

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

RORY QUENTIN MOORE

Transcript of the Reasons for Sentence delivered by The Honourable Justice L.A Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 19th day of September, 2016.

APPEARANCES:

Ms. A. Lewis: Counsel for the Crown

Mr. J. Bran: Counsel for the Accused

(Charges under s. 5(1), 4(1), 5(2), of the Controlled Drugs and Substances Act, and 354(1) of the Criminal Code of Canada)

1 THE COURT: Mr. Moore has pleaded guilty
2 to charges of simple possession of fentanyl,
3 possession of fentanyl for the purposes of
4 trafficking, and possession of proceeds of crime.
5 And today, it is my responsibility to impose a
6 sentence on him for these offences.

7 The circumstances of the offences committed
8 by Mr. Moore were outlined in an Agreed Statement
9 of Facts that was filed at the sentencing. I am
10 going to summarize those facts briefly today but,
11 for the sake of completeness, I am directing that
12 a copy of the Agreed Statement of Facts be
13 appended to the transcript of my Reasons for
14 Sentence.

15 In summary, with respect to the simple
16 possession charge, Mr. Moore was arrested on June
17 1st, 2014 when the RCMP responded to a complaint
18 regarding a possible impaired driver. Mr. Moore
19 was found passed out in a vehicle parked in a
20 parking lot in Yellowknife.

21 When he was arrested, two bottles of tablets
22 were found on his person. There was a total of
23 80 tablets in the bottles, and 18 of these were
24 green pills that contained fentanyl.

25 With respect to the possession for the
26 purposes of trafficking of fentanyl and
27 possession of proceeds of crime, these charges

1 are the result of an undercover operation that
2 was conducted by RCMP in Yellowknife targeting
3 drug trafficking activities.

4 In August 2014, undercover officers came
5 into contact with Dayle Hein and were able to
6 purchase illegal drugs from him on a number of
7 occasions. The first few transactions involved
8 crack cocaine.

9 On August 8th, one of the undercover officers asked
10 Mr. Hein if he had any oxycodone. Mr. Hein said
11 that he did not have any at that point but would
12 get some in the future. The officer gave
13 Mr. Hein a number where he could be texted when
14 the drugs became available.

15 On August 10th, Mr. Hein texted the
16 undercover officer and told him the "oxys" were
17 available. He directed the officer to Frobisher
18 House apartments. There, the undercover met up
19 with Mr. Hein and give him \$120. Mr. Hein went
20 inside and returned a short time later with two
21 tablets of oxycodone and gave them to the
22 officer.

23 The next day, August 11, Mr. Hein texted the
24 undercover to tell him that "the 80s had
25 arrived." The undercover called Mr. Hein and
26 asked how many he could get. Mr. Hein replied
27 that he would have to speak to "his guy".

1 In the minutes that followed, Mr. Hein
2 called Mr. Moore's cellphone twice. Mr. Hein
3 then agreed to sell the undercover officer three
4 pills for \$280. Mr. Hein said he would have to
5 walk over to "his guy". Mr. Hein was seen
6 walking towards the location where Mr. Moore
7 lived, Rockridge Apartments. He was seen having
8 a brief meeting with Mr. Moore on 49th Street,
9 half-way between Crestview Apartments and
10 Rockridge Apartments.

11 After this brief exchange, Mr. Moore walked
12 back to Rockridge and Mr. Hein returned to
13 Crestview. At Crestview, Mr. Hein sold three
14 fentanyl pills to the officer for \$280. After
15 the transaction, Mr. Hein and Mr. Moore were
16 observed meeting again on 49th Street between the
17 two apartment buildings in the same location as
18 they had before.

19 The following day, August 12th, the
20 undercover went to Crestview Apartments. This
21 time, he asked Mr. Hein for five fentanyl pills.
22 Mr. Hein pulled out a small bag from his pocket
23 that contained 80-gram fentanyl pills, and he
24 sold five pills to the undercover officer for
25 \$450.

26 On August 13th, police executed a search
27 warrant of Mr. Moore's residence. Both him and

1 his spouse were there when the search warrant was
2 executed. Among other things that were found
3 during the search, the police found 23 tablets
4 that contained fentanyl in a man's jacket in the
5 wardrobe. These were similar to the ones that
6 had been purchased from Mr. Hein on August 11th
7 and 12th.

8 Police also found a small bag of cocaine in
9 the residence; various tablets containing illicit
10 substances listed at Schedules I, IV, and V of
11 the Controlled Drugs and Substances Act; a
12 digital scale; and three mobile phones.

13 Mr. Moore was also found in possession of \$1,000
14 in cash in a pocket of his pants. Five of the
15 \$20 bills in that bundle were bills used in the
16 August 12th transaction with Mr. Hein.

