*R v Adzin*, 2019 NWTSC 12 S-1-CR-2018-000132

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

PATRICK JR ADZIN

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Transcript of the Reasons for Sentence delivered by The Honourable Justice L.A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 12th day of March, 2019.

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**APPEARANCES:**

Mr. J. Potter: Counsel for the Crown

Mr. J. Bran: Counsel for the Accused

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

1. THE COURT: Patrick Jr. Adzin has pleaded
2. guilty to possession of cocaine for the purpose
3. of trafficking, and this afternoon, it is my
4. responsibility to sentence him for that offence.
5. Mr. Adzin was charged following an investigation
6. by the Behchoko RCMP that lasted several months.
7. He was suspected of drug trafficking, and police
8. took various steps to investigate this. The
9. investigation started during the summer of 2017
10. and progressed during the following months. It
11. included police surveillance of residences and
12. people associated with Mr. Adzin. Police also
13. obtained judicial authorizations to track his
14. movements. Eventually, after surveillance that
15. included following a truck from Behchoko to
16. Dettah and then going back in the direction of
17. Behchoko, that truck was intercepted. Mr. Adzin
18. was a passenger.
19. He was found in possession of 51 grams of
20. crack cocaine and a few grams of powder cocaine.
21. He also had a hundred and forty dollars in cash
22. on him. The next day, he gave a statement to the
23. RCMP where he admitted that the crack cocaine was
24. in his possession for the purpose of trafficking.
25. The powder cocaine that was in his possession was
26. for his personal use.
27. He admitted to police he had been selling
    1. crack cocaine in his community. He said that he
    2. never sold any drugs that were contaminated with
    3. fentanyl. There is no evidence suggesting that
    4. he ever sold any drugs contaminated with
    5. fentanyl.
    6. The street value of the crack cocaine,
    7. assuming it would have been sold in individual
    8. doses of .3 to .5 grams, is between $8,160 and
    9. $12,200. That method of selling was the standard
    10. method of selling crack cocaine at the relevant
    11. time.
    12. This matter was scheduled to proceed to a
    13. preliminary hearing, but Mr. Adzin ultimately
    14. consented to his committal without any evidence
    15. needing to be called.
    16. He has a criminal record. It is not a
    17. particularly extensive record, but it is not a
    18. minor record either. There are convictions for
    19. crimes of violence, uttering threats, possession
    20. of weapon, and breaches of court orders. He has
    21. been sentenced to jail before including a term of
    22. some nine months imprisonment back in August
    23. 2011. The last entry on his record is from

