*R v King*, 2019 NWTSC 7 **S-1-CR-2018-000021**

# 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.**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** 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.

# \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ APPEARANCES:

Mr. J. Major-Hansford: Counsel for the Crown

Mr. R. Clement, agent for Mr. P. Harte:

Counsel for the Accused

(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
28. over $15,000 in cash.
29. The apartment was searched as well, and a
30. shotgun, ammunition and various indications of
31. drug trafficking were found. In addition, almost
32. 100 grams of cocaine and $5,000 in cash were
33. seized in that apartment.
34. Mr. King admitted through his guilty plea
35. and through admitting these facts that the money
36. that he was found in possession of was proceeds
37. of crime. The facts that he admitted amply
38. support the conclusion that it was proceeds
39. derived from trafficking in drugs, including
40. trafficking in cocaine.
41. The Crown does not allege that Mr. King was
42. the leader of this operation. Far from it. The
43. Crown takes the position that Mr. King should be
44. sentenced on the basis that his role in this
45. operation was that of a runner, and I think that
46. is a fair concession on the part of the Crown.
47. At the time this offence was committed,
48. Mr. King was on process for a number of charges,
49. including drug charges, which arose in 2016. He
50. was bound by a recognizance signed in July 2016,
51. and his conditions, aside from statutory ones,
52. included that he have no contact with a certain
53. number of people, including a person named
54. Brandon Baxandall. This is one of the
55. individuals who was seen coming and going from
56. the apartment that I have referred to, during the
57. investigation that led to the charge I am dealing
58. with today.
59. The Crown has also filed a copy of an
60. undertaking that was entered into by Mr. King
61. after the events I have to sentence him for
62. today. That undertaking was entered into in

9 November 2017. The charges it relates to is

1. trafficking in cocaine. The conditions include a
2. no-contact condition with respect to Brandon
3. Baxandall. Those charges arise from
4. Saskatchewan. It is important to say that those
5. charges are still pending, so Mr. King still
6. benefits from the presumption of innocence on
7. them.
8. The May 2016 Yellowknife charges were dealt
9. with last June. On June 18th, 2018, my
10. colleague, Justice Shaner, sentenced Mr. King to
11. 30 months' imprisonment for that offence minus
12. credit that he was given for his remand time.
13. The charge Mr. King was sentenced on, on that
14. occasion, was a charge of possession of cocaine
15. for the purpose of trafficking. Justice Shaner's
16. decision is reported at *R v King*, 2018 NWTSC 44.
17. The pre-sentence report that was filed as an
18. exhibit in these proceedings was prepared for the
19. sentencing hearing before Justice Shaner. The
20. circumstances of Mr. King that are outlined in
21. this report are, of course, as relevant to this
22. sentencing as they were to the earlier
23. sentencing. Those circumstances were reviewed in
24. detail by Justice Shaner in her decision, and I
25. am not going to go over all of that again today.
26. Suffice it to say that the circumstances
27. that Mr. King faced, from a very early point in
28. his life, were extremely difficult and tragic.
29. This pre-sentence report is truly a heartbreaking
30. read. No child should have to grow up in those
31. circumstances, but sadly, many do and, sadly, the
32. judges of this Court and of the Territorial Court
33. read many heartbreaking pre-sentence reports and
34. hear about many heartbreaking circumstances
35. during the course of sentencing hearings.
36. When he addressed the Court at the end of
37. counsel's submissions a few days ago on this
38. matter, Mr. King said something that, to my mind,
39. is very important. He said he wanted the
40. destructive and sad cycle that he has been caught
41. in to end with him. He said he wants to take
42. responsibility for his actions, he does not blame
43. anyone else for his choices and he wants to make
44. a new start and change his ways.
45. 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

* + - * 1. distinction becomes less evident when the holder of the proceeds of a criminal
        2. offence is involved in assisting the continuation of the offence itself.

