

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**IN THE MATTER OF:**

**HER MAJESTY THE QUEEN**

**-v-**

**ALI OMAR**

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**Transcript of the Reasons for Sentence delivered by the Honourable Chief Justice L.A. Charbonneau, sitting in Yellowknife, in the Northwest Territories, on the 26th day of May, 2022.**

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**APPEARANCES:**

J. Major-Hansford:

Counsel for the Crown

L. Allen:

Counsel for the Defence

via teleconference

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Charge under s. 354(1)(a) *Criminal Code*

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Reasons for sentence

1

1 THE COURT: Ali Omar was convicted, after trial, of  
2 having been in possession of proceeds of crime in  
3 Inuvik in March 2019. Today, it is my responsibility to  
4 sentence him for that offence.

5 The trial evidence is referred to in more  
6 detail in my Reasons for Judgment finding Mr. Omar  
7 guilty. For today's purposes, I will just summarize the  
8 main facts.

9 The charge stemmed from the execution of a  
10 search warrant at the hotel room where Mr. Omar was  
11 staying in Inuvik. Various items were seized during the  
12 search, most notably, over \$62,000 in Canadian  
13 currency. A digital scale that had cocaine residue on it  
14 was also seized, as well as Mr. Omar's cellphone.

15 Data extracted from his cellphone  
16 showed that although the large majority of text  
17 messages were innocuous, some were indicative of Mr.  
18 Omar being involved in drug trafficking activities,  
19 including messages that reported how much cocaine  
20 was left to sell and how much money had been made.

21 The evidence also revealed that Mr. Omar  
22 opened a bank account at the CIBC in Inuvik on  
23 January 31st, 2019. That account was closed April  
24 12th, 2019. During that time, Mr. Omar made several  
25 deposits in the account. From when the account was  
26 opened up until his arrest on March 9th, 2019, Mr.  
27 Omar deposited over \$26,000 in the account. Between

1 his release on process and when the account got  
2 closed less than a month later, he made further  
3 deposits totalling over \$11,000. There were also  
4 several transfers of money out of the account.

5 As far as Mr. Omar's personal circumstances  
6 are concerned, I have the benefit of a Presentence  
7 Report which was supplemented significantly by his  
8 counsel's submissions at the sentencing hearing.  
9 There are a number of parts of the report that make  
10 reference to Mr. Omar refusing to answer questions or  
11 comment on the topic raised. He also did not provide a  
12 lot of information that would enable the author of the  
13 report to contact Mr. Omar's family members and other  
14 potential collateral sources of information.

15 At the sentencing hearing, Mr. Omar's counsel  
16 explained that at the time the report was prepared, he  
17 had not told his family members about his situation,  
18 facing sentencing for this serious charge. He had not  
19 told his family about the charge at all. He has since told  
20 them. Under the circumstances, and with the  
21 explanations provided, I draw no negative inference  
22 from the fact that Mr. Omar was not entirely  
23 forthcoming with the author of the Presentence Report.

24 Mr. Omar will turn 28 years old next month. He  
25 does not have a criminal record. He was born in  
26 Kenya. His mother and siblings relocated to Vancouver  
27 when he was about one year old.

1                   He reports that the family did not have a lot of  
2 money when he was growing up and they moved  
3 around a lot. He described the home as a loving home  
4 and says he had a happy childhood. There was no  
5 family violence or other forms of abuse in the  
6 household.

7                   At the time of the offence, he was in a common  
8 law relationship. His girlfriend later became pregnant  
9 and has given birth very recently.

10                  Counsel advised that that relationship ended last  
11 February, apparently largely because of these  
12 proceedings and the prospect that Mr. Omar might be  
13 incarcerated. Counsel says that Mr. Omar would like to  
14 resume the relationship and be reunited with his partner  
15 and child as a family. Counsel also advised that he is  
16 informed that this is what his ex-partner desires as well.

17                  There is no independent confirmation of this. At  
18 the time the Presentence Report was prepared, Mr.  
19 Omar reported that he was not in communication with  
20 her. This was sometime ago and seems to have  
21 changed. As of now, it would appear that the  
22 resumption of this relationship is a possibility but it  
23 remains uncertain.