24 September 2011, so there is a bit of a gap

1. between the last conviction and the offence that
2. I have to sentence him for today. There are no
3. drug-related convictions on his criminal record.
   1. The Crown seeks a jail term in the range of
   2. 18 to 22 months. Defence counsel agrees with
   3. that range and asks that the Court impose a
   4. sentence at its lower end.
   5. Mr. Adzin is 29 years old. He is Tlicho. I
   6. have the benefit of a thorough Presentence Report
   7. that gives me a lot of information about his
   8. circumstances including his circumstances as an
   9. Indigenous offender. The fact that Mr. Adzin is
   10. an Indigenous offender alters the legal framework
   11. that applies on sentencing. The usual sentencing
   12. principles all apply, but sentencing must be
   13. approached through a different lens. That lens
   14. requires taking into account the systemic factors
   15. that have had an impact on Indigenous people in
   16. this country generally as well as specific
   17. circumstances that Mr. Adzin himself has faced.
   18. I am required to approach sentencing and the
   19. sentencing tools available to me in light of
   20. those circumstances. And if I conclude that a
   21. jail term is required, I must consider whether
   22. something less than what might otherwise be
   23. imposed is appropriate given his circumstances
   24. and the systemic factors that I have referred to.
   25. Restraint is always an important sentencing
   26. principle, but the *Criminal Code*, as interpreted
   27. by the Supreme Court of Canada, makes that
4. principle especially important when dealing with
5. Indigenous offenders.
6. Without going into all the details of the
7. Presentence Report, I agree with counsel that it
8. does provide important and relevant information
9. about Mr. Adzin's circumstances as an Indigenous
10. offender. I will not refer to everything that is
11. in the report, but I want to touch on a few
12. points.
13. The first is that both his parents attended
14. residential school. Up until Mr. Adzin was
15. 9 years old, they were both heavy drinkers. That
16. is not uncommon. For many people, attendance at
17. residential school is associated with traumatic
18. experiences. This often leads to personal
19. distress and addictions, and that, in turn, often
20. leads to dysfunction that perpetuates trauma for
21. the next generation. It is a terrible cycle that
22. we often hear about in courtrooms in this
23. jurisdiction. We must be cognizant of it and
24. attempt to address and recognize this reality in
25. sentencing decisions. The problem, of course, is
26. that the Court only has limited tools at its
27. disposal to do so.
28. It goes without saying that, if a child
29. grows up for almost the first decade of his or
30. her life in an environment where there is alcohol
31. abuse, this will have an impact on that child. I
32. do not doubt it had an impact on Mr. Adzin even
33. though his memory of those years is somewhat
34. limited. To their credit, his parents have been
35. able to address their addiction issue and now
36. live a sober lifestyle. Hopefully, in that
37. sense, they can inspire others to take the same
38. path, including their son.
39. I read, in the Presentence Report, that
40. Mr. Adzin was very close to his grandparents. He
41. spent a lot of time with them and acquired
42. traditional knowledge from them. He spent time
43. on the land with them. He learned good values
44. from them, in particular from his grandmother.
45. In recent years, he has had to cope with the loss
46. of his grandparents. Not surprisingly, this has
47. been difficult for him.
48. I found it interesting to note that,
49. according to the Presentence Report, while he
50. used to participate in community activities such
51. as gatherings and drum dances when he was
52. younger, Mr. Adzin now feels somewhat
53. disconnected from his community and no longer
54. participates in those kinds of events. I do not
55. know if there is any connection between that and
56. the death of his grandparents and the grief and
57. sorrow that he has experienced as a result, but I
58. suggest that it might be helpful for Mr. Adzin to
59. try to reconnect with those parts of himself that
60. he associates with his grandparents because that
61. might be something that would help him stay out
62. of trouble in the future.
63. Members of his family continue to go out on
64. the land and carry out traditional activities,
65. and he can continue that tradition if he chooses
66. to. He was taught those skills by his
67. grandparents, and one way to honour their memory
68. would be to continue to put those skills to good
69. use.
70. Although this family has had its fair share
71. of struggles and some members of that family have
72. ongoing health issues, they are supportive.
73. Members of his family were here yesterday and are
74. here again today. Mr. Adzin is very fortunate to
75. have support from his family. Many people I have
76. had to sentence have faced court proceedings
77. completely alone. I hope that, when he is
78. released, Mr. Adzin will get some strength from
79. that support, from constructive activities on the
80. land, that he will remember the lessons and
81. values that he learned from his grandparents, and
82. will make a point of contributing to making
83. Behchoko a better place as opposed to making it a
84. worse place by selling dangerous drugs to people.
85. But for that to happen, he will have to address
