

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

WILLIAM JOSEPH SIMPSON

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Transcript of the Reasons for Sentence delivered by The Honourable Justice L.A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 17th day of September, 2018.

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APPEARANCES:

Ms. A. Piché:	Counsel for the Crown
Mr. P. Harte:	Counsel for the Accused, William Joseph Simpson

(Charges under s. 5(3)(a) of the *Controlled Drugs and Substances Act*)

1 THE COURT: As counsel know, it is my  
2 usual practice, after I hear sentencing  
3 submissions, to take some time to formulate  
4 reasons to put the sentencing decision in  
5 context.

6 In this particular case, this matter has  
7 been going on for a very long time, and I think  
8 it would be best to bring it to a close this  
9 afternoon. Accordingly, I am going to give a  
10 brief decision.

11 Rather than have you come back, Mr. Simpson,  
12 prolong this any longer, I think the best thing  
13 for me to do today is to impose sentence now. I  
14 do not think there is any benefit in me issuing a  
15 very long decision or making you wait any longer  
16 for the outcome of these long proceedings.

17 This is a very unusual case, and part of the  
18 reason why I do not see a need to write a long  
19 decision is that I cannot imagine circumstances  
20 coming up where quite the same factors would be  
21 at play.

22 The first thing I need to say is that the  
23 law is very clear that, when counsel present a  
24 joint submission, unless the Court finds it to be  
25 completely unreasonable and something that would  
26 bring the administration of justice into  
27 disrepute, the Court is required to follow it.

1           As Crown counsel has said, and as I think  
2 both counsel realize, what is being proposed here  
3 is very much on the lenient side when one takes  
4 into account the starting point that applies to  
5 wholesale trafficking of cocaine, the fact that  
6 Mr. Simpson has been convicted several times in  
7 the past for drug-related offences, and the  
8 significant harm that trafficking in hard drugs  
9 has caused in this community.

10           I talked about that in one of the cases  
11 counsel referred to, *R v Baker* 2009, NWTSC 75.  
12 Mr. Baker had no prior record. He had tremendous  
13 support from various people in the community.  
14 Mr. Baker made one very, very bad mistake. It  
15 was not pleasant to have to sentence him for that  
16 crime.

17           In sentencing Mr. Baker, I talked about the  
18 very real impact that drug trafficking has caused  
19 in this community. And, without repeating  
20 everything I said then, I think it is worth  
21 repeating that drug trafficking has done harm to  
22 this community, and this has manifested in  
23 different ways. Those of us who have lived here  
24 for a while know the stories of reputable  
25 business people whose lives spun completely out  
26 of control after developing addictions to drugs.  
27 We have heard of gratuitous and very violent

1 things happening and finding out, after the fact,  
2 that those crimes were connected with drugs,  
3 either because the people committing the offences  
4 were under the influence of those drugs, or  
5 because they were so desperate to get more that  
6 they were ready to do just about anything to get  
7 their hands on money to buy more drugs. This is  
8 a small community; so, when these things happen,  
9 we hear about them.

10 As I said in *Baker*, anyone who gets  
11 themselves involved in any way in this kind of  
12 activity is participating in something that  
13 causes a lot of harm, and that cannot ever be  
14 forgotten. That is why the sentencing regime, in  
15 this jurisdiction, has not historically been  
16 particularly lenient in drug-trafficking cases.  
17 All that remains true, and all that is why people  
18 generally get sentenced for significant jail  
19 terms when they engage in these activities. That  
20 is why the starting point is what it is.

21 Now, having said all of that, as I referred  
22 to already, the first question I have to ask  
23 myself is whether the joint submission that is  
24 being presented here is unreasonable. I cannot  
25 say that it is. It is definitely lenient, but it  
26 is not unreasonable. I think in fact it is far  
27 from unreasonable under these specific

1           circumstances. Sentencing is an individualized  
2           exercise, and a judge always has to take into  
3           account the specific circumstances of each case.