24                  Mr. Omar relocated to British Columbia relatively  
25 recently. Counsel advises that he did so to be closer to  
26 family and to get away from negative influences. He  
27 now lives close to where his mother and many

1 members of his family are. His mother has encouraged  
2 him to return to the practice of his Islamic faith and he  
3 now attends the local mosque. He is very ashamed of  
4 what he has done and he reports that his family  
5 members were very upset when he finally told them  
6 about the charge.

7 Mr. Omar is currently working full-time as a  
8 barber and his plans for the future are to attend college  
9 and obtain a hairdressing diploma. Ultimately, he  
10 would like to open his own barber shop.

11 Mr. Omar does not have any addiction issues  
12 with alcohol or drugs. He reports that he has had no  
13 involvement with any criminal activity since these  
14 events and that, in his counsel's words, he has made a  
15 180-degree turn in his life.

16 Counsel advises that Mr. Omar and the other  
17 man who was involved with this drug selling operation  
18 in Inuvik were recruited by someone in southern  
19 Canada to go to Inuvik to do this and that Mr. Omar  
20 was not the mastermind of the operation. Counsel  
21 reports that Mr. Omar gained insight and perhaps a  
22 fuller picture of the nature of the business he got  
23 himself involved with after he was charged.

24 Predictably, some of his associates were  
25 not pleased about so much money having ended up in  
26 the hands of the police. Mr. Omar told his counsel for  
27 the few weeks when he remained in Inuvik because his

1 bail conditions required it, someone broke into his room  
2 and he was threatened. He also says that the other  
3 man involved ended up getting stabbed and seriously  
4 injured.

5 Mr. Omar told the author of the Presentence  
6 Report, and he told his counsel, that he is remorseful  
7 for his actions. He said that as well when he addressed  
8 the court directly at the conclusion of the sentencing  
9 hearing.

10 The Crown and defence are very far apart in  
11 their submissions as to what would be a fit sentence for  
12 this offence. The Crown seeks the imposition of a  
13 sentence of 30 months incarceration. The Crown  
14 emphasizes the need to denounce these types of  
15 offences and deter others that may be tempted to take  
16 advantage of the lucrative market that northern  
17 communities present to drug dealers.

18 Mr. Omar's counsel emphasizes the principles of  
19 restraint and the objective of rehabilitation and argues  
20 that for a young man without a criminal record like Mr.  
21 Omar, incarceration is not necessary to achieve the  
22 objectives of sentencing. He asks that I suspend the  
23 passing of the sentence and place Mr. Omar on  
24 probation for a period of three years.

25 The offence of being in possession of proceeds  
26 of crime does not attract a minimum penalty. The  
27 maximum penalty is ten years' imprisonment.

1                   A conditional sentence is not available for this  
2                   offence by operation of section 742.1(e)(ii) of the  
3                   *Criminal Code*. The constitutionality of that provision  
4                   has been challenged in another jurisdiction and the  
5                   issue has made its way to the Supreme Court of  
6                   Canada but no decision has been made yet. There is  
7                   no constitutional challenge before me in this case, so  
8                   the provision applies and a conditional sentence is not  
9                   available as a sentencing option.

10                  Trafficking in cocaine has a maximum penalty of  
11                  life imprisonment. Being in possession of proceeds of  
12                  crimes, as I just said, is punishable by a maximum of  
13                  ten years' imprisonment. The maximum penalty is the  
14                  same, regardless of the underlying crime that  
15                  generated the proceeds. It may seem surprising to the  
16                  public that the punishment for committing a crime and  
17                  the punishment for having the proceeds generated from  
18                  that crime are different, but that is how the relevant  
19                  sentencing provisions are framed.

20                  That said, an offence can be committed in any  
21                  number of ways and each situation falls somewhere on  
22                  a spectrum of relative seriousness. A person found in  
23                  possession of a relatively small amount of money  
24                  knowing this money came from petty thefts would be  
25                  guilty of the same offence as Mr. Omar. That, however,  
26                  would be lower on the spectrum of seriousness than  
27                  the offence that Mr. Omar is being sentenced for today.



