

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

**IN THE MATTER OF:**

**HIS MAJESTY THE KING**

**-v-**

**ABUKAR MAIE**

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**Transcript of the Reasons for Sentence held before the  
Honourable Chief Justice S.H. Smallwood, sitting in Yellowknife,  
in the Northwest Territories, on the 26<sup>th</sup> day of June, 2023**

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**APPEARANCES:**

M. Fane:	Counsel for the Crown
A. Jarrah:	Counsel for the Defence appearing via videoconference

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Charges under s. 5(2) of the *Controlled Drugs and Substances Act* and 354(1)(a) of  
the *Criminal Code* of Canada

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1 THE COURT: So Abukar Maie has entered a guilty  
2 plea to count 1 on the indictment that is before the  
3 Court, and so that is an offence contrary to section 5(2)  
4 of the *Controlled Drugs and Substances Act*,  
5 possession of a substance included in Schedule 1, to  
6 wit cocaine, for the purposes of trafficking, and that  
7 offence occurred on July 9, 2020, in Fort Providence.

8 The details of the offence are brief; they  
9 were read in earlier this afternoon. Essentially, the  
10 police attended a residence in Fort Providence in  
11 response to information that was received. They  
12 attended with Health and Social Services workers to  
13 check on the welfare of a child. They located the  
14 accused in the residence. He did not reside there. He  
15 is not a resident of Fort Providence. And there were  
16 other individuals in the residence.

17 The accused was located with two  
18 baggies of crack cocaine, and a further search revealed  
19 individual packages of crack. There was also a scale in  
20 the room that was located and three cellphones. In  
21 total there was 40 grams of crack cocaine which was  
22 seized, and the accused had been at the residence for  
23 the past two days.

24 Mr. Maie is a 42-year-old person who has  
25 a prior criminal record that was presented to the Court.  
26 There are convictions on that record starting in 2006  
27 and continuing through to 2015. Of significance to this

1 offence, there are three prior convictions for possession  
2 of a scheduled substance: one in 2007, 2013 and  
3 2014. For each of those offences, Mr. Maie received a  
4 fine of varying amounts.

5 And for the most part on his record the  
6 matters -- the other matters that are on his criminal  
7 record he has received essentially fines. He was  
8 subjected to a conditional sentence order in 2006, but  
9 the majority of the sentences he has received to date  
10 have been in the nature of fines. His last conviction  
11 was entered in 2015, which was a drive while  
12 disqualified for which he received a fine and a driving  
13 prohibition. The other offences that comprise his  
14 record for the most part are offences against the  
15 administration of justice for which he's received fines or  
16 a brief period of jail.

17 So he has entered a guilty plea. This is  
18 not a guilty plea at the earliest opportunity. This matter  
19 has been set for a *voir dire* and for a trial in December.  
20 And this matter has been outstanding for some time.  
21 But it is a guilty plea, so it is obviously worth credit in  
22 that the accused has accepted responsibility for the  
23 offence and is prepared to waive his right to a trial, and  
24 it saves the court time and resources with respect to  
25 having this matter dealt with.

26 There is a joint submission before the  
27 Court. The joint submission is for two years less a day,

1 a conditional sentence order. There are a number of  
2 conditions that have been proposed by counsel. For  
3 this offence, conditional sentence orders have relatively  
4 recently become available for this type of offence,  
5 having been prohibited for several years.

6 The joint submission today -- I am not  
7 going to say much about the suitability of conditional  
8 sentence orders for this type of offence in this  
9 jurisdiction -- for years the Court has dealt with  
10 sentencing for possession for the purpose of trafficking  
11 in crack cocaine and for trafficking in crack cocaine and  
12 emphasized the seriousness of these offences. It has  
13 been called a "scourge" on the community, and the  
14 prevalence of trafficking in crack cocaine in Yellowknife  
15 and other communities has been a concern of the  
16 Court for some time.

