*R v Cotchilly and Boyd,* 2018 NWTSC 57 **S-1-CR-2017-000116**

# IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**- v -**

**RAMONA COTCHILLY AND MEGAN GLOW BOYD**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** Transcript of the Reasons for Sentence delivered by The Honourable Justice B. Browne, sitting in Hay River, in the Northwest Territories, on the 19th day of September, 2018.

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**APPEARANCES:**

Mr. W. Silliker: Counsel for the Crown

Mr. J. Bran: Counsel for the Accused Megan Boyd

Mr. T. Pham: Counsel for the Accused Ramona Cotchilly

(Charges under s. 5(1) of the *Controlled Drugs and Substances Act*)

1. THE COURT: Please be seated.
2. We are dealing today with sentencing
3. regarding two individuals who have pled guilty to
4. charges of trafficking in cocaine. Both
5. individuals have pled guilty and have pled guilty
6. not knowing what the sentence would be.
7. Cocaine trafficking in northern communities,
8. in any community, is a serious charge. We all,
9. including Ms. Boyd and Ms. Cotchilly, have seen
10. families torn apart because of drugs, families
11. who do not have enough money to feed the kids
12. because of drugs, all kinds of damage done to
13. families and to our community as a result of
14. drugs, particularly cocaine. People lose
15. everything if they become addicted to those
16. drugs. And so the Courts take the charges
17. seriously of trafficking to ensure that others do
18. not do the same thing and become involved in
19. trafficking. The idea is that if significant
20. sentences are imposed on people who are charged
21. with trafficking, others will learn from those
22. sentences and not be involved in similar
23. activities. The NWT Court of Appeal, which is
24. the Alberta Court of Appeal, has said in the case
25. of *Joe* (that the lawyers have talked to me about)
26. that the minimum sentence in that case was a
27. sentence of one year in jail.
    1. Another principle that we toss into the mix
    2. when we are trying to balance the personal
    3. circumstances of the accused people and the
    4. nature of the crime is proportionality. We can
    5. only sentence people on the crime that they
    6. committed, and we have to keep in mind their
    7. personal circumstances and figure out after that
    8. balance what the proper sentence is.
    9. So interesting, referring back to the case
    10. of *Joe*, that was quite a serious case when we
    11. compare it to the circumstances of the cases that
    12. I have in front of me today. In that case where
    13. the sentence was one year in jail, there was a
    14. significant amount of marijuana, 236 grams; 8
    15. grams of cocaine; and 4 to $5,000. In
    16. Ms. Cotchilly's case, we are talking about $20
    17. and one transaction. That is the charge that is
    18. before me today. With regard to Ms. Boyd, we
    19. have three transactions and 200-plus dollars
    20. involved in the transactions of small amounts of
    21. cocaine. So it is important to throw that into
    22. the balance that I have to look at when I am
    23. arriving at a proper sentence.
    24. And then, of course, we have the *Gladue* and
    25. *Ipeelee* factors, and that goes to moral
    26. blameworthiness or culpability. Those are big
    27. words. I do not know how to explain them more
28. simply. But as I was thinking about it, maybe it
29. means what do we expect of people who have had
30. tragedies throughout their life, who have been in
31. foster homes again and again, who have not had
32. the stability and the privileges that I have had.
33. How do we figure out what is normal for people
34. who have not had a strong family base to grow up
35. with, and how do we judge them in terms of the
36. sentencing and the criminal law? And that is
37. what *Gladue*, *Ipeelee* -- the later cases are
38. *Swampy* -- that is what those cases are saying to
39. us. How do we recognize the challenges that some
40. people have had in their lives in trying to
41. figure out that proportional sentence?
42. And both Ms. Boyd and Ms. Cotchilly have had
43. significant challenges in their lives in terms of
44. becoming productive members of society, going to
45. school, raising kids, foster homes, all of those
46. things that we recognize now are significant
47. challenges for people in their lives. So that is
48. one of the things that we have to think about in
49. the general context of sentencing.
50. So in terms of the facts of the crimes that
51. Ms. Cotchilly and Ms. Boyd have pled guilty to,
52. the facts of what I am dealing with today are
53. significantly less than the facts that the Court
54. of Appeal dealt with in the *Joe* case that I have
55. referred to already. And I just want to say a
56. little bit about both Ms. Boyd and Ms. Cotchilly
57. in terms of their personal circumstances and how
58. I arrive at my final decision. It is worth
59. talking about when we are talking about
60. sentencing, aggravating factors that suggest a
61. serious sentence and mitigating factors, things
62. that can be said in favour of an accused person.
63. A basic aggravating factor here is that we are
64. dealing with cocaine, and the Courts deal with
65. cocaine seriously.
66. In Ms. Cotchilly's case -- since we dealt
67. with her first -- a guilty plea, maybe not an
68. early guilty plea but a guilty plea nonetheless,
69. so we have not had to have a trial. That takes
70. time, and there is some indication of remorse.
71. She has on old record subject to a 2017
72. conviction to which she received one day in jail.
73. She indicates to the Court that she has not been
74. involved with drugs since January, and I note in
