

ORIGINAL

R v Oake, 2018 NWTSC 45

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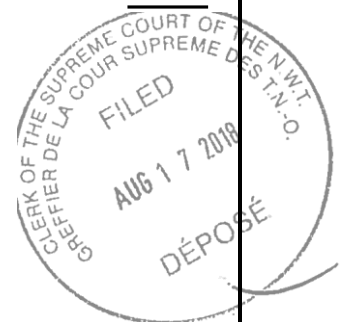
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

DARCY OAKE



Transcript of the Decision on s. 525 Bail Review delivered by The Honourable Justice L. A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 20th day of July, 2018.

APPEARANCES:

Mr. D. Praught: Counsel for the Crown
Mr. C. Davison: Counsel for the Accused

(Charges under s. 221 of the *Criminal Code* and s. 6(1), 5(1) of the *Controlled Drugs and Substances Act*)

This decision is subject to a publication ban until the trial into this matter has ended pursuant to s. 525(8) and 517 of the Criminal Code

Publication Ban no longer in effect pursuant to the direction of the Honourable Justice L.A. Charbonneau dated December 5, 2018.

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1 THE COURT: Darcy Oake faces a number of
2 serious charges: importation of furanylfentanyl
3 into Canada, trafficking and possession for the
4 purpose of trafficking of that same substance,
5 criminal negligence causing bodily harm for
6 having provided that substance to Courtney Janes.

7 The events giving rise to these charges
8 occurred in October and November 2016. Mr. Oake
9 was arrested on those charges in early December
10 and remained in custody for several months.

11 In May 2017, after having become eligible
12 for review of detention, under Section 525 of the
13 Code, he took the opportunity to apply for bail
14 for the first time; and, on May 25th, I granted
15 that application. I released Mr. Oake on a
16 recognizance with a number of strict conditions
17 and with both his parents acting as sureties.

18 In January 2018, Mr. Oake was arrested on
19 new charges. His process was cancelled. The
20 issue of his detention once again comes before
21 this Court by operation of Section 525 of the
22 Criminal Code.

23 A transcript of the May 2017 bail hearing
24 has been filed, as well as a transcript of my
25 decision on that matter. *R v Oake, 2017*
26 NWTSC 41, also currently subject to a publication
27 ban.

1 Those materials outline the 2016 allegations
2 in some detail, and I am not going to repeat all
3 those details here today. I will focus instead
4 on the events that have occurred since then.

5 The release plan that was presented in May
6 was that Mr. Oake would attempt to get into
7 treatment for his drug addiction, and that did
8 happen. He went to the Edgewood facility in
9 British Columbia. He was admitted into the
10 facility on June 5th and completed the program on
11 July 31st. He then entered an extended care
12 program on August 1st. He was discharged from
13 that program at the end of September for
14 noncompliance with the rules. He testified, at
15 the hearing yesterday, that the nature of the
16 noncompliance was that he got involved in a
17 relationship with another person in the program,
18 and that is not permitted.

19 He then returned to Yellowknife. He had
20 employment for about a month and lived with his
21 mother at first, as required by the recognizance.
22 His parents do not live together. Mr. Oake had
23 been living with his father at the time of the
24 events that gave rise to the charges, so the
25 release plan that had been presented at the May
26 hearing, and that was ultimately accepted by the
27 Court, was that he would reside with his mother

1 when not in treatment.

2 In October 2017, after his return to
3 Yellowknife, he applied to the Court to have the
4 recognizance amended to permit him to live with
5 either of his parents. And this was granted.
6 Yesterday, I heard that the reason the request
7 was made was that there were some renovations
8 taking place at his mother's house and that it
9 was felt that she and Mr. Oake's father could
10 share the responsibility of having him live with
11 them.

