

S-1-CR2017000070

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

YOHANNES SEYOUME

Transcript of the Reasons for Sentence by The Honourable
Justice S. H. Smallwood, at Yellowknife in the Northwest
Territories, on February 8th A.D., 2018.

APPEARANCES:

Mr. D. Praught: Counsel for the Crown

Mr. P. Harte: Counsel for the Accused

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

1 THE COURT: Yohannes Seyoume has pleaded
2 guilty to trafficking in cocaine, contrary to
3 section 5(1) of the Controlled Drugs and
4 Substances Act. A guilty plea was entered on
5 November 6th, 2017, and the matter was
6 adjourned for sentencing to February 5th,
7 2018. It is now my task to sentence Mr.
8 Seyoume for this offence.

9 The facts of the offence were included in
10 an Agreed Statement of Facts. Briefly, they
11 are:

12 The charge arises from a major
13 investigation conducted by the RCMP into drug
14 trafficking activities in Yellowknife and in
15 the Northwest Territories. The objective of
16 the project (named Project Green Manalishi)
17 was to disrupt and dismantle networks
18 responsible for high-level trafficking in the
19 Northwest Territories. As part of the
20 investigation, the RCMP were granted a
21 judicial authorization to monitor the private
22 communications of multiple individuals. A
23 number of telephone calls and text messages
24 were intercepted suggesting that Mr. Seyoume
25 was trafficking cocaine in Yellowknife as part
26 of the drug trafficking network associated
27 with Todd Dube.

1 Between February 25th and April 4th, 2016,
2 Mr. Seyoume sold crack cocaine under the
3 direction of Mr. Dube in conjunction with
4 three other individuals. Mr. Seyoume and
5 three others worked a dial-a-dope phone. The
6 dial-a-dope phone was operated 24 hours a day,
7 every day. Mr. Seyoume and three others took
8 turns working 12-hour shifts with the phone.
9 Mr. Dube supplied them with crack cocaine
10 which they then sold. The arrangement was
11 that Mr. Dube would front them an ounce of
12 crack cocaine for approximately \$2300. That
13 ounce would typically be divided into 50 to 55
14 street grams weighing approximately .5 grams
15 each. A street gram would then be sold for 80
16 to \$100. The money in excess of the cost of
17 the ounce of cocaine would be profit kept by
18 the dial-a-dope phone operators. Upwards of
19 two ounces of crack cocaine a day were sold
20 through the dial-a-dope phone.

21 On April 4th, 2016, the RCMP executed a
22 number of search warrants and made several
23 arrests. A search warrant was executed at the
24 residence of Mr. Dube and Mr. Seyoume. Drugs,
25 drug paraphernalia, cell phones, and cash were
26 seized at the residence.

27 Mr. Seyoume was arrested with Mr. Dube

1 outside of a restaurant in Yellowknife. At
2 the time of his arrest, he had \$325 in cash on
3 him and three cellular phones.

4 The Crown is seeking a sentence of 30 to
5 36 months incarceration less credit for remand
6 time. The defence is seeking a sentence of
7 two years less a day imprisonment.

8 Both counsel in their submissions referred
9 to the sentencing principles applicable to
10 trafficking in cocaine. The Crown referred to
11 the case of R v. Lau, 2004 ABCA 408, and R. v.
12 Maskell, 1981 ABCA 50, decisions of the
13 Alberta Court of Appeal which set the
14 starting-point for trafficking in cocaine at
15 the commercial level at three years
16 imprisonment and for trafficking at the
17 wholesale level at four and a half years
18 imprisonment.

19 Defence counsel challenged the reasoning
20 in Maskell as no longer being appropriate and
21 being flawed in its analysis, arguing that it
22 is inappropriate to send a message to others
23 on the back of other offenders; it is contrary
24 to the applicable sentencing principles.

25 In Maskell, the Court of Appeal stated, at
26 paragraph 16:

27 Cocaine is a very powerful drug.
It is a narcotic drug. Its

1 non-medical use can lead to many
2 undesirable results. The
3 trafficking in it is highly
4 undesirable. Trafficking in the
5 drug must be deterred. It is a
6 very expensive drug so that huge
7 profits can be made from its
8 illegal sale. It is our duty to
9 deter people from using it and
10 from trafficking in it.
11 Deterrence is and remains the most
12 important element in the
13 sentencing process. It calls for
14 imprisonment and not for a short
15 nominal term.

