

**AMENDED ORIGINAL**

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

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**- v -**

**TRAVIS KING**

**ORIGINAL amended as of February 13, 2019, to:**

**Publication Ban removed.**

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Transcript of the Reasons for Sentence delivered by The Honourable Justice L.A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 16th day of January, 2019.

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**APPEARANCES:**

Mr. J. Major-Hansford: Counsel for the Crown  
Mr. R. Clement, agent for Counsel for the Accused  
Mr. P. Harte:

(Charges under s. 354(1)(a) of the *Criminal Code*, s. 5(2)  
of the *Controlled Drugs and Substances Act*)

1 THE COURT: Today I must sentence Mr. King  
2 on a charge of being in possession of money  
3 knowing that it was obtained through criminal  
4 activity. In this case, the criminal activity in  
5 question was drug trafficking.

6 I will first summarize briefly the facts  
7 that I heard on Monday and are included in the  
8 Agreed Statement of Facts that was filed as an  
9 exhibit.

10 In May 2017, Mr. King was arrested, along  
11 with others, following a drug investigation that  
12 was conducted by the RCMP in Yellowknife. The  
13 investigation revealed that he and several others  
14 were seen coming and going from an apartment in  
15 Yellowknife.

16 On the day of his arrest, Mr. King was in a  
17 vehicle with another man, and they attended a  
18 campsite at the Fred Henne Campground. They went  
19 inside a trailer that was on the campsite, then  
20 came back out and into their vehicle. They were  
21 intercepted shortly thereafter.

22 Mr. King was found in possession of \$415.  
23 The other man in the vehicle was in possession of  
24 money as well, just over \$1,000. Cocaine was  
25 seized in the vehicle. Almost 30 grams of  
26 cocaine were found in the trailer on the  
27 campsite, as well as 400 grams of marijuana and

1 over \$15,000 in cash.

2 The apartment was searched as well, and a  
3 shotgun, ammunition and various indications of  
4 drug trafficking were found. In addition, almost  
5 100 grams of cocaine and \$5,000 in cash were  
6 seized in that apartment.

7 Mr. King admitted through his guilty plea  
8 and through admitting these facts that the money  
9 that he was found in possession of was proceeds  
10 of crime. The facts that he admitted amply  
11 support the conclusion that it was proceeds  
12 derived from trafficking in drugs, including  
13 trafficking in cocaine.

14 The Crown does not allege that Mr. King was  
15 the leader of this operation. Far from it. The  
16 Crown takes the position that Mr. King should be  
17 sentenced on the basis that his role in this  
18 operation was that of a runner, and I think that  
19 is a fair concession on the part of the Crown.

20 At the time this offence was committed,  
21 Mr. King was on process for a number of charges,  
22 including drug charges, which arose in 2016. He  
23 was bound by a recognizance signed in July 2016,  
24 and his conditions, aside from statutory ones,  
25 included that he have no contact with a certain  
26 number of people, including a person named  
27 Brandon Baxandall. This is one of the

1 individuals who was seen coming and going from  
2 the apartment that I have referred to, during the  
3 investigation that led to the charge I am dealing  
4 with today.

5 The Crown has also filed a copy of an  
6 undertaking that was entered into by Mr. King  
7 after the events I have to sentence him for  
8 today. That undertaking was entered into in  
9 November 2017. The charges it relates to is  
10 trafficking in cocaine. The conditions include a  
11 no-contact condition with respect to Brandon  
12 Baxandall. Those charges arise from  
13 Saskatchewan. It is important to say that those  
14 charges are still pending, so Mr. King still  
15 benefits from the presumption of innocence on  
16 them.

17 The May 2016 Yellowknife charges were dealt  
18 with last June. On June 18th, 2018, my  
19 colleague, Justice Shaner, sentenced Mr. King to  
20 30 months' imprisonment for that offence minus  
21 credit that he was given for his remand time.  
22 The charge Mr. King was sentenced on, on that  
23 occasion, was a charge of possession of cocaine  
24 for the purpose of trafficking. Justice Shaner's  
25 decision is reported at *R v King*, 2018 NWTSC 44.

