

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

WILLIAM NELSON CASTRO

Transcript of the Reasons for Sentence delivered by The Honourable Justice L. A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 21st day of December, 2015.

APPEARANCES:

Mr. A. Piché: Counsel for the Crown

Mr. J. Chadi: Counsel for the Accused

(Charges under s. 5(2) of the *Controlled Drugs and Substances Act* and s. 354(1) of the *Criminal Code of Canada*)

1 THE COURT: Mr. Castro has pleaded guilty
2 to four charges this morning. The first is a
3 charge of possession of fentanyl for the purposes
4 of trafficking; the second is possession of
5 cocaine for the purpose of trafficking; the third
6 is possession of marijuana for the purpose of
7 trafficking; and the fourth is possession of
8 Canadian currency knowing that that was obtained
9 through the commission of crime. My
10 responsibility now is to sentence Mr. Castro for
11 those offences.

12 The circumstances of the offences and the
13 investigation that led to these charges are set
14 out in a detailed Agreed Statement of Facts that
15 has been filed as Exhibit 1 at this sentencing
16 hearing. I am not going to refer to those facts
17 in all their details, but I am going to direct
18 that a copy of the Agreed Statement of Facts be
19 appended to the Reasons for Sentence so that they
20 are readily available for anyone interested in
21 all the details that were read into the record
22 this morning.

23 In summary, the RCMP initiated this
24 investigation in November 2014. It came to their
25 attention that Mr. Castro had rented a storage
26 locker from the local storage company here in
27 Yellowknife. Eventually they installed a camera

1 to conduct surveillance at that location. They
2 also obtained, later on, a warrant that allowed
3 them to access the storage locker. They did
4 access it on April 15th, 2015, and they found a
5 very large quantity of drugs as well as other
6 items in that locker. Paragraph 10 of the Agreed
7 Statement of Facts sets out the quantities and
8 value of what was found and I will refer to that
9 because it is important: 538 grams of crack
10 cocaine, of a street value of \$53,800; 175 grams
11 of powder cocaine, of a street value of \$17,500;
12 503 fentanyl tablets, street value of \$45,000;
13 1.68 kilograms of a white powder that was
14 apparently a cutting agent and 744 grams of
15 another powder that was used as a cutting agent.

16 The same day the police executed a search
17 warrant at a residence where Mr. Castro was a
18 tenant and various items were seized in that
19 residence as well. Sixty grams of powder cocaine
20 were found, valued at \$6,000; 19 grams of crack
21 cocaine were found, a value of \$1,900; 536 grams
22 of marijuana with a street value of \$8,040; and
23 another 90 fentanyl tablets, of a street value of
24 \$1,800. In a safe in Mr. Castro's room, police
25 found \$212,955 in Canadian currency. Mr. Castro
26 admits that the money that was found in the safe
27 was obtained through criminal activity.

1 This is the first time this court deals with
2 an offence involving the possession of fentanyl
3 for the purpose of trafficking.

4 Paragraphs 28 to 34 of the Agreed Statement
5 of Facts sets out information about this type of
6 drug. It is a very dangerous drug. It has
7 analgesic potency that is fifty to a hundred
8 times stronger than morphine and twenty times
9 stronger than heroin. Its illicit use creates a
10 high increase of lethal overdose.

11 Unfortunately, the popularity of this drug
12 has increased in Canada recently. I doubt very
13 much that those who make profit from this type of
14 activity care about this type of statistic, but
15 health authorities in Alberta and British
16 Columbia have reported a spike in fentanyl
17 related overdoses in 2015. In particular, the
18 percentage of fentanyl related overdose deaths in
19 British Columbia has increased over the past few
20 years in the following manner: In 2012,
21 5 percent of the drug overdose deaths were linked
22 to it; in 2014, that number had increased to 25
23 percent; and in the first eight months of 2015,
24 that number had increased to 35 percent. So,
25 quite simply, this is a very powerful drug, it is
26 a very dangerous drug and people are dying more
27 and more from overdosing on it.

1 While the people who consume these
2 substances are responsible for their actions and
3 their choices, in my view, those who, out of pure
4 greed, get involved in trafficking these types of
5 substances also bear responsibility for those
6 very tragic consequences. The devastating impact
7 that this drug has must inform the Court's
8 response in sentencing people who choose,
9 unscrupulously and in the most predatory way
10 imaginable, to profit from its illicit sale.