16 Maskell is a decision that is some 36
17 years old now. It was decided before the
18 amendments to the sentencing regime in 1996.
19 However, it continues to be applied in Alberta
20 and in this jurisdiction. Despite the passage
21 of time, the Alberta Court of Appeal has
22 continue to endorse Maskell in cases like
23 Rahime 2001 ABCA 203, where, at paragraphs to
24 18 to 19, the Court stated:

25 For over twenty years, beginning
26 with the decision in R. v. Maskell
27 supra, this Court has offered
guidance to sentencing judges in
cocaine trafficking cases by
establishing a starting-point of
three years incarceration in cases
of a commercial operation on
something more than a minimal
scale.

It is worth repeating that the
guidance given is simply a
starting-point. It is implicit in
that concept that the sentencing
Judge may depart from the
starting-point by increasing or
decreasing the severity of the
sentence depending on the

1 sentencing Judge's assessment of
2 the aggravating and mitigating
3 circumstances presented by the
4 offender and the offence.

5 The Alberta Court of Appeal also expressly
6 refused to reconsider Maskell in R. v. Melnyk,
7 2014 ABCA 313. This tells me that the Alberta
8 Court of Appeal continues to consider
9 deterrence and denunciation appropriate
10 sentencing principles in cases of trafficking
11 in cocaine and that the starting-point
12 established in Maskell continues to be
13 applicable.

14 In R. v. Arcand, 2010 ABCA 363, the
15 Alberta Court of Appeal specifically endorsed
16 the use of starting-points, stating at
17 paragraph 108:

18 In summary, starting-point
19 sentencing accords with the
20 proportionality principle. It is
21 hostile to rigidity and actively
22 embraces the aim of a proportional
23 sentence fit for the offence and
24 the offender. The argument that
25 it unreasonably confines "judicial
26 discretion" is misplaced. Every
27 process of reasoning must start
 somewhere and it needs acceptable
 standard reference points along
 the way. Starting-point
 sentencing is not only loyal to
 Parliament's will - and the
 governing proportionality
 principle it has mandated - but
 antithetical to randomness and
 arbitrariness, the polar opposite
 of judicial decision-making.

1 The starting-point established in Maskell
2 has been adopted and followed here in the
3 Northwest Territories for many years. For
4 example, in the case of R. v. Mohammed, 2015
5 NWTSC 38, at page 5, Justice Charbonneau
6 stated:

7 It is interesting to reread the
8 Maskell decision because back in
9 1981, cocaine was not as well
10 known a drug as it is today. If
11 anything, the passage of time has
12 confirmed that the Alberta Court
13 of Appeal was very right to treat
14 it as a highly addictive, highly
15 dangerous, and highly destructive
16 drug.

17 It has been said many times that the drug
18 trade (trafficking in cocaine and crack
19 cocaine) has had a devastating effect on the
20 people in Yellowknife and elsewhere in the
21 Northwest Territories. Cocaine has destroyed
22 lives. People become addicted to this drug.
23 They commit crimes to get money to purchase
24 cocaine. They will traffic in cocaine to
25 support their addiction. While under the
26 influence of cocaine other offences are
27 committed often. And cocaine is often sold to
28 those that are the most vulnerable, those who
29 are most in need of help, and those that
30 traffic in cocaine contribute directly to
31 plague of cocaine addiction. They prey on the

1 most vulnerable members of the community for
2 profit.

3 Cocaine is an illegal drug. There can be
4 debates about whether cocaine or alcohol or
5 some other drugs have had a more devastating
6 impact in the Northwest Territories, and on
7 the morality of the government's choice in
8 what is legal and what is not legal. But it
9 is not the role of the Courts to decide what
10 should be legal and what should be illegal and
11 what should be regulated. That is the job of
12 our elected officials.