86. his own addiction issues.
87. I have to say that one of the areas that I
88. find of considerable concern and troubles me,
89. from the Presentence Report, is that Mr. Adzin
90. does not seem to fully appreciate, or at least
91. did not at the time he was interviewed, that he
92. has an issue with alcohol and with substance
93. abuse generally. I am not sentencing him today
94. for a crime directly related to the consumption
95. of alcohol, but I am troubled by this aspect of
96. the report because it gives me concern about his
97. level of insight.
98. For example, the report says that Mr. Adzin
99. reports binge drinking from time to time to the
100. point of blacking out; that when he blacks out,
101. he becomes angry and conflict arises; that he
102. does not believe he has an issue with alcohol but
103. is willing to attend treatment and counselling if
104. ordered by the Court.
105. Binge drinking, blacking out, getting mad,
106. and assaulting people is a clear indication to me
107. that there is, in fact, a serious issue there.
108. Many people drink and do not get into trouble and
109. do not become violent. If a person drinks to the
110. point of blacking out and, in that state, gets
111. angry, that is a sure sign that the alcohol is
112. being used to mask other problems, anger, pain,
113. and that once intoxicated, that anger and that
114. pain comes crashing out. I am no expert in this
115. area, but it is not very hard to figure out. We
116. see it in the criminal courts all the time.
117. Although I was not specifically told, I
118. suspect that the crimes of violence that
119. Mr. Adzin was convicted for arose from situations
120. when he was intoxicated. As for substance abuse,
121. it should be obvious to him that, if he was
122. prepared to sell hard drugs in his own community
123. and cause this much harm to others to feed his
124. habit, then there very much is a problem there
125. that needs to be addressed. Those are things
126. that Mr. Adzin will have to address if he is to
127. have a bright future. The Court cannot force him
128. to address those issues. He has to want to do
129. that himself, for himself, for his family, and
130. for his community. That needs to be at the heart
131. of his motivation, not the fact that the Court
132. has ordered it.
133. From everything I have read about Mr. Adzin
134. and what I heard from his counsel, he has a lot
135. of valuable traditional skills and knowledge that
136. were passed on to him by his grandparents and his
137. family. He can help keep those practices and
138. skills alive. He could teach others. He has a
139. lot to contribute if he wants to.
140. No one is suggesting that a sentence other
141. than jail can be imposed today, and that is
142. because, among other reasons, sentencing is not
143. just about the offender before the Court.
144. Sentencing today is not just about Mr. Adzin,
145. although it is obviously about him. It is also
146. about sending a strong, clear message to anyone
147. who is tempted to make money by selling drugs,
148. especially hard drugs.
149. There are many cases from this Court,
150. unfortunately, that talk about the harm that
151. drugs cause in our communities. *R v Mohammed,*
152. 2015 NWTSC 38, referred to by counsel, is just
153. one example of such a case. Mr. Mohammed was a
154. young man. He pleaded guilty to a similar charge
155. to the one that Mr. Adzin pleaded guilty to. He
156. was found in possession of 55 grams of
157. crack cocaine and over $12,000 in cash. He also
158. pleaded guilty to a charge of breach of
159. recognizance. Mr. Mohammed had not done well at
160. all on bail. His reporting was sporadic and, at
161. one point, ceased completely.
162. In that case, the Crown and Defence had
163. presented a joint submission that a range of
164. two-and-a-half to three years' imprisonment would
165. be appropriate. I decided, in the end, that a
166. sentence of 32 months was appropriate minus the
167. credit to be given for remand time.
168. The range that is being proposed in this
169. case is quite a bit lower than that, although the
170. quantity of drugs seized is comparable. Of
171. course, each case is different and must be
172. decided on its own facts.
173. Sentencing is a highly discretionary
174. fact-driven exercise, but some of the governing
175. principles that applied in *Mohammed* apply in this
176. case. In particular, the need for deterrence and
177. denunciation, when dealing with trafficking in
178. hard drugs, is present in this case as much as it
179. was in *Mohammed*. In that case, I talked about
180. the harm that trafficking in these drugs does to
181. our communities. As I said, there are,
182. unfortunately, many other cases where this Court
183. has had to say the same things. But it bears
184. repeating, and I am going to read from what I
185. said in *Mohammed* at paragraphs 10 to 12:
186. The North is a very tempting market for drug traffickers, and judging by
187. the number of drug cases that have been heard by the Territorial Court
188. and this court over the last few decades, it is apparent that there
189. continues to be a need to impose sentences that denounce this conduct
190. and send a clear message that when people do get caught, they will face
191. stern sentences no matter how young they are or no matter how good their
192. background might otherwise be. Sadly, there are quite a few young
193. people in the Northwest Territories who have learned that lesson the hard
194. way.