26 The pre-sentence report that was filed as an  
27 exhibit in these proceedings was prepared for the

1           sentencing hearing before Justice Shaner. The  
2           circumstances of Mr. King that are outlined in  
3           this report are, of course, as relevant to this  
4           sentencing as they were to the earlier  
5           sentencing. Those circumstances were reviewed in  
6           detail by Justice Shaner in her decision, and I  
7           am not going to go over all of that again today.

8           Suffice it to say that the circumstances  
9           that Mr. King faced, from a very early point in  
10          his life, were extremely difficult and tragic.  
11          This pre-sentence report is truly a heartbreaking  
12          read. No child should have to grow up in those  
13          circumstances, but sadly, many do and, sadly, the  
14          judges of this Court and of the Territorial Court  
15          read many heartbreaking pre-sentence reports and  
16          hear about many heartbreaking circumstances  
17          during the course of sentencing hearings.

18          When he addressed the Court at the end of  
19          counsel's submissions a few days ago on this  
20          matter, Mr. King said something that, to my mind,  
21          is very important. He said he wanted the  
22          destructive and sad cycle that he has been caught  
23          in to end with him. He said he wants to take  
24          responsibility for his actions, he does not blame  
25          anyone else for his choices and he wants to make  
26          a new start and change his ways.

27          That is important because a person with his

1 background could stay stuck in a pattern of  
2 simply saying that the behaviour that he is  
3 engaging in now is a result of what happened to  
4 him in the past, and no doubt it is. But the  
5 important part is deciding that the future can be  
6 different. The future can be better.

7 Mr. King sounded very sincere and determined  
8 when he said that to me, and everything else he  
9 said to me, and it is my sincere and heartfelt  
10 wish for him that he will stay on that course,  
11 because it is, in fact, the only way forward.

12 Mr. King's background is highly relevant to  
13 his sentencing. An offender's background always  
14 is relevant, but our law is that it is especially  
15 relevant for Indigenous offenders. That  
16 background has to inform the entire approach to  
17 the determination of a proportionate sentence.

18 A difficult background, a tragic background  
19 even, does not excuse the commission of crimes  
20 and does not eliminate the need for the Court to  
21 impose a meaningful sentence for that crime. But  
22 it does have an impact on the level of  
23 blameworthiness of an offender, and that reduced  
24 blameworthiness in turn has an impact on the  
25 determination of what is a proportionate  
26 sentence.

27 Justice Shaner addressed all of this in her

1 decision last June. I cannot say it better than  
2 she did, and so for today's purposes, I will  
3 simply say that I agree with everything that she  
4 said in that regard last June.

5 She also talked about the harm that drug  
6 trafficking causes and why courts, no matter how  
7 sympathetic a person's circumstances are, have to  
8 impose meaningful sentences when they deal with  
9 those offences.

10 Again, I do not think there is a need for me  
11 to repeat all of this today. These things are  
12 things that courts say frequently. They are  
13 things Mr. King heard last June at the sentencing  
14 hearing. So, again, I will simply say that I  
15 agree with what was said at that time, on that  
16 topic.

17 The challenge in honouring and balancing all  
18 of these principles is obvious. Indeed, even  
19 having recognized the tragic circumstances  
20 Mr. King faced and her duty to take those into  
21 account in deciding what the sentence should be,  
22 Justice Shaner nonetheless imposed a significant  
23 jail term on Mr. King last June.

24 Today I am not sentencing Mr. King for a  
25 drug offence, but that does not mean that it is  
26 irrelevant that the proceeds he was in possession  
27 of were connected to drug trafficking.

1 I found the analysis of Judge Malakoe of the  
2 Territorial Court in *R v Jager*, 2014 NWTTC 20  
3 very instructive and persuasive in this regard.

