.

11 Defence counsel yesterday relayed that
12 Mr. Hodges told him that he was a user of cocaine
13 during this period of time, was addicted and
14 turned to the selling of drugs to make money to
15 feed his habit. Mr. Hodges may well have been a
16 user. There is no suggestion or evidence
17 contradicting that. But his level of involvement
18 is not entirely consistent with other scenarios
19 that the Court has heard from from time to time
20 where, for example, an addict agrees to act as a
21 courier or simply agrees to sell on the street at
22 the gram level in exchange for drugs to feed a
23 habit. There is no basis for the Court not to
24 accept the proposition that Mr. Hodges was a
25 user, but the evidence also suggests, as I said,
26 that he was not merely a salesman or delivery
27 person in this enterprise.

1 I heard about Mr. Hodges' personal
2 circumstances yesterday. He is 26 years old and
3 he does not have a criminal record. He is
4 originally from British Columbia.

5 His counsel talked a bit about his personal
6 circumstances, indicating that Mr. Hodges went to
7 school up to Grade 11 and stopped going to school
8 because there were problems within his family.
9 Counsel noted also yesterday that there were
10 certain aspects of Mr. Hodges' personal history
11 and circumstances that he could not really talk
12 about at the sentencing hearing because
13 Mr. Hodges has another matter pending which will
14 be going to trial. So obviously I have to work
15 with what I have been provided here yesterday.

16 Counsel advised that Mr. Hodges told him
17 that he came to Yellowknife hoping to find work,
18 having heard that there were good paying jobs
19 here. He told his counsel that when he was
20 unable to find work, he turned to this illegal
21 activity to feed his habit and also to deal with
22 the high cost of living in Yellowknife.

23 The cost of living in Yellowknife is high -
24 everyone who lives here knows that - but many
25 people live here and earn their living without
26 breaking the law, and, frankly, especially for
27 someone who is not from here and has no ties to

1 here, if the cost of living is too high and the
2 hunt for employment is not successful, the
3 logical thing to do would be to leave. It is
4 certainly not to become involved in a dial-a-dope
5 scheme to be able to continue living in this
6 community.

7 Whatever his reasons were for coming North
8 in the first place, it is clear that at one point
9 Mr. Hodges made a choice to stay and to engage in
10 this illegal activity and benefit from it. There
11 is much money to be made in this business, and
12 courts know from the sheer number of people who
13 end up before the courts from it that the
14 temptation can be high to get involved in this
15 and take the risk for a good profit.

16 As Mr. Hodges himself acknowledged
17 yesterday, and as courts have been saying over
18 and over again for years, this is not by any
19 stretch of the mind a victimless crime. The
20 ravages that hard drugs have caused in this
21 jurisdiction and elsewhere are well documented.
22 I could spend hours quoting cases, and my
23 intention is not to do that, but I will refer to
24 a couple of cases.

25 Just about ten years ago in R. v. Turner,
26 2006 NTSC 64, this court said this about drug
27 trafficking, paragraph 6 and 7 of the decision:

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(As read)

The illegal trade in cocaine and crack cocaine in Yellowknife has had a devastating effect on the people and on the social life of our community. We know this because of the many cases that come before the Courts where we see the snowball effect of the commission of crimes in this community. We see thefts, B&Es, assaults, domestic violence, and we have seen homicides - all related to cocaine addiction. We have seen broken families. We have seen destroyed lives.

It has been said many times in this courtroom that the illegal cocaine trade is like a plague which has infested the social fabric of our community. Those who are involved in the supply and ... trafficking of cocaine are like vultures and predators who are preying upon those weak members of the community who are addicted to this drug. The traffickers are doing this presumably for profit, or money. They, apparently, have no scruples about preying upon vulnerable people. For this reason alone, they ought to be punished. They are doing so even though there is a risk that they will end up in jail for a substantial period of time.

The Court making these comments was sentencing a young man much like Mr. Hodges.

Earlier this year, some nine years after the Turner case was decided, I had to sentence another young man who did not have a criminal record for his involvement in the drug trade. This was in the case of R. v. Mohammed, 2015 NWTSC 38. I said some things that I will just

1 repeat because I think the same applies to this
2 case:

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

20 The reason why courts have to be
21 firm in their sentencing practices
22 is very simple and was referred to
23 this morning. Cocaine causes
24 ravages and devastation in our
25 communities. Yellowknife has seen
26 its fair share of the collateral
27 damage that crack cocaine has
28 caused. The people who become
29 addicted to the drug harm themselves
30 of course. They sometimes lose
31 everything to it, their families,
32 their work, and their health, but
33 they also often harm others. Houses
34 get broken into, people commit
35 robberies, sometimes on the street
36 in broad daylight or in small
37 convenience stores or gas stations
38 to get money to buy more drugs, or
39 they break into homes and steal
40 property. And they steal, in
41 addition to property, the occupants'
42 senses of safety in their own home,
43 sometimes for a very long time.
44 Some addicts get to the point of
45 being so dysfunctional that they
46 neglect their own children.