12 At some point after that -- this seems
13 undisputed -- Mr. Oake started not doing well.
14 In his Affidavit, he deposes that he began
15 associating with some of his friends and others
16 who use drugs. He eventually relapsed and
17 purchased and used cocaine. In his testimony at
18 the hearing, he said that being at his father's
19 house was not a good environment. There was no
20 suggestion of anything wrong happening in the
21 household, or anything of that nature. It
22 appears to have been more a question of Mr. Oake
23 being in the house, where he had first started
24 using drugs, and, as he said, him being triggered
25 by being there and by seeing some of the people
26 he used to associate with and by being back in
27 Yellowknife.

1 His arrest occurred as a result of his
2 father contacting police on January 5th, 2018.
3 He had found what he thought was a handgun in the
4 house. It turned out to be an air gun that
5 looked like a handgun. I heard some things had
6 been done to it to make it look more like a
7 handgun, and Mr. Oake himself refers to it as a
8 "replica" in his Affidavit. He deposes that one
9 of his friends had left this air gun at his
10 place.

11 The discovery and the police being called
12 ultimately led to a search of the house, and the
13 police found 22 grams of powdered cocaine, a
14 number of syringes, a scale, and drug
15 paraphernalia.

16 Mr. Oake was charged as a result of this.
17 He has since then pleaded guilty to simple
18 possession of cocaine and received a jail term of
19 the equivalent of 60 days, which was effectively
20 considered time served out of the period he had
21 already spent on remand.

22 Other things have changed as well. At the
23 time of the May 2017 bail hearing, Mr. Oake had
24 an outstanding drug charge in Alberta. He and
25 two others had been charged following the
26 interception of a vehicle that they were all in.
27 I heard yesterday that those charges have now

1 been stayed against Mr. Oake.

2 At the time of the original bail hearing,
3 Mr. Oake faced two breach charges in relation to
4 his process on those Alberta charges: a charge
5 for breaching a curfew and a charge for failing
6 to keep the peace and be of good behaviour, both
7 arising of him having been found in a car in
8 Yellowknife at a time the curfew was in effect.
9 Those matters have now been dealt with. He has
10 pleaded guilty to the breach of curfew, and the
11 other charge was withdrawn. For the breach of
12 curfew, he received a fine.

13 At the time of the original bail hearing, I
14 had heard that a laptop had been seized during
15 the search, but it had not yet been examined, so
16 it was not known if anything useful to the Crown
17 would be found on it. I heard yesterday that the
18 laptop has been examined, and the Crown does
19 intend to adduce evidence that was found on it.
20 Without going into the details, if admitted, that
21 evidence would be strong, corroborative evidence
22 on the importation charge.

23 I will not go into all the details of the
24 evidence the Crown anticipates calling at the
25 trial. Suffice it to say that, on the
26 importation charge, and the defence concedes
27 this, the Crown has a strong case.

1 I will turn to the release plan now.
2 Mr. Oake is very fortunate to continue to have
3 the support of both his parents. They both
4 testified at the hearing. They are still willing
5 to be his sureties. His mother is prepared to
6 deposit a sum of money in support of his release
7 and commit an additional amount without deposit.
8 His father is not able to deposit cash at this
9 point, but is prepared to commit an amount
10 without deposit as well.

11 The plan would have Mr. Oake go back to
12 British Columbia, reside at a Recovery Home in
13 Nanaimo and attend aftercare at Edgewood.
14 Mr. Oake has taken some responsibility and steps
15 for organizing his release plan. He has made
16 contact with the Recovery Home and has received
17 confirmation that there is a room available for
18 him if he is released. He has applied to and
19 been accepted into a road building and heavy
20 construction equipment operator program at
21 Vancouver Island University, and he has secured a
22 student loan to pursue this.

23 The Crown opposes Mr. Oake's release on the
24 secondary and tertiary grounds. The defence
25 argues that the breach, although serious, does
26 not, in all circumstances, engage the same public
27 safety concerns that would have existed if it had

1 involved trafficking in drugs or further
2 involvement with furanylfentanyl.

3 The defence also argues that Mr. Oake's
4 further release would not cause informed members
5 of the public to lose confidence in the
6 administration of justice because the plan is
7 geared at addressing the things that are at the
8 root of the failure of the first plan, namely
9 Mr. Oake being in Yellowknife, being somewhat
10 idle and back in the circumstances that he was in
11 when he was using drugs.