4 At paragraphs 25 to 33 of that decision,  
5 Judge Malakoe outlined some of the factors that  
6 are to be considered in sentencing an offender  
7 for a proceeds of crime charge, generally  
8 speaking. These include:

9 a) The degree of responsibility of the  
10 accused in the commission of the offence, whether  
11 it is an active or a passive role;

12 b) The degree of commerciality and actual  
13 amount of money involved;

14 c) Whether the operation is an ongoing  
15 enterprise;

16 d) If the criminal activity is drug  
17 activity, the nature of the drug being  
18 trafficked;

19 e) Whether the accused's motivation is  
20 greed, profit or some other reason; and

21 f) Whether the accused, in fact, made a  
22 profit.

23 Judge Malakoe also discussed the difference  
24 between sentencing in drug cases and sentencing  
25 in proceeds cases, noting that Parliament draws a  
26 distinction between the two. Having noted that  
27 distinction, he went on to say at paragraph 46:



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Although this distinction exists, the distinction becomes less evident when the holder of the proceeds of a criminal offence is involved in assisting the continuation of the offence itself.

I agree with that. Whether someone holds a stash of drugs for a drug trafficking organization or acts as a runner, or whether that person holds some money for that organization, those actions enable the continuation of the activity. The blameworthiness for that behaviour is comparable because, in both cases, that behaviour facilitates the continuation of an activity that often allows some people to make a lot of money while preying on other people's vulnerabilities and sometimes destroying their lives.

As far as the factors that I have just mentioned that apply to sentencing in proceeds cases generally, the Crown underscored, and I understand why, that this appeared to be an ongoing activity, that cocaine was the subject matter of some of that activity and that overall the amount of money seized and the quantity of drugs seized are not insignificant. But the Crown did not attempt, and rightfully so on the evidence, to argue that Mr. King was a senior or a leading member of this organization. And his

1 role is something I have to take into account as  
2 well.

3 One of the issues that I raised during  
4 submissions earlier this week is the effect of  
5 the principle of totality in these proceedings.

6 When Mr. King was sentenced in June 2018, he  
7 was already facing this charge. At that point,  
8 he had not yet pleaded guilty to it. There are  
9 various reasons why this case was on a different  
10 track than the other one, including the fact that  
11 Mr. King brought a *certiorari* application on this  
12 matter.

13 That application had not been decided at the  
14 time of the June sentencing hearing. The  
15 application ultimately failed, but Mr. King had  
16 the right to make it and should not be punished  
17 for having exercised that right.

18 Had the timing of things been different and  
19 had Mr. King been sentenced for all those matters  
20 together, he would have had the benefit of the  
21 principle of totality, which is set out at  
22 Section 718.2(c) of the *Criminal Code* and says:

23

24 (c) where consecutive sentences are  
25 imposed, the combined sentence should not  
26 be unduly long or harsh

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27 The Crown took the view earlier this week

1           that, strictly speaking, the principle of  
2           totality only applies when a court is imposing  
3           sentence for several offences at the same time,  
4           not when, as here, a serving prisoner is  
5           sentenced for another offence. But the Crown did  
6           acknowledge that the fact that Mr. King is  
7           already serving a sentence is part of his overall  
8           circumstances and must be taken into account.

9           I am not convinced that the principle of  
10          totality has as narrow an application as what the  
11          Crown suggests, but I do not have to decide that  
12          today.

13          Whether it is by operation of the principle  
14          of totality or simply through taking into account  
15          Mr. King's current circumstances, I think it  
16          would be an error not to consider the net result  
17          of the decision I make today. By this I mean  
18          that I think I must take into account the effect  
19          of the sentence I will impose today having regard  
20          to the unexpired portion of his existing  
21          sentence.

22          Aside from Mr. King's personal  
23          circumstances, which, as I have said, reduce his  
24          blameworthiness, it is mitigating that he pleaded  
25          guilty. This represents an acknowledgment of  
26          responsibility, a willingness to own up to what  
27          he has done and to face the consequences. He has

1 given up his right to have a trial and to  
2 challenge the Crown's case. This has saved court  
3 time and resources. He is entitled to credit for  
4 that.

5 It is aggravating, on the other hand, that  
6 this offence was committed when Mr. King was on  
7 process for drug charges. It is very aggravating  
8 that he continued to associate with Mr. Baxandall  
9 and others who were involved with the drug trade  
10 and that he continued himself to have a role in  
11 that operation.