The reason why courts have to be

1. firm in their sentencing practices is very simple and was referred to this
2. morning. Cocaine causes ravages and devastation in our communities.
3. Yellowknife has seen its fair share of the collateral damage that crack
4. cocaine has caused. The people who become addicted to this drug harm
5. themselves of course. They sometimes lose everything to it, their
6. families, their work, and their health, but they also often harm
7. others. Houses get broken into, people commit robberies, sometimes on
8. the street in broad daylight or in small convenience stores or gas
9. stations to get money to buy more drugs, or they break into homes and
10. steal property. And they steal, in addition to property, the occupants'
11. sense of safety in their own home, sometimes for a very long time. Some
12. addicts get to the point of being so dysfunctional that they neglect their
13. own children.

We do not just hear about

1. cocaine in the criminal courts. We hear about cocaine in family court
2. frequently, and the Territorial Court hears about it in child welfare court
3. frequently.
4. *Mohammed* was a case that arose in Yellowknife. I
5. have no doubt at all that these kinds of impacts
6. are also felt in Behchoko when people consume
7. this drug.
8. Trafficking in hard drugs does real damage.
9. It aggravates the problem that people in our
10. communities are already struggling with including
11. intergenerational trauma. It feeds a destructive
12. cycle of misery, as the Crown put it in
13. submissions. It takes money away from families,
14. money that should be used to look after
15. childrens' needs and the needs of others in the
16. community. It leads to the commission of crimes;
17. it leads to desperation, and it can lead to
18. death.
19. Several decades ago, the Alberta Court of
20. Appeal set a starting point of three years'
21. imprisonment for trafficking in cocaine at a more
22. than minimal scale. That standard has been
23. adopted in this jurisdiction and has been applied
24. many times, and it is the reason why even
25. relatively young people who commit this crime
26. receive long jail terms even after a guilty plea.
27. That is why a significant jail term,
28. unfortunately, has to be imposed today.
29. The problem of drug trafficking in this
30. jurisdiction is not diminishing. It was, all
31. things being relative, not so long ago that crack
32. cocaine found its way here and in cases before
33. the courts. The effects were soon very visible
34. in this community and others. We saw
35. well-established businesses destroyed,
36. relationships shattered, children neglected,
37. serious crimes committed associated with this
38. activity. It never seems to stop.
39. In the last few years, we have started
    1. seeing more and more cases involving fentanyl.
    2. This is a particularly dangerous drug, and yet
    3. some people still choose to use it, and others
    4. unscrupulously continue to sell it. And it seems
    5. there is always the next drug, the next thing
    6. that people will sell. So the need for
    7. deterrence and denunciation, the need for stern
    8. sentences, which is the only tool the Courts have
    9. to try to deter this, has not diminished.
    10. Many say this is a public health issue, that
    11. prevention, treatment, and counselling is what is
    12. needed, not repression. I do not disagree that
    13. those things are needed, but they are outside the
    14. control of the Courts. The Court does not have a
    15. lot of tools. There is so much money to be made
    16. with the sale of these drugs; there has to be
    17. meaningful consequences for those who get caught
    18. because that really is the only tool that the
    19. Court has to respond to this very destructive,
    20. very lucrative activity.
    21. As the Crown acknowledges, the range of 18
    22. to 22 months that is being proposed here is quite
    23. lenient when one takes into account the
    24. three-year starting point, but yesterday, the
    25. Crown prosecutor explained why that range was
    26. being sought. That was very helpful for the
    27. Court to know because, without those
40. explanations, it may, in fact, have been very
41. difficult for me to agree that this range is
42. indeed appropriate.
43. The guilty plea, of course, is an important
44. factor, as is the Accused's cooperation and
45. admission to the authorities about his activities
46. shortly after his arrest. I believe him when he
47. says he is sorry and that he understands the harm
48. that his actions have caused his community. The