1 In other words, the seriousness of the underlying  
2 offence, if it is established, necessarily has a bearing on  
3 the seriousness of the proceeds offence.

4 Here, the underlying criminal activity is trafficking  
5 in cocaine in a small, isolated northern community.  
6 This court has for many years treated this activity as  
7 very serious because of how destructive it is for our  
8 communities.

9 In *R. v. Mohammed*, 2015 NWTSC 38, I talked  
10 about the reasons behind this court's sentencing  
11 approach to cocaine trafficking. It is worth repeating  
12 here for the benefit of Mr. Omar and others: The  
13 reason why courts have to be firm in their sentencing  
14 practices is very simple and was referred to this  
15 morning. Cocaine causes ravages and devastation in  
16 our communities. Yellowknife has seen its fair share of  
17 the collateral damage that crack cocaine has  
18 caused. The people who become addicted to this drug  
19 harm themselves of course. They sometimes lose  
20 everything to it, their families, their work, and their  
21 health, but they also often harm others. Houses get  
22 broken into, people commit robberies, sometimes on  
23 the street in broad daylight or in small convenience  
24 stores or gas stations to get money to buy more drugs,  
25 or they break into homes and steal property. And they  
26 steal, in addition to property, the occupants' sense of  
27 safety in their own home, sometimes for a very long

1 time. Some addicts get to the point of being so  
2 dysfunctional that they neglect their own children.

3 We do not just hear about cocaine in the  
4 criminal courts. We hear about cocaine in family court  
5 frequently, and the Territorial Court hears about it in  
6 child welfare court frequently.

7 Justice Smallwood of this court made comments  
8 to the same effect two years later in *R. v. Dube, 2017*  
9 *NWTSC 77*: It has been said repeatedly but bears  
10 repeating again trafficking in cocaine has had a  
11 devastating effect on the people in Yellowknife and  
12 elsewhere in the Northwest Territories. Cocaine has  
13 destroyed lives, jobs, families. It creates addicts who  
14 will lose their jobs, their business, their families  
15 because of the unrelenting grip of their addiction. The  
16 trafficking of cocaine has been referred to by the courts  
17 as a plague, a scourge, the tearing apart of the fabric of  
18 our society, and it continues to be the case.

19 Those that traffic in cocaine contribute directly to  
20 this. They prey on the most vulnerable members of the  
21 community for profit. And there are those who come to  
22 this jurisdiction simply to traffic in drugs because it is  
23 lucrative. There is easy money to be made off the  
24 addiction of others. The blameworthiness of those who  
25 traffic in cocaine is high.

26 Interestingly, the Supreme Court of Canada  
27 recently picked up on this theme in *R v Parranto, 2021*

1 SCC 46. In that case, at Paragraph 71, the majority of  
2 the Supreme Court said: While all people and places  
3 merit protection, sentencing judges may, as they  
4 consider appropriate, give special consideration to the  
5 disproportionate harm caused to particularly vulnerable  
6 groups and/or vulnerable and remote locations where  
7 escaping traffickers is more difficult and resources for  
8 combating addictions are more sparse. Here, for  
9 example, Mr. Felix was trafficking fentanyl destined for  
10 resale in the remote communities comprising the  
11 territory of Nunavut. As an outsider, he chose to traffic  
12 drugs to those vulnerable communities for easy money.  
13 It would have been open to the courts below to  
14 consider this as a significantly aggravating factor.  
15 Indeed, the Supreme Court of the Northwest Territories,  
16 which would “have front-line experience and  
17 understand the needs of the community where the  
18 crime was committed”, has specifically denounced this  
19 sort of predatory conduct.

20 Immediately after this passage, The Supreme  
21 Court quotes Justice Smallwood in *Dube*.

22 I accept, and it is also apparent from the  
23 evidence, that Mr. Omar was not at the top of the  
24 operation that generated these proceeds. But he also  
25 was not merely a courier or strictly a street level  
26 trafficker. He was entrusted with holding, and to an  
27 extent managing, the flow of large sums of money.

