

R. v. B.S., 2017 NWTTC 15

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IN THE YOUTH JUSTICE COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

- and -

B.S. (A Young Person)

**REASONS FOR SENTENCE
of the
HONOURABLE JUDGE B.E. SCHMALTZ**

Heard at: Yellowknife, Northwest Territories

Date of Decision: June 12, 2017
Reasons Filed: June 15, 2017

Date of Trial: January 27, 2017 and June 12, 2017

Counsel for the Crown: Brendan Green

Counsel for the Accused: Thomas Boyd

[Sections 5(2) x 2 of the *Controlled Drugs and Substances Act* and 354(1) of the *Criminal Code*]

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A. INTRODUCTION

[1] B.S., a young person, was found guilty after trial of possession of cocaine for the purpose of trafficking, possession of marijuana for the purpose of trafficking, and possession of proceeds of crime.

B. FACTS

[2] On March 18, 2016, the RCMP executed a search warrant at a house in Yellowknife; from one of the bedrooms 192.1 grams of crack cocaine cut and packaged into 446 individual pieces was seized. This amount of crack cocaine in Yellowknife, if sold on the street would be worth approximately \$35,000. Also seized from this bedroom was 982.4 grams of marijuana packaged in four ziploc bags, each weighing approximately half a pound. The marijuana seized would have a street value of between \$7,560 and \$19,648, depending on how it was sold, i.e. by the gram or by the pound. And lastly, \$7,680 in cash was seized from the residence; in

the bedroom where the crack cocaine was found, there were two separate bundles of cash under the futon: one of \$3,200 and the other \$3,180.

[3] When the police entered the home to execute the search warrant, B.S. and another individual were in the bedroom where the crack cocaine, marijuana, and the majority of the cash were found. Also in that bedroom were three cell phones, a blackberry, and a digital scale. From all the evidence on the trial, including the expert evidence of Constable Douglas Melville, I found that B.S. was one of the “food bosses” in this operation, a term used to describe a mid-level supplier who supplies “product” to those who traffic to users, or to street-level traffickers.

[4] A further \$790 was seized from Quinn Beaver who was also in the residence at the time, along with other people; Mr. Beaver had 2 cell phones and 10 pieces of crack cocaine on his person. Seven cell phones in total were seized from the residence.

[5] In one of the other bedrooms, drug packaging material and equipment were found, along with two notebooks which were used to track the sale of drugs. The notebooks, or “score sheets” set out a running total of what was owed to the “food boss”.

[6] B.S. was 16 years old at the time of these offences, and is now 17 years old.

C. SENTENCING

C.1 Aggravating Factors

[7] The amount of drugs seized, being close to half a pound of crack cocaine with a street value of \$35,000, and over two pounds of marijuana with a street value of somewhere between \$7,000 and \$20,000, is aggravating. That amount along with cash in excess of \$7,000, clearly establishes that this was a commercial crack cocaine and marijuana trafficking operation; I am not dealing with a street level trafficker

here, or social trafficking. B.S. was involved in the business of cocaine and marijuana trafficking and distribution, and was not at the bottom of the chain of distribution, but was a “food boss” as Cst. Mellville described him, had others working and distributing these drugs for him. Not only is the offence of trafficking or possession for the purpose of trafficking very serious, but these are highly aggravating circumstances of this serious offence.

C.2 Section 39(1) of the *Youth Criminal Justice Act*

[8] Sentencing a young person to jail, or as the *Youth Criminal Justice Act (YCJA)* refers to it, to custody, cannot be done lightly. Section 39 of the *YCJA* sets out the circumstances where a Youth Justice Court can consider custody: for violent crimes, or when a young person has not complied with previous non-custodial sentences, or has a previous record indicating a pattern of criminal behaviour – none of those situations apply here. But s. 39(1)(d) of the *YCJA* states that custody can be considered:

In exceptional situations where the young person has committed an indictable offence, the aggravating circumstances of the offence are such that the imposition of a non-custodial sentence would be inconsistent with the purpose and principles set out in section 38.

[9] For the following reasons I find that s. 39(1)(d) is applicable in this situation. I find that imposing a non-custodial sentence would not reflect the seriousness or the aggravating circumstances in this case, and would be inconsistent with the purpose and principles of sentencing set out in the *YCJA*.

[10] Trafficking in cocaine, or possession of cocaine for the purpose of trafficking, is a very serious offence. So serious, in fact, that the maximum sentence for that offence is imprisonment for life. That maximum sentence reflects the gravity of the offence. That is not the maximum sentence when I am dealing with a youth, but it is important that B.S. realize the seriousness of the offence that he has committed.