17 Mr. Moore admits that the fentanyl that was
18 found at the residence was in his possession for
19 the purpose of trafficking and that he knew that
20 the money that was found in his possession was
21 proceeds of crime.

22 Paragraphs 25 to 31 of the Agreed Statement
23 of Facts specifically deal with the drug
24 fentanyl. The information that is included in
25 this document mirrors the comments in the
26 sentencing decisions that pertain to this drug
27 and were filed by the Crown. Those facts are

1 also consistent with admissions that were made in
2 the only other case from this jurisdiction
3 involving fentanyl trafficking so far,
4 R. v. Castro, [2016], NWTSC 8.

5 That information bears repeating here
6 because, although there is increasing awareness
7 about this drug in the general population, I
8 suspect many people in our communities are still
9 not aware of the growing problem that fentanyl
10 trafficking presents and of just how dangerous
11 this drug is.

12 Fentanyl is a synthetic opioid analgesic.
13 It is intended to be used as a painkiller. It is
14 a very powerful drug. Its analgesic potential is
15 50 to a hundred times that of morphine and 20
16 times that of heroin. Its illicit sale has
17 become increasingly popular in recent years. It
18 is a drug that creates a very high risk of
19 overdose. B.C. health authorities report a spike
20 of fentanyl related overdoses in both B.C. and
21 Alberta.

22 The Crown filed a number of cases decided in
23 the past few years where people were sentenced
24 for trafficking in this drug and sometimes for
25 being part of various schemes to divert the drug
26 from its lawful use as a prescription drug to its
27 unlawful use.

1 Some of the decisions are connected to one
2 another in the sense that the people who were
3 sentenced were involved in the same overall
4 trafficking scheme. These decisions include a
5 lot of information about this drug. Several of
6 those cases originate from Ontario, and the
7 judgments refer to evidence that was adduced from
8 apparently the same toxicology expert who
9 explained, at those sentencing hearings, things
10 about the potency of the drug, how it is
11 consumed, and why the risks associated with its
12 illegal consumption are so high.

13 Some of the information that is found in
14 these cases includes, for example, that fentanyl
15 is a prescription drug and is intended to be
16 administered by way of a patch that allows the
17 drug to slowly enter the body. Those who traffic
18 in it extract the drug from the patch and sell it
19 to be consumed in a variety of other ways. The
20 result is that, instead of the slow absorption
21 that would happen when the drug is being used
22 lawfully, those who consume fentanyl pills or
23 consume it in other ways may well end up with a
24 very large dose of the drug entering the body all
25 at once. Typically, the users have no way of
26 knowing the exact dosage that is being absorbed
27 because the pills are produced illegally. It is

1 not as though there is any control or monitoring
2 of the dosage. And that makes it even more
3 dangerous.

4 And finally, because fentanyl is a
5 prescription drug, it may lead people into a
6 false sense of security that it is not actually
7 as dangerous as it is.

8 Of course, many aspects of this factual
9 information are not part of the evidence that was
10 adduced at this sentencing hearing. But I
11 mention these things because they are referred to
12 in the published cases that were filed, and the
13 information is fairly consistent in the various
14 cases.

15 What is part of the facts admitted before me
16 is that the consumption of fentanyl has resulted
17 in an increasing number of deaths over the past
18 few years. The Agreed Statement of Facts
19 includes the following statistics from the
20 British Columbia coroner's office: in 2012, 5
21 percent of drug overdose deaths in British
22 Columbia were linked to fentanyl; in 2014, that
23 percentage rose to 25 percent; and, in the first
24 eight months of 2015, that percentage increased
25 to 35 percent. Those are very daunting
26 statistics.

27 In many of the cases filed at this

1 sentencing hearing, the sentencing judges made
2 reference to an increase in the fentanyl-related
3 deaths in their province or region. Comments to
4 this affect were made in R. v. Brooker, [2014]
5 O.J. No. 2609; in R. v. Giannilos, 2016, ONSC
6 556; and in R. v. Husch, an unreported decision
7 of the Saskatchewan's Queen's Bench from
8 September 2nd, 2015.

9 The Agreed Statement of Fact filed in this
10 case says that, in this Territory, between 2012
11 and 2015, there was one drug overdose death
12 related to fentanyl per year on average. Given
13 how dangerous this drug is and the growing effect
14 that its trafficking has had elsewhere in the
15 country, there is absolutely no reason to believe
16 that, if it continues to be sold and used here,
17 we will not experience an increased number of
18 deaths related to its use. There is no reason to
19 believe that what has happened elsewhere will not
20 happen here.