1           There is no evidence that he did any of the drug  
2           transactions himself and his counsel says he was never  
3           involved directly in any of them. However, I find that to  
4           be of no significance given that he clearly was  
5           responsible for handling the money.

6                     The drug trafficking operation that generated  
7           these proceeds was ongoing for some time. This was  
8           not a one-off. Nor was Mr. Omar simply holding  
9           money, knowing where it came from, but without having  
10          had any involvement with the underlying activity. His  
11          involvement is clear from the evidence of the banking  
12          transactions and text messages.

13                    The evidence establishes very clearly, in my  
14          view, that Mr. Omar was in Inuvik for the sole purpose  
15          of generating proceeds from cocaine trafficking  
16          activities. There is no evidence suggesting any other  
17          reason for him being there. He was not working. He  
18          was not a tourist. He was not someone who was there  
19          for other legitimate reasons and who, once there,  
20          became caught up in this.

21                    His counsel said he was recruited to do this.  
22          This was not a momentary, spontaneous lapse in  
23          judgment. Nor can it be explained by Mr. Omar  
24          suffering from an addiction that he needed to feed. He  
25          simply succumbed to the temptation to do it for  
26          monetary gain without regard for, and I suspect without  
27          even thinking about, the ravages that these activities

1 cause and the many people who suffer great distress  
2 as a result.

3 In short, this is exactly the type of activity that  
4 needs to be met with a stern response by the court.  
5 There are others who will try to recruit young people  
6 without criminal records to engage in this activity.  
7 There are also many young people who may find it very  
8 tempting to take the risk for quick and seemingly easy  
9 financial gain.

10 There are mitigating factors that must be  
11 considered in this case as well.

12 At the outset, I want to note that the absence of  
13 a criminal record is not mitigating. Rather, it is the  
14 absence of something that would otherwise be  
15 aggravating. However, restraint is a particularly  
16 important sentencing principle when dealing with a  
17 relatively youthful offender with an otherwise good  
18 background.

19 Mr. Omar is now gainfully employed. His  
20 rehabilitative potential is undeniable. He has actually  
21 gone a long way towards rehabilitation already and he  
22 has family support.

23 As I already noted, Mr. Omar has told a number  
24 of people he is remorseful, including this court. That  
25 does not carry the same mitigating weight when it  
26 comes at this stage of the proceedings after a trial. Mr.  
27 Omar was of course entitled to have this trial and there

1                   were triable issues here. He was, in fact, successful in  
2                   establishing some breaches of his rights. To be clear, I  
3                   am not faulting him for having exercised that right. I am  
4                   simply noting that the expression of remorse post-  
5                   conviction, while relevant, can only go so far in  
6                   mitigation.

7                   I can also appreciate that the seriousness of  
8                   what Mr. Omar got himself involved with became  
9                   clearer to him after his arrest, and that some of the  
10                  things that happened at that point opened his eyes to  
11                  the reality of the world he had involved himself with. In  
12                  that sense, I accept that specific deterrence, meaning  
13                  discouraging him from getting involved in this type of  
14                  activity again, is not as significant a factor as it might  
15                  otherwise be.

16                 Counsel has argued that the breaches of Mr.  
17                 Omar's rights should be treated as significant mitigating  
18                 factors. He has referred to the breaches that I found  
19                 occurred during the investigation, but he has also  
20                 argued for the first time during final submissions that  
21                 Mr. Omar's right to be tried within a reasonable time  
22                 was breached and that this should be treated as a  
23                 mitigating factor.

24                 Having considered the issue, I find that the issue  
25                 of unreasonable delay that would constitute a *Charter*  
26                 breach is not properly before me. As I said, this was  
27                 raised for the first time during sentencing submissions,

1 without any notice.

2 Counsel suggested that it was open to him to do  
3 so at that late stage because of the language of the  
4 *Charter* Application Notice that was filed back in  
5 September 2010. That Notice alleged breaches of  
6 sections 7 and 8 of the *Charter* (arbitrary detention and  
7 breach of his right to be secure against unreasonable  
8 search and seizure). The relief sought in the Notice is  
9 the exclusion of evidence obtained as a result of those  
10 breaches, pursuant to section 24(2) of the *Charter*.

