

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

LUQMAN HUSSEIN

Transcript of the Sentencing Hearing held before The Honourable Justice L.A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 15th day of May, 2019.

APPEARANCES:

Mr. D. Praught: Counsel for the Crown
Mr. P. Harte: Counsel for the Accused

(Charges under s. 465(1) of the *Criminal Code*, 5(1) of the
Controlled Drugs and Substances Act)

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1 THE COURT: Luqman Hussein has pleaded
2 guilty to a charge of trafficking crack cocaine
3 in Yellowknife between February 24, 2016 and
4 April 4, 2016. The facts he admitted to are set
5 out in an Agreed Statement of Facts that was
6 filed as an exhibit at the sentencing hearing. A
7 copy of that document was, at my direction,
8 appended to this transcript. I will not repeat
9 those facts now.

10 There is a joint submission in this case.

11 Joint submissions are to be given
12 considerable deference by sentencing judges, the
13 Supreme Court of Canada has made that very clear.
14 In order to not follow this joint submission, I
15 would have to find that it is clearly
16 unreasonable. That is not the case. What is
17 being proposed here is essentially either the
18 same or very similar to the sentences that were
19 imposed to other young men who were involved in
20 the very same activity that the accused before me
21 today was involved in. There is nothing
22 unreasonable about this joint position. In fact,
23 it is in line with what this Court has done with
24 similarly situated offenders.

25 I certainly agree that parity is extremely
26 important. I think the public's confidence in
27 the court system would be greatly shaken if

1 offenders who are similarly situated, in other
2 words people who commit similar offences and have
3 similar circumstances, were to receive widely
4 different sentences for similar crimes. Parity
5 is an important sentencing principle and it is
6 very relevant here.

7 I just want to go back to why this Court
8 imposes significant sentences for this type of
9 activity. I completely adopt what my colleague
10 Justice Smallwood said in the *R v Seyoume*, 2018
11 NWTSC 14 as well as what Chief Judge Gagnon said
12 in the other case that was filed, *R v*
13 *Mahalingham*, 2017 NWTTC 13.cor1. Chief Judge
14 Gagnon quoted some cases from this Court in
15 rendering her decision in that case.

16 The simple fact is that this is a very
17 lucrative activity. It is one that causes
18 immense harm in our communities. I have had
19 occasion to say it in several sentencing
20 decisions, and I will not go in as much detail
21 here as I have in other cases but, to be blunt,
22 this is a very expensive habit for the users to
23 sustain. It leads to the commission of other
24 crimes because people need to get their hands on
25 money to sustain their habits. It means that
26 people neglect their children and their family
27 responsibilities. It has meant that businesses,

1 well established businesses, have gone bankrupt
2 and been destroyed because their owners have
3 developed an addiction to crack and no longer
4 cared about anything else. In extreme cases it
5 has lead to deaths. Deaths by accident, deaths
6 by homicide, and no end of pain and trauma for
7 many people.

8 What this particular accused and the others
9 who were sentenced for similar crimes did is a
10 good example of what the Courts are trying to put
11 an end to, admittedly with not very great success
12 judging by the number of drug trafficking cases
13 we continue to see. But the point is exactly
14 that this is relatively easy money to make.

15 It is actually a very dangerous activity to
16 get involved with, as some people have discovered
17 the hard way, but on the surface it seems like an
18 easy way to make money. And I suppose those who
19 do get involved in this type of activity may even
20 convince themselves that they are really not
21 doing anything that is that bad because they are
22 selling a product that people want to buy. The
23 reality, as I have said, is quite different, and
24 the harm that this causes is very real.

25 It is difficult to know whether the
26 sentences this Court imposes are known to people
27 who might be inclined to come to this

1 jurisdiction specifically for the purpose of
2 profiting from this. I imagine that over time
3 the message might get through. There are a
4 number of people I have heard about just this
5 afternoon who found out about the sentencing
6 ranges that are imposed in these cases.
7 Presumably their friends, family members and
8 others who hear about these cases will eventually
9 get the message that there is a high price to pay
10 for those who get caught. That is why the
11 starting point for many years has been what it
12 is, and even in jurisdictions where there is no
13 starting point per se, generally sentences
14 imposed for trafficking in cocaine for profit are
15 high.

