

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**- v -**

**TRAVIS KING**

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Transcript of the Reasons for Sentence delivered by The Honourable Justice K.M. Shaner, sitting in Yellowknife, in the Northwest Territories, on the 18th day of June, 2018.

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**APPEARANCES:**

Mr. B. Green and	Counsel for the Crown
Ms. M. Chertkow:	
Mr. P. Harte:	Counsel for the Accused

(Charges under s.5(2) of the *Controlled Drugs and Substances Act*)

1 THE COURT: On May 27th, 2016, Travis King  
2 was arrested for obstruction of justice. He was  
3 taken to the Hay River detachment where he was  
4 strip searched. The legality of that search was  
5 challenged and determined through a *voir dire* to  
6 be legal. The search revealed that Mr. King was  
7 in possession of approximately 111 grams of  
8 cocaine.

9 On May 10th, 2018, sometime following the  
10 *voir dire*, Mr. King pled guilty to possession of  
11 cocaine for the purpose of trafficking and a  
12 conviction was entered.

13 I am going to start the substantive  
14 discussion with Mr. King's circumstances.  
15 Information about him and his background was  
16 provided through a presentence report and also by  
17 his counsel.

18 Mr. King comes to this Court from tragic and  
19 difficult circumstances. This is something that  
20 we hear frequently and frankly, it never gets any  
21 easier to hear; it never gets any less  
22 concerning; and it never gets any less  
23 heartbreaking.

24 Mr. King is 21 years old. He is Indigenous  
25 of Chipewyan ancestry. He is one of seven  
26 children. His father and mother separated when  
27 he was born, and Mr. King had no relationship

1 with his father. His mother was responsible for  
2 raising him. According to Mr. King and based on  
3 what he told the author of the presentence  
4 report, his mother has struggled with alcohol  
5 addiction for a very long time. His upbringing  
6 was unstable and his home life with his mother  
7 chaotic. He was apprehended by social services  
8 numerous times starting at age 1.

9 At age 4 he was apprehended again and placed  
10 in a group home for six months, something which  
11 he says was an unpleasant experience. At age 5  
12 he went to live with his grandmother and one of  
13 his brothers. She died when he was 11. At that  
14 time, Mr. King went to live with an uncle who he  
15 says abused him emotionally. He went back to  
16 live with his mother about nine months later and  
17 while it is not clear exactly when, at some point  
18 after he moved back in with her she lost her  
19 housing because of alcohol use. So the family,  
20 including Mr. King, became homeless.

21 For the next two years Mr. King survived by  
22 sleeping on friends' couches, in stairwells and  
23 outside. He relied on friends for food. He quit  
24 school. He completed Grade 9 before leaving  
25 school. When he was 16, Mr. King went to live  
26 with an aunt in Lutselk'e. He then returned to  
27 Yellowknife at 17 and moved in with a friend.

1           And at 18 he went to live with his cousin in  
2           Saskatoon. He returned to Yellowknife again  
3           briefly, and then he went back to Saskatoon and  
4           that is where he started selling cocaine, when he  
5           was 20 and living in Saskatoon. He made about  
6           \$600 a week doing this and he told the author of  
7           the presentence report that he did this so that  
8           he could make ends meet.

9           Mr. King has almost no legitimate work  
10          experience. He worked briefly for a construction  
11          company. He has no assets, and he has about  
12          \$7,000 in debt. He says he plans to use whatever  
13          period of incarceration is imposed on him to  
14          improve himself and among other things, he wants  
15          to finish high school.

16          Turning to the relevant sentencing  
17          objectives and principles, it is well-established  
18          that the primary sentencing objectives for  
19          trafficking in cocaine are deterrence and  
20          denunciation. The deterrence is both specific  
21          and general. That is, the sentence is to be  
22          designed to deter the specific offender from  
23          repeating the behaviour, and it must also deter  
24          others who might be tempted to traffic in drugs.

