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| *R v Oake,* 2018 NWTSC 45 **S-1-CR-2018-000005****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 CrownMr. C. Davison: Counsel for the Accused(Charges under s. 221 of the *Criminal Code* ands. 6(1), 5(1) of the *Controlled Drugs and Substances Act)**Thi s d ec i s i on is* subjec t t o a *pub 1ication* b an *unti1 the tr ia1* in to *this* m a t t er *h as* e nd ed p ursuan t to *s . 525(8)* a n d *5 17* of *the Cr imina1 C od e* |
|  | **Publication Ban no longer in effect pursuant to the direction of the Honourable Justice L.A. Charbonneau dated Decem ber 5, 2018.** |  |

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*A.C.E. Reporting Services Inc*

*R v Oake*, 2018 NWTSC 45 **S-1-CR-2018-000005**

# 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.

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**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***

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

1. program on August 1st. He was discharged from
2. that program at the end of September for
3. noncompliance with the rules. He testified, at
4. the hearing yesterday, that the nature of the
5. noncompliance was that he got involved in a
6. relationship with another person in the program,
7. and that is not permitted.
8. He then returned to Yellowknife. He had
9. employment for about a month and lived with his
10. mother at first, as required by the recognizance.
11. His parents do not live together. Mr. Oake had
12. been living with his father at the time of the
13. events that gave rise to the charges, so the
14. release plan that had been presented at the May
15. hearing, and that was ultimately accepted by the
16. Court, was that he would reside with his mother
17. when not in treatment.
18. In October 2017, after his return to
19. Yellowknife, he applied to the Court to have the
20. recognizance amended to permit him to live with
21. either of his parents. And this was granted.
22. Yesterday, I heard that the reason the request
23. was made was that there were some renovations
24. taking place at his mother's house and that it
25. was felt that she and Mr. Oake's father could
26. share the responsibility of having him live with
27. them.
28. At some point after that -- this seems
29. undisputed -- Mr. Oake started not doing well.
30. In his Affidavit, he deposes that he began
31. associating with some of his friends and others
32. who use drugs. He eventually relapsed and
33. purchased and used cocaine. In his testimony at
34. the hearing, he said that being at his father's
35. house was not a good environment. There was no
36. suggestion of anything wrong happening in the
37. household, or anything of that nature. It
38. appears to have been more a question of Mr. Oake
39. being in the house, where he had first started
40. using drugs, and, as he said, him being triggered
41. by being there and by seeing some of the people
42. he used to associate with and by being back in
43. 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
44. been stayed against Mr. Oake.
45. At the time of the original bail hearing,
46. Mr. Oake faced two breach charges in relation to
47. his process on those Alberta charges: a charge
48. for breaching a curfew and a charge for failing
49. to keep the peace and be of good behaviour, both
50. arising of him having been found in a car in
51. Yellowknife at a time the curfew was in effect.
52. Those matters have now been dealt with. He has
53. pleaded guilty to the breach of curfew, and the
54. other charge was withdrawn. For the breach of
55. curfew, he received a fine.
56. At the time of the original bail hearing, I
57. had heard that a laptop had been seized during
58. the search, but it had not yet been examined, so
59. it was not known if anything useful to the Crown
60. would be found on it. I heard yesterday that the
61. laptop has been examined, and the Crown does
62. intend to adduce evidence that was found on it.
63. Without going into the details, if admitted, that
64. evidence would be strong, corroborative evidence
65. on the importation charge.
66. I will not go into all the details of the
67. evidence the Crown anticipates calling at the
68. trial. Suffice it to say that, on the
69. importation charge, and the defence concedes
70. 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
71. involved trafficking in drugs or further
72. involvement with furanylfentanyl.
73. The defence also argues that Mr. Oake's
74. further release would not cause informed members
75. of the public to lose confidence in the
76. administration of justice because the plan is
77. geared at addressing the things that are at the
78. root of the failure of the first plan, namely
79. Mr. Oake being in Yellowknife, being somewhat
80. idle and back in the circumstances that he was in
81. when he was using drugs.
82. The defence argues that the combination of
83. him being busy with school and in an environment
84. supportive of his recovery makes this plan
85. adequate to address any concerns under the
86. secondary and tertiary grounds.
87. In my last decision, I referred to the legal
88. principles that apply when considering these two
89. grounds for detention. I adopt what I said back
90. in May 2017. I will not repeat it here.
91. I do accept that, in many respects, this
92. plan would place Mr. Oake in a less at risk
93. position than him being at large in Yellowknife.
94. If he succeeds, it would make the time between
95. now and his trial, which is scheduled to proceed
96. in January 2019, far more productive than sitting
97. in remand. He would be in a recovery supportive
98. environment and engaged in his schooling. He
99. would live in a sober house with rules and attend
100. regular group counselling at Edgewood.
101. On the other hand, his sureties would not be
102. in a position to exercise any meaningful
103. supervision because they would not be in the same
104. city. The difference between being bound by
105. program rules or house rules and being under the
106. supervision of a surety are exemplified by
107. comparing what happened at the end of September
108. 2017 and what happened last January.
109. Last September 2017, Mr. Oake broke a rule
110. of the program. The consequence was that he was
111. kicked out and returned to Yellowknife. Last
112. January, Mr. Oake's surety had a concern about
113. what he found in the house, and he called the
114. police. The consequence was that Mr. Oake
115. quickly found himself back in custody. That is
116. the difference between having a surety that
117. monitors what you are doing, and simply being
118. bound by program rules or house rules.
119. Of course, aside from sureties, there may
120. exist other forms of monitoring. The May release
121. terms gave the authorities an ability to do
122. things like curfew checks or random checks to
123. make sure he was not using drugs, and similar
124. 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
125. going on. I do accept that people in the
126. recovery home in Nanaimo may have excellent
127. antennas for spotting this kind of thing, but so
128. would parents who have known about their son's
129. addiction for some time; and what that shows is
130. that sometimes things can go on and people can do
131. things without being detected.
132. There is no doubt that Mr. Oake is an
133. addict; but, if he were to start using again, it
134. is only a matter of time before he would need
135. significant funds to sustain his addiction, and
136. that does engage serious public safety concerns
137. especially in light of the allegations from