12 As I have noted, the Saskatchewan charges  
13 are not proven, but the fact that another  
14 judicial officer saw fit to prohibit contact  
15 between Mr. King and Mr. Baxandall as part of his  
16 process on those matters raises obvious concerns  
17 about ongoing contact with this individual, who  
18 is associated with both sets of offences  
19 committed by Mr. King in the Northwest  
20 Territories.

21 Hopefully that association is now a thing of  
22 the past for Mr. King. If it is not, or if that  
23 association resumes, there is, sadly, a very good  
24 chance that Mr. King will find himself in trouble  
25 again. And no one here wants to see that happen.

26 I have reviewed the Court's record on the  
27 matters for which Mr. King is currently serving a

1 sentence. The warrant of committal on the Court  
2 file relating to the June 18th sentencing says  
3 that Justice Shaner imposed a sentence of 30  
4 months and that once credit was applied for the  
5 remand time, the further jail term imposed that  
6 day was 23 months and 15 days. Of this time,  
7 seven and a half months have elapsed, which means  
8 the unexpired portion of that sentence is 16  
9 months.

10 Counsel agree that if I impose a consecutive  
11 sentence for the present offence, that sentence  
12 will merge with the unexpired portion of  
13 Mr. King's current sentence. If that unexpired  
14 portion and the sentence I impose adds up to more  
15 than two years, the sentence will become a  
16 penitentiary sentence.

17 In that event, whether Mr. King is permitted  
18 to continue serving his sentence in the North  
19 would be up to the Director of Corrections.  
20 Sentencing judges can make recommendations about  
21 these things, but those recommendations are not  
22 binding on the authorities.

23 Mr. King has asked me to make this sentence  
24 concurrent when he addressed me directly, and I  
25 cannot do that. There has to be a meaningful,  
26 tangible consequence to this offence because  
27 sentencing is not just about him. So the

1 sentence I impose today will be consecutive to  
2 the sentence he is currently serving.

3 However, for reasons I have already given, I  
4 have taken into account the effect of that  
5 sentence in conjunction with the unexpired  
6 portion of the sentence that Mr. King is  
7 currently serving.

8 In particular, I have taken into  
9 consideration the fact that Mr. King is still  
10 very young. I have considered his own statements  
11 about what he wants to do to turn a page and work  
12 towards his rehabilitation. I think that, if  
13 possible, within the bounds of the law, my  
14 sentence should support those efforts and not  
15 crush them, because we will all be better off as  
16 a community if Mr. King succeeds in his  
17 rehabilitation.

18 Crown and Defence are not very far apart in  
19 their submissions on sentence. Crown seeks a  
20 jail term in the range of nine to 12 months,  
21 whereas Defence urges me to impose a sentence of  
22 six months.

23 The Defence's position, as I understand it,  
24 is mainly anchored in the objective of avoiding  
25 the net result of these proceedings being a  
26 global sentence that is in the penitentiary  
27 range.

1           Defence counsel also mention in passing a  
2           number of cases which he argued support the range  
3           that he seeks, and although it is not going to  
4           make a difference for today's purposes, I do want  
5           to comment about this briefly.

6           It is very difficult for the Court to  
7           properly weigh the relevance of other cases  
8           without having the benefit of reading the actual  
9           decisions. Having only the bottom line (by this  
10          I mean the sentence imposed) is of marginal  
11          assistance if the rest of the context is not  
12          before the Court.

13          Just by way of illustration, one of the  
14          cases referred to by counsel was *R v Bjornson*,  
15          2018 NWTSC 79, where a sentence of six months was  
16          imposed. I happen to be familiar with that case  
17          because I was the sentencing judge, and because  
18          of that I know certain things about the case that  
19          are important context to understand the sentence  
20          that was imposed.

21          First, the sentence imposed in that case was  
22          the result of a joint submission. I have had  
23          occasion to say this before: sentences imposed  
24          as a result of a joint submission have minimal  
25          precedential value. That is so because under the  
26          current state of the law, a sentencing judge has  
27          an extremely limited discretion to depart from a

1 joint submission.