25          My colleague Justice Charbonneau noted in *R*  
26          *v Mohammed*, 2015 NWTJ 51 at paragraph 9 that the  
27          starting point for sentencing in cocaine

1 trafficking cases in the Northwest Territories is  
2 three years. She explained that this flows from  
3 the Alberta Court of Appeal's decision in *R v*  
4 *Maskill*, 1981 ABCA 50. In that case, the Court  
5 set out a three-year starting point. She  
6 indicated that there is no reason to treat the  
7 Northwest Territories any differently than  
8 Alberta. Justice Charbonneau then expressed the  
9 rationale for applying the three-year starting  
10 point here, and her remarks, which were recently  
11 adopted by the Northwest Territories Court of  
12 Appeal in the *R v Joe* 2018 NWTCA 1 at paragraph  
13 21 bear repeating. She said:

14 The North is a very tempting market  
15 for drug traffickers, and judging by  
16 the number of drug cases that have  
17 been heard by the Territorial Court  
18 and this court over the last few  
19 decades, it is apparent that there  
20 continues to be a need to impose  
21 sentences that denounce this conduct  
22 and send a clear message that when  
23 people do get caught, they will face  
24 stern sentences no matter how young  
25 they are or no matter how good their  
26 background might otherwise be.  
27 Sadly, there are quite a few young  
people in the Northwest Territories  
who have learned that lesson the hard  
way.

24 The reason why courts have to be firm  
25 in their sentencing practices is very  
26 simple and was referred to this  
27 morning. Cocaine causes ravages and  
devastation in our communities.  
Yellowknife has seen its fair share  
of the collateral damage that crack  
cocaine has caused. The people who

1                   become addicted to this drug harm  
2 themselves of course. They sometimes  
3 lose everything to it, their  
4 families, their work, and their  
5 health, but they also often harm  
6 others. Houses get broken into,  
7 people commit robberies, sometimes on  
8 the street in broad daylight or in  
9 small convenience stores or gas  
10 stations to get money to buy more  
11 drugs, or they break into homes and  
12 steal property. And they steal, in  
13 addition to property, the occupants'  
14 sense of safety in their own home,  
15 sometimes for a very long time. Some  
16 addicts get to the point of being so  
17 dysfunctional that they neglect their  
18 own children.

19                   We do not just hear about cocaine in  
20 the *Criminal Code*. We hear about  
21 cocaine in family court frequently,  
22 and the Territorial Court hears about  
23 it in child welfare court frequently.

24                   In this case, the Crown seeks a sentence of  
25 the starting point which is three years  
26 incarceration. Crown Counsel, Mr. Green, stated  
27 in his submissions that in arriving at this  
28 position. He took into account that there are no  
29 aggravating factors. He accounted for the fact  
30 that Mr. King is young and has strong prospects  
31 for rehabilitation and that Mr. King entered a  
32 guilty plea, which, although, not at the earliest  
33 opportunity, nevertheless, avoided the necessity  
34 of a very long and expensive trial.

35                   Defence counsel argued that a sentence of  
36 18 months followed by a period of probation is  
37 what is appropriate. As part of his argument,

1 defence counsel submitted information from the  
2 Canadian Institute for Health Information on  
3 Alcohol Harm in Canada. He stated that alcohol  
4 causes significant harm, possibly more than  
5 cocaine and other drugs, and questioned why drug  
6 offences should be treated so much more seriously  
7 than alcohol offences.

8 Defence counsel also submitted an article  
9 published by the Centre For Criminology and Socio  
10 Legal Studies at the University of Toronto  
11 entitled "Issues Related to Harsh Sentences and  
12 Mandatory Minimum Sentences General Deterrence  
13 and incapacitation." The premise of it is that  
14 harsher sentences do not result in deterrence.

15 Respectfully, and without making any  
16 judgment on the merits of these arguments in the  
17 broader sense, they simply are not relevant in  
18 this forum. This is a trial court and a  
19 sentencing court. It cannot make or change  
20 policies or legislation. It cannot solve social  
21 problems, undo the past, or compensate for  
22 inadequacies or failings of social policies and  
23 infrastructure or for holes in the social safety  
24 net. As a trial court judge, it is incumbent  
25 upon me to determine the facts and apply the law  
26 as it has been written by Parliament or  
27 pronounced by the higher courts. And as a

1 sentencing judge, the tools I have to work with  
2 are probation or prison or a combination of the  
3 two.