14 November 2016.

1. It must be remembered that, on those
2. allegations, he imported into this country and
3. trafficked a substance he knew to be very
4. dangerous. It had very serious consequences for
5. the person he sold it to and nearly fatal
6. consequences for himself.
7. In fact, one thing that had really struck me
8. last May was something that Mr. Oake's mother had
9. said in response to a question about what made
10. her think back then that her son would be able to
11. remain sober despite his addiction. And she had
12. answered, "his death." She believed that because
13. he had nearly died, things would change for him;
14. he would realize how serious a problem this was.
15. And I thought that was a very compelling answer.
16. It was one of the reasons why, despite the very
17. serious nature of the November charges and the
18. concerns arising from Mr. Oake's noncompliance
19. with one of the terms of his process on the
20. Alberta charges, I was persuaded back then to
21. take a calculated risk and grant him release so
22. he could attend treatment.
23. Unfortunately, the release plan succeeded
24. for a time, but ultimately failed. So, having
25. had this near-death experience, having been in
26. custody for some months, having been in
27. treatment, having been in that supportive
28. environment, facing the risk of re-incarceration
29. if he breached, and having both his parents at
30. risk of losing the money they put up to secure
31. his release, none of that, under the right, or I
32. should say the wrong conditions, was enough for
33. him to resist associating with the wrong people
34. and ultimately making the wrong choice.
35. Much has been said about the factors that
36. might have caused him to relapse: the time of
37. year, not having work, being triggered by old
38. friends and old surroundings; and I have to say
39. that all makes sense, and the plan does seek to
40. 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?
41. MR. DAVISON: No. Thank you.
42. THE COURT: I want to say to Mr. Oake and
43. his parents that I appreciate their candor. I
44. appreciated their testimony. I simply feel I
45. have no choice on this matter.
46. We will close court.
47. THE COURT CLERK: All rise.

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# 10 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 produced and
4. transcribed from audio recording to
5. the best of my skill and ability.
6. Dated at the City of Edmonton, Province of
7. Alberta, this 14th day of August, 2018.

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

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