2 A joint submission represents counsel's  
3 agreement as to what the sentence should be. The  
4 Supreme Court of Canada has said that unless the  
5 position is completely unhinged from the  
6 circumstances of the case, unless it would bring  
7 the administration of justice into disrepute, a  
8 joint submission must be followed. Given this,  
9 it cannot be said or assumed that a sentence  
10 imposed as a result of a joint submission  
11 represents the court's view as to what a fit  
12 sentence is.

13 The law now is, to be blunt, that a  
14 sentencing judge has to follow a joint submission  
15 even if the judge disagrees with it, unless that  
16 joint submission is entirely unreasonable. That  
17 is why I say such sentences do not have very much  
18 precedential value at all.

19 The second thing about the *Bjornson* case is  
20 that it was quite unique and completely different  
21 from this case, both on its facts and with  
22 respect to the accused's personal circumstances.  
23 There was no evidence that the accused in that  
24 case had any ongoing involvement with any  
25 criminal activity. The accused was not on  
26 process for drug charges when she committed the  
27 offence. And she had, not very long before the



1 sentencing hearing, given birth to a child who  
2 was expected to be taken into the correctional  
3 facility with her.

4 All this to say the sentence imposed in that  
5 case is of no assistance at all in supporting a  
6 six-month sentence in this case.

7 I was not the judge on the other cases that  
8 were mentioned on Monday, so I do not have that  
9 kind of context about those other cases, but I am  
10 confident that there were nuances and  
11 characteristics about those cases that may shed a  
12 lot of light on how those sentences were arrived  
13 at. It is often said that no two cases are  
14 alike, and sentencing decisions are difficult to  
15 compare. But it is virtually impossible to use a  
16 case without having all the information about the  
17 circumstances of the offence and of the offender  
18 and without knowing whether, for example, the  
19 sentence was the result of a joint submission.

20 As I said, in this case, it is not going to  
21 make a difference, but I thought it important to  
22 mention in case a case does come up where it does  
23 make a difference.

24 In conclusion, given the nature of the  
25 offence and the aggravating factors, there is  
26 nothing excessive about the sentence that the  
27 Crown is seeking, especially taking into account

1           that Mr. King was on process at the time and that  
2           he can no longer be treated as a first offender.

3           These offences were committed one year  
4           apart. It is not as though they belonged to the  
5           same cluster of activities in a relatively short  
6           time span.

7           Mr. King's involvement in this overall  
8           activity in this underworld was ongoing for some  
9           time and persisted even after he was charged with  
10          the May 2016 offences.

11          There is an ongoing and undeniable continued  
12          need for deterrent and denunciatory sentences for  
13          this type of crime in this jurisdiction.

14          At the same time, whatever the case, there  
15          is never just one fit sentence. Sentencing is a  
16          highly individualized process, and when there is  
17          no mandatory minimum punishment, a judge has to  
18          decide within a range, often a broad range, what  
19          the sentence should be.

20          Denunciation and deterrence are important  
21          but so is rehabilitation and so is giving effect  
22          to the principles set out by the Supreme Court of  
23          Canada about restraint in general and restraint  
24          in the sentencing of Indigenous offenders, in  
25          particular. And I think in all cases, the  
26          firmness of the message that the Court needs to  
27          send out must be tempered with mercy within the

1 bound that the law permits.

2           Hopefully the June 2018 sentencing marked a  
3 true turning point for Mr. King. Listening to  
4 him speak, that is what I understood him to be  
5 saying. In the hopes that this is the case, I  
6 have tried to balance the need for the Court to  
7 impose a sentence that reflects the seriousness  
8 of the offence and its aggravating features but  
9 also giving due weight to all other  
10 considerations.

11           I have thought about this a lot, and I  
12 really do not think it would be helpful or  
13 desirable to impose a sentence that could result  
14 in Mr. King serving his sentence in a  
15 penitentiary. It may be that he would be  
16 permitted to serve his sentence in the North, but  
17 it would not be up to me to decide. I am not  
18 comfortable taking that risk and I have crafted  
19 my sentence accordingly.