11 With respect, that Notice cannot reasonably be  
12 interpreted as raising the issue of Mr. Omar's right to be  
13 tried within a reasonable time. There is a reason why  
14 the *Rules of Court* require notice when *Charter* relief is  
15 going to be sought. That process serves to ensure that  
16 proper evidence is adduced, full submissions are  
17 made, and the court is given the tools it needs to give  
18 *Charter* issues the serious consideration they warrant.

19 Raising such an important issue at this stage  
20 and in the manner it was done in this case is not an  
21 available course of action. For that reason, while I  
22 thank counsel for their submissions on this point, I will  
23 not address that issue because it is not properly before  
24 me.

25 That said, the passage of time since the charges  
26 were laid is still relevant to the determination of a fit  
27 sentence today. Of course, considering the reality of

1 the COVID pandemic, the pretrial motions that needed  
2 to be dealt with and the need for the court to schedule  
3 hearings taking into consideration everyone's  
4 availability, some delay was inevitable.

5 Be that as it may, I do accept that living with this  
6 charge hanging over his head for all this time has  
7 added to the difficulties that Mr. Omar has faced  
8 personally. I also accept that intervening events must  
9 be taken into consideration both in terms of the steps  
10 he has taken towards rehabilitation but also,  
11 importantly, the impact that the sentence will have on  
12 him. There is no question that facing sentencing, as  
13 the father of a very young child, creates a much more  
14 difficult and painful situation for him than would have  
15 been the case had this matter been dealt with sooner,  
16 before his girlfriend became pregnant, for example.

17 I now turn to the mitigating effect of the breaches  
18 that I found to have occurred during this investigation.  
19 In this case, I concluded that the search of the hotel  
20 room amounted to a warrantless search and therefore  
21 was unreasonable in the circumstances. I concluded  
22 that parts of the Information To Obtain the warrant  
23 should be excised and that without those, the warrant  
24 could not have issued.

25 The information was excised because it was  
26 obtained as a result of another breach: a police officer  
27 stopped the vehicle that Mr. Omar was driving and



1           obtained certain information from him, including his  
2           name and where he had rented the vehicle from. This  
3           illegally obtained information was used in the  
4           Information To Obtain the search warrant. This is set  
5           out in my original ruling on this *Charter* motion (*R v*  
6           *Omar*, 2021 NWTSC 34), and in the Ruling I issued  
7           after being asked to revisit the *Charter* motion in light of  
8           evidence that emerged at trial (*R v Omar*, 2022  
9           NWTSC 11).

10                   *Charter* breaches can be taken into account  
11           during a sentencing. That is consistent with the  
12           fundamental purpose of sentencing which is to  
13           contribute to the respect for the law and maintenance of  
14           a just, safe and peaceful society. *R v Nasogaluak*, 2010  
15           SCC 6.

16                   This principle has been applied in this  
17           jurisdiction. For example, in *R v Firth*, 2013 NWTTC  
18           16, the sentencing judge found that the offender's  
19           detention conditions in the drunk tank, which included  
20           lack of bedding, insufficient heat in the cell, removal of  
21           clothing that might have provided him warmth in that  
22           cell, amounted to state misconduct that justified a  
23           reduction in sentence. The sentencing judge  
24           concluded that the detention conditions were "beyond  
25           uncomfortable", were "inhumane and inexcusable", and  
26           that the offender was subject to these conditions for a  
27           number of hours.

1 More recently in *R v Paradis*, 2019 NWTSC 27  
2 (affirmed on appeal *R v Paradis*, 2020 NWTCA 2), the  
3 judge found at trial that there were several breaches of  
4 the accused's rights by police because they arbitrarily  
5 detained him, failed to advise him of the reasons for his  
6 detention, failed to advise him of his right to counsel,  
7 and searched his vehicle. The Court noted that there  
8 was no evidence that the treatment of the accused was  
9 demeaning to his dignity or that there was anything  
10 particularly unusual about how he was treated by the  
11 officers, but concluded that he was stopped without  
12 justification and that his expectation of liberty and  
13 privacy were interfered with. The Court found in that  
14 case that the breaches, while not at the most serious  
15 end of the spectrum, were significant. Those breaches  
16 were treated as mitigating factors on sentencing.

