*R v Maie,* 2023 NWT SC 23 S-1-CR-2021-000084

**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 26th 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

**I N D E X**

 **PAGE**

**RULINGS, REASONS**

Reasons for decision 1

Sentence 5

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

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

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

 Mr. Maie is a 42-year-old person who has a prior criminal record that was presented to the Court. There are convictions on that record starting in 2006 and continuing through to 2015. Of significance to this offence, there are three prior convictions for possession of a scheduled substance: one in 2007, 2013 and 2014. For each of those offences, Mr. Maie received a fine of varying amounts.

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

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

 There is a joint submission before the Court. The joint submission is for two years less a day, a conditional sentence order. There are a number of conditions that have been proposed by counsel. For this offence, conditional sentence orders have relatively recently become available for this type of offence, having been prohibited for several years.

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

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

 So I cannot overstate the menace of those who come to the Northwest Territories to make money off of the vulnerable, off the addicted, to enter into these small communities which have so many social problems and to add to that -- to add to those problems by trafficking these substances.

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

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

 In this case I am told there are triable issues. There were *Charter* issues that existed. The accused had a *Charter* application scheduled for September and so for him this provides a resolution to this matter. He gives up his right to have the Court determine those issues and maybe he would have been successful; we do not know. But in exchange for this plea agreement, he has given up his right to having the *Charter* application heard and to having a trial on this matter. And so that is significant as well.

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

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

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

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

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

 3) You must report by telephone to conditional sentence supervisor in Yellowknife at 867-767-9264 by 4:00 p.m., June 27, 2023. If the office is closed, you must continue calling daily during regular business hours until you have spoken to a supervisor and received further direction to report. After that you must report as directed by your supervisor.

 4) You must remain in Alberta unless you have prior written permission from the Court or your conditional sentence supervisor to leave the province.

 5) You must notify the Court or your conditional sentence supervisor in advance of any change of address and promptly notify the Court or supervisor of any change in employment or occupation.

 6) For the first eight months of this order, a) you must be inside your residence or in its lot at all times every day save for the exceptions below; b) you must present yourself immediately at the door to your residence or answer your phone when any peace officer or conditional sentence supervisor attends or calls to check on you.

 7) For the next eight months of this order, a) you must be inside your residence or in its lot between 11:00 p.m. and 6:00 a.m. every day save for the exceptions below; b) you must present yourself immediately at the door to your residence or answer the phone when any peace officer or conditional sentence supervisor attends or calls to check on you.

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

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

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

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

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

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

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

THE ACCUSED: Yes, Ma’am.

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

M. FANE: Not from the Crown’s perspective, Your Honour.

THE COURT: Okay. Mr. Jarrah?

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

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

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

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

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

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

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

A. JARRAH: Thank you.

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

THE CLERK: Yes, Your Honour.

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

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

(VIDEOCONFERENCE CONCLUDES)

**(PROCEEDINGS CONCLUDED)**

**CERTIFICATE OF TRANSCRIPT**

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

Dated at the City of Toronto, in the Province of Ontario, this 14th day of July, 2023.

Veritext Legal Solutions, Canada

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