

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES.

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

CASSIUS ZANE PARADIS

Transcript of the Sentencing Hearing held before The Honourable Justice S.H. Smallwood, sitting in Yellowknife, in the Northwest Territories, on the 24th day of May, 2019.

The proceedings were not captured by the recording system and this transcript was prepared from the Judge's notes.

APPEARANCES:

Mr. R. Fane:	Counsel for the Crown.
Mr. B. Lotery:	Counsel for the Accused

contrary to section 3 91(2) of the *Criminal Code*;

8) Possessing a weapon: a firearm for a dangerous purpose, contrary to section 88(2) of the *Criminal Code*;

9) Possessing a weapon: a knife for a dangerous purpose, contrary to section 88(2) of the *Criminal Code*;

10) Possessing a firearm while prohibited, contrary to section 117.01(3) of the *Criminal Code*;

11) Possession of a prohibited device while prohibited, contrary to section 117.01(3) of the *Criminal Code*; and

12) Possession of ammunition while prohibited, contrary to section 117.01(3) of the *Criminal Code*.

This multiplicity of charges arise from one incident which occurred on October 20, 2018 in the Hamlet of Fort Providence where the police stopped a rental vehicle driven by Mr. Paradis and in a subsequent search of that vehicle located money, weapons, ammunition and drugs.

Mr. Paradis plead not guilty and a *voir dire* was held in which he claimed that his *Charter* rights were breached during the stop and the subsequent search and seizure. Following the

voir dire, I found that Mr. Paradis' section 8,9,
10(a) and (b) Charter rights had been infringed.

5 However, I concluded that the evidence was
admissible following an analysis pursuant to
section 24(2) of the Charter.

10 Following this ruling, the trial continued on
the basis of agreed facts. Mr. Paradis did not
present evidence. Mr. Paradis was found guilty of
all charges, with a stay being entered on Counts
3 and 4 pursuant to the principles in *R v*
Kienapple.

FACTS

15 The charges against the accused arose as a
result of the search of a motor vehicle incident
to the arrest of the accused.

20 Located in the vehicle, inside the glove box,
was \$579 in cash along with six individually
wrapped packages of cocaine with a total weight
of 1.3 grams.

25 Inside a suitcase in the back seat was a
hunting knife, a fully loaded AR-15 type
semi-automatic rifle with a 40 round magazine
without a trigger lock, a cartridge magazine
for the rifle and additional cartridges and spare
parts for the rifle. Analysis of the rifle
determined that it was non-functional as there

was an extra spring in the gas system. Once the spring was removed, the rifle was capable of discharging ammunition.

5 Inside the trunk of the vehicle was a locked safe which contained \$850, two ziploc bags containing 140 small packages of cocaine weighing approximately 33.67 grams of cocaine, a blue Ziploc bag contained 93 small packages of cocaine weighing approximately 22.19 grams of cocaine and 10 a cylindrical piece of cocaine weighing 28.47 grams, a green Ziploc bag containing 93 small packages of cocaine weighing approximately 18.28 grams of cocaine and a 28.8 gram cylindrical piece of cocaine and \$3379.50 in cash.

15 At the time, Mr. Paradis was prohibited from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance pursuant to a section 110 prohibition 20 order imposed on January 19, 2017 for a period of 10 years.

POSITION OF THE PARTIES

25 The Crown and Defence are quite far apart on sentence. The Crown is seeking a global sentence of 7 years imprisonment, the Crown seeking that a number of the sentences be imposed consecutively.

Defence is seeking a sentence of 3 years imprisonment, seeking concurrent sentences and a reduction in sentence as a result of the *Charter* breaches that Mr. Paradis was subjected to.

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CRIMINAL RECORD

A formal criminal record has not been introduced but it is not in dispute that Mr. Paradis was convicted on January 19, 2017 of an offence under the *Traffic Safety Act of Alberta* and under section 86 of the *Criminal Code*. He received fines and a 10 year discretionary prohibition order.

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SECTION 718.2(e)

Counsel for Mr. Paradis advised that he is Métis, although it appears that he has not been formally recognized as such. I accept that Mr. Paradis is of Métis descent and this requires me to consider section 718.2(e) of the *Criminal Code* where:

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All available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

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In the cases of *Gladue and Ipeelee*, the Supreme Court of Canada has set out how sentencing courts are to consider this section. I have considered the principles set out in those cases and the requirement to consider the unique systemic or background factors which may have played a part in bringing an aboriginal offender before the courts and the types of sentencing procedures and sanctions which may be appropriate in the circumstances because of an offender's aboriginal background.