17 The position of Mr. Omar on the *Charter*  
18 application, both initially and when it was renewed at  
19 the conclusion of the trial evidence, was, and I suspect  
20 remains, that the police misconduct in this case was  
21 egregious, included bad faith, and amounted to  
22 extremely serious police misconduct. For reasons that  
23 are set out in both my Rulings on this issue, I disagree  
24 with that characterization.

25 Mr. Omar was stopped illegally as he was  
26 driving in Inuvik. The officer obtained certain  
27 information from him. That is a fact, and it was a

1 breach of his rights. This was not, however, a  
2 prolonged detention. It did not involve extensive  
3 questioning. It did not involve, and is a far cry from, the  
4 kind of treatment that was at issue in *R v Firth* and  
5 some of the other cases referred to in *Nasogaluak*,  
6 some of which included cases of police violence.

7 I found that the breaches in this case were less  
8 serious than the ones in *Paradis*. So while I accept, as  
9 the judge did in *Paradis*, that the *Charter* breaches can  
10 be treated as mitigating, in my view, their mitigating  
11 effect is modest.

12 Crown and defence have filed cases for my  
13 consideration. Sentencing decisions are useful to  
14 identify governing principles. They can also assist in  
15 identifying ranges of sentences that are appropriate in a  
16 set of circumstances. But there are usually so many  
17 variables and distinctions between the facts and the  
18 offenders involved that it is very hard to find cases that  
19 are on all fours with the one before the court.

20 In addition, appellate decisions on sentence  
21 must always be looked at taking into account the very  
22 high standard of review that applies on sentence  
23 appeals. The fact that the Court of Appeal upholds a  
24 sentence does not necessarily mean agreement with  
25 that sentence.

26 Overall, the cases support the notion that,  
27 generally speaking, deterrence and denunciation are

1 the paramount sentencing principles in cases like this.  
2 *R v Daschner*, 2013 ABQB paras 10-11. *R v Daschner*  
3 also sets out helpful factors to be considered  
4 specifically on sentencing in proceeds cases.

5 Some of the cases filed date back to when a  
6 conditional sentence was available in cases involving  
7 the possession of proceeds of crime derived from drug  
8 trafficking activities. Those cases discuss whether a  
9 conditional sentence can adequately express society's  
10 condemnation for this type of activity, given the harm  
11 that is associated with it. *R. v. Bui*, 2006 BCCA 245; *R.*  
12 *v. Daluro*, 2011 ABCA 312.

13 These cases, and others that discuss the  
14 availability of a suspended sentence for this type of  
15 offence, are instructive because they illustrate some of  
16 the situations that were found by the court to involve  
17 exceptional circumstances that justify not imposing a  
18 sentence of actual incarceration. *R. v. McInnis*, 2020  
19 ONCJ 607, *R. v. Chappell*, 2020 BCSC 536, *R. v.*  
20 *Manhas*, 2019 BCSC 1293 and *R. v. McGill*, 2016  
21 ONCJ 138, paras 69 to 87.

22 Having reviewed those cases carefully, I do not  
23 find that Mr. Omar's case is comparable to those where  
24 offenders received conditional sentences or suspended  
25 sentences. Mr. Omar was found with a considerable  
26 amount of proceeds of crime. He was involved in an  
27 ongoing commercial operation in a small and isolated

1 northern community. He was not an addict who was  
2 doing this to support his own drug use, nor someone  
3 who was caught with money but had little to do with the  
4 criminal activity that generated it. He does not benefit  
5 from the special consideration and principles that apply  
6 to the sentencing of Indigenous offenders. His  
7 expression of remorse came after a conviction.