21 I have the benefit of a presentence report
22 that provides information about Mr. Moore's
23 background and his personal circumstances, and
24 his counsel has provided me with additional
25 information. All this is very useful and
26 important information at a sentencing hearing
27 because any sentence has to take into

1 consideration the crimes that were committed but
2 also the circumstances of the person who has
3 committed them.

4 Mr. Moore, like many who traffic in illicit
5 drugs, is a user himself and got into selling
6 drugs to sustain his own habit. His arrest on
7 these charges, it appears, has been a turning
8 point for him and his spouse. I accept he has
9 made significant efforts to address his addiction
10 and that he has made enormous progress.

11 His counsel has said that, having to be
12 sentenced to a jail term today, which Crown and
13 defence both agree is what is going to happen,
14 will represent a setback because he has spent the
15 last two years working very hard at changing his
16 situation. I accept that, and I accept that it
17 may seem counterproductive now that he has
18 employment, now that he has made efforts to get
19 his life back on the right track, to sentence him
20 to a lengthy jail term.

21 That being said, it is not unusual for
22 people to continue trafficking and cause this
23 immense harm to their community until they are
24 caught. Getting caught often is the turning
25 point. That does not take anything away from the
26 value and the sincerity of the efforts made or
27 the value of the rehabilitative steps that are

1 taken. But it also does not take anything away
2 from the seriousness of the crime. And, as is
3 the case with any sentencing, these proceedings
4 are not just about Mr. Moore.

5 I want to add that, although it is clear
6 Mr. Moore has made a lot of progress, I do not
7 think it can be said that his rehabilitation is
8 complete. While he was on process for these
9 charges, he had, at one point, stopped reporting
10 to police and was convicted of a breach of his
11 process. He was also convicted of shoplifting.

12 He has been on a screening program, and some
13 of the reports arising from that program were
14 filed by Mr. Moore's counsel. They show that he
15 has abstained or was certainly screened clear for
16 fentanyl on those various occasions. He did test
17 positive for cannabis on a few occasions, based
18 on the screening reports that I have before me.

19 It is perhaps not surprising that he has
20 occasionally consumed cannabis, but it is another
21 indication of the ongoing nature in his
22 rehabilitation process.

23 It is very clear that Mr. Moore has come a
24 long way when one reads the presentence report
25 and what his situation was at the time of his
26 arrest. But it is also clear that this
27 rehabilitation process is going to have to be an

1 ongoing thing for many years to come.

2 Perhaps the most telling example of that
3 comes from Mr. Moore's own words reported in the
4 presentence report when he is reported saying
5 that he is "thankful and amazed that he can now
6 go one or two days at a time without thinking
7 about fentanyl." That says a lot about the power
8 of this addiction and the difficult road ahead
9 for anyone who tries to battle it. It is very
10 much to Mr. Moore's credit that he is battling it
11 courageously for his well-being and the
12 well-being of his family. It also demonstrates
13 the very serious harm that can come any time a
14 single one of these pills is sold on the streets.

15 Mr. Moore told the author of the presentence
16 report that he was not trying to get new people
17 hooked. As Crown counsel noted during
18 submissions, there is no way Mr. Moore could
19 realistically know or control who these pills he
20 was supplying were going to be sold to. The
21 evidence is clear: Mr. Moore was Mr. Hein's
22 supplier. He could not know who the fentanyl
23 pills were going to be sold to. He could not
24 know he was not going to get new people hooked on
25 this drug. The reality is, once those drugs were
26 given to Mr. Hein, those pills could end up in
27 anyone's hands including a new user.

1 People who traffic in these drugs may well
2 want to kid themselves into thinking it is not
3 what they are selling that produces a new addict
4 or it is not the pill that they sold that
5 resulted in a person's death. The fact is, every
6 time this drug is sold, it can mean a new addict
7 and it can mean a new death. I think Mr. Moore's
8 counsel probably said it best during his
9 submissions when he was talking about that part
10 of the presentence report. Counsel said perhaps
11 Mr. Moore's comment was more the expression on
12 his part of wishful thinking, but it is not
13 reality.

14 I have said that, in any sentencing, I have
15 to take into account the circumstances of the
16 offence and the circumstances of the offender.
17 Of course, I also have to take into account the
18 general sentencing principles that are set out in
19 the Criminal Code.