4 Defence counsel also submitted statistics  
5 regarding the over-representation of Indigenous  
6 men in Canada's prisons as part of his argument  
7 on how the systemic factors identified in *Gladue*  
8 and more recently in *Ipeelee* must be considered  
9 in determining a fit and proper sentence for  
10 Mr. King. Those are highly relevant here. As  
11 defence counsel quite properly pointed out, the  
12 most important principle in sentencing is  
13 proportionality. That is, that the punishment  
14 must be proportional to the offender's degree of  
15 moral culpability. Among the many things that  
16 *Ipeelee* and *Gladue* tell us is that the systemic  
17 adversity in an Indigenous offender's background  
18 must be considered in determining the question of  
19 how much that offender is to blame.

20 As noted at paragraph 73 in *Ipeelee*:

21 Canadian criminal law is based on the  
22 premise that criminal liability only  
23 follows from voluntary conduct. Many  
24 Aboriginal offenders find themselves  
25 in situations of social and economic  
26 deprivation with a lack of  
27 opportunities and limited options for  
positive development. While this  
rarely – if ever – attains a level  
where one could properly say that  
their actions were not voluntary and  
therefore not deserving of criminal  
sanction, the reality is that their  
constrained circumstances may



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diminish their moral culpability.

It would not have taken a great leap in logic to have predicted that Travis King would wind up in the justice system for one reason or another. Quite frankly, I am surprised that this is your first stop, Mr. King.

Based on his background, it was just a matter of time. This is not the case of a young person just going off the rails. Mr. King has had no parental support and little adult guidance in his relatively short life. There was no one to ensure that he got to school, ensure that he was fed, or that he did his homework, and there was no one there to show him how to apply for or find a job and how to get up and go to work in the morning.

He did not have a reliable and stable home. He lived in chaos. He became a homeless teenager. He could not get to school because he was busy surviving. Theoretically, I suppose, he could have reached out to social services or another agency for help, but, realistically, that is a lot to ask of a teenager.

While I do not think that Mr. King is entirely blameless in this situation, I am confident in saying that he is not before this

1 Court simply because he made bad and deliberate  
2 choices. Realistically, he really did not have  
3 many choices.

4 What, then, is an appropriate sentence? As  
5 set out so well in my sister, Justice  
6 Charbonneau's comments that I just noted, this is  
7 a serious offence. Cocaine wreaks havoc in our  
8 communities, and the Courts have to send a  
9 message that those who sell it will face serious  
10 penalties. The community must be confident that  
11 the Court will do what it can to protect members  
12 of the public from the impact of this highly  
13 addictive substance by imposing serious penal  
14 consequences.

15 Given the amount of cocaine involved and the  
16 seriousness with which this Court treats cocaine  
17 trafficking, it is my view that the 18 months of  
18 custody and following probation would not send  
19 the right message to either Mr. King nor to the  
20 community. At the same time, sentencing is an  
21 individualized process which must take into  
22 account the circumstances of the offence and of  
23 the offender. Deterrence and denunciation are  
24 the primary sentencing objectives, but that does  
25 not mean other objectives do not come into play.  
26 In this case, Mr. King, an Indigenous offender,  
27 comes to court with a background that is full of

1 adverse circumstances. These reduce his moral  
2 blameworthiness and have to be taken into  
3 account. He is also very young with no criminal  
4 record, and the potential for rehabilitation must  
5 be considered. The sentence imposed must reflect  
6 this.

7 In my view, an appropriate sentence in this  
8 case is one that combines a period of custody  
9 longer than what is proposed by defence counsel  
10 with a period of probation. The former takes  
11 away Mr. King's freedoms, something which all  
12 members of our society treasure and hold dear.  
13 It sends a message of denunciation and serves as  
14 a deterrent for Mr. King and others from selling  
15 illegal drugs. The latter, the probation, serves  
16 the objective of rehabilitation and what I view  
17 as much-needed structure and guidance which  
18 Mr. King has, to this point, lacked in his life.  
19 I am hopeful that Probation Services will be able  
20 to offer supports to Mr. King upon his release so  
21 that he can reintegrate into society and become a  
22 productive member of it.

