*R v Mohamed,* 2019 NWTSC 3 **S-1-CR-2015-000113**

# IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**- v -**

**HASSEN ABDUL KERIM MOHAMED**

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Transcript of the Sentencing Decision of The

Honourable Justice S.H. Smallwood, sitting in Yellowknife, in the Northwest Territories, on the 13th day of December, 2018.

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**APPEARANCES:**

Mr. D. Praught: Counsel for the Crown

Ms. J. Cunningham: Counsel for the Accused

(Charges under s. 5(2) and 4(1) of the *Controlled Drugs and Substances Act*)

1. THE COURT: Hassen Mohamed was found
2. guilty after trial of one count of possession of
3. cocaine for the purpose of trafficking and one
4. count of possession of marijuana. On April 15th,
5. 2015, the RCMP executed a search warrant on
6. Finlayson Drive in Yellowknife, Northwest
7. Territories. The RCMP were looking for drugs and
8. evidence of drug trafficking.
9. When the police executed the warrant, Hassen
10. Mohamed was one of the two people who had been
11. inside the residence. Mr. Mohamed was arrested
12. in an upstairs bathroom, and William Nelson
13. Castro was arrested outside the residence having
14. jumped out an upstairs bedroom window.
15. Inside the residence, the police found
16. fentanyl pills, cocaine, marijuana, cash, and
17. paraphernalia consistent with drug trafficking.
18. The investigation by the RCMP began with
19. William Castro in November 2014. Mr. Castro had
20. rented a storage locker at Pack Rat Storage in
21. Kam Lake. The RCMP obtained a warrant and
22. searched the locker on April 15th, 2015, and they
23. found substantial quantities of crack cocaine,
24. powdered cocaine, and fentanyl.
25. Following this, the RCMP obtained a warrant
26. to search the townhouse on Finlayson Drive where
27. Mr. Castro resided and was the tenant. That same
28. day, at approximately 8 p.m., the RCMP executed a
29. search warrant at the residence; and when they
30. arrested Mr. Mohamed in the upstairs bathroom,
31. they located a bag of cocaine between his legs.
32. During the execution of the search warrant,
33. the RCMP found and seized cash and controlled
34. substances along with other items. In the
35. kitchen, fentanyl pills were located in a bag in
36. a glass jar on top of the refrigerator. Three
37. separate bags of marijuana were located in the
38. fridge. Three cell phones were found on the
39. kitchen table still in their packaging.
40. In the living room, there was a thousand
41. dollars in cash on the coffee table, marijuana in
42. a jar, keys, six pieces of crack cocaine in
43. baggies with the corners twisted off, loose crack
44. cocaine on the table, scissors, a plate with what
45. appeared to be cocaine residue on it, two coffee
46. grinders, cigarettes, a digital scale, and
47. rolling papers. On the TV stand, there was a bag
48. of marijuana.
49. In an upstairs bedroom that appeared to be
50. Mr. Castro's, a large safe was found in the
51. closet, and a key was found nearby. Inside the
52. safe, there was a bag of powder cocaine, $212,955
53. in cash, and the birth certificate of Mr. Castro.
54. There were other things, identification and other
55. documents, of Mr. Castro as well as cash and
56. cocaine also located in that bedroom.
57. Mr. Castro ultimately pleaded guilty and was
58. convicted of possession for the purpose of
59. trafficking in fentanyl, cocaine, and marijuana
60. as well as possession of the proceeds of crime
61. for the items that were located in the storage
62. locker and at the residence on Finlayson Drive.
63. He received a sentence of six years less credit
64. for remand time.
65. The cocaine that was located in the bathroom
66. with Mr. Mohamed was in a baggy with two hard
67. pieces individually wrapped in an outer layer and
68. eight soft pieces individually wrapped in an
69. inner layer. There were also 4.8 grams of loose
70. crack cocaine on the coffee table in the living