12 The defence argues that the combination of
13 him being busy with school and in an environment
14 supportive of his recovery makes this plan
15 adequate to address any concerns under the
16 secondary and tertiary grounds.

17 In my last decision, I referred to the legal
18 principles that apply when considering these two
19 grounds for detention. I adopt what I said back
20 in May 2017. I will not repeat it here.

21 I do accept that, in many respects, this
22 plan would place Mr. Oake in a less at risk
23 position than him being at large in Yellowknife.
24 If he succeeds, it would make the time between
25 now and his trial, which is scheduled to proceed
26 in January 2019, far more productive than sitting
27 in remand. He would be in a recovery supportive

1 environment and engaged in his schooling. He
2 would live in a sober house with rules and attend
3 regular group counselling at Edgewood.

4 On the other hand, his sureties would not be
5 in a position to exercise any meaningful
6 supervision because they would not be in the same
7 city. The difference between being bound by
8 program rules or house rules and being under the
9 supervision of a surety are exemplified by
10 comparing what happened at the end of September
11 2017 and what happened last January.

12 Last September 2017, Mr. Oake broke a rule
13 of the program. The consequence was that he was
14 kicked out and returned to Yellowknife. Last
15 January, Mr. Oake's surety had a concern about
16 what he found in the house, and he called the
17 police. The consequence was that Mr. Oake
18 quickly found himself back in custody. That is
19 the difference between having a surety that
20 monitors what you are doing, and simply being
21 bound by program rules or house rules.

22 Of course, aside from sureties, there may
23 exist other forms of monitoring. The May release
24 terms gave the authorities an ability to do
25 things like curfew checks or random checks to
26 make sure he was not using drugs, and similar
27 conditions are being proposed here.

1 But I cannot ignore that the evidence at the
2 hearing yesterday was that the authorities never
3 did any such checks between Mr. Oake's release
4 and the time he was taken back into custody.
5 That is, of course, not his fault, but what it
6 does signal or remind us all about is that, in a
7 world where police only have a finite amount of
8 resources, these types of monitoring conditions
9 can only go so far. It is certainly not the same
10 thing as having a surety close by who can be, as
11 we often say, the eyes and the ears of the Court.

12 Going back to the issues I must address
13 under the two grounds of detention at issue here,
14 I cannot agree that the January 2018 events do
15 not give rise to serious public safety concerns.
16 This was a very serious and related breach. The
17 quantity of drugs found was not insignificant; 22
18 grams of powder cocaine is a lot of cocaine, and
19 it is worth a lot of money.

20 The discovery of the replica handgun is also
21 of concern. Even if it belonged to a friend, it
22 says a lot about who Mr. Oake chose to associate
23 with. And what was it doing at the residence
24 Mr. Oake was living at?

25 It is apparent Mr. Oake had started using
26 drugs sometime before his father found the
27 air gun. His parents did not realize this was

1 going on. I do accept that people in the
2 recovery home in Nanaimo may have excellent
3 antennas for spotting this kind of thing, but so
4 would parents who have known about their son's
5 addiction for some time; and what that shows is
6 that sometimes things can go on and people can do
7 things without being detected.

8 There is no doubt that Mr. Oake is an
9 addict; but, if he were to start using again, it
10 is only a matter of time before he would need
11 significant funds to sustain his addiction, and
12 that does engage serious public safety concerns
13 especially in light of the allegations from
14 November 2016.

15 It must be remembered that, on those
16 allegations, he imported into this country and
17 trafficked a substance he knew to be very
18 dangerous. It had very serious consequences for
19 the person he sold it to and nearly fatal
20 consequences for himself.