I have not heard much about Mr. Paradis' indigenous background or how it may have played a part in bringing him before the courts. I have heard about his personal circumstances which reveal a troubled background. He started consuming alcohol and drugs while young. Mr. Paradis has abused cocaine, Xanax and alcohol and his counsel describes him as being addicted to them. His family moved around a lot, Mr. Paradis ended up on the streets at 13. He did not complete high school. His father and brother have both committed suicide which has had a significant impact on him.

Despite this problems, there are positive aspects in Mr. Paradis' life, he has become a journeyman scaffolder, he has been employed, he

has been in a relationship with his fiancée for 7 years. As well, he has taken some courses while in custody.

5 **SENTENCING PRINCIPLES**

 There are a number of sentencing principles that are applicable. The purpose and principles of sentencing are set out in the *Criminal Code*. The fundamental principle of sentencing is that a
10 sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

 Section 718 of the *Criminal Code* speaks of the objectives of sentencing which include:

- 15 To denounce unlawful conduct and the harm done to victims or to the community;
 To deter the offender and other persons from committing crimes;
 To separate the offender from society
20 where necessary;
 To assist in rehabilitating offenders;
 To provide reparations for harm done to victims or to the community; and
 To promote a sense of responsibility in
25 offender and acknowledgement of harm done to victims or to the community.

 The caselaw is clear that a primary objective

in sentencing for possession for the purpose of
trafficking in cocaine is deterrence and
denunciation. Denunciation meaning to denounce
unlawful conduct and the harm done to victims or
5 to the community that is caused by the offender's
conduct. And deterrence to deter the specific
offender and other persons from committing
similar offenses. In trafficking and Possession
for the Purpose of Trafficking cases, the focus
10 is on imposing sentences that send a message and
deter other persons who might be tempted to
traffic in cocaine.

Historically, the sentences that the court
have imposed for trafficking in cocaine have been
15 harsh, designed to emphasize the sentencing
principles of denunciation and deterrence.

Deterrence and denunciation are also primary
sentencing objectives in offences involving
firearms. The illegal possession of firearms is
20 of concern in this country and firearms offences
are treated seriously. The use or possession of
firearms in conjunction with committing other
offences is a serious concern in Canada. The
sentences imposed reflect this sentences for
25 these types of offences are more serious when the
weapon is loaded, when it is used in conjunction
with an offence like trafficking in drugs.

MITIGATING FACTORS

In terms of mitigating factors, the *Charter* breaches can be considered mitigating factors relevant to sentence, pursuant to *R v Nasogaluak*, [2010] 1 S.C.R. 206.

In this case, there were several breaches of Mr. Paradis' *Charter* rights: His section 8, 9, 10 (a) and (b) rights were violated by the police in arbitrarily detaining him, failing to advise him of the reason for his detention, failing to provide him with his right to counsel and for the subsequent search of the vehicle. There is no evidence that the treatment of the accused at the stop itself by the police was demeaning to the dignity of the accused or that there was anything particularly unusual about the treatment of the accused by the officers.

The accused was stopped without justification and his expectation of liberty and privacy was interfered with. Following the stop, he was subjected to searches of his person and the rental vehicle. The breaches were numerous and while not at the most serious end of the spectrum, were significant. The breaches of Mr. Paradis' rights should be considered as mitigating in imposing a sentence.

AGGRAVATING FACTORS

Mr. Paradis does have a criminal record. It is brief but related. The accused has been
5 convicted of a firearms offence before and was subjected to a firearms prohibition order.

The amount of Drugs, approximately 130 grams of cocaine was seized which is a significant amount of cocaine. Drug offences are serious. For
10 many years, this Court has been concerned about the trafficking in cocaine in the Northwest Territories and the offence has been treated seriously by our Courts. Trafficking in cocaine has been described as a scourge on society. It
15 continues to devastate lives, families, communities. It results in other crimes, people commit offences of violence while on cocaine, they commit crimes to get cocaine, it results in injuries and death. The movement of the activity
20 of trafficking in cocaine and other drugs from the City of Yellowknife to the smaller, more isolated communities is of serious concern to the residents of the small communities and to the residents of the Northwest Territories in
25 general. Communities that have had to deal with alcohol abuse, the legacies of residential school, dislocation, loss of culture, so many

social problems, now have to deal with the impact of cocaine. The impact of cocaine on our society has been devastating.

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People like Mr. Paradis who come from the south to traffic in cocaine and prey upon our communities should be soundly condemned. How can communities heal when people like Mr. Paradis appear like vultures to profit off the weakness and addictions of others?

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Firearm offences are also treated seriously and of concern in Canada. The potential for misuse of firearms is a serious safety issue and the risk of serious injury or death is one that is always present. People are rightly concerned about the safe use and storage of firearms. The use and storage of firearms, and particularly this type of firearm raise serious public safety concerns.