71. room and six wrapped pieces of crack cocaine on
72. the coffee table weighing a total of 6.4 grams.
73. Not all of the white substance that was on
74. the table was analyzed, but I inferred, in
75. reasons for judgment, that it was cocaine. I
76. based that on its location on a table in very
77. close proximity to other similar pieces that were
78. analyzed and determined to be crack cocaine.
79. One of the issues at the trial was whether
80. Mr. Mohamed was in possession of the drugs
81. located in the residence. While I concluded that
82. Mr. Mohamed was occupying the residence at the
83. time of the search, I also found that his
84. occupancy of the residence was relatively recent
85. as demonstrated by the itineraries that were
86. located in the room that he was using.
87. The Crown has questioned whether the
88. documents are hearsay and can be used to
89. establish when Mr. Mohamed arrived in
90. Yellowknife. However, the Crown also argued
91. during the trial that the documents established
92. that the room was Mr. Mohamed's room and that he
93. was an occupant of the residence. Using the
94. contents of the itinerary to establish that
95. Mr. Mohamed's name was on them is no different
96. than using the itinerary to establish the date of
97. Mr. Mohamed's scheduled travel.
98. In any event, I concluded in my reasons for
99. judgment that Mr. Mohamed was a relatively recent
100. occupant of the residence considering not just
101. the itinerary but the presence of a blow-up
102. camping bed and the lack of significant personal
103. items which might indicate a more permanent
104. presence in the residence.
105. And I will not repeat my reasons, but I also
106. concluded that Mr. Mohamed met the requirements
107. of knowledge and control for the cocaine located
108. in the bathroom and living room and the marijuana
109. located in the living room and kitchen. I was
110. not convinced that he had knowledge of the
111. fentanyl pills located in the kitchen, and he was
112. acquitted of that charge.
113. Turning to the sentencing principles that
114. are applicable in this case, the position of the
115. Crown and defence are quite different. The Crown
116. is seeking a sentence of three years imprisonment
117. arguing that this was not a minimal amount of
118. drugs involved and that Mr. Mohamed was a
119. street-level dealer for Mr. Castro.
120. The defence is seeking a sentence of nine
121. months imprisonment arguing that this is
122. reflective of a more restrained approach that has
123. been adopted by the Courts in this jurisdiction
124. recently and taking into account Mr. Mohamed's
125. personal circumstances including his
126. rehabilitation efforts since he was arrested for
127. this offence.
128. The Crown and defence have each filed cases
129. dealing with sentences in cases similar to this
130. one. The Crown filed two cases; the first being
131. the one of *R v Randall*, 2015 NWTSC 27. In that
132. case, the accused entered a guilty plea to one
133. count of trafficking. That case involved four
134. separate transactions where Mr. Randall sold
135. drugs to an undercover officer.
     1. The first three transactions were small, but
     2. the fourth involved the sale of 28 pieces of
     3. crack cocaine weighing 17.3 grams, and the
     4. accused was part of a dial-a-dope operation. The
     5. trafficking in Mr. Randall's case was motivated
     6. by opportunity and greed. He had just turned 18
     7. and had no criminal record and entered a guilty
     8. plea.
     9. In that case, it was noted that deterrence
     10. and denunciation are the primary sentencing
     11. principles. As stated at page 5:
     12. Deterrence still plays an important role in sending a message to members
     13. of the community in general. The message is that if you were going to
     14. traffic in hard drugs in the Northwest Territories, you are going
     15. to jail for a significant period of time.