49. guilty plea is especially mitigating in this case
50. because the Crown said that there would have been
51. many triable issues had the matter gone to trial.
52. In any case such as this one, where there is
53. a long investigation and potential *Charter*
54. issues, giving up the right to litigate those
55. issues and saving all the resources and court
56. time needed to have a trial is an important
57. consideration. The Crown knows its file, knows
58. the details of the case, and is better placed
59. than I am to assess the challenges that it would
60. have faced at trial and how much credit Mr. Adzin
61. deserves for giving up his right to have a trial.
62. I accept, based on what the prosecutor has told
63. me, that the guilty plea in this case should be
64. given exceptional weight.
65. As I already mentioned, Mr. Adzin's
66. circumstances as an Indigenous offender must also
67. be taken into account and justify an exceptional
68. degree of restraint. As was noted in the
69. submissions, this was not a factor that was at
70. play in the *Mohammed* case.
71. In conclusion, even though the range being
72. proposed is quite low considering the starting
73. point that applies in cases like this one, based
74. on the submissions I heard from the Crown and
75. based on the submissions I heard from Defence
76. counsel, based on the mitigating factors,
77. Mr. Adzin's circumstances, and the importance of
78. restraint, I am satisfied that the sentence for
79. this offence can be within the range proposed.
80. However, I do not think that it can be at its low
81. end. In my view, the top end of that range is
82. the absolute minimum sentence that can be imposed
83. in order to address the important and continued
84. need to denounce this destructive behaviour.
85. I hope Mr. Adzin uses the time he will spend
86. in custody productively. I hope he will think
87. about the things that brought him here today,
88. that he will acknowledge that he has a
89. substance-abuse issue to address, and that he
90. will take steps to address it because, as I said,
91. and I hope I have made clear, I think there are a
92. lot of positive things that he can contribute to
93. his family and his community if he sets his mind
94. to it. He can contribute to building a stronger
95. community instead of carrying on activities that
96. are harming the community and destroying it.
97. The Crown has asked for a number of
98. ancillary orders. I will deal with those first.
99. There will be a firearms prohibition order which
100. will commence today and expire ten years after
101. Mr. Adzin's release. I will include, as asked by
102. Defence, the Section 113 exemption so that
103. Mr. Adzin can, under certain conditions, continue
104. to use the skills he has learned from his family
105. to go out on the land, provide for his family and
106. others in the community, and maybe even teach
107. those skills to others.
108. The second order that the Crown seeks is a
109. DNA order. That order is discretionary. The
110. factors to be considered in deciding whether to
111. issue such an order are set out in the
112. *Criminal Code,* and they include the criminal
113. record, whether the person has been found guilty
114. of a designated offence in the past, the nature
115. of the offence, and the circumstances surrounding
116. its commission, as well as the impact that the
117. order would have on the person's privacy.
118. I accept and understand that the impact on a
119. person's privacy of taking a small sample for DNA
120. analysis is not immense. There are other
121. designated offences on Mr. Adzin's criminal
122. record. That is a factor as well, but as I
123. noted, there are no drug offence convictions.
124. The circumstances of the commission of this
125. offence do not really assist one way or another.
126. He was found with the drugs on his person. There
127. is no indication that he had someone else hold
128. them or stash them for him, so the usefulness of
129. a DNA sample in future drug investigations is not
130. necessarily immediately apparent from the
131. circumstances of this offence.
132. In the *Mohammed* case, a DNA order was made,
133. but it was consented to. Here, the Defence
134. opposes the making of that order. I have taken
135. into consideration, as I said, that this perhaps
136. is not the most intrusive procedure. But at the
137. same time, there is still an impact in having
138. someone's DNA included in a database, and as I
139. said, there are no other convictions for
140. drug-related offences on his record. Under all
141. the circumstances, having given the matter some
142. consideration, I am not going to issue a DNA
