R. v. Stiopu, 2018 NWTSC 7

 S-1-CR-2017-000102

 IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

 IN THE MATTER OF:

 HER MAJESTY THE QUEEN

 - vs -

 KATRINA STIOPU

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 Transcript of the Reasons for Sentence by The

 Honourable Justice S. H. Smallwood, at Yellowknife, in the

 Northwest Territories, on January 3rd, 2018.

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 APPEARANCES:

 Mr. D. Praught: Counsel for the Crown

 Mr. J. Bran: Counsel for the Accused

 (Charges under s. 465(1)(c) of the Criminal Code)

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 1 THE COURT: Katrina Stiopu has pleaded

 2 guilty to one count of conspiring with eight

 3 others to traffic and possess, for the purpose

 4 of trafficking, cocaine, fentanyl and

 5 marijuana, between February 24th and April

 6 4th, 2016 here in Yellowknife, as well as

 7 other places in the Northwest Territories and

 8 in British Columbia and Alberta.

 9 Ms. Stiopu entered her guilty plea on

 10 November 6th, 2017, and the matter was

 11 adjourned for sentencing to December 18th,

 12 2017 with the preparation of a pre-sentence

 13 report. Counsel made their submissions on

 14 sentence on December 18th and 19th, 2017.

 15 The Crown is seeking a sentence of five

 16 years incarceration less credit for remand

 17 time. Defence sought a sentence of 30 months

 18 custody less credit for remand time. Ms.

 19 Stiopu has been in custody since April 4th,

 20 2016 so she has been in custody for 21 months.

 21 The matter was adjourned to today and it

 22 is now my task to sentence Ms. Stiopu for this

 23 offence.

 24 The charges arise from a major

 25 investigation conducted by the RCMP into drug

 26 trafficking activities in Yellowknife and in

 27 the Northwest Territories. The objective of

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 1 Project Green Manalishi was to disrupt and

 2 dismantle networks responsible for high level

 3 drug trafficking in the Northwest Territories.

 4 As part of the investigation, the RCMP

 5 were granted a judicial authorization to

 6 monitor the private communications of multiple

 7 individuals, including Todd Dube. A number of

 8 telephone calls and text messages were

 9 intercepted between Mr. Dube and Ms. Stiopu as

 10 well as other individuals associated with this

 11 drug trafficking network.

 12 An Agreed Statement of Facts was filed on

 13 the sentencing as well as the audio and

 14 transcripts of the intercepted calls and text

 15 messages between Ms. Stiopu and Mr. Dube.

 16 Between February 24th and April 4th, 2016,

 17 Ms. Stiopu conspired with Todd Dube, Brittany

 18 Dube, Eddy Radeka, Sam Ovayuak, Byron Bibby,

 19 Luqman Hussein, Yohannes Seyoume, and Ajanthan

 20 Mahalingam to traffic and possess, for the

 21 purpose of trafficking, cocaine, fentanyl, and

 22 marijuana in Yellowknife and other places.

 23 Ms. Stiopu worked with and under Todd

 24 Dube, who was the head of the drug trafficking

 25 network. She arranged and coordinated the

 26 storage of cocaine, fentanyl, and marijuana on

 27 her property in N'dilo and other properties

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 1 which belonged to her relatives in Dettah and

 2 N'dilo. Ms. Stiopu accessed the stored drugs

 3 when asked to do so, or arranged and

 4 coordinated for others to access the drugs.

 5 Ms. Stiopu also helped Todd Dube arrange and

 6 coordinate the receipt and transport of drugs,

 7 including cocaine and marijuana, into the

 8 Northwest Territories. She also, on occasion,

 9 worked for Jerrie's Delivery, which was a

 10 delivery service used as a front by Mr. Dube

 11 to transport and deliver drugs around the city

 12 of Yellowknife.

 13 In the days leading up to March 18th,

 14 2016, Ms. Stiopu, working with Todd Dube,

 15 arranged to have her mother and grandmother

 16 meet Eddy Radeka near the Alberta/NWT border

 17 and exchange money for drugs.

 18 On that date, March 18th, 2016, her

 19 grandmother and mother met with Mr. Radeka and

 20 in exchange for cash, received 5.8 kilos of

 21 marijuana, 1.7 kilos of cocaine, 5.5 litres of

 22 a syrup containing Benzodiazepine, and 84.5

 23 grams of MDMA. Following the exchange, the

 24 two women were arrested with the drugs on

 25 their way back to Yellowknife.