16 In this case, as counsel have noted, there
17 are mitigating factors. Anyone facing a charge
18 that arises of the type of long-term
19 investigation is almost inevitably going to be
20 facing a case where there are triable issues.
21 Whether it is the initial authorization to
22 intercept calls, or voice recognition, as defence
23 counsel has pointed out, I recognize that in
24 cases like this they are almost always triable
25 issues. Giving up the right to have a trial on
26 these charges is worth a lot.

27 It is obvious from what I have heard that

1 this would have been a lengthy trial and
2 potentially a complex one, so the guilty plea has
3 saved a lot of resources. It also shows that
4 Mr. Hussein is at this point prepared to accept
5 responsibility for his involvement in this, and
6 that is why guilty pleas are mitigating.

7 As Crown counsel said, the aggravating
8 factors include the type of drug, the fact that
9 this was at the high end of the retail commercial
10 operation, and the fact that this was,
11 effectively, run very much like a business and,
12 by all accounts, a very efficient one and very
13 lucrative one both for the suppliers and for
14 those who were operating the phones.

15 For a first offender in his early 20's to
16 face on his very first contact with the criminal
17 justice system a sentence in the range that is
18 proposed here shows the serious consequences of
19 engaging in this type of activity. I can only
20 hope that the lesson has been learned and that
21 even in the face of some of the challenges that
22 life will no doubt throw his way in the future,
23 Mr. Hussein will have learned that this is not
24 the way to go to make a living.

25 I have to say that any further involvement
26 in this type of activity on his part would
27 probably lead to the imposition of very

1 significant jail terms because any judge looking
2 at a criminal record with one entry for
3 trafficking and a sentence in the range that is
4 going to be imposed today would know that this
5 was a very serious first offence. There are many
6 other ways to make a living. This may seem like
7 the easy way from a certain perspective, but in
8 the end it is a much harder way.

9 I agree that the joint submission is
10 reasonable. It honours the principle of parity.
11 One of the other persons involved, Mr. Bibby, got
12 a slightly longer sentence, but he had some
13 aggravating factors that Mr. Hussein does not
14 have. Others got the same sentence as the one
15 proposed.

16 Can you stand up please, sir. On the count
17 of trafficking, I would have sentenced you to 30
18 months imprisonment if you did not have any time
19 on remand. For the total 188 days that you have
20 spent in custody during the two periods of time
21 you were detained, I will give you credit for
22 nine months. That means the further jail term is
23 going to be 21 months in custody for this
24 offence. You can sit down.

25 I will also issue a DNA order and a firearms
26 prohibition order under Section 109 of the
27 *Criminal Code*. The firearms prohibition order is

1 mandatory. The DNA order is discretionary, but,
2 again, as it was imposed in the other cases, and
3 given the nature of the offense and what Crown
4 counsel has referred to and specifically the way
5 these particular offences were committed, in my
6 view it is appropriate to issue a DNA order. Do
7 you want to seek anything with relation to
8 exhibits, Mr. Praught?

9 MR. PRAUGHT: No, Your Honour.

10 THE COURT: No. Okay. Is there anything
11 that I have overlooked?

12 MR. PRAUGHT: I don't believe so, Your
13 Honour, no.

14 THE COURT: All right. I direct, Madam
15 Clerk, that a photocopy of the Agreed Statement
16 of Facts be appended to the transcript, to put
17 what I have said in the full context of what Mr.
18 Hussein is being sentenced for.

19 I want to finish by thanking counsel for
20 their work in resolving this case. No doubt it
21 would have taken up a lot of the Court's
22 resources. Now those resources can be used for
23 something else. And I appreciated your
24 submissions, which were very helpful. Thank you.

25 On this type of offence, Mr. Praught,
26 firearms prohibition, you are asking for the
27 minimum?

1 MR. PRAUGHT: Ten years.

2 THE COURT: So commencing today, expiring
3 in ten years. Thank you.

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6 **CERTIFICATE OF TRANSCRIPT**

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

13 Dated at the City of Edmonton, Province of
14 Alberta, this 4th day of June, 2019.

15 Certified Pursuant to Rule 723
16 of the Rules of Court

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Colleen Rea

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Court Reporter

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