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1. I agree with that. Whether someone holds a
2. stash of drugs for a drug trafficking
3. organization or acts as a runner, or whether that
4. person holds some money for that organization,
5. those actions enable the continuation of the
6. activity. The blameworthiness for that behaviour
7. is comparable because, in both cases, that
8. behaviour facilitates the continuation of an
9. activity that often allows some people to make a
10. lot of money while preying on other people's
11. vulnerabilities and sometimes destroying their
12. lives.
13. As far as the factors that I have just
14. mentioned that apply to sentencing in proceeds
15. cases generally, the Crown underscored, and I
16. understand why, that this appeared to be an
17. ongoing activity, that cocaine was the subject
18. matter of some of that activity and that overall
19. the amount of money seized and the quantity of
20. drugs seized are not insignificant. But the
21. Crown did not attempt, and rightfully so on the
22. evidence, to argue that Mr. King was a senior or
23. a leading member of this organization. And his
24. role is something I have to take into account as
25. well.
26. One of the issues that I raised during
27. submissions earlier this week is the effect of
28. the principle of totality in these proceedings.
29. When Mr. King was sentenced in June 2018, he
30. was already facing this charge. At that point,
31. he had not yet pleaded guilty to it. There are
32. various reasons why this case was on a different
33. track than the other one, including the fact that
34. Mr. King brought a *certiorari* application on this
35. matter.
36. That application had not been decided at the
37. time of the June sentencing hearing. The
38. application ultimately failed, but Mr. King had
39. the right to make it and should not be punished
40. for having exercised that right.
41. Had the timing of things been different and
42. had Mr. King been sentenced for all those matters
43. together, he would have had the benefit of the
44. principle of totality, which is set out at
45. Section 718.2(c) of the *Criminal Code* and says: 23
46. (c) where consecutive sentences are imposed, the combined sentence should not
47. 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
28. given up his right to have a trial and to
29. challenge the Crown's case. This has saved court
30. time and resources. He is entitled to credit for
31. that.
32. It is aggravating, on the other hand, that
33. this offence was committed when Mr. King was on
34. process for drug charges. It is very aggravating
35. that he continued to associate with Mr. Baxandall
36. and others who were involved with the drug trade
37. and that he continued himself to have a role in
38. that operation.
39. As I have noted, the Saskatchewan charges
40. are not proven, but the fact that another
41. judicial officer saw fit to prohibit contact
42. between Mr. King and Mr. Baxandall as part of his
43. process on those matters raises obvious concerns
44. about ongoing contact with this individual, who
45. is associated with both sets of offences
46. committed by Mr. King in the Northwest
47. Territories.
48. Hopefully that association is now a thing of
49. the past for Mr. King. If it is not, or if that
50. association resumes, there is, sadly, a very good
51. chance that Mr. King will find himself in trouble
52. again. And no one here wants to see that happen.
53. I have reviewed the Court's record on the
54. matters for which Mr. King is currently serving a
55. sentence. The warrant of committal on the Court
56. file relating to the June 18th sentencing says
57. that Justice Shaner imposed a sentence of 30
58. months and that once credit was applied for the
59. remand time, the further jail term imposed that
60. day was 23 months and 15 days. Of this time,
61. seven and a half months have elapsed, which means
62. the unexpired portion of that sentence is 16
63. months.
64. Counsel agree that if I impose a consecutive
65. sentence for the present offence, that sentence
66. will merge with the unexpired portion of
67. Mr. King's current sentence. If that unexpired
68. portion and the sentence I impose adds up to more
69. than two years, the sentence will become a
70. penitentiary sentence.
71. In that event, whether Mr. King is permitted
72. to continue serving his sentence in the North
73. would be up to the Director of Corrections.
74. Sentencing judges can make recommendations about
75. these things, but those recommendations are not
76. binding on the authorities.
77. Mr. King has asked me to make this sentence
78. concurrent when he addressed me directly, and I
79. cannot do that. There has to be a meaningful,
80. tangible consequence to this offence because
81. sentencing is not just about him. So the
82. sentence I impose today will be consecutive to
83. the sentence he is currently serving.
84. However, for reasons I have already given, I
85. have taken into account the effect of that
86. sentence in conjunction with the unexpired
87. portion of the sentence that Mr. King is
88. currently serving.
89. In particular, I have taken into
90. consideration the fact that Mr. King is still
91. very young. I have considered his own statements
92. about what he wants to do to turn a page and work
93. towards his rehabilitation. I think that, if
94. possible, within the bounds of the law, my
95. sentence should support those efforts and not
96. crush them, because we will all be better off as
97. a community if Mr. King succeeds in his
98. rehabilitation.
99. Crown and Defence are not very far apart in
100. their submissions on sentence. Crown seeks a
101. jail term in the range of nine to 12 months,
102. whereas Defence urges me to impose a sentence of
103. six months.
104. The Defence's position, as I understand it,
105. is mainly anchored in the objective of avoiding
106. the net result of these proceedings being a
107. global sentence that is in the penitentiary
108. 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
109. joint submission.
110. A joint submission represents counsel's
111. agreement as to what the sentence should be. The
112. Supreme Court of Canada has said that unless the
113. position is completely unhinged from the
114. circumstances of the case, unless it would bring
115. the administration of justice into disrepute, a
116. joint submission must be followed. Given this,
117. it cannot be said or assumed that a sentence
118. imposed as a result of a joint submission
119. represents the court's view as to what a fit
120. sentence is.
121. The law now is, to be blunt, that a
122. sentencing judge has to follow a joint submission
123. even if the judge disagrees with it, unless that
124. joint submission is entirely unreasonable. That
125. is why I say such sentences do not have very much
126. precedential value at all.