23 Mr. King, please stand up. Travis King,  
24 this Court sentences you to a period of 30 months  
25 in prison, and this is going to be followed by  
26 two months probation. You can sit down.

27 From your incarceration, there will be

1           deducted six and a half months which represents  
2           the credit for presentence custody at the rate of  
3           1.5 day for each day served. So you will serve  
4           just under two years in prison.

5           The terms of your probation are going to be  
6           these: That you will keep the peace and be of  
7           good behaviour; that you will appear before this  
8           Court as you are required to; you will report to  
9           a probation officer within two working days of  
10          your release and thereafter as your probation  
11          officer directs; you will advise your probation  
12          officer in advance of any change of name or  
13          address or place of employment; and you will  
14          remain within the jurisdiction of the Northwest  
15          Territories unless you obtain prior written  
16          permission from your probation officer or you are  
17          required to leave for emergency medical purposes  
18          in which case you will inform your probation  
19          officer as soon as you can. And your probation  
20          will last for two years as well.

21          The Crown has asked, as well, for ancillary  
22          orders which I will rely on Mr. Harte to explain  
23          to you, Mr. King, but those are, first, a s.109  
24          firearms prohibition which I will grant, and I  
25          will also grant the order requiring you to  
26          provide a DNA sample.

27          Counsel, before I go on, is there anything

1           else?

2                   Mr. Green?

3       MR. GREEN:                   May I just have a moment to  
4           confer with my friend, Your Honour?

5       THE COURT:                   Certainly.

6       MR. GREEN:                   Thank you for that indulgence,  
7           Your Honour.   Nothing further from the Crown.

8       THE COURT:                   All right.

9           Now, Mr. King, you have heard me talk about  
10          you today in the third person.   That is something  
11          that we do in court, more for the record, and by  
12          talking about you in the third person, I do not  
13          want you to get the impression that I was not  
14          thinking about you personally when I was coming  
15          to this decision.

16          So what I need you to do now is also listen  
17          very carefully because I have something to say  
18          directly to you.   And that is that I hope that  
19          the combination of jail and probation that I have  
20          imposed on you today is going to serve not only  
21          as a deterrent but as an opportunity for you to  
22          rehabilitate yourself and to get assistance in  
23          reintegrating and settling into mainstream  
24          society.

25          Your life has been very difficult, and your  
26          circumstances have, without doubt, played a large  
27          part in you being in front of me today.

1           Neither of us can change the past, but you  
2           can change the direction of your future. You are  
3           very young, and you can choose a better path.  
4           The choices that you make from this day forward  
5           are going to determine if you succeed or fail.  
6           So choose wisely. Upgrade your education, take  
7           advantage of counselling opportunities and  
8           programs, deal with your past, and take  
9           responsibility for your life, connect with the  
10          resources that are going to be available to you  
11          in the correctional system, and get housing, get  
12          training, get a job. Stay away from criminal  
13          activity. And that may mean that you need to cut  
14          ties with your associates from the past, because  
15          if you get involved in criminal activity, it is  
16          going to become a revolving door, and it is never  
17          going to stop. So you need to change your  
18          conduct, you need to change your path, and you  
19          need to do that now while you still have time.

20        THE ACCUSED:                    Yes, Your Honour.

21        THE COURT:                     Thank you.

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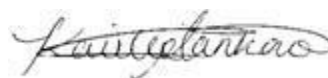
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**CERTIFICATE OF TRANSCRIPT**

I, the undersigned, hereby certify that the foregoing pages are a complete and accurate transcript of the proceedings taken down by me in shorthand and transcribed from my shorthand notes to the best of my skill and ability.

Dated at the City of Edmonton, Province of Alberta, this 20th day of September, 2018.

Certified Pursuant to Rule 723  
of the Rules of Court



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Karilee Mankow  
Court Reporter