20 The legal framework that governs any
21 sentencing is in the Criminal Code. Section 718
22 explains what the fundamental purpose of
23 sentencing is and what its objectives are. It
24 says, and I quote: (as read)

25 "The fundamental purpose of
26 sentencing is to contribute, along
27 with crime prevention initiatives, to
 respect for the law and the
 maintenance of a just, peaceful and
 safe society by imposing just

1 sanctions that have one or more of
2 the following objectives: (a) to
3 denounce unlawful conduct and the
4 harm done to victims or to the
5 community that is caused by unlawful
6 conduct; (b) to deter the offender
7 and other persons from committing
8 offences; (c) to separate offenders
9 from society, where necessary; (d) to
10 assist in rehabilitating offenders;
11 (e) to provide reparations for harm
12 done to victims or to the community;
13 and, (f), to promote a sense of
14 responsibility in offenders, and
15 acknowledgement of the harm done to
16 the victims or to the community."

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The Controlled Drugs and
Substance Act also has a section that deals with
the purpose of sentencing. It is similar to
Section 718, but it is not entirely identical.
It reads, and this is paragraph 1 of Section 10:
(as read)

Without restricting the generality of
the Criminal Code, the fundamental
purpose of any sentence for an
offence under this Part is to
contribute to the respect for the law
and the maintenance of a just,
peaceful and safe society while
encouraging rehabilitation, and
treatment in appropriate
circumstances, of offenders and
acknowledging the harm done to
victims and to the community.

All the other principles that
deal with sentencing, in the Criminal Code, are
in support of the fundamental principle in any
sentencing, which is proportionality: A sentence
must be proportionate to the gravity of the

1 offence and to the degree of responsibility of
2 the person who committed that offense.

3 In the Northwest Territories, Courts have,
4 for a long time, followed the jurisprudence of
5 the Alberta Court of Appeal, which is, due to the
6 composition of the Northwest Territories Court of
7 Appeal, highly persuasive. And one of the areas
8 where our Courts have followed the Alberta
9 jurisprudence is as far as starting points on
10 sentencing.

11 The usefulness of starting points set out by
12 appellate courts has been recognized by the
13 Supreme Court of Canada as something useful in
14 that it is capable of fostering consistency in
15 sentencing while, at the same time, leaving with
16 sentencing judges the flexibility that is needed
17 to craft, in each case, an individualized
18 sentence that reflects the specific factual
19 matrix of each case.

20 In relative terms, trafficking in fentanyl
21 is a recent phenomenon. This case is only the
22 second one to come before this Court for
23 sentencing. No such cases have ever been dealt
24 with by our Court of Appeal. To my knowledge,
25 there are no appellate decisions that suggest a
26 starting point for sentencing in cases involving
27 trafficking in this drug. And I would say that,

1 even if one speaks in terms of ranges of
2 sentences, there is no particular consensus or
3 uniformity in sentencing in this area.

4 The cases filed by the Crown show this, as
5 both counsel mentioned, at the sentencing
6 hearing. Some of the cases filed suggest
7 sentences in the range of what the Crown is
8 seeking. There are other decisions where the
9 sentences imposed were somewhat lower and closer
10 in range to what is being suggested by defence.

11 In some of the cases, Courts have been
12 invited to conclude that fentanyl is an even more
13 dangerous drug than heroin. In R. v. Giannilos,
14 which I have already referred to, the Ontario
15 Court of Justice declined to make such a finding.
16 I find, as the judge in that case did, that the
17 evidence before me, on this case, falls short of
18 establishing that fentanyl is more dangerous than
19 heroin.

20 There is an admission that it is more
21 potent, but dangerousness is not necessarily the
22 same thing as potency. I think more specific
23 evidence would be needed before it could be
24 established beyond a reasonable doubt that the
25 higher potency of fentanyl translates into it
26 being a more dangerous drug than heroin. Maybe a
27 day will come where that will be established, but

1 I do not think it has been established in this
2 case.

3 And maybe, as I mentioned in my decision in
4 Castro, appellate courts will, in time, find it
5 necessary to establish a distinct, higher
6 starting point for cases involving trafficking in
7 fentanyl as the evidence about its prevalence and
8 the danger it presents builds. But setting new
9 starting points is not the role of a sentencing
10 Court. That is to be left with the Court of
11 Appeal.

12 In Giannilos, while the Court was not
13 prepared to say that sentencing should proceed on
14 the basis that fentanyl is more dangerous than
15 heroin, it did accept that fentanyl should be
16 treated with the same degree of gravity as heroin
17 trafficking. I agree with that view.

18 The Northwest Territories has not seen many
19 cases involving heroin trafficking, but the
20 Alberta Court of Appeal has set a starting point
21 for low-level trafficking in heroin in
22 R. v. Ostertag [2000] ABCA 232 at paragraph 20.
23 That starting point is five years. I conclude
24 that starting point should apply here. Mr. Moore
25 was a supplier. Clearly, he was a supplier at a
26 lower level than Mr. Castro was, but he was
27 supplying to Mr. Hein. This is not a situation

1 of Mr. Moore providing drugs to his friend and
2 then his friend turning around and selling it
3 unbeknownst to Mr. Moore.