4           So what are the specific circumstances of  
5           the case? Well, first there is the information  
6           set out in the Pre-Sentence Report. I will not  
7           quote from it, but it discloses that Mr. Simpson  
8           faced some major challenges when he was still  
9           very young. He was not treated well by those who  
10          should have looked after him. He certainly did  
11          not start life with the best of chances. Sadly,  
12          that is not necessarily unusual, but it does have  
13          to be taken into account.

14          The second factor is that this matter has a  
15          long, convoluted procedural history; and I agree  
16          with what has been said that, under the  
17          circumstances, this being a circumstantial case,  
18          the guilty plea is significantly mitigating. It  
19          is especially mitigating because, given the  
20          passage of time and what I have heard, by  
21          pleading guilty, Mr. Simpson has given up, not  
22          just his right to have a trial and have the Crown  
23          prove his guilt, beyond a reasonable doubt, but  
24          he has given up the opportunity to assert a right  
25          that is protected by the *Charter*, which is to  
26          have his trial within a reasonable time.

27          Everyone has been very candid this afternoon

1           that a significant part of the delay in this  
2           matter would have been attributed to the Crown if  
3           an unreasonable delay application had been made.  
4           So, in a very real way, Mr. Simpson gave up his  
5           right to ask the Court to order a stay of  
6           proceedings based on delay and get out of even  
7           having to face trial. That is a very significant  
8           thing as well under the present circumstances.

9           There is another aspect that must be  
10          considered. There is always impact on family and  
11          often a lot of innocent indirect victims of  
12          crimes when people are sentenced and sent to  
13          jail. In this case, it is very clear that there  
14          is a direct victim and someone who bears no  
15          responsibility for what happened: Mr. Simpson's  
16          daughter. It is very tragic that a 14-year-old  
17          is going to be in that situation, and I can only  
18          hope that the people who support Mr. Simpson and  
19          who have been there for him will be able to be  
20          there for her and will find a way to explain to  
21          her why her father has to be sent away. But that  
22          is a very sad thing, and I have a feeling that  
23          knowing that this is going to happen is going to  
24          be, in all of this, probably the worst punishment  
25          of all for Mr. Simpson.

26          Mr. Baker received a sentence of  
27          two-and-a-half years' imprisonment for his

1 offence. What is being proposed here is very  
2 close to that. I think I still have to take into  
3 account parity and proportionality and the  
4 quantity of drugs and the criminal record. For  
5 that reason, the sentence I impose will be at the  
6 high end of the jointly proposed range.

7 Mr. Simpson, this will still be a very light  
8 sentence considering what this offence is. It  
9 probably does not feel like a light sentence to  
10 you, but believe me, it could have been a lot  
11 worse; and after trial, I do not even want to  
12 take a guess as to what the sentence would have  
13 been if you had been convicted.

14 But I recognize that you have given up your  
15 right to trial; you have given up your right to  
16 raise other issues in this case. You are taking  
17 responsibility.

18 I am not sure I understand how you got  
19 yourself involved in this after such a long  
20 stretch of staying out of trouble. You obviously  
21 have a very good working record. You are able to  
22 lead a responsible lifestyle. You are able to be  
23 a good father, and I just hope that this really  
24 truly is the last time you make a mistake like  
25 this one because they are costly.

26 For these reasons, I am going to go along  
27 with the joint submission.

1                   Now, Ms. Piché, you did not say, but there  
2                   are two counts on this Indictment. What had you  
3                   contemplated as far as the breakdown of the  
4                   sentence as between those two counts? Or had you  
5                   thought about this?

6           MS. PICHÉ:                   Certainly, three years on the  
7                   cocaine charge. For the marihuana, I would  
8                   suggest a lesser sentence would be appropriate.

9           THE COURT:                   But concurrent?

10          MS. PICHÉ:                   Yes.

11          THE COURT:                   All right. Thank you.

12                   Can you stand up with Mr. Simpson? On the  
13                   charge of possession of cocaine for the purpose  
14                   of trafficking, the sentence will be three years'  
15                   imprisonment.