 26 Ms. Stiopu was arrested on April 4th,

 27 2016, when the RCMP executed multiple search

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 1 warrants, including at her residence and other

 2 relatives' residences, as well as other

 3 residences in Yellowknife. The searches

 4 resulted in the seizure of drugs, cash,

 5 weapons, and other drug trafficking

 6 paraphernalia.

 7 A primary objective in the sentencing for

 8 trafficking in cocaine, fentanyl, and other

 9 drugs is deterrence and denunciation.

 10 Denunciation, meaning to denounce unlawful

 11 conduct and the harm done to victims or to the

 12 community that is caused by the offender's

 13 conduct. And deterrence is to deter the

 14 specific offender and other persons from

 15 committing similar offences. In trafficking

 16 cases, the focus is on imposing sentences that

 17 will send a message and deter other persons

 18 who might be tempted to traffic in illicit

 19 substances.

 20 The fundamental principle of sentencing is

 21 that the sentence must be proportionate to the

 22 gravity of the offence and the degree of

 23 responsibility of the offender.

 24 There have been many cases in this

 25 jurisdiction where individuals have been

 26 sentenced for trafficking in cocaine. More

 27 recently there have been sentences imposed for

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 1 trafficking in fentanyl. These decisions and

 2 appellate decisions from our Court of Appeal,

 3 as well as the Alberta Court of Appeal, have

 4 established sentencing ranges for these types

 5 of sentences. They have established

 6 starting-points.

 7 A starting-point is not a minimum sentence

 8 or a set sentence but it is a guideline where

 9 the Court starts with a sentence and adjusts

 10 the sentence to reflect the mitigating and

 11 aggravating factors of each case, taking into

 12 account the circumstances of the offence and

 13 of the offender.

 14 A starting-point reflects the seriousness

 15 of the crime and its prevalence in this

 16 jurisdiction and the need to impose deterrent

 17 sanctions. It also reflects the moral

 18 blameworthiness of those who traffic in

 19 illegal drugs on a significant scale.

 20 The starting-point sentences for

 21 trafficking in cocaine and fentanyl have been

 22 reviewed recently in several cases that have

 23 arose from Project Green Manalishi, cases like

 24 R. v. Dube, 2017 NWTSC77, R. v. Hache, 2017

 25 NWTSC62, and R. v. Castro, 2016 NWTSC 8.

 26 The starting-point for commercial cocaine

 27 trafficking is three years whereas wholesale

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 1 cocaine trafficking has been established as a

 2 four and a half year starting-point. These

 3 sentences reflect the seriousness with which

 4 courts consider trafficking in cocaine.

 5 The devastating effects of cocaine on the

 6 people in Yellowknife and in the Northwest

 7 Territories are well known and it continues to

 8 be a major problem in this community. Those

 9 that traffic in cocaine contribute directly to

 10 this. They prey on the most vulnerable

 11 members of the community for profit. The

 12 moral blameworthiness of those who traffic in

 13 cocaine is high.

 14 The appropriate starting-point for those

 15 who traffic in fentanyl at a low level has

 16 been determined to be five years. This was

 17 considered in R. v. Moore 2015 NWTSC 57,

 18 R. v. Dube 2017 NWTSC 77, R. v. Hein 2017

 19 NWTSC 21, and in the case of Brittany Dube and

 20 Eddy Radeka, unreported April 25th, 2017.

 21 The starting-point reflects the

 22 dangerousness of fentanyl. In Castro, Moore,

 23 Hein, Dube, Dube and Radeka, the Court has

 24 talked about the dangerousness of fentanyl.

 25 The Agreed Statement of Facts in this case

 26 also refers to the dangers associated with

 27 fentanyl.

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 1 Fentanyl is extremely potent. It is 80 to

 2 100 times that of morphine and 25 to 50 times

 3 that of pharmaceutical-grade heroin. It has

 4 recently become popular as an illegal drug and

 5 with that has come a high risk of overdose.

 6 Statistics from Alberta and British

 7 Columbia show the drastic increase in

 8 fentanyl-related deaths over the past six

 9 years in those jurisdictions. In the

 10 Northwest Territories, between 2012 and 2016

 11 there was one drug overdose death involving

 12 fentanyl per year in this jurisdiction. And

 13 there has been, in November 2016, a public

 14 health advisory was issued regarding the

 15 dangers associated with the illicit use of

 16 opioids after a number of near fatal fentanyl

 17 overdoses here in Yellowknife.

 18 Fentanyl is dangerous and its use creates

 19 a high risk of overdose. Those that traffic

 20 in fentanyl, with its well publicized risks,

 21 bear significant moral blameworthiness.