17 We are increasingly seeing the spread of  
18 the trafficking of crack cocaine and the possession for  
19 the purpose of trafficking of crack cocaine into small  
20 communities like Fort Providence and into the various  
21 communities which have in the past perhaps been less  
22 likely to have seen this type of activity.

23 So I cannot overstate the menace of  
24 those who come to the Northwest Territories to make  
25 money off of the vulnerable, off the addicted, to enter  
26 into these small communities which have so many  
27 social problems and to add to that -- to add to those

1 problems by trafficking these substances.

2 So that is why the Courts have  
3 consistently imposed sentences that have emphasized  
4 the sentencing principles, denunciation and deterrence.  
5 Does this sentence meet that goal of promoting the  
6 sentencing principles of denunciation and deterrence?  
7 Not really, but that is not the test that is applicable in  
8 that was set out by the Supreme Court of Canada in  
9 *Anthony-Cook*, which says that I should consider other  
10 factors.

11 And one of the things that the Courts  
12 have emphasized is the recognition of the value of plea  
13 negotiations with counsel getting together and  
14 negotiating plea deals to resolve matters, particularly in  
15 the era of post-COVID where we have a significant  
16 backlog of court matters. It is important that we can get  
17 through that backlog and continue to deal with matters  
18 that do need to go to trial, so there is a significant value  
19 to plea negotiations.

20 In this case I am told there are triable  
21 issues. There were *Charter* issues that existed. The  
22 accused had a *Charter* application scheduled for  
23 September and so for him this provides a resolution to  
24 this matter. He gives up his right to have the Court  
25 determine those issues and maybe he would have  
26 been successful; we do not know. But in exchange for  
27 this plea agreement, he has given up his right to having

1 the *Charter* application heard and to having a trial on  
2 this matter. And so that is significant as well.

3 And I have also heard the accused's  
4 personal circumstances, which are also compelling. He  
5 is somebody who has been employed; he has had  
6 some challenges with respect to his employment and  
7 his employment history. He has been affected by  
8 COVID, which has affected so many people.

9 He is also a parent to several young  
10 children, and his partner has mental health issues  
11 which has made it a challenge to maintain employment  
12 and to care for the children. So there are  
13 circumstances in the accused's personal history which  
14 are also compelling. And as well he has also been a  
15 volunteer in his community in helping his children in  
16 terms of sports and other activities. So I think that is  
17 also significant.

18 So I am prepared to impose the  
19 conditional sentence that has been proposed as part of  
20 the joint submission. So there will be a conditional  
21 sentence order for two years less a day. It will have the  
22 conditions that have been proposed by counsel. So I  
23 will go through those.

24 1) That Mr. Maie has to keep the peace  
25 and be of good behaviour.

26 2) You must appear before the Court  
27 when required to do so by the Court.





1 supervisor attends or calls to check on you.

2 8) You may be away from your residence  
3 within the first eight months of this order or otherwise  
4 during curfew hours with the prior written permission of  
5 your conditional sentence supervisor. Such permission  
6 is to be given only for employment, volunteering or  
7 other compelling reasons. You must carry the  
8 permission, which can be in electronic format, with you  
9 when you are outside your residence.

10 9) You may also be away from your  
11 residence a) while at or going directly to or returning  
12 directly from a health care facility because of a medical  
13 emergency; if asked, you must provide your conditional  
14 sentence supervisor with proof of your attendance at  
15 the facility.

16 9) You must provide your conditional  
17 sentence supervisor with the details of your  
18 employment status. You must inform your supervisor  
19 within two business days of any change in your  
20 employment status.

21 10) If you are given permission by your  
22 conditional sentence supervisor, you must carry it with  
23 you in paper or electronic format when you are doing or  
24 possessing something that requires permission. You  
25 must show the permission along with a copy of this  
26 order to a peace officer who a) requests to see it; b)  
27 who stops you for any reason.

1 11) You must not possess or consume  
2 alcohol, drugs or other intoxicating substances except  
3 with a medical prescription.