13 It is my responsibility to sentence Mr.
14 Seyoume for trafficking in cocaine, which
15 Parliament has decided is illegal and
16 punishable by up to a maximum of life
17 imprisonment. So it is considered a serious
18 offence by lawmakers and has been considered a
19 serious offence by the Courts.

20 The sentences that the Courts have imposed
21 have been harsh, designed to emphasize the
22 sentencing principles of denunciation and
23 deterrence - denunciation being to express
24 society's condemnation of this conduct and
25 deterrence to deter Mr. Seyoume and others
26 from engaging in this activity.

27 As the Court stated in R. v. Hodges, 2015

1 NWTSC 59, at pages 9 and 10:

2 The Courts have a duty to impose
3 sentences that will reflect the
4 strong condemnation of these
5 activities, that will reflect the
6 terrible harm that these
7 activities cause, and that will
8 deter others, if that is possible,
9 from engaging in this when they
10 are here or from coming here to
11 engage in this activity because it
12 is so lucrative and the north
13 offers an attractive market for
14 it.

15 Courts in the Northwest
16 Territories have not been known
17 for having a particularly soft
18 approach in sentencing drug
19 traffickers over the last few
20 decades. It would appear the
21 message is not getting through.
22 Maybe there is still too much
23 money to be made and too much
24 greed out there. Maybe Courts
25 will have to revise their
26 sentencing practices and make it
27 even less attractive for
28 traffickers to do business here
29 because evidently many people
30 still think it is worth taking the
31 risk to make lots of money out of
32 it.

33 In sentencing for trafficking in cocaine,
34 and in consideration of Maskell and the other
35 cases that have imposed similar sentences, I
36 do not view this as sending a message to other
37 offenders on the back of Mr. Seyoume or any
38 other person who comes before the Court for
39 sentencing on this offence. If anything, the
40 message is on the back of those whose lives
41 have been devastated by their addiction to

1 crack cocaine.

2 In considering the mitigating and
3 aggravating factors, it is mitigating that Mr.
4 Seyoume entered a guilty plea. It was not at
5 the earliest opportunity but he did waive his
6 preliminary inquiry and this matter was a
7 complicated matter involving a lot of
8 disclosure and the matter was never set for
9 trial. If this matter had proceeded to trial,
10 it would have consumed a significant amount of
11 time and resources so it is to Mr. Seyoume's
12 credit that he did waive the preliminary
13 inquiry and enter a guilty plea. So he
14 deserves full credit for his guilty plea.

15 As well, Mr. Seyoume is 21 years old and
16 he has no prior criminal record. He is
17 youthful and this is his first conviction.

18 It is aggravating, the circumstances of
19 the offence. Mr. Seyoume was one of four
20 individuals who operated a dial-a-dope drug
21 phone which used to sell approximately two
22 ounces of crack cocaine per day in
23 Yellowknife. The amount of cocaine sold was
24 significant, clearly putting it within the
25 commercial level of trafficking.

26 Based on the Crown's calculations, this
27 was a lucrative endeavor for Mr. Seyoume,

1 earning anywhere between \$5100 to \$8100 per
2 week for him alone. And it is attractive
3 money that can be earned by young people, the
4 lure of easy money.

5 As well, it is statutorily aggravating
6 that this offence was committed in conjunction
7 with a criminal organization, and I am
8 satisfied, as was found in the sentencing of
9 Todd Dube, that this was a criminal
10 organization.

11 The trafficking of drugs, like cocaine,
12 has been and continues to be a serious problem
13 in Yellowknife and unfortunately has spread to
14 some of the other communities. It does not
15 seem like this problem will go away any time
16 soon and with the lure of easy money, it is
17 not hard to see why.

18 Defence counsel advised of Mr. Seyoume's
19 personal circumstances. He is Somalian who
20 was born in a refugee camp in Kenya. He came
21 to Canada when he was seven, along with his
22 family. He has lived in several places in
23 Canada. Many members of his family have been
24 successful in Canada.

25 Mr. Seyoume came to Yellowknife for a job
26 but ended up involved with Todd Dube and his
27 drug trafficking network.