4 The admitted facts make it clear that
5 Mr. Hein was doing the selling on the street, but
6 "his guy" was Mr. Moore. That is, in the word of
7 the Ostertag case, "low level trafficking", and
8 it is the level that engages this five-year
9 starting point.

10 There is a lot of money to be made in this
11 area. Over the last few years, the North has had
12 its fair share of people coming to this Territory
13 from Provinces in southern Canada to make the
14 most of the "market" that exists here for the
15 sale of drugs. It happened with softer drugs
16 decades ago; then it started happening with
17 harder drugs such as cocaine and soon thereafter,
18 crack cocaine, with devastating results for this
19 community and others. Perhaps the impact of
20 these things is more obvious and visible in a
21 smaller community. It certainly has been visible
22 here, and this Court has commented several times
23 about the devastation that crack cocaine, for
24 example, has caused in our communities.

25 The evidence presented at this sentencing
26 hearing, the evidence presented in the Castro
27 case, and the evidence that has come before the

1 Court on cases that are at other stages, such as
2 bail hearings and bail reviews, demonstrates
3 that, more and more, police are seizing fentanyl
4 in this jurisdiction. This drug is being
5 trafficked in this jurisdiction. It may have
6 taken a bit longer time for it to get here
7 compared to when it became available in southern
8 Canada, but it is now definitely here.

9 That being the case, it is entirely
10 predictable that the tragic outcomes that have
11 occurred elsewhere, where this drug has been
12 trafficked, will happen here too. To think that
13 the outcome here will be different than what it
14 has been anywhere else is delusional. This drug
15 kills people. Those who traffic in it know
16 knowing this cannot expect leniency from the
17 Courts.

18 This Court cannot put a stop to this very
19 dangerous activity, not anymore than it can
20 single handedly put an end to drinking and
21 driving, to sexual assaults, to domestic
22 violence, or to child abuse. But the Courts do
23 have a role to play: that is to impose sentences
24 that denounce this conduct and hopefully deter at
25 least some people from making the decision to
26 engage in this even if it is lucrative.

27 To be sure, the people who choose to

1 purchase the drugs and use it bear responsibility
2 for their choices and actions. But those who
3 participate in making it available to others
4 knowing how addictive and dangerous it is, have a
5 very high level of blame-worthiness in all of
6 this.

7 In a case called R. v. Phun, referred to at
8 paragraph 22 of Ostertag, the Alberta Court of
9 Appeal, speaking at that point about heroin
10 trafficking stated: (as read)

11 "We must continue to preserve a
12 hostile attitude towards heroin in
13 Alberta."

14 I think the Courts, in this
15 jurisdiction, must adopt a hostile attitude
16 towards fentanyl trafficking.

17 The Crown seeks a sentence of 42 months.
18 The defence seeks a sentence between two and
19 two-and-a-half years. So there is a bit of a gap
20 between the respective positions that were
21 advocated.

22 The maximum jail term for trafficking in
23 fentanyl is life imprisonment. As I have already
24 noted, I have concluded that the starting point
25 of five years that applies to heroin cases is the
26 one that should apply in fentanyl cases unless
27 and until appellate guidance is provided that
suggests that a different approach should be

1 adopted.

2 I think, for the same reasons as the judge
3 did in *Giannilos*, that the same starting point
4 can apply because the level of risk presented by
5 this drug is very high just the same as the level
6 of risk presented by heroin is very high.

7 Mr. Moore has pleaded guilty to these
8 offences, and that is an important mitigating
9 factor. In a jurisdiction where judicial
10 resources, courtrooms, and court time is limited
11 and where the Court carries a busy caseload of
12 criminal, family, and civil cases, it must be
13 recognized that resolving a case without the
14 necessity of a trial takes pressure off the
15 system. Resolution of cases has to be
16 encouraged.

17 Importantly, the guilty pleas represent an
18 acknowledgement of responsibility. I give
19 significant credit to Mr. Moore for his guilty
20 pleas. They did not come at the earliest stages
21 in this case, but I recognize that people have a
22 right, and counsel have a duty, as they give
23 advice to their clients, to ensure that the
24 evidence that is being presented by the Crown is
25 adequately tested. I give Mr. Moore the maximum
26 credit that I can for his guilty pleas.

27 It goes without saying that, but for these

1 guilty pleas, given what the starting point is,
2 Mr. Moore would be looking at a much more severe
3 sentence today.

