*R v King,* 2018 NWTSC 44 **S-1-CR-2016-000111**

# IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**- v -**

**TRAVIS KING**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** 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 Ms. M. Chertkow:

Counsel for the Crown

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
28. with his father. His mother was responsible for
29. raising him. According to Mr. King and based on
30. what he told the author of the presentence
31. report, his mother has struggled with alcohol
32. addiction for a very long time. His upbringing
33. was unstable and his home life with his mother
34. chaotic. He was apprehended by social services
35. numerous times starting at age 1.
36. At age 4 he was apprehended again and placed
37. in a group home for six months, something which
38. he says was an unpleasant experience. At age 5
39. he went to live with his grandmother and one of
40. his brothers. She died when he was 11. At that
41. time, Mr. King went to live with an uncle who he
42. says abused him emotionally. He went back to
43. live with his mother about nine months later and
44. while it is not clear exactly when, at some point
45. after he moved back in with her she lost her
46. housing because of alcohol use. So the family,
47. including Mr. King, became homeless.
48. For the next two years Mr. King survived by
49. sleeping on friends' couches, in stairwells and
50. outside. He relied on friends for food. He quit
51. school. He completed Grade 9 before leaving
52. school. When he was 16, Mr. King went to live
53. with an aunt in Lutselk'e. He then returned to
54. Yellowknife at 17 and moved in with a friend.
55. And at 18 he went to live with his cousin in
56. Saskatoon. He returned to Yellowknife again
57. briefly, and then he went back to Saskatoon and
58. that is where he started selling cocaine, when he
59. was 20 and living in Saskatoon. He made about
60. $600 a week doing this and he told the author of
61. the presentence report that he did this so that
62. he could make ends meet.
63. Mr. King has almost no legitimate work
64. experience. He worked briefly for a construction
65. company. He has no assets, and he has about
66. $7,000 in debt. He says he plans to use whatever
67. period of incarceration is imposed on him to
68. improve himself and among other things, he wants
69. to finish high school.
70. Turning to the relevant sentencing
71. objectives and principles, it is well-established
72. that the primary sentencing objectives for
73. trafficking in cocaine are deterrence and
74. denunciation. The deterrence is both specific
75. and general. That is, the sentence is to be
76. designed to deter the specific offender from
77. repeating the behaviour, and it must also deter
78. others who might be tempted to traffic in drugs.
79. My colleague Justice Charbonneau noted in *R*
80. *v Mohammed*, 2015 NWTJ 51 at paragraph 9 that the
81. starting point for sentencing in cocaine
82. trafficking cases in the Northwest Territories is
83. three years. She explained that this flows from
84. the Alberta Court of Appeal's decision in *R v*
85. *Maskill*, 1981 ABCA 50. In that case, the Court
86. set out a three-year starting point. She
87. indicated that there is no reason to treat the
88. Northwest Territories any differently than
89. Alberta. Justice Charbonneau then expressed the
90. rationale for applying the three-year starting
91. point here, and her remarks, which were recently
92. adopted by the Northwest Territories Court of
93. Appeal in the *R v Joe* 2018 NWTCA 1 at paragraph
94. 21 bear repeating. She said:
95. The North is a very tempting market for drug traffickers, and judging by
96. the number of drug cases that have been heard by the Territorial Court
97. and this court over the last few decades, it is apparent that there
98. continues to be a need to impose sentences that denounce this conduct
99. and send a clear message that when people do get caught, they will face
100. stern sentences no matter how young they are or no matter how good their
101. background might otherwise be. Sadly, there are quite a few young
102. people in the Northwest Territories who have learned that lesson the hard
103. way.

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1. The reason why courts have to be firm in their sentencing practices is very
2. simple and was referred to this morning. Cocaine causes ravages and
3. devastation in our communities. Yellowknife has seen its fair share
4. of the collateral damage that crack cocaine has caused. The people who
5. become addicted to this drug harm themselves of course. They sometimes
6. lose everything to it, their families, their work, and their
7. health, but they also often harm others. Houses get broken into,
8. people commit robberies, sometimes on the street in broad daylight or in
9. small convenience stores or gas stations to get money to buy more
10. drugs, or they break into homes and steal property. And they steal, in
11. addition to property, the occupants’ sense of safety in their own home,
12. sometimes for a very long time. Some addicts get to the point of being so
13. dysfunctional that they neglect their own children.

10

We do not just hear about cocaine in

1. the *Criminal Code*. We hear about cocaine in family court frequently,
2. and the Territorial Court hears about it in child welfare court frequently.