1 I am advised as a result of the sentence
2 that there is a risk that Mr. Seyoume may be
3 deported to Kenya as sentences which involve
4 six months of imprisonment involve the risk of
5 deportation. That is unfortunate and it seems
6 that that was a huge risk for Mr. Seyoume to
7 take with his future but he has to bear the
8 consequences of his actions. Ultimately what
9 occurs will be up to the Immigration
10 authorities.

11 In determining a fit sentence for Mr.
12 Seyoume, it is also important to consider the
13 principle of parity and what sentences were
14 imposed on others who were involved in the
15 criminal organization.

16 Ajanthan Mahalingam was another operator
17 of the dial-a-dope phone and sold crack
18 cocaine. I am told that the facts of his
19 involvement were identical to Mr. Seyoume's.
20 His circumstances were that he was 23 years
21 old, from Toronto, and had one prior
22 conviction for possession of a controlled
23 substance. He entered a guilty plea to
24 trafficking in cocaine and received a sentence
25 of 30 months.

26 Byron Bibby was another individual who
27 operated the dial-a-dope phone and the facts

1 of his involvement, I am told, were also
2 similar to Mr. Seyoume. He was 24 years old
3 and had a criminal record with three prior
4 convictions, including two previous
5 convictions for trafficking, one of those as a
6 youth. At the time of the offence he was on
7 bail for an offence alleged to have been
8 committed in Alberta. He pleaded guilty to
9 trafficking in cocaine and received a sentence
10 of 36 months.

11 The other person who operated the
12 dial-a-dope phone has not been dealt with as
13 there is an outstanding warrant for their
14 arrest.

15 First, I will deal with the ancillary
16 orders requested by the Crown. Defence
17 counsel has not taken any issue with them.

18 Section 5(1) of the Controlled Drugs and
19 Substances Act is a secondary designated
20 offence pursuant to section 487.04 and there
21 will be an order pursuant to the 487.051 for
22 the taking of Mr. Seyoume's DNA for the
23 databank.

24 Pursuant is section 109, a firearms
25 prohibition order is mandatory, and Mr.
26 Seyoume will be prohibited from possessing
27 firearms for a period of ten years following

1 his release from imprisonment.

2 There will also be a victim of crime
3 surcharge of \$200 payable in accordance with
4 the regulations.

5 Mr. Seyoume was in custody on this matter
6 for a period of time before his release on a
7 recognizance. He was arrested on April 4th,
8 2016 and was in custody until August 26th,
9 2016 when he was released on a recognize.
10 This amounts to 145 days which, at one and a
11 half to one credit, amounts to 217 days or
12 just over seven months of remand credit which
13 will be deducted from Mr. Seyoume's sentence.

14 I have considered what an appropriate
15 sentence is, given the circumstances of the
16 offence, Mr. Seyoume's personal circumstances,
17 and the applicable sentencing principles.

18 Please stand up, Mr. Seyoume.

19 For the offence of trafficking in cocaine,
20 I sentence you to a period of imprisonment of
21 30 months. You will be given credit for seven
22 months pre-trial custody leaving a sentence of
23 23 months to be served.

24 You may sit down.

25 Is there anything else on this matter,
26 counsel?

27 MR. PRAUGHT: No, Your Honour.

1 MR. HARTE: Your Honour, I am not
2 certain where Correctional authorities will
3 end up leaving him. I expect that he will
4 remain in the territorial system but his only
5 relative within any proximity of a
6 correctional institution is his father, who is
7 resident in Yellowknife which was why he ended
8 up here in the first place, and I ask the
9 Court to endorse, just so that there is no
10 uncertainty as to where he ends up, that he be
11 permitted to serve his sentence in
12 Yellowknife.

13 THE COURT: I will endorse that on the
14 warrant of committal, that there be a judicial
15 recommendation that the authorities consider
16 allowing him to serve his sentence here.

17 MR. HARTE: Thank you, Your Honour.

18 THE COURT: Thank you, counsel.

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20 Certified to be a true and
21 accurate transcript pursuant
22 to Rules 723 and 724 of the
23 Supreme Court Rules,

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Lois Hewitt,
Court Reporter