 22 Ms. Stiopu is a Dene person, which

 23 requires me to pay particular attention to her

 24 circumstances as an Aboriginal person. In

 25 that regard, I have the benefit of a

 26 pre-sentence report and the submissions of

 27 counsel to provide background into Ms.

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 1 Stiopu's circumstances.

 2 She is 27 years old and was raised in the

 3 communities of N'dilo and Dettah. Her

 4 childhood appears to have been a good one.

 5 Her parents did not drink or use drugs. There

 6 was no violence within the home and the family

 7 engaged in positive activities when they were

 8 together.

 9 Ms. Stiopu did have personal challenges,

 10 suffering abuse, and her parents separated

 11 when she was a child. She began to use

 12 alcohol and drugs and entered into an

 13 inappropriate relationship with a much older

 14 man when she was a teenager.

 15 Despite the challenges that Ms. Stiopu has

 16 faced, she has steadily employed and has been

 17 provided for her family. She has a daughter

 18 that she has been raising and it is clear from

 19 her words to the Court in December that her

 20 daughter is an important part of her life.

 21 In mitigation, Ms. Stiopu has entered a

 22 guilty plea which demonstrates that she has

 23 taken responsibility for her actions. And it

 24 is apparent that had this matter proceeded to

 25 trial, a significant amount of time would have

 26 been required so by pleading guilty to this

 27 offence, Ms. Stiopu has saved a significant

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 1 amount of time and resources from being

 2 expended.

 3 She does not have a prior criminal record

 4 so she comes before the Court a 27-year-old

 5 without a criminal history. This is her first

 6 offence.

 7 In terms of aggravation, it is statutorily

 8 aggravating pursuant to section 718.2(a)(iv)

 9 that the offence was committed for the benefit

 10 of, at the direction of, or in association

 11 with a criminal organization.

 12 A criminal organization is defined as a

 13 group however organized that is composed of

 14 three or more persons in or outside of Canada

 15 and has, as one of its main purpose or

 16 activities, the facilitation or commission of

 17 one or more serious offences that, if

 18 committed, would likely result in the receipt

 19 of a material benefit, including a financial

 20 benefit, by the group or by any of the persons

 21 in the group.

 22 In this case, Ms. Stiopu's activities

 23 occurred in association with Mr. Dube's

 24 criminal organization. Ms. Stiopu was a

 25 significant person in the organization,

 26 involved in the storage and distribution of

 27 drugs for the network. The organization was

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 1 actively involved, over a several week period

 2 of the investigation, in the distribution and

 3 sale of cocaine, fentanyl, and other drugs.

 4 Ms. Stiopu has accepted responsibility and

 5 pled guilty but it is also apparent that she

 6 does not appear to understand or minimizes the

 7 extent of her involvement in this offence.

 8 Her comments in the pre-sentence report and

 9 before the Court cause me some concern that

 10 she has not fully accepted responsibility for

 11 her actions or her role in the organization

 12 and that in looking back on her actions, she

 13 now believes that she was the victim, that she

 14 was preyed upon and manipulated by others.

 15 While she no doubt regrets being caught,

 16 this view of herself as the victim of this

 17 offence is not borne out by a review of the

 18 Agreed Statement of Facts or the audio or

 19 transcripts of the intercepted communications.

 20 They do not give the appearance of a woman who

 21 is in over her head or who is reluctant or

 22 feels that she has no choice but to

 23 participate in this criminal organization.

 24 Ms. Stiopu made a choice in becoming involved

 25 and staying involved in Mr. Dube's criminal

 26 activities and now has to bear the

 27 consequences of that choice.

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 1 The crime of drug trafficking includes a

 2 number of people - the head, street-level

 3 dealers, mid-level suppliers, couriers, those

 4 involved in storage and distribution, and

 5 others who are involved in the organization in

 6 some way.

 7 It has been said before that people

 8 involved in drug trafficking are always

 9 somewhere in the chain of distribution. The

 10 higher up the person is in the chain, the more

 11 blameworthy they are and the more the

 12 significant the sentence becomes.

 13 In determining a fit sentence for

 14 Ms. Stiopu, it is also important to consider

 15 parity and what sentences were imposed on

 16 others involved in the conspiracy and the

 17 criminal organization. I have heard about

 18 several of the people who have already been

 19 sentenced for their involvement.