C.3 The Harm done to Victims and the Community

[11] One of the principles of sentencing set out in the *YCJA* is that a sentence should promote a sense of responsibility in the young person, and an acknowledgment of the harm done to victims and the community.

[12] It is sometimes said that drug offences are victimless crimes, that those who commit offences against the *Controlled Drugs and Substances Act (CDSA)* are only hurting themselves or, in the case of trafficking, those who choose to use the drug. This attitude belies the terrible harm caused by trafficking in cocaine, the fact that trafficking in illicit substances is a parasitic lifestyle, that those who choose to traffic in cocaine or other illicit substances are living off the addictions of those they traffic to, are making a profit off people who are slowly destroying their lives.

[13] Many Courts have recognized the harm done by those who traffic in cocaine. And it is important that B.S. realize and understand the harm he has done:

This [trafficking in cocaine] is not a victimless crime; it cripples many, and spawns other serious crimes. ... It is a crime of greed, not of poverty. *R. v. Thompson* (1989), 98 A.R. 348 (C.A.)

Cocaine is a very dangerous drug, it is highly addictive, and its use has significant direct and indirect harmful effects on society. ... It causes social devastation. *R. v. Overacker*, [2005] A.J. No. 855 (C.A.)

The illegal cocaine trade that has flourished in this jurisdiction in the past several years has added yet another negative dimension to the many social problems that are endemic in our northern communities. We already have serious and widespread abuse of alcohol, appalling levels of domestic violence, and the highest crime rates in the country.

Those persons who supply cocaine, who traffic in cocaine, who facilitate cocaine transactions, are preying upon the weak members of the community who are addicted to the drug. There is a snowball effect of crime in the community when the purchasers at the street-level themselves commit other crimes or get themselves involved in other

harmful conduct in order to satisfy their addiction. ... This is not an illegal activity that has no victims. *R. v. Blake*, 2003 NWTSC 28

We have cases come into court all the time of people whose lives have been devastated by cocaine, either because they are users themselves or because they have suffered violence or family breakdown because of someone else using it. The only people who want cocaine here in the north are the people who want to make money from it, which really means making money off other people's tragedy and misfortune.

...

The community as a whole suffers from this activity. *R. v. Woledge*, (2005) NWTSC 55

One might add that trafficking in cocaine (and methamphetamine and ecstasy) is a scourge in our society. The toxic affects of these highly addictive drugs ruins the lives of people from all backgrounds, particularly the young, many permanently. The seriousness of such crimes cannot be minimized and must be reflected in the sentence imposed. ... *R. v. Chan*, [2005] A.J. No. 443 (Q.B.)

There is a cost in trafficking of drugs to thousands of members of society, both to individuals and to society as a whole. The cost in human dignity, in medical costs, in the effect on individuals who have nothing -- have never been involved in this situation directly creates a colossal problem in our society today. In my opinion drug traffickers are the scourge of society. *R. v. Andrews*, [1996] M.J. No. 127 (C.A.)

[14] It is important that B.S. realize that if he were to be sentenced as an adult he would be facing a significant penitentiary sentence.

[15] But he was not an adult when he committed these offences, and different sentencing considerations apply when sentencing young people. Rehabilitation has to be first and foremost in my mind when attempting to craft an appropriate sentence. If the sentence I impose today along with whatever B.S. hopefully will learn from this experience, results in him becoming a productive member of the community, then all of us will be better off, will be safer, and hopefully B.S. will become a

responsible young man who can contribute to the community. That is the ultimate goal in sentencing when dealing with young people, and it is better to err on the side of optimism, and express hope for young people, and do everything possible to encourage B.S. to do something that he can be proud of, that his family can be proud of.

C.4 Purpose and Principles of Sentence

[16] Section 38(1) of the *YCJA* states:

The purpose of sentencing ... is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.

[17] For a sentence to have meaningful consequences to a young person, the sentence must not only reflect the needs or the circumstances of the young person, but has to also reflect the circumstances of the offence. I recognize the increased importance of rehabilitation and reintegration back into the community when dealing with young people, however, if a sentence does not reflect the seriousness of an offence, it cannot foster a young person's rehabilitation, and in fact may foster a sense of contempt for the system, may encourage young people to believe that they are immune from criminal sanctions and that when they commit a crime, the consequences will be no more than a slap on the wrist so to speak. Such an attitude does not result in rehabilitation and successful reintegration of young persons into the community, and it can be a dangerous attitude to encourage.

[18] Somehow the sentence I impose today has to bring to B.S.'s attention the seriousness of the situation, the seriousness of this offence, and the harm that he is causing. Meaningful consequences have to encompass at least that, to reinforce community values without negatively affecting B.S.'s likelihood of rehabilitation.