11 The Crown has filed cases from jurisdictions
12 where courts have had occasion to deal with
13 offences of trafficking and possession for the
14 purpose of trafficking of this type of drug.
15 These cases are very helpful for two reasons.
16 First, they give an indication of the types of
17 sentences that are imposed for these offences.
18 But many also talk about the dangers that this
19 drug presents and the comments in those cases are
20 very much in line with what has been included
21 here in the Agreed Statement of Facts. For
22 example, in *R. v. Brooker*, 2014 ONCJ 2609, in
23 paragraphs 88 and 89, the Court talks about this.
24 It labels this illicit trafficking activity as a
25 despicable activity, and this is a label that I
26 fully endorse. The Court refers to the fact that
27 it is a very lucrative business and one that has

1 led to a number of young people dying from
2 overdoses while using it. The judge speaking in
3 that case sits in the region of Barry, Ontario.

4 Similarly, in *R. v. Medeiros-Sousa*, 2014
5 ONCJ 626, at paragraph 8, there is a reference to
6 the expert evidence called in that case and it
7 summarizes very nicely, I think, what this drug
8 is, what it is supposed to be used for, and how
9 it is misused. So I will quote that one
10 paragraph from that one case. It is paragraph 8:

11 Fentanyl is an opioid and acts like
12 morphine to provide pain relief.
13 When in patch form, fentanyl is
14 designed to slowly release in order
15 to control pain over a number of
16 days. However, fentanyl patches can
17 be abused by chewing, melting or
18 otherwise consuming the contents of
19 the patch so as to receive the
20 immediate affect [sic] of the drug
21 contained in the patch. Fentanyl is
22 10 to 20 times stronger than heroin.
23 Misuse of even one patch of fentanyl
24 can cause death.

25 Then he speaks about the expert, a Dr. Woodall,
26 and says:

27 Dr. Woodall testified that there has
28 been an increase in reported deaths
29 from fentanyl; indeed, the reported
30 deaths from fentanyl now outnumber
31 deaths from heroin.

32 The courts also commented on the dangers of
33 this drug in *R. v. Reid*, 2015 NSSC 276, and *R. v.*
34 *Rowley*. In *Rowley*, at paragraph 137, the
35 sentencing judge notes that members of the public

1 may not realize how dangerous this substance is
2 because it is a prescription drug and this can
3 create a false sense of security in people.

4 It is undisputed here that Mr. Castro was
5 involved in a wholesale commercial operation
6 within the meaning of *R. v. Lau*, 2004 ABCA 408.
7 This engages a starting point of four and a half
8 years when the drug trafficked is cocaine.

9 The sentences in the Northwest Territories
10 for trafficking in hard drugs are not lenient.
11 There are many cases where this court and the
12 Territorial Court have explained why, including
13 recent ones. The devastation that hard drugs
14 have caused in our communities is well known. If
15 fentanyl is trafficked more frequently here,
16 there is no reason to expect that the same tragic
17 outcomes as has been noted in other provinces,
18 such as British Columbia, Ontario and Alberta,
19 will not occur here. For that reason,
20 denunciation and deterrence are of primary
21 importance, as they always are in dealings with
22 sentencings in hard drugs. I am certain that if
23 the Alberta Court of Appeal or any other
24 appellate court had occasion to decide whether a
25 different starting point should apply in cases
26 involving fentanyl, counsel would have brought
27 that case to my attention. It may well be that,

1 with the increase of cases involving this drug,
2 that type of guidance may eventually come from
3 the Alberta Court of Appeal, our Court of Appeal,
4 or another Court of Appeal in the country. But
5 for now it seems to me that based on the potency
6 of this drug and how dangerous it is, as well as
7 the very disturbing statistics that I have been
8 presented with in this case about the dramatic
9 increase in the number of deaths linked to it in
10 the recent past, sentences for trafficking and
11 possessing this type of drug for the purpose of
12 trafficking should be higher than the ones
13 imposed for trafficking in cocaine.

14 I must take into account the circumstances
15 of Mr. Castro himself. He is still a young man.
16 I heard he is from British Columbia and some
17 years ago moved to the United States with his
18 parents and returned to British Columbia after he
19 turned 18. He was essentially on his own at that
20 point. It is evident that he made some very bad
21 decisions and choices about what to do with his
22 time and what activities to engage in.

23 I heard that his plan is to take advantage
24 of educational opportunities while in custody and
25 complete his training once he finishes serving
26 his sentence. He is interested in the field of
27 IT and has a brother who now lives in B.C. and is

1 working in that field.