8 A suspended sentence is available in law for this  
9 offence but for possession of proceeds of crime  
10 gathered through trafficking in cocaine, it would be a  
11 very unusual sentence and should be reserved for  
12 exceptional circumstances. This case is not one that  
13 involves exceptional circumstances. Mr. Omar's story  
14 is sadly similar to that of many young men without any  
15 criminal history who were recruited to traffic drugs in the  
16 Northwest Territories because it is a lucrative market.  
17 He got caught and now realizes that the risk was not  
18 worth the potential consequences.

19 But this sentencing is not just about him, as I  
20 have already said. It is also about making sure that  
21 society's condemnation of this conduct is shown. It is  
22 about attempting to discourage others similarly inclined  
23 to make the same choice that he did.

24 I have taken into account his age, background,  
25 family support, the consequences that incarceration will  
26 have on him. I have taken into consideration the  
27 passage of time since these events which, in his

1 specific circumstances, means the added hardship of  
2 facing imprisonment now as the father of a very young  
3 child. I have taken into account that his rights were  
4 breached during the investigation, although my  
5 assessment of the impact of those breaches is not in  
6 line with what his counsel invited me to find.

7 Counsel argued I should give credit to Mr. Omar  
8 against any jail term imposed on a ratio of .5 to 1 for the  
9 time he was bound by release conditions. I have taken  
10 into account that his liberty was restricted to various  
11 degrees through his release conditions, but am not  
12 prepared to credit him for that using a fixed ratio in the  
13 manner suggested by counsel, for the following  
14 reasons.

15 The first Release Order dated March 19th  
16 required Mr. Omar to remain in the NWT, reside at a  
17 specific address, abide by a curfew except for work,  
18 report three times a week to the RCMP in person, and  
19 not have a phone or a similar electronic device. There  
20 was also a no contact order. The Release Order was  
21 amended April 9th. The amended terms allowed Mr.  
22 Omar to leave the NWT. He was required to reside at  
23 a specific address in Edmonton. The curfew condition  
24 was removed, the reporting was decreased to once a  
25 week, but remained in-person reporting. The no  
26 contact and prohibition to possess an electronic device  
27 remained.

1                    This court vacated that Release Order and  
2                    issued a new one on November 25th, 2021 at the  
3                    conclusion of submissions at the end of the trial. This  
4                    was done at Mr. Omar's request and with the consent  
5                    of the Crown. Under that order, he was free to change  
6                    his address so long as he provided his new address to  
7                    the bail supervisor before moving. The reporting  
8                    condition was changed to be by phone instead of in  
9                    person and it was changed to "as directed" instead of  
10                   being weekly reporting. The no contact condition and  
11                   the device prohibition conditions remained. These  
12                   revised terms remained in force after I found him guilty.

13                   Mr. Omar appears to have abided by his release  
14                   terms, save for a period of time where he was not  
15                   reporting. As noted by Mr. Omar's counsel, some  
16                   courts have given credit against a jail term as is done  
17                   with remand time to account for very restrictive bail  
18                   conditions. Strict release conditions that curtail an  
19                   offender's freedom for a long time may also be taken  
20                   into consideration as part of the overall assessment of  
21                   what the sentence should be, without it being precisely  
22                   and mathematically identified as the law requires it to  
23                   be for remand time.

24                   The release conditions that applied to Mr. Omar  
25                   for the first three weeks after his release required him to  
26                   remain in in Inuvik and I recognize that, under all the  
27                   circumstances, this was challenging and stressful for

1 him. He was also required to report three times a week  
2 in person, which is burdensome. At the same time,  
3 given the size of the Town of Inuvik, reporting three  
4 times to the RCMP detachment would not require  
5 travelling over any great distance, unlike what might be  
6 the case elsewhere.

7 The conditions here did not include house  
8 arrest. The curfew condition was in place for a  
9 relatively short time and included an exception for work.  
10 After the first amendment of the Release Order,  
11 condition to report in person once a week was really the  
12 one that was the most intrusive.

13 I find that the conditions in place, especially for  
14 the first few weeks, were somewhat intrusive, but they  
15 are still not among the most stringent release terms the  
16 court sees. It is not surprising that such conditions  
17 would be placed on a person facing a serious charge in  
18 the Northwest Territories, particularly when that person  
19 has no ties to the jurisdiction.