13

1. In this case, the Crown seeks a sentence of
2. the starting point which is three years
3. incarceration. Crown Counsel, Mr. Green, stated
4. in his submissions that in arriving at this
5. position. He took into account that there are no
6. aggravating factors. He accounted for the fact
7. that Mr. King is young and has strong prospects
8. for rehabilitation and that Mr. King entered a
9. guilty plea, which, although, not at the earliest
10. opportunity, nevertheless, avoided the necessity
11. of a very long and expensive trial.
12. Defence counsel argued that a sentence of
13. 18 months followed by a period of probation is
14. what is appropriate. As part of his argument,
15. defence counsel submitted information from the
16. Canadian Institute for Health Information on
17. Alcohol Harm in Canada. He stated that alcohol
18. causes significant harm, possibly more than
19. cocaine and other drugs, and questioned why drug
20. offences should be treated so much more seriously
21. than alcohol offences.
22. Defence counsel also submitted an article
23. published by the Centre For Criminology and Socio
24. Legal Studies at the University of Toronto
25. entitled "Issues Related to Harsh Sentences and
26. Mandatory Minimum Sentences General Deterrence
27. and incapacitation." The premise of it is that
28. harsher sentences do not result in deterrence.
29. Respectfully, and without making any
30. judgment on the merits of these arguments in the
31. broader sense, they simply are not relevant in
32. this forum. This is a trial court and a
33. sentencing court. It cannot make or change
34. policies or legislation. It cannot solve social
35. problems, undo the past, or compensate for
36. inadequacies or failings of social policies and
37. infrastructure or for holes in the social safety
38. net. As a trial court judge, it is incumbent
39. upon me to determine the facts and apply the law
40. as it has been written by Parliament or
41. pronounced by the higher courts. And as a
42. sentencing judge, the tools I have to work with
43. are probation or prison or a combination of the
44. two.
45. Defence counsel also submitted statistics
46. regarding the over-representation of Indigenous
47. men in Canada's prisons as part of his argument
48. on how the systemic factors identified in *Gladue*
49. and more recently in *Ipeelee* must be considered
50. in determining a fit and proper sentence for
51. Mr. King. Those are highly relevant here. As
52. defence counsel quite properly pointed out, the
53. most important principle in sentencing is
54. proportionality. That is, that the punishment
55. must be proportional to the offender's degree of
56. moral culpability. Among the many things that
57. *Ipeelee* and *Gladue* tell us is that the systemic
58. adversity in an Indigenous offender's background
59. must be considered in determining the question of
60. how much that offender is to blame.
61. As noted at paragraph 73 in *Ipeelee*:
62. Canadian criminal law is based on the premise that criminal liability only
63. follows from voluntary conduct. Many Aboriginal offenders find themselves
64. in situations of social and economic deprivation with a lack of
65. opportunities and limited options for positive development. While this
66. rarely — if ever — attains a level where one could properly say that
67. their actions were not voluntary and therefore not deserving of criminal
68. sanction, the reality is that their constrained circumstances may

1 diminish their moral culpability.

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1. It would not have taken a great leap in logic to
2. have predicted that Travis King would wind up in
3. the justice system for one reason or another.
4. Quite frankly, I am surprised that this is your
5. first stop, Mr. King.
6. Based on his background, it was just a
7. matter of time. This is not the case of a young
8. person just going off the rails. Mr. King has
9. had no parental support and little adult guidance
10. in his relatively short life. There was no one
11. to ensure that he got to school, ensure that he
12. was fed, or that he did his homework, and there
13. was no one there to show him how to apply for or
14. find a job and how to get up and go to work in
15. the morning.
16. He did not have a reliable and stable home.
17. He lived in chaos. He became a homeless
18. teenager. He could not get to school because he
19. was busy surviving. Theoretically, I suppose, he
20. could have reached out to social services or
21. another agency for help, but, realistically, that
22. is a lot to ask of a teenager.
23. While I do not think that Mr. King is
24. entirely blameless in this situation, I am
25. confident in saying that he is not before this
26. Court simply because he made bad and deliberate
27. choices. Realistically, he really did not have
28. many choices.
29. What, then, is an appropriate sentence? As
30. set out so well in my sister, Justice
31. Charbonneau's comments that I just noted, this is
32. a serious offence. Cocaine wreaks havoc in our
33. communities, and the Courts have to send a
34. message that those who sell it will face serious
35. penalties. The community must be confident that
36. the Court will do what it can to protect members
37. of the public from the impact of this highly
38. addictive substance by imposing serious penal
39. consequences.
40. Given the amount of cocaine involved and the
41. seriousness with which this Court treats cocaine
42. trafficking, it is my view that the 18 months of
43. custody and following probation would not send
44. the right message to either Mr. King nor to the
45. community. At the same time, sentencing is an
46. individualized process which must take into
47. account the circumstances of the offence and of
48. the offender. Deterrence and denunciation are
49. the primary sentencing objectives, but that does
50. not mean other objectives do not come into play.
51. In this case, Mr. King, an Indigenous offender,
52. comes to court with a background that is full of
53. adverse circumstances. These reduce his moral
54. blameworthiness and have to be taken into
55. account. He is also very young with no criminal
56. record, and the potential for rehabilitation must
57. be considered. The sentence imposed must reflect
58. this.
59. In my view, an appropriate sentence in this
60. case is one that combines a period of custody
61. longer than what is proposed by defence counsel
62. with a period of probation. The former takes
63. away Mr. King's freedoms, something which all
64. members of our society treasure and hold dear.
65. It sends a message of denunciation and serves as
66. a deterrent for Mr. King and others from selling
67. illegal drugs. The latter, the probation, serves
68. the objective of rehabilitation and what I view
69. as much-needed structure and guidance which
70. Mr. King has, to this point, lacked in his life.
71. I am hopeful that Probation Services will be able
72. to offer supports to Mr. King upon his release so
73. that he can reintegrate into society and become a
74. productive member of it.
75. Mr. King, please stand up. Travis King,
76. this Court sentences you to a period of 30 months
77. in prison, and this is going to be followed by
78. two months probation. You can sit down.
79. 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

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| 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 |

1. you today in the third person. That is something
2. that we do in court, more for the record, and by
3. talking about you in the third person, I do not
4. want you to get the impression that I was not
5. thinking about you personally when I was coming
6. to this decision.
7. So what I need you to do now is also listen
8. very carefully because I have something to say
9. directly to you. And that is that I hope that
10. the combination of jail and probation that I have
11. imposed on you today is going to serve not only
12. as a deterrent but as an opportunity for you to
13. rehabilitate yourself and to get assistance in
14. reintegrating and settling into mainstream
15. society.
16. Your life has been very difficult, and your
17. circumstances have, without doubt, played a large
18. 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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# 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 20th day of September, 2018.

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

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1. Karilee Mankow
2. Court Reporter

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