4 Mr. Moore is not Mr. Castro. He was not
5 found with the same quantity of drugs and clearly
6 was not at the same level in his trafficking
7 activities. Still, as I said, the starting point
8 is five years. The guilty plea, remorse, and
9 rehabilitative efforts can only mitigate his
10 sentence so much.

11 This Court has had the unpleasant task of
12 sending many people to jail for significant
13 periods of time because of drug trafficking.
14 Mr. Moore will not be the first one, and he
15 unfortunately will not be the last. Sadly,
16 people, sometimes very young people, from
17 seemingly good backgrounds, without criminal
18 records, with lots of potential, choose, some out
19 of pure greed, others to feed their own
20 addictions and others for mixed reasons, to
21 engage in this type of activity.

22 Often times, it is only once they get caught
23 that they start to take real steps to turn their
24 lives around, and the inevitable jail term they
25 receive on sentencing almost always represents a
26 setback as defence counsel noted in his
27 submissions.

1 Mr. Moore is 32. He has a relationship. He
2 has a child. He was able to get a job. He has
3 taken real steps to rehabilitate himself since
4 his arrest. I understand that going to jail
5 today will be hard and I understand it will be a
6 setback. Sending people to jail is not pleasant,
7 even less so with people who evidently could do
8 so much more with their lives. It all seems like
9 a colossal waste. But the Court cannot and will
10 not back away from its responsibility to do its
11 part to send a clear message about the
12 consequences of engaging in this kind of activity
13 for those who get caught. The Court only hopes
14 that Mr. Moore will use this time to continue
15 reaffirming his resolve to stay the course and
16 everything he has going for him, the things he
17 can look forward to with his family; and that
18 this will help him through his time in custody so
19 that, when he is released, he will indeed stay
20 the course.

21 Restraint is an important sentencing
22 principle. Mr. Moore's rehabilitation is an
23 important sentencing objective. But these have
24 to be balanced against these other sentencing
25 principles I have been talking about and the need
26 to establish a firm and clear stand about how
27 seriously the Court takes this problem.

1 Defence counsel has said everything that
2 could be said in favour of Mr. Moore, and I want
3 to make it clear that I have taken it into
4 consideration. And I have taken the guilty pleas
5 into consideration, and I have taken the efforts
6 that have been made into consideration. These
7 are mitigating, but, in my respectful view, not
8 enough to reduce the sentence that must be
9 imposed today to the extent that the defence
10 asked me to.

11 The Crown has asked for a number of
12 ancillary orders, and I will deal with those
13 first. First, there will be a forfeiture order
14 with respect to the monies that were seized and
15 the cellphones. Crown counsel provided a draft
16 order at the sentencing hearing, and that order
17 will issue.

18 Other orders were sought that were not
19 opposed. A DNA order will issue because this is
20 a primary designated offence; a firearms
21 prohibition order will issue pursuant to Section
22 109 of the Code. It will expire ten years after
23 Mr. Moore's release.

24 I also am required to impose a victim of
25 crime surcharge. There are three counts; so the
26 total would be \$600 and the time to pay is
27 predetermined by regulations and calculated from

1 the time of release.

2 Mr. Moore has spent some time on remand, and
3 I will give him credit for this time. I was
4 advised that he has spent a total of 22 days on
5 remand. The maximum credit he can receive for
6 that, if it is calculated at a rate of 1.5 days
7 of credit for each day spent on remand, would be
8 33 days; and so I will give Mr. Moore credit for
9 one month for the time he has spent on remand.

10 There are three separate charges, and they
11 could give rise to consecutive sentences, but, if
12 I did that, I would have to reduce each sentence
13 to make sure that the total sentence is not
14 crushing, in accordance with the principle of
15 totality. That would mean that the seriousness
16 of the offences would not be reflected in the
17 sentences imposed on each count. So, for that
18 reason, I am going to impose jail terms on each
19 count and order that they be served concurrently.

20 Can you stand up please, Mr. Moore.

21 Mr. Moore, you have heard what I have said.
22 The sentence I impose to you today is not with
23 any joy and it is not, I hope, something you will
24 take as not accepting that you have made
25 significant progress and efforts, but I have no
26 choice. I really feel I have no choice because
27 of the harm that these activities are causing in

1 our communities. You probably will not serve
2 every day of this sentence; I am sure you will be
3 able to be released sooner on parole or other
4 forms of release. When you are released, I
5 really hope that you can stay the course and be
6 there for your family and child.

7 For the charge of possession of fentanyl for
8 the purpose of trafficking, but for the remand
9 time, I would have imposed 42 months. I am
10 giving you one month credit; so that will leave a
11 sentence of 41 months on that count.