2 Mr. Castro was on probation for trafficking
3 in cocaine at the time he committed these
4 offences. He received a suspended sentence and
5 probation for 18 months for that offence in
6 September 2014. This was very shortly before he
7 rented this locker in Yellowknife, so obviously
8 the sentence he received in September 2014 did
9 not have any deterrent effect on him whatsoever.

10 I agree with the Crown submissions that the
11 level of sophistication of this enterprise is
12 aggravating, as is the fact that Mr. Castro was
13 on probation for a similar offence at the time
14 these ones were committed.

15 There are also, however, some mitigating
16 factors to consider, and without doubt the most
17 significant one is the pleas of guilty that
18 Mr. Castro has entered. This is very significant
19 for many reasons. First, it shows a willingness
20 to accept responsibility for the offence. It
21 avoids the need to have a trial. Given the
22 nature of this investigation, I accept that this
23 is a trial that would have tied up a considerable
24 amount of court time and requires extensive
25 resources. Mr. Castro has avoided all that by
26 giving up his right to have the Crown prove his
27 guilt beyond a reasonable doubt. The plea comes

1 some months after his arrest, but I completely
2 accept that that should not be held against
3 Mr. Castro because I completely accept that
4 disclosure in these types of cases is extensive;
5 some of the issues to be addressed potentially
6 complex; and that in order to diligently
7 represent Mr. Castro's interest, his counsel
8 needed to have the disclosure, full disclosure,
9 and to review it in order to provide his client
10 with advice before this matter could reach the
11 point that it has today. The Crown is not
12 suggesting that this should be treated as a late
13 guilty plea. I agree with counsel that this
14 should be treated as a guilty plea at an early
15 opportunity and I agree that Mr. Castro is
16 entitled to the maximum credit for those pleas.
17 I have also taken into account his age and the
18 fact that his prospects for rehabilitation cannot
19 be ignored.

20 Mr. Castro must be given credit for the 251
21 days he has spent on remand since his arrest. I
22 have not heard anything that would give me a
23 reason to not give him credit for that remand
24 time on an enhanced basis following the
25 principles set out by the Supreme Court of Canada
26 in *R. v. Summers*, [2014] 1 SCR 575.

27 The Crown has sought a number of ancillary

1 orders and those will be granted. There will be
2 a firearms prohibition for Mr. Castro's life.
3 Any firearms that he might have are to be
4 surrendered forthwith, which is really a
5 non-issue here since he is in custody. There
6 will also be a DNA order. There will also be a
7 victim of crime surcharge in this matter. I
8 believe it is \$100 per count under the *Criminal*
9 *Code*. There will be a forfeiture order for the
10 amount of money that was seized in the safe, and
11 I will ask the Crown to submit a draft order that
12 includes the various items that are to be
13 forfeited.

14 As far as the quantum of sentence, the jail
15 time itself, I am presented with a joint
16 submission in this case. The law is very clear
17 that such a submission must be followed unless it
18 is clearly unreasonable. In my view, what has
19 been suggested here is very reasonable. It is a
20 significant sentence for someone who has pleaded
21 guilty early in the process. It is undoubtable
22 that after trial on these facts, Mr. Castro would
23 have been facing a much, much longer sentence.

24 To reflect the seriousness of each of these
25 counts, I have decided the sentences should all
26 be concurrent to one another because otherwise,
27 in applying the principle of totality, I would

1 have to reduce the sentence on each of those
2 counts to avoid a crushing overall sentence.
3 That, to me, would mean that the sentences for
4 each individual offence would not reflect the
5 seriousness of each of the counts.

6 Stand up, please, Mr. Castro. Mr. Castro,
7 on Count 1, that is the possession of fentanyl
8 for the purpose of trafficking, the sentence I
9 would have imposed if you had not been on remand
10 would have been six years. For the 251 days you
11 have spent on remand, I give you credit for one
12 year. So on that count, there will be a further
13 imprisonment of five years. On Count 2, I will
14 impose a sentence of five years, concurrent. On
15 Count 3, two and a half years, concurrent. On
16 Count 4, two years, concurrent. So the global
17 sentence that you have left to serve is five
18 years. You can sit down.