 20 Todd Dube was the head of the drug

 21 trafficking network and oversaw all aspects of

 22 the operation. He was in charge and several

 23 persons worked under his direction. He pled

 24 guilty to three counts: conspiring with

 25 Ms. Stiopu and others to traffic and possess

 26 cocaine, fentanyl, marijuana, Benzodiazepine,

 27 and MDMA for the purpose of trafficking;

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 1 possession of offence-related property; and

 2 conspiring with someone to commit an

 3 aggravated assault. Mr. Dube received a nine

 4 year sentence for conspiring to traffic and

 5 posess for the purpose of trafficking and

 6 received two years concurrent for possession

 7 of offence-related property, and three years

 8 concurrent for conspiring to commit an

 9 aggravated assault.

 10 Brittany Dube, who was Todd Dube's sister,

 11 worked with and under the direction of her

 12 brother. She assisted him in running the

 13 organization and was familiar with all aspects

 14 of the operation. She managed Jerrie's

 15 Delivery Service as well. Ms. Dube pleaded

 16 guilty and received a five year sentence which

 17 was also a joint submission.

 18 Eddy Radeka was a courier who transported

 19 drugs for Mr. Dube's network and imported

 20 drugs from British Columbia and Alberta to the

 21 Northwest Territories. He pleaded guilty and

 22 received a five year sentence which was also

 23 the subject of a joint submission.

 24 Ajanthan Mahalingam operated a dial-a-dope

 25 phone for the organization with three others

 26 and he sold crack cocaine. He pleaded guilty

 27 to trafficking in cocaine and received a

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 1 sentence of 30 months. His involvement did

 2 not include trafficking in fentanyl.

 3 Sam Ovayuak was involved in the storage of

 4 drugs for the organization at his residence.

 5 Two safes were located and he apparently did

 6 not know the contents of the safes which

 7 contained cocaine and fentanyl. He could not

 8 access the contents of the safes. He pleaded

 9 guilty and received a sentence of 30 months.

 10 Listening to the audio and reviewing the

 11 transcripts and the Agreed Statement of Facts,

 12 it seems clear that Ms. Stiopu was integral to

 13 the storage and distribution of the drugs that

 14 went through Mr. Dube's operation. She stored

 15 the drugs, was the contact for access to those

 16 drugs that she stored. She kept his cash when

 17 he needed her to. She helped coordinate the

 18 transport of a significant amount of drugs

 19 into the Northwest Territories. She recruited

 20 relatives to assist with this transportation

 21 and her role went beyond just providing a

 22 place to store the drugs for Mr. Dube.

 23 Ms. Stiopu has been in custody since April

 24 4th, 2016, which is 21 months to today's date.

 25 I have not heard any reason why she should not

 26 receive enhanced credit of one and a half days

 27 credit for every day spent in pre-sentence

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 1 custody. At one and a half to one, that

 2 equates to 31 and a half months of

 3 pre-sentence custody which will be deducted

 4 from her sentence.

 5 The Crown is seeking some ancillary orders

 6 which I will deal with first.

 7 First, there will be a firearms

 8 prohibition order pursuant to section 109 of

 9 the Criminal Code. It is mandatory and

 10 Ms. Stiopu will be prohibited from possessing

 11 firearms beginning today and ending ten years

 12 following her release from imprisonment.

 13 Second, the Crown has sought a DNA order.

 14 This is a secondary designated offence where

 15 it is within the Court's discretion to grant

 16 the order. In the circumstances, I am

 17 satisfied that it is appropriate even though

 18 Ms. Stiopu has no criminal record. The

 19 circumstances of the offence are such that

 20 forensic evidence, including the collection of

 21 DNA, can be important in solving these types

 22 of crimes.

 23 I have considered what is an appropriate

 24 sentence, taking into account the applicable

 25 sentencing principles, Ms. Stiopu's personal

 26 circumstances, and the circumstances of the

 27 offence.

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 1 Please stand, Ms. Stiopu.

 2 For the offence of conspiracy to traffic

 3 and possess cocaine, fentanyl and marijuana

 4 for the purpose of trafficking, I sentence you

 5 to four and a half years imprisonment. You

 6 will receive credit of 31 and a half months

 7 for your pre-sentence custody, leaving a

 8 sentence of 22 and a half months to be served.

 9 You may sit down.

 10 Counsel, is there anything else that we

 11 need to address?

 12 MS. LEWIS: A victim of crime surcharge,

 13 Your Honour.

 14 THE COURT: Yes, there will be the

 15 victim of crime surcharge according to the

 16 regulations.

 17 Mr. Bran, is there anything else?

 18 MR. BRAN: No, thank you.

 19 THE COURT: All right thank you,

 20 counsel, and we will adjourn.

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 2 Certified to be a true and

 accurate transcript pursuant

 3 to Rules 723 and 724 of the

 Supreme Court Rules,

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 9 Lois Hewitt,

 Court Reporter

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