12 For the simple possession of fentanyl, I
13 impose a sentence of one year, to be served
14 concurrently. And, for the possession of
15 proceeds of crime, nine months concurrent. You
16 can sit down.

17 This is a significant sentence, I know.
18 And, as I said, I hope you can continue to work
19 on your rehabilitation and on your progress and
20 never be back before the Court again.

21 Is there anything I have overlooked from the
22 Crown's perspective?

23 MS. LEWIS: No. Thank you.

24 THE COURT: Is there anything I have
25 overlooked from your perspective?

26 MR. BRAN: Not overlooked, but I will be
27 asking the Court, if it is agreeable, to making a

1 judicial recommendation that Mr. Moore be able to
2 serve his time here in the Northwest Territories.
3 We know it's not binding, but we would be asking
4 for that on the -- on the order.

5 THE COURT: Mr. Moore's family is -- his
6 wife and child will be staying at Yellowknife?

7 MR. BRAN: Yes.

8 THE COURT: Are staying in Yellowknife?

9 MR. BRAN: Yes.

10 THE COURT: Thank you, Mr. Bran. I am
11 going to make that recommendation. I am not able
12 to order this, but, for what it is worth, I will
13 certainly say, for the record, and this will be
14 reflected in my sentencing decision, that, given
15 the significant efforts that Mr. Moore has made
16 towards his rehabilitation, given that he has a
17 relationship and a child in Yellowknife, I think
18 it would be much more conducive to his continued
19 rehabilitation if he was not sent somewhere far
20 from where those people live.

21 And so I am going to ask Madam Clerk that
22 the warrant of committal reflect the strongest
23 possible recommendation that Mr. Moore be
24 permitted to serve his sentence in the North.

25 Thank you for your submissions, counsel. We
26 will close court.

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CERTIFICATE OF TRANSCRIPT

I, the undersigned, hereby certify that the foregoing pages are a complete and accurate transcript of the proceedings taken down by me in shorthand and transcribed from my shorthand notes to the best of my skill and ability.

Dated at the City of Edmonton, Province of Alberta, this 27th day of September, 2016.

Certified Pursuant to Rule 723
of the Rules of Court

Janet Belma, CSR(A), B.Ed.
Court Reporter

1 5. The two bottles of tablets were lodged with
2 Mr. Moore's personal effects at the Detachment
3 during the booking process. Constable Long later
4 seized the tablets and sent them out for
5 analysis.

6
7 6. In total, 80 tablets of different colours
8 and shapes were found in the bottles. Among them
9 were 18 green pills with a logo indicating "80"
10 on the pills. These 18 pills contained fentanyl.

11
12 Possession for the Purpose of Trafficking of
13 Fentanyl and Possession of Property Obtained by
14 Crime - August 2014

15
16 7. In August 2014, the "G" Division RCMP
17 Federal Investigation Unit launched an undercover
18 drug operation into the drug trafficking
19 activities of several individuals in the City of
20 Yellowknife, Northwest Territories.

21
22 8. On August 7th, 2014, an undercover police
23 operator (UCO1) was introduced to Dayle Mr. Hein.
24 The undercover operator successfully purchased
25 one street gram of crack cocaine from Mr. Hein at
26 Crestview Apartments in Yellowknife, for the sum
27 of \$80.

1 9. On August 8th, 2014, UCO1 contacted Dayle
2 Mr. Hein via text messages. UCO1 then met Mr.
3 Hein at Crestview Apartments and successfully
4 purchased one street gram of crack cocaine for
5 the sum of \$100.

6
7 10. On August 8th, 2014, UCO1 contacted Mr. Hein
8 via text messaging. UCO1 then met Mr. Hein at
9 Crestview Apartments and successfully purchased
10 one street gram of crack cocaine from Mr. Hein
11 for the sum of \$100. Another undercover operator
12 (UCO2) was also present during that transaction.
13 UCO2 asked Mr. Hein if he had any "oxys"
14 referring to oxycodone. Mr. Hein said he did not
15 have them at the moment but would be getting some
16 in the future. UCO2 told Mr. Hein he would text
17 Hein's phone so Mr. Hein could notify him when
18 "oxys" were available for purchase. UCO2 texted
19 Mr. Hein at the number provided to him by UCO1:
20 867-445-2615.

21
22 11. On August 10th, 2014, Mr. Hein texted UCO2.
23 Mr. Hein told UCO2 he had two 60mg "oxys" for
24 \$120 for both. Mr. Hein directed UCO2 to
25 Frobisher House Apartments in Yellowknife. UCO2
26 attended Frobisher House Apartments and gave Mr.
27 Hein \$120. Mr. Hein went inside Frobisher House

1 Apartments and returned a short time later with
2 two 60mg oxycodone tablets. Mr. Hein handed the
3 two tablets to UCO2.