4 12) You must complete 40 hours of  
5 community service work under the direction of your  
6 conditional sentence supervisor. Your community work  
7 service must be completed within the first year of this  
8 order.

9 13) When first reporting to your  
10 conditional sentence supervisor, you must provide  
11 them with the address where you live and your phone  
12 number. You must not change your address or phone  
13 number without prior written permission from your  
14 conditional sentence supervisor. Do you understand  
15 those conditions, Mr. Maie?

16 THE ACCUSED: Yes, Ma'am.

17 THE COURT: Okay. All right. And then also, it is  
18 mandatory pursuant to section 109 of the *Criminal*  
19 *Code* that there be a firearms prohibition order. It will  
20 start today, and it will end 10 years -- it will be a 10-year  
21 firearms prohibition order, and the exact terms and  
22 conditions will be explained to you. But that will prohibit  
23 you from possessing firearms and other items for the  
24 period. And there is no DNA order, so that will not --  
25 that is not being sought by the Crown, so that will not  
26 be imposed in the circumstances. Mr. Fane, is there  
27 anything that I have overlooked?

1 M. FANE: Not from the Crown's perspective, Your  
2 Honour.

3 THE COURT: Okay. Mr. Jarrah?

4 A. JARRAH: Madam Justice, if I can just direct you to  
5 condition number 8. In terms of the exceptions, it  
6 mentions employment, volunteering or other compelling  
7 reasons. I know we had just previously discussed prior  
8 to the intermission to the break about, for example,  
9 shopping for necessities of life. Is that something that's  
10 typically implemented? I just want to receive  
11 confirmation. I wasn't sure earlier.

12 THE COURT: That -- I mean, it is -- there is two ways it  
13 has been dealt with. One is it is done with the written  
14 permission of the conditional sentence supervisor, and  
15 so that is something that is discussed between the  
16 offender and the conditional sentence supervisor, and  
17 written permission is provided sometimes, you know,  
18 generally on a set schedule.

19 There have been also occasions where  
20 the Court has said, okay, I will allow you, you know, two  
21 hours a week to take care of errands. So I have not put  
22 that in this order because it was not requested. And so  
23 that is something that as well can be negotiated or  
24 discussed with the conditional sentence supervisor  
25 once that person has an opportunity to meet with the  
26 offender and to discuss his needs and what sort of  
27 permission would be appropriate in his specific

1 circumstance.

2 A. JARRAH: That makes sense. I appreciate that  
3 explanation. If there's obviously any issues, I'm sure  
4 we could bring it before this Honourable Court and  
5 have something amended if need be, but I don't  
6 anticipate that.

7 THE COURT: Okay. All right. So -- and I think then,  
8 counsel will deal with the issue of forfeiture. Is that  
9 anticipated, then, Mr. Fane, to be a -- something that  
10 will be just submitted in writing like a desk order?

11 M. FANE: Yes, Your Honour. Yes. Unfortunately, as I  
12 say, in reviewing this file, I see that we never received  
13 the 5.2, so it should be in relatively short order and I'll  
14 be in correspondence with my friend about that.

15 THE COURT: Okay. All right. And what --

16 A. JARRAH: Thank you.

17 THE COURT: Okay. Thank you. And, Mr. Clerk, I will  
18 leave the agreed statement of facts here. It is not an  
19 exhibit, but it should be just left with the file.

20 THE CLERK: Yes, Your Honour.

21 THE COURT: As it was submitted in court. All right.  
22 Thank you. We will adjourn.

23 THE CLERK: All rise. I declare the Supreme Court  
24 closed.

25 **(VIDEOCONFERENCE CONCLUDES)**

26

27 **(PROCEEDINGS CONCLUDED)**

1           **CERTIFICATE OF TRANSCRIPT**

2           Veritext Legal Solutions, Canada, the undersigned, hereby  
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6           amendments have been applied to this transcript.

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9           Dated at the City of Toronto, in the Province of Ontario, this  
10          14<sup>th</sup> day of July, 2023.

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