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1. The sentence that was imposed in that case
2. was one of 20 months imprisonment.
3. The second case filed by the Crown is that
4. of *R v Hodges*, 2015 NWTSC 59. In that case, the
5. accused entered a guilty plea to one count of
6. trafficking in cocaine and one count of
7. possession for the purpose of trafficking. That
8. case involved two transactions which were made to
9. an undercover officer, and when the accused was
10. arrested and a search warrant executed,
11. 26.9 grams of crack cocaine were located.
    1. The accused was also part of a dial-a-dope
    2. operation and was considered a higher level
    3. trafficker than Randall, which that case had been
    4. provided to the sentencing judge. Mr. Hodges was
    5. a user and was motivated to supply his own habit
    6. and to make money. He was 26, had no criminal
    7. record, and entered a guilty plea after the
    8. preliminary inquiry. The sentence that was
    9. imposed was 30 months imprisonment.
    10. And the defence has also filed a number of
    11. cases; the first being *R v Tobac*, 2018 NWTSC 20.
    12. In that case, the accused entered a guilty plea
    13. to one count of trafficking in cocaine. The
    14. offence involved one transaction of 0.4 grams of
    15. cocaine, and the accused was motivated to sell by
    16. her own addiction to cocaine. There were
    17. significant *Gladue* factors for the accused, and
    18. she had a prior criminal record. A sentence of 6
    19. months imprisonment was imposed.
    20. As well, there is the case of *R v Cotchilly*,
    21. another recent case from this court which
    22. involved the guilty plea of two accused to
    23. trafficking in cocaine. For Cotchilly, the
    24. offence involved one transaction for $20. And
    25. for the co-accused, Boyd, the offence involved
    26. three transactions of small amounts of cocaine.
    27. Ms. Cotchilly had a limited criminal record
12. whereas Ms. Boyd had no prior criminal record.
13. The sentence that was imposed was 6 months
14. incarceration for Ms. Cotchilly and 8 months for
15. Ms. Boyd.
16. As well, a recent case from the NWT Court of
17. Appeal, the case of *R v Joe*, which was a case
18. involving a guilty plea to one count of
19. possession of cocaine for the purpose of
20. trafficking and one count of possession of
21. marijuana for the purpose of trafficking, the
22. appeal in that case was from the imposition of an
23. illegal sentence. In that case, a search of the
24. accused's residence located a half pound of
25. marijuana and 8 grams of crack cocaine as well as
26. over $5,000 in cash. The accused in that case
27. was 37 years old and had no prior criminal
28. record. On appeal, the Court of Appeal imposed a
29. sentence of 1 year incarceration.
30. There has also been reference to the case of
31. *R v Foster*, which is an unreported decision of
32. this court, which involved a guilty plea to one
33. count of trafficking in cocaine. The sentence in
34. that case was 6 months imprisonment, and the
35. offence apparently involved two transactions
36. where crack cocaine was sold to an undercover
37. officer as part of a dial-a-dope operation. The
38. accused in that case appeared to be the driver of
39. the vehicle, and it was unclear the age of the
40. accused or whether he had a criminal record.
41. As well, the other cases, *R v Gosselin*, a
42. decision of the Territorial Court from 2011
43. involved a guilty plea to one count of possession
44. of cocaine for the purpose of trafficking. The
45. accused had 3 grams of powder cocaine and was
46. part of a dial-a-dope operation. The accused in
47. that case was a user of cocaine and sold to fund
48. his own use. He was 26 years old and had a prior
49. unrelated criminal record. 9 months imprisonment
50. was imposed in that case.
51. As well, the case of *R v Hajcik* from 2007 in
52. the Territorial Court involved a guilty plea to
53. trafficking in cocaine as well as two other
54. offences. In that case, the accused had
55. facilitated the sale of cocaine to an undercover
56. officer. She was motivated by her addiction to
57. cocaine and engaged in the transaction to obtain
58. drugs for herself. She had a lengthy criminal
59. record including two prior related offences. She
60. was 28 years old and a sentence of 10 months
61. imprisonment was imposed for the trafficking
62. offence.
63. Defence counsel also provided some
64. relatively recent cases from Alberta and British
65. Columbia. Cases from the Alberta Court of Appeal
66. are often considered persuasive in this
67. jurisdiction as many members of that court are
68. members of the Northwest Territories Court of
69. Appeal. Decisions from other levels of court
70. provide some of guidance of how other
71. jurisdictions treat these offences. I will not
72. go through the cases, but I have reviewed them.
73. The Alberta cases demonstrate that there
74. have been various sentences imposed for cases
75. involving the trafficking in cocaine in a single
76. transaction or small amounts, and the sentences
77. have ranged from 90 days to 1 year imprisonment.
78. The British Columbia cases demonstrate a range
79. from a suspended sentence for possession of
80. cocaine for the purpose of trafficking to 6
81. months imprisonment that was imposed. And I
82. think it is safe to say that the sentencing range
83. reflected in the cases provided from British
84. Columbia are not in line with the sentences that
85. have been imposed in this jurisdiction.
86. In looking at the cases that have been
87. provided and the approach to sentencing for cases
88. involving trafficking and the possession for the
89. purpose of trafficking in cocaine in this
90. jurisdiction, I do not think that there has been
91. a downward trend in sentencing cases in this
92. jurisdiction.
    1. First off, every case has to be considered
    2. on its own circumstances and considering the
    3. individual offender before the Court. As stated
    4. at paragraph 25 of *Tobac*, for sentencing an
    5. offender for trafficking in cocaine:
    6. There is a considerable range in the sentence depending on, for example,
    7. the offender; their personal circumstances; their criminal record;
    8. whether there was a guilty plea; whether there was a trial; the number
    9. of transactions involved; the amount of drugs involved; the nature of
    10. drugs involved; the role of the offender in a criminal organization,
    11. if any; and their motivation for trafficking in drugs.