47 We do not just hear about cocaine in
48 the criminal courts. We hear about
49 cocaine in family court frequently,
50 and the Territorial Court hears

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about it in child welfare court frequently.

Mr. Mohammed was found with just over 50 grams of cocaine, and the sentence that was imposed on him before his remand time was taken into account was 32 months. And that was on a guilty plea which, like here, was not an early one. In Mr. Mohammed's case, however, the trial date had been set.

The point is that everyone needs to understand that those involved in this, if they are caught, will meet a stern response from the Court. This is because the level of blameworthiness of people who engage in this activity is very high. These types of drugs cause a lot of harm in our community. This jurisdiction has its fair share of addiction issues and social problems. Some people work very, very hard every day to try to address these social problems and difficulties, to find solutions, to find ways to help those that are in more difficult circumstances. Others choose to become part of the problem and prey on other people's vulnerabilities to make good money. In response to that, courts have a duty to impose sentences that will reflect the strong condemnation of these activities, that will

1 reflect the terrible harm that these activities
2 cause, and that will deter others, if that is
3 possible, from engaging in this when they are
4 here or from coming here to engage in this
5 activity because it is so lucrative and the North
6 offers an attractive market for it.

7 Courts in the Northwest Territories have not
8 been known for having a particularly soft
9 approach in sentencing drug traffickers over the
10 last few decades. It would appear the message is
11 not getting through. Maybe there is still too
12 much money to be made and too much greed out
13 there. Maybe courts will have to revise their
14 sentencing practices and make it even less
15 attractive for traffickers to do business here,
16 because evidently many people still think it is
17 worth taking the risk to make lots of money off
18 of it.

19 All that being said, there are mitigating
20 factors here which I have not overlooked.
21 Mr. Hodges has pleaded guilty. This is certainly
22 not an early guilty plea. There was a
23 preliminary hearing and these charges have been
24 pending for some time. I also note that the case
25 against him appears to have been quite strong.
26 Still, he had the right to have a trial and he
27 gave up that right. I accept that this would

1 have been a costly trial as witnesses would have
2 had to be brought up from outside the
3 jurisdiction. The Court knows that these types
4 of cases can turn into long ones with many
5 issues. Avoiding all of that and saving the
6 resources and court time it would have taken is
7 very much to Mr. Hodges' credit. And a guilty
8 plea is an indication that the person is willing
9 to take responsibility for their actions,
10 something that Mr. Hodges has done himself
11 directly yesterday when he addressed the Court.

12 I also take into account that Mr. Hodges is
13 still a young man. Although his involvement in
14 this did not consist of one single bad decision
15 or one single mistake, because there had to have
16 been a whole serious of bad decisions and
17 mistakes to get him to the point he was at the
18 time of arrest, the fact remains that if he
19 chooses to, he can make something of his life
20 when all of this is behind him. It will be up to
21 him and only time will tell.

22 I must also take into account the time that
23 Mr. Hodges has spent on remand, a total of 455
24 days, which amounts to a year and almost three
25 months. The Crown agrees that under the existing
26 law and the principles set out by the Supreme
27 Court of Canada in *R. v. Summers*, 2014 SCC 26.

1 Mr. Hodges should get credit for his remand time
2 at a ratio of one half days' credit for each day
3 spent in custody, which adds up to 682 days,
4 somewhere between 22 and 23 months.

5 The Crown's position is that the sentence,
6 before credit is given for the remand time,
7 should be two to two and a half years. Defence
8 has argued that a fit sentence would be one in
9 the range of 18 to 22 months and that for that
10 reason, the time that Mr. Hodges has already
11 spent in custody is sufficient to address the
12 goals and principles of sentencing.

13 Defence argues that the sentence imposed
14 today should be similar to the one imposed in the
15 case referred to by the Crown, R. v. Randall,
16 2015 NWTSC 27. In that case, the accused was
17 sentenced to 20 months' imprisonment. There were
18 four transactions: The first three, for sales of
19 roughly one gram of cocaine each time and the
20 fourth for a larger continue. Mr. Randall had
21 pleaded guilty and had waived his preliminary
22 hearing. The sentencing decision stated that he
23 had taken several positive steps towards his
24 rehabilitation. His parents and others were
25 supportive of those efforts and had filed letters
26 of support. In addition, although Mr. Randall
27 was part of a dial-a-dope operation, he was one

1 of several people covering shifts, for lack of a
2 better word. The fourth transaction showed that
3 he could have access to larger quantities of
4 drugs on short notice. But on the other hand,
5 there was no evidence tying him to being any
6 higher up in the chain than a street seller,
7 whereas in the case of Mr. Hodges, given what was
8 seized in his apartment, as I have already
9 indicated, I think the inference has to be that
10 he was at a slightly higher level.

