***R v Simpson*, 2018 NWTSC 61 S-1-CR-2015-000052**

# IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**- v -**

**WILLIAM JOSEPH SIMPSON**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** 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.

# \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. 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
28. things happening and finding out, after the fact,
29. that those crimes were connected with drugs,
30. either because the people committing the offences
31. were under the influence of those drugs, or
32. because they were so desperate to get more that
33. they were ready to do just about anything to get
34. their hands on money to buy more drugs. This is
35. a small community; so, when these things happen,
36. we hear about them.
37. As I said in *Baker*, anyone who gets
38. themselves involved in any way in this kind of
39. activity is participating in something that
40. causes a lot of harm, and that cannot ever be
41. forgotten. That is why the sentencing regime, in
42. this jurisdiction, has not historically been
43. particularly lenient in drug-trafficking cases.
44. All that remains true, and all that is why people
45. generally get sentenced for significant jail
46. terms when they engage in these activities. That
47. is why the starting point is what it is.
48. Now, having said all of that, as I referred
49. to already, the first question I have to ask
50. myself is whether the joint submission that is
51. being presented here is unreasonable. I cannot
52. say that it is. It is definitely lenient, but it
53. is not unreasonable. I think in fact it is far
54. from unreasonable under these specific
55. circumstances. Sentencing is an individualized
56. exercise, and a judge always has to take into
57. account the specific circumstances of each case.
58. So what are the specific circumstances of
59. the case? Well, first there is the information
60. set out in the Pre-Sentence Report. I will not
61. quote from it, but it discloses that Mr. Simpson
62. faced some major challenges when he was still
63. very young. He was not treated well by those who
64. should have looked after him. He certainly did
65. not start life with the best of chances. Sadly,
66. that is not necessarily unusual, but it does have
67. to be taken into account.
68. The second factor is that this matter has a
69. long, convoluted procedural history; and I agree
70. with what has been said that, under the
71. circumstances, this being a circumstantial case,
72. the guilty plea is significantly mitigating. It
73. is especially mitigating because, given the
74. passage of time and what I have heard, by
75. pleading guilty, Mr. Simpson has given up, not
76. just his right to have a trial and have the Crown
77. prove his guilt, beyond a reasonable doubt, but
78. he has given up the opportunity to assert a right
79. that is protected by the *Charter*, which is to
80. have his trial within a reasonable time.
81. 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
82. offence. What is being proposed here is very
83. close to that. I think I still have to take into
84. account parity and proportionality and the
85. quantity of drugs and the criminal record. For
86. that reason, the sentence I impose will be at the
87. high end of the jointly proposed range.
88. Mr. Simpson, this will still be a very light
89. sentence considering what this offence is. It
90. probably does not feel like a light sentence to
91. you, but believe me, it could have been a lot
92. worse; and after trial, I do not even want to
93. take a guess as to what the sentence would have
94. been if you had been convicted.
95. But I recognize that you have given up your
96. right to trial; you have given up your right to
97. raise other issues in this case. You are taking
98. responsibility.
99. I am not sure I understand how you got
100. yourself involved in this after such a long
101. stretch of staying out of trouble. You obviously
102. have a very good working record. You are able to
103. lead a responsible lifestyle. You are able to be
104. a good father, and I just hope that this really
105. truly is the last time you make a mistake like
106. this one because they are costly.
107. For these reasons, I am going to go along
108. 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
109. hunting and that is how you are feeding your
110. family, you can make a request to have the ban
111. lifted for that purpose. So that is an option
112. that will be available to you; and Mr. Harte, I
113. am sure, can tell you how to go about doing that.
114. It is something that comes up fairly frequently.
115. There will also be a DNA order. And there
116. will be a Victim of Crime Surcharge on each
117. count.
118. Is there anything I have overlooked in what
119. you have asked?
120. MS. PICHÉ: No, not from the sentencing
121. perspective. But we still have forfeiture to
122. address.
123. THE COURT: Yes. Yes.
124. Mr. Harte, anything I have overlooked from
125. your perspective?
126. MR. HARTE: No, Your Honour. Thank you.
127. THE COURT: All right. So, with respect
128. to the forfeiture and return orders, Ms. Piché?
129. MS. PICHÉ: Yes, I do have an affidavit
130. from Mr. Shushack with respect to property that
131. was -- because everything was seized in his
132. residence, so I will file that.
133. THE COURT: Okay. Thank you.
134. MS. PICHÉ: And it does give you the basis
135. for the return order part of the order that the
136. Crown is seeking, so I have a draft order here.
137. THE COURT: Now, this -- there is a lot of
138. exhibits listed in there. I -- I can -- I assume
139. counsel have reviewed this carefully and it
140. matches the orders you are going to give me?

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| 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 |

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| --- | --- | --- |
| 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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1. I, the undersigned, hereby certify that the foregoing transcribed pages are a complete and
2. accurate transcript of the digitally recorded proceedings taken herein to the best of my skill and
3. ability.

Dated at the City of Edmonton, Province of

1. Alberta, this 19th day of October, 2018.
2. Certified Pursuant to Rule 723 of the Rules of Court

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22 Janet Belma, CSR(A), B.Ed.

Court Reporter

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