4
5 12. On August 11th, 2014, Mr. Hein texted UCO2
6 informing him that the "80s" had arrived and that
7 they were "a bill each". UCO1 and UCO2 attended
8 the parking lot of Crestview Apartments. UCO2
9 called Mr. Hein and asked how many "80s" he could
10 get. Mr. Hein said he needed to call "his guy".

11
12 13. In the minutes following this phone
13 conversation between Mr. Hein and UCO2, Mr. Hein
14 called one of Mr. Moore's mobile phone [sic]
15 twice.

16
17 14. Mr. Hein then walked over to the UCOs' car
18 and spoke to UCO2. Mr. Hein agreed to sell three
19 pills to UCO2 for \$280. Mr. Hein said that he
20 had to walk over to "his guy".

21
22 15. Mr. Hein was then observed walking towards
23 Mr. Moore's residence situated at Rockridge
24 Apartments in Yellowknife. Mr. Hein was observed
25 briefly meeting with Mr. Moore on 49th Street,
26 halfway between Crestview Apartments and
27 Rockridge Apartments. Mr. Moore was observed

1 walking back to Rockridge Apartments while Mr.
2 Hein returned to Crestview Apartments.

3 16. At Crestview Apartments, UCO2 purchased
4 three fentanyl pills from Mr. Hein for \$280.

5
6 17. After the transaction was completed,
7 Mr. Moore and Mr. Hein were observed meeting up
8 again on 49th Street.

9
10 18. On August 12th, 2014, UCO2 attended
11 Crestview Apartments. UCO2 asked Mr. Hein for
12 five fentanyl pills. Mr. Hein pulled a small
13 clear Ziploc baggy out of his pocket which
14 contained 80mg fentanyl pills. UCO2 purchased
15 five 80mg fentanyl pills from Mr. Hein for the
16 sum of \$450.

17
18 19. On August 13, 2014, a Search Warrant was
19 executed at the residence of Rory Quentin Moore
20 and Lillian Paniloo situated at apartment 111
21 Rockridge Apartments. Mr. Moore and Ms. Paniloo
22 were present in the residence at the time the
23 warrant was executed.

24
25 20. The search of the residence revealed the
26 presence of a bag of 88 tablets, 23 of which
27 contained fentanyl. The tablets were found in

1 the pocket of a man's jacket in the wardrobe of
2 the main bedroom. These tablets are of a similar
3 colour and bear the same inscription "80" as the
4 tablets purchased by UCO2 from Mr. Hein on August
5 11th and 12th, 2014.

6
7 21. During the execution of the Search Warrant,
8 other items were located. A small bag of cocaine
9 was located on the kitchen table. Tablets
10 containing various Schedule I, IV and VI
11 substances were also located throughout the
12 residence. A digital scale was observed in the
13 residence. Three mobile phones were also located
14 during the search of the residence: one
15 Blackberry phone, one Samsung cell phone and one
16 HTC cell phone.

17
18 22. Rory Quentin Moore possessed the 23 tablets
19 of fentanyl found in his residence for the
20 purpose of trafficking.

21
22 23. At the time of his arrest, Mr. Moore was
23 searched. Canadian currency in the amount of
24 \$1,000 was located in a pocket of his pants.
25 Five pre-recorded \$20 bills used in the
26 transaction between Mr. Hein and UCO2 on August
27 12th, 2014, were located in that bundle of

1 Canadian currency.

2

3 24. Rory Quentin Moore knew that the amount of
4 \$1,000 found on his person derived directly or
5 indirectly from the commission in Canada of an
6 offence punishable by Indictment.

7

8 Fentanyl

9

10 25. Fentanyl is a synthetic opiate analgesic
11 that is commonly used as a painkiller and as a
12 veterinary medication.

13

14 26. Fentanyl can be smoked, ingested, or
15 absorbed through skin. It has an analgesic
16 potency 50-100 times that of morphine and 20
17 times that of heroin.

18

19 27. Recently, fentanyl has become popular in the
20 sales of illicit drugs both as either a cutting
21 agent or direct substitution for heroin, or in
22 the manufacturing of counterfeit oxycodone pills.

23

24 28. The illicit use of fentanyl creates a high
25 risk of overdose.

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27 29. In 2015, health authorities reported a spike

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in fentanyl-related overdoses in British Columbia and Alberta.

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

31. According to the Northwest Territories Coroner's Service, between 2012 and 2015, there was one drug overdose death involving fentanyl per year in the Northwest Territories.

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