19 Have I overlooked anything, counsel, or is
20 there anything else you need by way of orders?

21 MS. PICHE: First, Your Honour, I believe
22 that when the count is indictable, the victim
23 surcharge is \$200.

24 THE COURT: Is it 200?

25 THE COURT CLERK: Yes, Your Honour.

26 THE COURT: I stand corrected. Thank you.

27 MS. PICHE: I have a draft forfeiture

1 order now, if the Court is willing to take it.

2 THE COURT: Yes, I can look at it now if
3 you want.

4 Have you seen this draft, Mr. Chadi?

5 MR. CHADI: I am looking at it now. I
6 have no issue.

7 THE COURT: I will sign the order as it is
8 presented.

9 MR. CHADI: I think on page 2, we just
10 have to fill in a sentence in there.

11 THE COURT: Yes. The clerk will complete
12 that, but I am confident that she will put in the
13 right sentence.

14 THE COURT CLERK: Thank you, Your Honour.

15 THE COURT: I am also going to give you
16 back, Madam Clerk, the Book of Authorities, the
17 case that was submitted by Mr. Chadi, and the
18 three exhibits.

19 THE COURT CLERK: Thank you.

20 THE COURT: You do not require any other
21 order in relation to other exhibits, Ms. Piché?

22 MS. PICHÉ: No, not at this time
23 considering that there is still the co-accused
24 whose case is pending before the Court. Thank
25 you.

26 THE COURT: Anything from you, Mr. Chadi?

27 MR. CHADI: Nothing further from me.

1 Thank you, Your Honour.

2 THE COURT: Thank you.

3 MR. CHADI: I take it there should be no
4 time to pay these fines. My client is in
5 custody.

6 THE COURT: I think the time to pay is --
7 I forget now. Is it automatically set out in the
8 schedule, Ms. Piché?

9 MS. PICHÉ: I believe it's a period of
10 time after Mr. Castro has served his sentence.
11 I'm not too sure. I'm looking at the clerk.

12 THE COURT CLERK: I believe it's six months.

13 THE COURT: From release?

14 THE COURT CLERK: From release.

15 THE COURT: In any event, the time to pay
16 is set statutorily. Anything further?

17 MR. CHADI: Nothing from me. Thank you.

18 THE COURT: Thank you.

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22 Certified Pursuant to Rule 723
23 of the Rules of Court

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Jane Romanowich, CSR(A)
Court Reporter

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES
BETWEEN:**

HER MAJESTY THE QUEEN

- and -

WILLIAM NELSON CASTRO

AGREED STATEMENT OF FACTS

The Following facts are admitted by the accused without the necessity of calling evidence, pursuant to s. 655 of the *Criminal Code*:

A) Possession for the Purpose of Trafficking of Fentanyl, Cocaine and Marihuana and Possession of Property Obtained by Crime

1. In November 2014, the Royal Canadian Mounted Police (hereinafter RCMP) in Yellowknife, Northwest Territories, initiated an investigation into the activities of William Nelson Castro.
2. In December 2014, William Nelson Castro rented a storage locker at a local storage company called Pack Rat Storage located at 114 Kam Lake Road in Yellowknife. The unit rented by Mr. Castro was unit 60. A unique access code was given to Mr. Castro at that time.
3. On January 15, 2015, Mr. Castro accessed the unit for the first time.
4. The investigation led the RCMP to install a camera at Pack Rat Storage.
5. The RCMP camera was initiated on March 31st,

2015 and was recording 24 hours a day until April 15, 2015.

6. Between March 31, 2015 and April 15, 2015, Mr. Castro accessed the locker 2 to 3 times a week.

7. Mr. Castro was the only person to access unit 60 between March 31, 2015 and April 15, 2015.

8. The last time Mr. Castro accessed unit 60 before April 25, 2015 was on April 13, 2015.

9. The RCMP obtained a General Warrant to covertly access and search the locker on multiple occasions. The first time they accessed it was on April 15, 2015, and they found substantial quantities of drugs, they seized them immediately.

10. The search of the locker revealed the presence of:

- 538 grams of crack cocaine (street value of 53 800\$)
- 175 grams of powder cocaine (street value of 17 500\$)
- 503 fentanyl tablets (street value of 45000\$)
- 1.68 kg of a white powder in a bag marked "Super" (cutting agent)
- 744 grams of a powder marked "powder buff" (cutting agent)
- 2 guitars stolen in December 2013
- A Canadian Air Transport Security Authority (CATSA) Uniform and an Airport Access Card

11. In April 2015, Mr. Castro was the tenant and a resident of the townhouse situated at 6236 Finlayson Drive in Yellowknife.