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In this case, the firearm was fully loaded but was not operational. It had an extra spring in the gas system. Once the spring was removed and the rifle re-assembled, the rifle was capable of discharging ammunition.

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There is no evidence before me about Mr. Paradis' knowledge of this problem or whether he had the training or know-how to fix the problem with the rifle.

5 So while the rifle was fully loaded with 40
 round of ammunition and there was spare
 ammunition, it could not be immediately fired and
 it is not clear that Mr. Paradis' had the
 capability to render the rifle operational.

PRE-SENTENCE CUSTODY

10 Mr. Paradis has been in custody since his
 arrest on October 20, 2018 which amounts to a
 little more than 7 months. I have heard no reason
 why he should not receive 1.5 to 1 credit for his
 remand time, therefore he will be credited with
 10.5 months remand time.

15 **ANCILLARY ORDERS**

 Dealing first with the ancillary orders
 sought by the Crown.

 The Crown seeks a DNA order and a firearm
 prohibition order.

20 There will be a DNA order. There will also be
 a firearms prohibition order pursuant to section
 109. Mr. Paradis is already on a 10 year
 prohibition order from 2017. In the
 circumstances, I am satisfied that a 12 year
25 prohibition is appropriate.

SENTENCE

I have considered what an appropriate sentence might be given the circumstances of the offence, the applicable sentencing principles and Mr. Paradis' personal circumstances including his aboriginal background. I have considered what the total sentence should be, one that proportionate to the gravity of the offence and the degree of responsibility of the offender in this case. The offences arise from one incident, Mr. Paradis has a limited criminal record in which he has never received a sentence of incarceration. As well, there are the *Charter* breaches to consider.

The sentence ranges sought by the Crown for each offence are appropriate in the circumstances, however, I think that the proposed global sentence of 7 years is excessive considering the circumstances that I have referred to.

Similarly, the sentence proposed by the Defence of 3 years does not adequately reflect the gravity of the offences and Mr. Paradis' degree of responsibility.

Mr. Paradis, please stand up.

Starting with:

- 1) Possessing cocaine for the purpose of trafficking, contrary to section 5(2) of the *Controlled Drugs and Substances Act*;

I am of the view that an appropriate sentence would be 3 years imprisonment.

5 2) Possessing money, in an amount not exceeding \$5000, knowing that it was obtained by the commission of a crime, contrary to s. 354(1)(a) of the *Criminal Code*;

An appropriate sentence would be 6 months imprisonment.

10 3) Possessing a restricted firearm without a licence or registration, contrary to section 91(3) of the *Criminal Code*;

STAYED.

15 4) Possessing a restricted firearm knowing that he did not have a licence or registration, contrary to section 92(3)(a) of the *Criminal Code*;

STAYED.

20 5) Occupying a motor vehicle in which he knew there was a restricted firearm, contrary to section 94(2) of the *Criminal Code*;

An appropriate sentence would be 6 months imprisonment.

25 6) Possessing a loaded restricted firearm without a licence or registration contrary to section 95(2) of the *Criminal Code*;

An appropriate sentence would be 3 years imprisonment.

7) Possessing a prohibited device; a cartridge magazine, without a licence contrary to section 91(2) of the *Criminal Code*;

5 An appropriate sentence would be 2 months imprisonment.

8) Possessing a weapon: A firearm for a dangerous purpose, contrary to section 88(2) of the *Criminal Code*;

10 An appropriate sentence would be 6 months imprisonment.

9) Possessing a weapon: A knife for a dangerous purpose, contrary to section 88(2) of the *Criminal Code*;

15 An appropriate sentence would be 3 months imprisonment.

10) Possessing a firearm while prohibited, contrary to section 117.01(3) of the *Criminal Code*;

20 An appropriate sentence would be 6 months imprisonment.

11) Possession of a prohibited device while prohibited, contrary to section 117.01(3) of the *Criminal Code*; and

25 An appropriate sentence would be 3 months imprisonment.

12) Possession of ammunition while

prohibited, contrary to section 117.01(3) of
the *Criminal Code*.

An appropriate sentence would be 3 months
imprisonment.

5 On counts 2, 5, 8 and 10, the sentences will
be served consecutively for a total sentence of 5
years. You will receive credit of 10.5 months for
your remand time leaving a sentence of 4 years,
1.5 months left to serve.

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CERTIFICATE OF TRANSCRIPT.

5 I, the undersigned, hereby certify that the
foregoing pages are a complete and accurate
transcript of the proceedings produced from the
speaking notes of Justice S.H. Smallwood to the
best of my skill and ability.

10 Dated at the City of Yellowknife, NT on the 3rd
day of July, 2019.

15 _____
Janey Davis

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