75. the presentence report that various reporters say
76. that Ms. Cotchilly has been still interacting
77. with people who are involved in the drug world,
78. although she says she is clean. Ms. Cotchilly is
79. pregnant and has four other children in care.
80. The presentence report talks about *Gladue*
81. factors throughout. She is now homeless living
82. in a tent. There was alcoholism; trauma in her
83. growing-up years; poverty, poverty that some of
84. us cannot even imagine; and yet there is a little
85. bit of a spark when I was reading the report. As
86. a child, she talks positively about hunting and
87. fishing I think with her grandparents.
88. Common-law for a long period of time and from
89. time to time in that relationship some abuse.
90. So lots of *Gladue* factors, if we call them
91. that, lots of challenges in growing up, and lots
92. of challenges in finding a way to be a productive
93. member of the community, and the question I
94. always ask as a judge is how do we overcome that?
95. How does Ms. Cotchilly move to education, to
96. jobs, to being a good mom and having her kids
97. with her? How do we do that challenge?
98. Ms. Boyd, 36 years old; also indigenous from
99. Mikisew Cree Nation; involved in three
100. transactions rather than one and cocaine -- those
101. are the serious matters -- in and out of foster
102. homes over the years; very early guilty plea; no
103. previous record; has been trying since the
104. charges arose going to AA and trying to put life
105. together again in the absence of drugs.
106. So balancing all of those things, it is
107. important that the sentences that I impose on
108. Ms. Boyd and Ms. Cotchilly make sense to each
109. other, make sense to the other cases that I have
110. read about, and make sense to Ms. Boyd and
111. Ms. Cotchilly individually.
112. It is significant to note that, particularly
113. Ms. Cotchilly, we are talking about a $20
114. transaction. There was a little bit of activity
115. in getting to that $20, but that is what we are
116. talking about. Ms. Boyd, a little more serious.
117. Ms. Boyd's personal circumstances can balance
118. that to some extent.
119. So I think about personal circumstances of
120. both of the accused, facts of the crime, and I
121. balance that in trying to come up with an
122. appropriate sentence having received some
123. guidance from the Court of Appeal, which is a
124. higher court that I have to listen to.
125. So, Ms. Cotchilly, stand up, please. So
126. after all that, I have tried to explain in words
127. that everybody will understand how I came to the
128. decision that I did. I am satisfied that the
129. proper sentence for you and for the crime that is
130. before the Court with a guilty plea, the sentence
131. should be six months in jail. You will be on
132. probation after that for 12 months. Conditions
133. of the probation order will be keep the peace and
134. be of good behaviour, you will report within
135. seven days of your release to the probation
136. officer, you will attend counselling directed by
137. the probation officer. I am going to put a
138. recommendation in the order that you attend
139. education or get a job. I think those are some
140. of the ways that you can pay back and get back
141. into the swing of things. As well, there will be
142. the usual orders, a DNA order, forfeiture of all
143. the things that were seized, and a firearms order
144. for ten years.
145. Ms. Cotchilly, a final word. When I read
146. the presentence report, you sparkled when you
147. talked about hunting and fishing, so maybe try to
148. find out -- go visit some elders and talk to them
149. and find out how you can explore that traditional
150. life that you have some positive memories about.
151. I hope that you can find some way of working to
152. become a productive member of the community.
153. That is up to you. Thank you.
154. THE ACCUSED: Thank you.
155. THE COURT: Ms. Boyd, I struggled a little
156. bit because Ms. Boyd has three transactions, no
157. record mind you, and I think that it is -- I
158. cannot give the same sentence. So, Ms. Boyd,
159. with regard to the charge that you have pled
160. guilty to, the sentence is eight months in jail.
161. There will be the usual orders, forfeiture of the
162. drugs, a DNA order, ten-year firearms order.
     1. I will make a recommendation on both that
     2. both candidates may be appropriate for prerelease
     3. from the jail having regard to the *Gladue*
     4. factors, and I am particularly concerned about
     5. the *R. v. Ewert* decision which seems to have
     6. instructed us that some people do not get out of
     7. jail when others might.
     8. Ms. Boyd, I hope that you can do your time,
     9. get back to your family as soon as you can,
     10. continue to do the things that you have been
     11. doing to improve your life. I hope things go
     12. well for you.
     13. THE ACCUSED: Thank you.
     14. THE COURT: Thank you.

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# 1 CERTIFICATE OF TRANSCRIPT

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1. I, the undersigned, hereby certify that the
2. foregoing pages are a complete and accurate
3. transcript of the proceedings taken down by me in
4. shorthand and transcribed from my shorthand notes
5. to the best of my skill and ability.
6. Dated at the City of Edmonton, Province of
7. Alberta, this 4th day of October, 2018.

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1. Certified Pursuant to Rule 723
2. of the Rules of Court

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1. K. Cloutier
2. Court Reporter

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