*R v Hussein*, 2019 NWTSC 20 **S-1-CR-2019-000037**

# 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.

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**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*)

* + 1. *Reporting Services Inc.*
			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,
28. well established businesses, have gone bankrupt
29. and been destroyed because their owners have
30. developed an addiction to crack and no longer
31. cared about anything else. In extreme cases it
32. has lead to deaths. Deaths by accident, deaths
33. by homicide, and no end of pain and trauma for
34. many people.
35. What this particular accused and the others
36. who were sentenced for similar crimes did is a
37. good example of what the Courts are trying to put
38. an end to, admittedly with not very great success
39. judging by the number of drug trafficking cases
40. we continue to see. But the point is exactly
41. that this is relatively easy money to make.
42. It is actually a very dangerous activity to
43. get involved with, as some people have discovered
44. the hard way, but on the surface it seems like an
45. easy way to make money. And I suppose those who
46. do get involved in this type of activity may even
47. convince themselves that they are really not
48. doing anything that is that bad because they are
49. selling a product that people want to buy. The
50. reality, as I have said, is quite different, and
51. the harm that this causes is very real.
52. It is difficult to know whether the
53. sentences this Court imposes are known to people
54. who might be inclined to come to this
55. jurisdiction specifically for the purpose of
56. profiting from this. I imagine that over time
57. the message might get through. There are a
58. number of people I have heard about just this
59. afternoon who found out about the sentencing
60. ranges that are imposed in these cases.
61. Presumably their friends, family members and
62. others who hear about these cases will eventually
63. get the message that there is a high price to pay
64. for those who get caught. That is why the
65. starting point for many years has been what it
66. is, and even in jurisdictions where there is no
67. starting point per se, generally sentences
68. imposed for trafficking in cocaine for profit are
69. high.
70. In this case, as counsel have noted, there
71. are mitigating factors. Anyone facing a charge
72. that arises of the type of long-term
73. investigation is almost inevitably going to be
74. facing a case where there are triable issues.
75. Whether it is the initial authorization to
76. intercept calls, or voice recognition, as defence
77. counsel has pointed out, I recognize that in
78. cases like this they are almost always triable
79. issues. Giving up the right to have a trial on
80. these charges is worth a lot.
81. 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
82. significant jail terms because any judge looking
83. at a criminal record with one entry for
84. trafficking and a sentence in the range that is
85. going to be imposed today would know that this
86. was a very serious first offence. There are many
87. other ways to make a living. This may seem like
88. the easy way from a certain perspective, but in
89. the end it is a much harder way.
90. I agree that the joint submission is
91. reasonable. It honours the principle of parity.
92. One of the other persons involved, Mr. Bibby, got
93. a slightly longer sentence, but he had some
94. aggravating factors that Mr. Hussein does not
95. have. Others got the same sentence as the one
96. proposed.
97. Can you stand up please, sir. On the count
98. of trafficking, I would have sentenced you to 30
99. months imprisonment if you did not have any time
100. on remand. For the total 188 days that you have
101. spent in custody during the two periods of time
102. you were detained, I will give you credit for
103. nine months. That means the further jail term is
104. going to be 21 months in custody for this
105. offence. You can sit down.
106. I will also issue a DNA order and a firearms
107. prohibition order under Section 109 of the
108. *Criminal Code*. The firearms prohibition order is
109. mandatory. The DNA order is discretionary, but,
110. again, as it was imposed in the other cases, and
111. given the nature of the offense and what Crown
112. counsel has referred to and specifically the way
113. these particular offences were committed, in my
114. view it is appropriate to issue a DNA order. Do
115. you want to seek anything with relation to
116. exhibits, Mr. Praught?
117. MR. PRAUGHT: No, Your Honour.
118. THE COURT: No. Okay. Is there anything
119. that I have overlooked?
120. MR. PRAUGHT: I don't believe so, Your
121. Honour, no.
122. THE COURT: All right. I direct, Madam
123. Clerk, that a photocopy of the Agreed Statement
124. of Facts be appended to the transcript, to put
125. what I have said in the full context of what Mr.
126. Hussein is being sentenced for.
127. I want to finish by thanking counsel for
128. their work in resolving this case. No doubt it
129. would have taken up a lot of the Court's
130. resources. Now those resources can be used for
131. something else. And I appreciated your
132. submissions, which were very helpful. Thank you.
133. On this type of offence, Mr. Praught,
134. firearms prohibition, you are asking for the
135. 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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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 4th day of June, 2019.
8. Certified Pursuant to Rule 723
9. of the Rules of Court

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1. Colleen Rea
2. Court Reporter

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