21 In fact, one thing that had really struck me
22 last May was something that Mr. Oake's mother had
23 said in response to a question about what made
24 her think back then that her son would be able to
25 remain sober despite his addiction. And she had
26 answered, "his death." She believed that because
27 he had nearly died, things would change for him;

1 he would realize how serious a problem this was.
2 And I thought that was a very compelling answer.
3 It was one of the reasons why, despite the very
4 serious nature of the November charges and the
5 concerns arising from Mr. Oake's noncompliance
6 with one of the terms of his process on the
7 Alberta charges, I was persuaded back then to
8 take a calculated risk and grant him release so
9 he could attend treatment.

10 Unfortunately, the release plan succeeded
11 for a time, but ultimately failed. So, having
12 had this near-death experience, having been in
13 custody for some months, having been in
14 treatment, having been in that supportive
15 environment, facing the risk of re-incarceration
16 if he breached, and having both his parents at
17 risk of losing the money they put up to secure
18 his release, none of that, under the right, or I
19 should say the wrong conditions, was enough for
20 him to resist associating with the wrong people
21 and ultimately making the wrong choice.

22 Much has been said about the factors that
23 might have caused him to relapse: the time of
24 year, not having work, being triggered by old
25 friends and old surroundings; and I have to say
26 that all makes sense, and the plan does seek to
27 address that.

1 But the reality is there will always be
2 triggers. Mr. Oake would be starting a new
3 educational program, and even if that is a
4 positive thing, it can also be overwhelming and
5 stressful. But perhaps more importantly, as time
6 goes by and his trial dates get closer and
7 closer, that will be very stressful, too. And,
8 as has been said, there is a chance he would be
9 back here in Yellowknife during the Christmas
10 school break right at the time where the anxiety
11 level about the upcoming trial probably will be
12 at its highest.

13 On the whole, I do not disagree with what
14 has been said about addictions being a disease,
15 about how hard it is to battle. Relapses are
16 common. I am aware of that as well. But, given
17 the seriousness of the allegations, the strength
18 of the Crown's case, and the pattern of
19 noncompliance that emerges from the evidence
20 before me, I am not satisfied that the plan does
21 address the public safety concerns that I have.

22 I will add briefly that, even if I thought
23 the plan did address public safety concerns, I
24 would conclude that detention is necessary under
25 the tertiary ground as well. I will not repeat
26 what I said in May 2017 about that ground.

27 I will simply say that I think that

1 reasonable and informed members of the public
2 would lose confidence in the administration of
3 justice if a person charged with very, very
4 serious drug charges, with a strong Crown case
5 and facing a potentially very lengthy sentence,
6 having been released on strict conditions and
7 having committed a further related offence was to
8 be released on similar terms.

9 For those reasons, I dismiss the application
10 for release. Detention will continue.

11 Now, Mr. Praught, is there a need to endorse
12 the warrant of committal with any no-contact
13 orders?

14 MR. PRAUGHT: Yes, Your Honour. If we could
15 endorse it with the same names that had
16 previously appeared on the recognizance, please.

17 THE COURT: All right.

18 Mr. Clerk, I will ask you to check the
19 recognizance and endorse those names.

20 THE COURT CLERK: Yes, Your Honour.

21 THE COURT: I will also issue a Form 19
22 remand warrant for the date and time scheduled
23 for the start of the trial.

24 Is there anything further that is needed
25 from the Crown?

26 MR. PRAUGHT: No, Your Honour. Thank you.

27 THE COURT: Anything further from defence?

1 MR. DAVISON: No. Thank you.

2 THE COURT: I want to say to Mr. Oake and
3 his parents that I appreciate their candor. I
4 appreciated their testimony. I simply feel I
5 have no choice on this matter.

6 We will close court.

7 THE COURT CLERK: All rise.

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9

10 **CERTIFICATE OF TRANSCRIPT**

11

12 I, the undersigned, hereby certify that the
13 foregoing pages are a complete and accurate
14 transcript of the proceedings produced and
15 transcribed from audio recording to
16 the best of my skill and ability.

17 Dated at the City of Edmonton, Province of
18 Alberta, this 14th day of August, 2018.

19

20 Certified Pursuant to Rule 723
21 of the Rules of Court

22

23

24

Janet Belma

25

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

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Court Reporter