12. On April 14 and 15, 2015, Mr. Castro was observed coming and going from the residence situated at 6236 Finlayson Drive in Yellowknife with Hassen Abdul Kerim Mohamed.

13. On April 15, 2015 at approximately 8pm, the RCMP executed a Search Warrant at 6236 Finlayson Drive in Yellowknife.

14. Upon the RCMP's entry into the residence, Mr. Castro attempted to flee the residence by jumping head first from the second story window. His feet got caught in the window frame. He was able to get on the ground uninjured and he was taken into custody.

15. Hassen Adbul Mohamed was located in the bathroom at the time of the search. He complied with the direction of the officers to lay on the ground. A bag containing one ounce of cocaine was found between his legs.

16. The search of the residence revealed indicia of drug trafficking throughout the house.

17. The following items were located:

- In the living room:
 - a scale with crack cocaine rocks around it in plain view and a bag containing marihuana;
 - a bundle of \$1000 (1x\$100, 20x\$20, 10x\$50) on the coffee table;
- In the kitchen:
 - Marihuana in the refrigerator
 - A bag containing 90 green fentanyl pills packaged in smaller bags for resale found on top the refrigerator.

18. There are 3 bedrooms in the residence, all on the top floor.

19. Bedroom #1 was lived in. Mr. Castro's British Columbia identification card and passport were located in that bedroom.

20. In the same bedroom, \$1550 were located on top of the dresser and \$150 in a drawer of the dresser. A bag containing 15 individual packages of cocaine for a total quantity of 17 grams was also found on the top of the dresser.

21. In Bedroom #1, there was a safe in the closet. Mr. Castro's birth certificate was inside the safe. The safe also contained numerous stacks of currency which were bundled in approximately \$5000 bundles for a total of \$212,955.00 in Canadian currency and \$40 in American currency.

22. Bedroom #2 was lived in. Medication labelled with Mr. Mohamed's name, travel documents in his name and his passport were found this bedroom.

23. Mr. Mohamed had \$298.55 on his person. There was \$1000 in \$20 bills located in a shoe in Bedroom #2.

24. In total, the following quantities of drugs were found in the residence:

- 60 grams of powder cocaine (street value of \$6000)
- 19 grams of crack cocaine (street value of \$1900)
- 536 grams of marihuana (street value of \$8040); and
- 90 fentanyl tablets (street value of \$8100)

25. All fentanyl tablets seized at unit 60 Pack Rat Storage and at 6236 Finlayson Drive were counterfeit 80 mg Oxycodone tablets.

26. William Nelson Castro possessed fentanyl, cocaine and marihuana for the purpose of trafficking.

27. William Nelson Castro knew that currency found in the safe located in Bedroom #1 derived directly or indirectly from the commission in Canada of an offence punishable by indictment.

B) Nature, Effect and Street Purchase Pricing of Fentanyl

28. Fentanyl is a synthetic opiate analgesic that is commonly used as a pain killer and as a veterinary medication.

29. Fentanyl can be smoked, ingested, or absorbed through skin. It has an analgesic potency that is

50-100 times that of morphine and 20 times that of heroin.

30. Recently, fentanyl has become popular in the sales of illicit drugs both as either a cutting agent or direct substitution for heroin, or in the manufacturing of counterfeit Oxycodone pills.

31. The illicit use of fentanyl creates a high risk of overdose.

32. In 2015, health authorities reported a spike in fentanyl-related overdoses in British Columbia and Alberta.

33. The British Columbia Coroner Service recently reported that in 2014, 25 percent of drug overdose deaths in British Columbia were linked to fentanyl. Between January 1, 2015 and August 31, 2015, that percentage increased to 35 percent. In 2012, 5 percent of drug overdose deaths in British Columbia were linked to fentanyl.

34. In Yellowknife, the illicit purchase price of a counterfeit Oxycodone 80mg fentanyl tablet on the street is approximately \$80 to \$100.

C) William Nelson Castro Was Bound by a Probation Order in April 2015

35. On September 11, 2014, William Nelson Castro appeared before the British Columbia Provincial Court for a sentencing hearing with respect to a charge of trafficking in cocaine. Judge K. Walker ordered that the passing of sentence upon Mr. Castro be suspended. She also issued a Probation Order for a duration of 12 months. Amongst the conditions of this Probation Order was the condition to keep the peace and be of a good behaviour.

ORIGINAL SIGNED AND FILED WITH THE COURT