R. v. Hodges, 2015 NWTSC 59 S-1-CR-2015-000093

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

NATHAN LEWIS HODGES

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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 10th day

of November, 2015.

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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

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

2

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

3

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

4

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.

5

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

6

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:

7

1 (As read)

2 The illegal trade in cocaine and

crack cocaine in Yellowknife has had

3 a devastating effect on the people

and on the social life of our

4 community. We know this because of

the many cases that come before the

5 Courts where we see the snowball

effect of the commission of crimes

6 in this community. We see thefts,

B&Es, assaults, domestic violence,

7 and we have seen homicides - all

related to cocaine addiction. We

8 have seen broken families. We have

seen destroyed lives.

9

It has been said many times in this

10 courtroom that the illegal cocaine

trade is like a plague which has

11 infested the social fabric of our

community. Those who are involved

12 in the supply and ... trafficking of

cocaine are like vultures and

13 predators who are preying upon those

weak members of the community who

14 are addicted to this drug. The

traffickers are doing this

15 presumably for profit, or money.

They, apparently, have no scruples

16 about preying upon vulnerable

people. For this reason alone, they

17 ought to be punished. They are

doing so even though there is a risk

18 that they will end up in jail for a

substantial period of time.

19

20 The Court making these comments was

21 sentencing a young man much like Mr. Hodges.

22 Earlier this year, some nine years after the

23 Turner case was decided, I had to sentence

24 another young man who did not have a criminal

25 record for his involvement in the drug trade.

26 This was in the case of R. v. Mohammed, 2015

27 NWTSC 38. I said some things that I will just

8

1 repeat because I think the same applies to this

2 case:

3 The North is a very tempting market

for drug traffickers, and judging by

4 the number of drug cases that have

been heard by the Territorial Court

5 and this court over the last few

decades, it is apparent that there

6 continues to be a need to impose

sentences that denounce this conduct

7 and send a clear message that when

people do get caught, they will face

8 stern sentences no matter how young

they are or no matter how good their

9 background might otherwise be.

Sadly, there are quite a few young

10 people in the Northwest Territories

who have learned that lesson the

11 hard way.

12 The reason why courts have to be

firm in their sentencing practices

13 is very simple and was referred to

this morning. Cocaine causes

14 ravages and devastation in our

communities. Yellowknife has seen

15 its fair share of the collateral

damage that crack cocaine has

16 caused. The people who become

addicted to the drug harm themselves

17 of course. They sometimes lose

everything to it, their families,

18 their work, and their health, but

they also often harm others. Houses

19 get broken into, people commit

robberies, sometimes on the street

20 in broad daylight or in small

convenience stores or gas stations

21 to get money to buy more drugs, or

they break into homes and steal

22 property. And they steal, in

addition to property, the occupants'

23 senses of safety in their own home,

sometimes for a very long time.

24 Some addicts get to the point of

being so dysfunctional that they

25 neglect their own children.

26 We do not just hear about cocaine in

the criminal courts. We hear about

27 cocaine in family court frequently,

and the Territorial Court hears

9

1 about it in child welfare court

frequently.

2

3 Mr. Mohammed was found with just over 50

4 grams of cocaine, and the sentence that was

5 imposed on him before his remand time was taken

6 into account was 32 months. And that was on a

7 guilty plea which, like here, was not an early

8 one. In Mr. Mohammed's case, however, the trial

9 date had been set.

10 The point is that everyone needs to

11 understand that those involved in this, if they

12 are caught, will meet a stern response from the

13 Court. This is because the level of

14 blameworthiness of people who engage in this

15 activity is very high. These types of drugs

16 cause a lot of harm in our community. This

17 jurisdiction has its fair share of addiction

18 issues and social problems. Some people work

19 very, very hard every day to try to address these

20 social problems and difficulties, to find

21 solutions, to find ways to help those that are in

22 more difficult circumstances. Others choose to

23 become part of the problem and prey on other

24 people's vulnerabilities to make good money. In

25 response to that, courts have a duty to impose

26 sentences that will reflect the strong

27 condemnation of these activities, that will

10

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

11

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.

12

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

13

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

14

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

15

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

16

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

17

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.

8 .................................

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11 Certified Pursuant to Rule 723

of the Rules of Court

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Jane Romanowich, CSR(A)

15 Court Reporter

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