127. The second thing about the *Bjornson* case is
128. that it was quite unique and completely different
129. from this case, both on its facts and with
130. respect to the accused's personal circumstances.
131. There was no evidence that the accused in that
132. case had any ongoing involvement with any
133. criminal activity. The accused was not on
134. process for drug charges when she committed the
135. offence. And she had, not very long before the
136. sentencing hearing, given birth to a child who
137. was expected to be taken into the correctional
138. facility with her.
139. All this to say the sentence imposed in that
140. case is of no assistance at all in supporting a
141. six-month sentence in this case.
142. I was not the judge on the other cases that
143. were mentioned on Monday, so I do not have that
144. kind of context about those other cases, but I am
145. confident that there were nuances and
146. characteristics about those cases that may shed a
147. lot of light on how those sentences were arrived
148. at. It is often said that no two cases are
149. alike, and sentencing decisions are difficult to
150. compare. But it is virtually impossible to use a
151. case without having all the information about the
152. circumstances of the offence and of the offender
153. and without knowing whether, for example, the
154. sentence was the result of a joint submission.
155. As I said, in this case, it is not going to
156. make a difference, but I thought it important to
157. mention in case a case does come up where it does
158. make a difference.
159. In conclusion, given the nature of the
160. offence and the aggravating factors, there is
161. nothing excessive about the sentence that the
162. Crown is seeking, especially taking into account
163. that Mr. King was on process at the time and that
164. he can no longer be treated as a first offender.
165. These offences were committed one year
166. apart. It is not as though they belonged to the
167. same cluster of activities in a relatively short
168. time span.
169. Mr. King's involvement in this overall
170. activity in this underworld was ongoing for some
171. time and persisted even after he was charged with
172. the May 2016 offences.
173. There is an ongoing and undeniable continued
174. need for deterrent and denunciatory sentences for
175. this type of crime in this jurisdiction.
176. At the same time, whatever the case, there
177. is never just one fit sentence. Sentencing is a
178. highly individualized process, and when there is
179. no mandatory minimum punishment, a judge has to
180. decide within a range, often a broad range, what
181. the sentence should be.
182. Denunciation and deterrence are important
183. but so is rehabilitation and so is giving effect
184. to the principles set out by the Supreme Court of
185. Canada about restraint in general and restraint
186. in the sentencing of Indigenous offenders, in
187. particular. And I think in all cases, the
188. firmness of the message that the Court needs to
189. send out must be tempered with mercy within the
190. bound that the law permits.
191. Hopefully the June 2018 sentencing marked a
192. true turning point for Mr. King. Listening to
193. him speak, that is what I understood him to be
194. saying. In the hopes that this is the case, I
195. have tried to balance the need for the Court to
196. impose a sentence that reflects the seriousness
197. of the offence and its aggravating features but
198. also giving due weight to all other
199. considerations.
200. I have thought about this a lot, and I
201. really do not think it would be helpful or
202. desirable to impose a sentence that could result
203. in Mr. King serving his sentence in a
204. penitentiary. It may be that he would be
205. permitted to serve his sentence in the North, but
206. it would not be up to me to decide. I am not
207. comfortable taking that risk and I have crafted
208. my sentence accordingly.
209. Even considering the seriousness of the
210. offence, when I take into account the guilty plea
211. and his circumstances, I think the sentence
212. imposed can be below the range sought by the
213. Crown, even though as I said, the Crown's
214. position is not at all excessive.
215. Would you stand up, please, Mr. King.
216. 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
217. not going to be easy, it might actually be very
218. hard when you are first released. I do not think
219. I need to tell you that, because when you regain
220. your freedom, then you regain the ability to make
221. a lot more choices, and so it is even more
222. difficult to make the right ones.
223. But I want to remind you it is part of
224. Justice Shaner's sentence that you be on
225. probation when you are released. That is not
226. part of my sentence, but it is still going to
227. happen when you are released.
228. And you will have a probation officer that
229. you have to report to when you are released. And
230. I hope that you believe me when I say -- and this
231. is what I believe to be true, I hope I am
232. right -- that person is there to help you. That
233. is a resource. They might be able to point you
234. in the right direction. They might be just
235. someone you can talk to when you are feeling like
236. you might be getting yourself close to being into
237. trouble. So that is really to help you.
238. And there is not an endless amount of
239. resources, I know that, too, but probation
240. officers can be a very good resource for you,
241. even if just to check in and talk to. And if you
242. are supposed to report to them, let us say, in a
243. week but you feel that you need to talk to them
244. before that, you can always contact them. They
245. are there to help you with your efforts towards
246. rehabilitation.
247. Stay away from drug traffickers. These
248. people are using you. There is absolutely no
249. good that can come to you from maintaining those
250. contacts.
251. And I hope that when I see you next time it
252. will be on the street or working somewhere, but
253. not in this room. And I sincerely wish you the
254. best of luck.
255. THE ACCUSED: Thank you.
256. THE COURT: Is there anything I have
257. overlooked from the Crown's perspective?
258. MR. MAJOR-HANSFORD: Not from the Crown's
259. perspective, Your Honour, thank you.
260. THE COURT: Anything from Defence?
261. MR. CLEMENT: No.
262. THE COURT: All right. So thank you.

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21 **PROCEEDINGS CONCLUDED**

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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 Sault Ste. Marie, Province
7. of Ontario, this 26th day of January, 2019. 10
8. Certified Pursuant to Rule 723
9. of the Rules of Court 13

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1. Kerri Francella
2. Court Transcriber

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