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1. As noted in that case, sentences for cases
2. involving trafficking in cocaine can range from
3. as low as 7 to 10 months incarceration to
4. penitentiary sentences. There are differences in
5. the cases that come before the Court.
6. For as long as I have been practicing in
7. this jurisdiction, so since 2000, cases involving
8. one or two transactions of a small amount of
9. cocaine by an offender with no or limited
10. criminal record who pleads guilty and has other
11. mitigating factors, particularly significant
12. *Gladue* factors, sentences as low as 10 months --
13. 7 to 10 months have been possible. More
14. commonly, sentences in the range of 1 year are
15. imposed. However, I would emphasize that this is
16. for one, possibly two, transactions of a street
17. gram or less of cocaine.
18. Where more significant amounts of cocaine
19. are involved and the person is more involved in
20. trafficking, much more substantial sentences can
21. be expected. As noted in *Hodges* at pages 10 to

7 11:

1. The point is that everyone needs to understand that those involved in
2. this, if they are caught, will need a stern response from the Court. This
3. is because the level of blameworthiness of people who engage
4. in this activity is very high. These types of drugs cause a lot of harm in
5. our community. This jurisdiction has its fair share of addictions issues
6. and social problems. Some people work very, very hard every day to try
7. and address the social problems and difficulties, to find solutions, to
8. find ways to help those that are in more difficult circumstances. Others
9. choose to become part of the problem and prey on other people's
10. vulnerabilities to make good money. In response to that, courts have a
11. duty to impose sentences that will reflect the strong condemnation of
12. these activities that will reflect the terrible harm that these
13. activities cause and that will deter others, if that is possible, from
14. engaging in this when they are here or from coming here to engage in this
15. activity because it is so lucrative, and the North offers an attractive
16. market for it.

Courts in the Northwest

1. Territories have not been known for having a particularly soft approach
2. in sentencing drug traffickers over the last few decades. It would
3. appear the message is not getting through. Maybe there is still too
4. much money to be made and too much greed out there. Maybe courts will
5. have to revise their sentencing practices and make it even less
6. attractive for traffickers to do business here because evidently many
7. people still think it is worth taking the risk to make lots of money off of
8. it.

5

1. Cocaine continues to be a significant
2. problem in this community, and I recall from a
3. case earlier this year -- and maybe it was this
4. case; there have been many -- an expert
5. testifying about the ease with which a person can
6. obtain cocaine in Yellowknife. And with that
7. ease comes the harm to individual users, their
8. families, the community, and I do not think it is
9. possible to overstate the devastating impact that
10. cocaine has had on those who are vulnerable to
11. it.
12. In this case, despite this, there are
13. mitigating factors to consider. Mr. Mohamed
14. himself knows about the devastation that
15. addiction and drugs can bring to one's life. He
16. has experienced it. I have heard about
17. Mr. Mohamed's circumstances and background, both
18. from the letters that have been filed on his
19. behalf and from his counsel.
20. He has the support of his mother and his
21. sister as well as other relatives. He was
22. originally from Eritrea where he lived and went
23. to school during the Civil War. His family lived
24. in Saudi Arabia, so he was apart from them. And
25. he visited them from time to time, but the
26. experience left him with anxiety and stress.
27. When Mr. Mohamed moved to Canada years
28. later, he got married and had two children who
29. are now adults. He was steadily employed.
30. Eventually, his marriage broke down, and
31. Mr. Mohamed also began to develop problems
32. turning to gambling, alcohol, and then to drugs.
33. His life began a downward spiral.
34. It was only following his arrest for these
35. offences that he began to take steps to deal with
36. his addictions. He entered into a residential
37. treatment program on December 22nd, 2015. He
38. successfully completed the program, eventually
39. being completely discharged on September 7th,
40. 2017. So he has taken significant steps towards
41. addressing his addictions.
42. I have heard that he continues to work on
43. his recovery being part of an opioid replacement
44. program in British Columbia where he lives and
45. attending AA and NA meetings regularly, and I
46. accept that the accused has had a traumatic
47. background and was in the grips of addiction at
48. the time that this offence was committed. It is
49. to his credit that he has taken significant steps
50. to address his issues.
51. Mr. Mohamed does have a criminal record. He
52. was convicted of two counts of possession for the
53. purpose of trafficking on September 7th, 2017, in
54. Vancouver; and he was sentenced to 5 months
55. imprisonment concurrent on each charge. The
56. substances involved were cocaine and heroin.
57. So at the time of this offence, Mr. Mohamed
58. had not been convicted of the other offences, so
59. he had no criminal record. He had been charged
60. with the offences and was on release for those
61. offences at the time that he committed these
62. offences before the Court. The significance of
63. those other convictions is mainly that
64. Mr. Mohamed was on release for the other offences
65. from British Columbia at the time that these
66. offences were committed.
67. Considering Mr. Mohamed's role in this
68. offence, it was clear that he was not involved to
69. the same extent, or for as long as Mr. Castro
70. was. However, he was in the residence with
71. Mr. Castro for several days, being seen by the
72. police who were conducting surveillance coming
73. and going from the residence both with Mr. Castro
74. and alone.
75. When he was arrested, there were significant
76. amounts of marijuana and cocaine in the
77. residence. There were ten pieces of cocaine
78. located in the bathroom near Mr. Mohamed, and
79. there was also loose crack cocaine in the living
80. room as well as cocaine that had been packaged
81. for sale. There was marijuana in the living room
82. and kitchen, and there were numerous cell phones.
83. There was cash. There was other paraphernalia
84. consistent with drug trafficking: baggies, a
85. scale, et cetera. The amounts of cocaine
86. involved were not insignificant.
87. Mr. Mohamed is currently in custody having
88. turned himself in on November 7th, 2018, in
89. advance of his sentencing. His sentencing was
90. delayed, but that period of time will count
91. towards his remand credit. That is 37 days.
92. As well, Mr. Mohamed was arrested on