11 There are always specific features to every
12 case and about every offender that must be
13 balanced and taken into account to arrive at a
14 fit sentence. No two cases are ever alike.

15 For the reasons I have already given, I find
16 the level of blameworthiness of Mr. Hodges higher
17 than what Mr. Randall's was and more in line with
18 what Mr. Mohammed's was. That level of
19 blameworthiness is quite high. I also find the
20 need for general deterrence and denunciation
21 continues to be a pressing concern with respect
22 to this type of offence in this jurisdiction, and
23 for those reasons, even taking into account the
24 mitigating factors I have referred to, I have
25 concluded that a sentence at the high end of the
26 range sought by the Crown is what is appropriate.

27 It goes without saying that had he been

1 found guilty after trial, Mr. Hodges would face a
2 much longer jail term. I have taken his guilty
3 plea and his expression of remorse into account
4 as a mitigating factor of some significance.

5 I will deal first with the ancillary orders
6 that have been sought.

7 The firearms prohibition is mandatory, so
8 one will issue pursuant to Section 109 of the
9 Code. It will be in force for a period
10 commencing today and ending ten years after
11 Mr. Hodges' release from custody.

12 The Crown has sought a DNA order. This was
13 opposed by defence. This is a secondary
14 designated offence, so Section 487.051(3) applies
15 and sets out the criteria that must be applied.
16 The Court is to consider the criminal record if
17 there is one, the nature of the offence, the
18 circumstances of its commission, and the impact
19 that the order would have on the offender's
20 privacy and security. Mr. Hodges does not have a
21 criminal record and I have taken that into
22 account, but the offences he committed were
23 serious, and as I already noted, the facts
24 indicate that he was involved in preparing the
25 drugs for sale, weighing them, and packaging
26 them. In my view, the additional investigative
27 tool that will be available to the authorities

1 through a DNA order being made, should Mr. Hodges
2 choose to involve himself in this type of
3 activity again, outweigh the minimal impact on
4 his privacy and security that will result from
5 making the order and, for that reason, there will
6 be a DNA order.

7 One of the issues that was discussed
8 yesterday was the date of coming into force of
9 the amendments to the victim of crime surcharge
10 provisions. Those amendments came into force in
11 October 2013 before these offences were
12 committed, which means that I have no discretion
13 to waive the surcharge, and the amount will be
14 \$200 per count for a total of \$400. The time to
15 pay and default time are statutorily set.

16 The Crown has sought forfeiture of a number
17 of items that were seized, and the Crown
18 prosecutor present today has provided a revised
19 draft because there was something about the
20 appendix of the one presented yesterday that I
21 thought should be modified. I now have the
22 revised order and it is consistent in substance
23 with what had been submitted today. So that
24 order will issue.

25 Mr. Hodges, stand up, please. Mr. Hodges,
26 for the reasons that I have been talking about, I
27 conclude a sentence of 30 months is appropriate

1 for this offence -- for the two offences,
2 globally. For the 445 days you have spent on
3 remand, I will give you credit for 22 months.
4 That means the further term of imprisonment will
5 be eight months. You may sit down.

6 The Warrant of Committal will reflect that
7 the sentence is 24 months on Count 1, 30 months
8 on Count 3, concurrent; the 22 months' credit
9 applies for both because both sentences are being
10 served together.

11 Mr. Hodges, just before we conclude, you
12 said yesterday that you took responsibility for
13 what you did and that you were sorry and that you
14 want to turn a page when the various things you
15 are dealing with now are over, and you said you
16 knew that these activities cause harm in the
17 community. I have taken the time to quote from
18 some of the things the Court has said in other
19 cases because it is really true; they are not
20 just words. There are children that are going
21 hungry because there is no food in the fridge and
22 there are people whose homes are getting broken
23 into. There are all sorts of things happening in
24 the City of Yellowknife that are harming people
25 for real, and so I hope that you really do
26 understand the harm that this causes and I hope
27 you are sincere and that you will turn the page

1 and use your time in a better way and a more
2 productive way. I am sure that if you decide to
3 do that, you can do a lot of great things in
4 whatever community that you choose to live in.

5 THE ACCUSED: Thank you, Your Honour.

6 THE COURT: We will close court. Thank
7 you, counsel.

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Certified Pursuant to Rule 723
of the Rules of Court

Jane Romanowich, CSR(A)
Court Reporter