143. order.
144. I have reviewed the Draft Forfeiture and
145. Return Order that was submitted by the Crown.
146. The Defence does not take issue with any of the
147. terms in that order, and so I have signed it, and
148. it will be issued.
149. Can you stand up please, Mr. Adzin.
150. Mr. Adzin, for the reasons I have given on the
151. charge of possession of cocaine for the purpose
152. of trafficking, I would sentence you to
153. 22 months' imprisonment if you did not have any
154. remand time. For the seven days you have spent
155. on remand, I will credit you the maximum I can,
156. which is ten days. The further jail term will be
157. 21 months and 3 weeks. You can sit down.
158. I hope that you can make the most of your
159. time in jail. I hope you can start to get some
160. assistance and some help to deal with some of the
161. things you have been through and your
162. relationship with alcohol and drugs; and I hope
163. that, when you are released, you will go back to
164. Behchoko and become a leader in that community.
165. If you set your mind to it, I am sure that you
166. can do much more productive things than what you
167. were up to in the times where you were
168. investigated. You can honour your grandparents'
169. memory by doing those kinds of things, and I hope
170. that you are able to do that, and I wish you luck
171. in that respect.
172. Is there anything I have omitted,
173. Mr. Potter?
174. MR. POTTER: Crown's not seeking it,
     1. Your Honour, but I think the Court does need to
     2. address the victim fine surcharge. I think it
     3. can be waived by the Court, but I do think that
     4. needs to be addressed as part of the --
     5. THE COURT: I would have to look. My
     6. understanding of the decision rendered by the
     7. Supreme Court of Canada, I thought that they had,
     8. basically, struck it down.
     9. MR. POTTER: I believe they struck the
     10. mandatory nature down. I'm not sure if they
     11. struck the provision entirely.
     12. THE COURT: Well, I would waive it if that
     13. is what they said I should do. I thought that
     14. they, basically, left it to Parliament to reword
     15. it, but you are making me doubt myself now, so I
     16. will double-check. But in the event that this is
     17. what they decided, I am going to waive the
     18. imposition of the victim of crime surcharge
     19. because I am imposing a lengthy jail term, and
     20. based on what I have heard about the family
     21. circumstances of Mr. Adzin, I think that any
     22. funds that he has access to should be used to
     23. assist his family.
     24. Have I overlooked anything from the
     25. Defence's perspective, Mr. Bran?
     26. MR. BRAN: No. The -- I think you
     27. covered everything that we discussed, with the
175. one exception: Mr. Adzin does make reference, in
176. the Presentence Report, to concerns of being able
177. to serve his time here. This is a Territorial
178. Court -- or the sentence is short enough that
179. there (sic) doesn't appear that he would be
180. transferred South, but the only thing I was going
181. to request was a judicial recommendation that he
182. be allowed to serve his time, if at all possible,
183. here in Yellowknife to be as close to his family
184. as he can. So I think I still will ask the Court
185. to do that.
186. THE COURT: All right. Well, I mean the
187. only reason -- I do not know what the
188. arrangements are for transfer of people serving
189. Territorial time South, but presumably it would
190. have to be for some sort of security reason,
191. which would not be known at this point and would
192. not matter, or is not something I could recommend
193. anything on.
194. But certainly, given that his family is in
195. Behchoko and given that Yellowknife is accessible
196. by road from that community, I will ask Madam
197. Clerk that the Warrant of Committal reflect my
198. recommendation that, if at all possible, he be
199. permitted to serve his sentence at the
200. North Slave Correctional Centre to facilitate
201. ongoing contact with members of his family and
202. his support network.
203. Thank you very much, counsel, for your work
204. in resolving this case and thank you for your
205. thorough submissions.
206. MR. POTTER: Thank you, Your Honour.

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# 8 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 March, 2019.

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

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1. Ashley DeMarco
2. Court Transcriber

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