16                   And, on the charge for possession for the  
17                   purpose of trafficking of marihuana, it will be  
18                   two years concurrent, which means served at the  
19                   same time. You can sit down.

20                   The firearms prohibition order is mandatory  
21                   in these cases, so it will be commencing today,  
22                   ending ten years after your release from  
23                   imprisonment.

24                   There is a provision in the *Criminal Code*  
25                   that Mr. Harte can explain to you that gives you  
26                   an opportunity to apply for an exemption for  
27                   sustenance purposes. In other words, if you are



1 hunting and that is how you are feeding your  
2 family, you can make a request to have the ban  
3 lifted for that purpose. So that is an option  
4 that will be available to you; and Mr. Harte, I  
5 am sure, can tell you how to go about doing that.  
6 It is something that comes up fairly frequently.

7 There will also be a DNA order. And there  
8 will be a Victim of Crime Surcharge on each  
9 count.

10 Is there anything I have overlooked in what  
11 you have asked?

12 MS. PICHÉ: No, not from the sentencing  
13 perspective. But we still have forfeiture to  
14 address.

15 THE COURT: Yes. Yes.

16 Mr. Harte, anything I have overlooked from  
17 your perspective?

18 MR. HARTE: No, Your Honour. Thank you.

19 THE COURT: All right. So, with respect  
20 to the forfeiture and return orders, Ms. Piché?

21 MS. PICHÉ: Yes, I do have an affidavit  
22 from Mr. Shushack with respect to property that  
23 was -- because everything was seized in his  
24 residence, so I will file that.

25 THE COURT: Okay. Thank you.

26 MS. PICHÉ: And it does give you the basis  
27 for the return order part of the order that the

1 Crown is seeking, so I have a draft order here.

2 THE COURT: Now, this -- there is a lot of  
3 exhibits listed in there. I -- I can -- I assume  
4 counsel have reviewed this carefully and it  
5 matches the orders you are going to give me?

6 MS. PICHÉ: Yes, it does, Your Honour.

7 THE COURT: All right. Thank you.

8 MS. PICHÉ: And so I have the -- I have  
9 three copies of the draft order.

10 THE COURT: So this orders the forfeiture  
11 of the items that were mentioned in the Agreed  
12 Statement of Facts, the return of those,  
13 conversely that there is no interest in --

14 MS. PICHÉ: Yes.

15 THE COURT: -- and it matches with  
16 Mr. Shushack's affidavit.

17 MS. PICHÉ: Yes, it does.

18 THE COURT: Do you agree, Mr. Harte?

19 MR. HARTE: Yes, Your Honour. My client  
20 has no interest in any of what was seized.

21 THE COURT: The affidavit will be filed,  
22 Mr. Clerk.

23 THE COURT CLERK: Yes, Your Honour.

24 THE COURT: Not marked as an exhibit, just  
25 filed.

26 THE COURT CLERK: Yes, Your Honour.

27 THE COURT: And the forfeiture and return

1 order will issue.

2 Is there anything further on this matter?

3 MS. PICHÉ: No. Thank you, Your Honour.

4 THE COURT: Anything further from defence?

5 MR. HARTE: No. Thank you, Your Honour.

6 THE COURT: Mr. Simpson, I hope things  
7 work out for you.

8 THE ACCUSED: Yeah.

9 THE COURT: And I hope we do not have to  
10 see each other again in these circumstances.

11 Thank you, counsel.

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13 **CERTIFICATE OF TRANSCRIPT**

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15 I, the undersigned, hereby certify that the  
16 foregoing transcribed pages are a complete and  
17 accurate transcript of the digitally recorded  
18 proceedings taken herein to the best of my skill and  
19 ability.

20 Dated at the City of Edmonton, Province of  
21 Alberta, this 19th day of October, 2018.

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

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

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