20 This is why, while I have considered that Mr.  
21 Omar was bound by conditions that had an impact on  
22 his day to day life as part of the overall balancing of the  
23 factors that must be considered on sentencing, I am not  
24 applying a specific reduction of his sentence to account  
25 for that time in the same way that we would for pretrial  
26 custody, or for an offender who lived for a time with  
27 very strict release terms.



1                   Mr. Omar was in pretrial custody for 11 days and  
2 he is entitled to credit for that time.

3                   The Crown has sought some ancillary orders  
4 that were not disputed. I will deal with those first.  
5 Under the circumstances, I find it is appropriate to issue  
6 a DNA order. This is a secondary designated offence  
7 so a DNA Order is not mandatory, but having  
8 considered the factors set out in the *Criminal Code*,  
9 including the nature of the offence, I agree that it should  
10 be made. The Firearms Prohibition Order is  
11 mandatory. It will begin today and expire ten years  
12 from Mr. Omar's release.

13                   As far as the sentence itself, the 30-month  
14 sentence that the Crown seeks, when examined in light  
15 of the cases that have been filed, is within the range.  
16 Having considered the other factors, however, and  
17 exercising some restraint, I conclude that a slightly  
18 shorter sentence can achieve the goals of sentencing.  
19 Still, in my view, a sentence in the penitentiary range is  
20 required to reflect the seriousness of this offence.

21                   Mr. Omar, but for the time you spent in custody  
22 after your arrest, my sentence would have been 26  
23 months imprisonment. For the 11 days you spent in  
24 custody before you were released on bail, I will give  
25 you credit for 16 days. Accordingly there will be a  
26 further jail term of 25 months and 14 days.

27                   The Warrant of Committal will be endorsed with

1 the court's strong recommendation that, in considering  
2 Mr. Omar's placement, consideration be given to his  
3 connections to British Columbia or any other locations  
4 that he identifies during the placement process.

5 Mr. Omar, you are hereby directed to turn  
6 yourself into custody within the next 24 hours.

7 Mr. Major-Hansford, what is the exact location  
8 where he should turn himself in?

9 J. MAJOR-HANSFORD: Your Honour, at either the  
10 Victoria police station or at the Saanich police station. I  
11 wasn't certain, nor is it any of my business, where Mr.  
12 Omar resides. And so either of those, I am advised by  
13 Dan Mayo of the Vancouver Regional Island -- the  
14 Vancouver Island Regional Correctional Centre will be  
15 able to start the process.

16 THE COURT: Okay. I will ask you to give the correct  
17 spelling of those locations to the clerk. That needs to be  
18 endorsed on the Warrant of Committal.

19 J. MAJOR-HANSFORD: Thank you.

20 THE COURT: The Warrant of Committal should be sent  
21 to the RCMP. It should be sent to the two institutions  
22 the Crown has identified. And Mr. Omar, I do not know  
23 how the intake procedure will happen for sentencing  
24 from the Northwest Territories when the person is in  
25 southern Canada, but be sure to let them know where  
26 you would like to be close to and they will consider that,  
27 I am sure in the placement process.

1 Finally, I will issue the Forfeiture Order  
2 once the draft Order is submitted.

3 J. MAJOR-HANSFORD: Thank you.

4 THE COURT: There will be an order -- will your  
5 forfeiture order include the exhibits, Mr. Major-  
6 Hansford?

7 J. MAJOR-HANSFORD: It will, yes.

8 THE COURT: All right. Thank you. That is the end of  
9 this matter. We will sign off Mr. Omar and we will sign  
10 off Mr. Allen. Thank you.

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14 **(PROCEEDINGS CONCLUDED)**

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1           **CERTIFICATE OF TRANSCRIPT**

2           Veritext Canada, the undersigned, hereby certify that the  
3           foregoing pages are a complete and accurate transcript of  
4           the proceedings transcribed from the audio recording to the  
5           best of our skill and ability. Judicial amendments have been  
6           applied to this transcript.

7

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9           Dated at the City of Toronto, in the Province of Ontario, this  
10          27th day of May, 2022.

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13          *Veritext Canada*

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15          Veritext Canada

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