17 April 15th, 2015, and was in custody until he was

1. released on a recognizance on April 27th, 2015,
2. so that is 13 days. Mr. Mohamed's total amount
3. of remand time amounts to 50 days, so he will
4. receive credit for his remand time at a rate of 1
5. and a half days for every day spent in custody.
6. Dealing first with the ancillary orders: The
7. Crown has submitted a draft forfeiture order to
8. dispose of the exhibits that were seized.
9. Defence takes no issue with the draft order.
10. Many of the items on the draft order are being
11. forfeited either as offence-related property or
12. proceeds of crime. As well, there are some items
13. that are to be returned to their lawful owners if
14. they are able to be determined, and I have
15. reviewed the order, and I am satisfied that it
16. can be issued as drafted.
17. Pursuant to Section 109 as well, it is
18. mandatory to impose a firearms prohibition order,
19. so I will be imposing that. It will be imposed
20. in effect today and will be in effect for ten
21. years following Mr. Mohamed's release from
22. imprisonment. As well, I am required to impose
23. the victim of crime surcharge. That will be
24. imposed, which is $200. That will be imposed for
25. each offence.
26. Please stand, Mr. Mohamed. So taking into
27. account the applicable sentencing principles, the
28. circumstances of the offence, and your
29. circumstances, for the offence of possession of
30. marijuana, I am sentencing you to 30 days
31. imprisonment concurrent. For the offence of
32. possession for the purpose of trafficking in
33. cocaine, I sentence you to a period of 26 months
34. imprisonment. You will receive credit of 2 and a
35. half months for your remand time leaving a
36. sentence of 23 and a half months left to serve.
37. You may sit down. Thank you.
    1. All right. Counsel, is there anything else
    2. that needs to be addressed?
    3. MR. PRAUGHT: I don't believe so, Your
    4. Honour.
    5. MS. CUNNINGHAM: Nothing further, Your Honour.
    6. THE COURT: All right. Well, thank you
    7. for your work on this case and your submissions.
    8. And we will adjourn, then.
    9. THE COURT CLERK: All rise. Court is now
    10. adjourned.

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# 1 CERTIFICATE OF TRANSCRIPT

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1. I, the undersigned, hereby certify that the
2. foregoing transcribed pages are a complete and
3. accurate transcript of the digitally recorded
4. proceedings taken herein to the best of my skill and.
5. ability.
6. Dated at the City of Edmonton, Province of
7. Alberta, this 26th day of December, 2018.

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

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1. Adrianna Mazzocca, CSR(A)
2. Court Reporter

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