20           Even considering the seriousness of the  
21 offence, when I take into account the guilty plea  
22 and his circumstances, I think the sentence  
23 imposed can be below the range sought by the  
24 Crown, even though as I said, the Crown's  
25 position is not at all excessive.

26           Would you stand up, please, Mr. King.

27           Mr. King, I have decided to impose a

1 sentence of seven months consecutive on this  
2 offence. That is less than the Crown was  
3 seeking, a little bit more than your defence  
4 lawyer was asking. It is still, all things  
5 considered, quite a lenient sentence. I hope you  
6 understand that, but I hope that it helps you  
7 with your efforts to continue on the right path.

8 You can sit down.

9 I read the transcript, Mr. King, of what  
10 Justice Shaner said to you, and I am sure you  
11 remember what she said. We cannot change the  
12 past, she said, but we can change the future.

13 She encouraged you to use your time in jail,  
14 the resources that are there, to try to deal with  
15 all the things that have happened to you.

16 At 23, you have faced more challenges than  
17 most of us will face in our lifetime. I know I  
18 do not know what that feels like, but the fact is  
19 that that cannot be changed, and the only thing  
20 you can change is what happens next.

21 Just the way you were talking to me Monday,  
22 I can tell that you are a smart person, and I can  
23 tell that you can be strong and I am sure you can  
24 turn things around if you set your mind to it.

25 I think you really said it the best. You  
26 said you made wrong choices and you want to make  
27 the right ones and you do have that power. It is

1 not going to be easy, it might actually be very  
2 hard when you are first released. I do not think  
3 I need to tell you that, because when you regain  
4 your freedom, then you regain the ability to make  
5 a lot more choices, and so it is even more  
6 difficult to make the right ones.

7 But I want to remind you it is part of  
8 Justice Shaner's sentence that you be on  
9 probation when you are released. That is not  
10 part of my sentence, but it is still going to  
11 happen when you are released.

12 And you will have a probation officer that  
13 you have to report to when you are released. And  
14 I hope that you believe me when I say -- and this  
15 is what I believe to be true, I hope I am  
16 right -- that person is there to help you. That  
17 is a resource. They might be able to point you  
18 in the right direction. They might be just  
19 someone you can talk to when you are feeling like  
20 you might be getting yourself close to being into  
21 trouble. So that is really to help you.

22 And there is not an endless amount of  
23 resources, I know that, too, but probation  
24 officers can be a very good resource for you,  
25 even if just to check in and talk to. And if you  
26 are supposed to report to them, let us say, in a  
27 week but you feel that you need to talk to them

1 before that, you can always contact them. They  
2 are there to help you with your efforts towards  
3 rehabilitation.

4 Stay away from drug traffickers. These  
5 people are using you. There is absolutely no  
6 good that can come to you from maintaining those  
7 contacts.

8 And I hope that when I see you next time it  
9 will be on the street or working somewhere, but  
10 not in this room. And I sincerely wish you the  
11 best of luck.

12 THE ACCUSED: Thank you.

13 THE COURT: Is there anything I have  
14 overlooked from the Crown's perspective?

15 MR. MAJOR-HANSFORD: Not from the Crown's  
16 perspective, Your Honour, thank you.

17 THE COURT: Anything from Defence?

18 MR. CLEMENT: No.

19 THE COURT: All right. So thank you.

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21 **PROCEEDINGS CONCLUDED**

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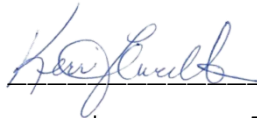
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**CERTIFICATE OF TRANSCRIPT**

I, the undersigned, hereby certify that the foregoing transcribed pages are a complete and accurate transcript of the digitally recorded proceedings taken herein to the best of my skill and ability.

Dated at the City of Sault Ste. Marie, Province of Ontario, this 26th day of January, 2019.

Certified Pursuant to Rule 723  
of the Rules of Court



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Kerri Francella  
Court Transcriber