[19] The sentence B.S. receives has to make him realize the seriousness of these offences, and bring home to him the fact that if he continues in this business and is back before the court for this type of crime as an adult, he will be facing serious consequences.

[20] Furthermore, the sentence must be proportionate to the seriousness of the offence and B.S.'s degree of responsibility for that offence; must be the least restrictive sentence that will promote accountability, rehabilitation, reintegration, and a sense of responsibility; and take into account B.S.'s degree of participation, reparations made to the community, time spent in detention, prior findings of guilt, and finally, aggravating and mitigating circumstances.

[21] Whereas sentencing is always the most difficult part of any criminal case, sentencing in this case, in dealing with a young person who has committed a very serious offence is particularly difficult. The sentence I impose should be first and foremost rehabilitative. It should discourage B.S. from pursuing this lifestyle. I can only hope that B.S. has or will come to realize the harm he is doing, and the path he was on, and where that leads. If he continues with this activity, it will be a terrible waste of his potential. B.S. will be eighteen this September, and hopefully before then he will realize that this activity, no matter what the profits, is not worth the risk. It would be a waste of his potential if he fails to recognize the seriousness of this type of activity and ends up in adult court on similar charges.

[22] I can only try to somehow instill in B.S. that he has to stop this activity, he has to realize the harm it does, and acknowledge his responsibility for that. I am hopeful that with his family's support, and as he matures, that he will use his strengths and abilities to become the person that he has the potential to become.

C.5 Consideration of other Cases

[23] Sentencing cases, while helpful, are also limited in the assistance that they can offer as each case is different, and each offender is different. This is even more pronounced when dealing with young persons where the primary sentencing objective is rehabilitation and reintegration back into the community. That being said, it is helpful to consider what other courts, and other jurisdictions, have done, and how a problem or a case has been approached.

[24] The Crown submitted that *R. v. A.T.*, 2004 ABPC 91, sets the “ceiling” for sentencing in this case, being a 4 month deferred custody and supervision order. With respect, I do not agree. The circumstances of the offence that A.T. was sentenced for were less aggravating than those that B.S. finds himself facing. A.T. was one of ten “employees” who distributed drugs for M.T.T., and while M.T.T. was in a far more serious situation than B.S., A.T. was not. A.T. was a street level trafficker who sold primarily to homeless people, and had pleaded guilty to trafficking. Whereas A.T. was a trusted employee and had access to the stash house, it was not a case where A.T. was being sentenced for possession of the large quantity of drugs that were in the stash house

[25] In the case of *R. v. B.L.*, 2013 SKPC 56, the court imposed a 6 month deferred custody and supervision order. B.L. was in possession of 76 grams of cocaine, which the court found to be significant, but was far less than B.S. was in possession of in this case; B.L. was found to be running a fairly unsophisticated cocaine trafficking operation being conducted out of the back seat of a vehicle, which were circumstances not nearly as serious as the operation that B.S. was involved in. Further B.L. was a street level trafficker while B.S. was higher up the distribution chain. All in all, B.S.’s circumstances are more aggravating than the circumstances in *B.L.*

[26] In the case of *R. v. L.B.*, 2007 BCPC 457, L.B. was convicted after trial of possession of cocaine for the purpose of trafficking, being part of a dial-a-dope scheme and was found to be a street level dealer “for someone else”. Again, circumstances I find far less serious than those of B.S. L.B. received a 6 month deferred custody and supervision order and 12 months’ probation.

[27] The case of *R. v. F.(J.)*, 2004 ONCJ 142, is a good example of how individualized sentencing is, especially in dealing with young people. J.F. pleaded guilty to trafficking in cocaine on 3 occasions at the ounce level. J.F. was seventeen years old, and had no prior record. There was significant evidence accepted by the court that rehabilitation had been achieved by the time of sentencing. A conditional discharge was imposed.

[28] Other cases submitted by the Crown were cases where the court held that section 39(1)(d) of the *YCJA* was not applicable, i.e. that a custodial sentence was not an option¹. I take no issue with those cases, but having found that s. 39(1)(d) is applicable in this case, those cases are all distinguishable.

[29] The Crown suggested, or was not aware of any young person receiving a custodial disposition for a drug trafficking offence in this jurisdiction. Having sat in Youth Justice Court for many years now, there have been cases where young persons have received actual sentences of custody for offences under the *CDSA*². It would be unfortunate if young people were under the mistaken belief that *meaningful consequences* are not imposed for trafficking in cocaine or other drugs in Northwest Territories.

¹ *R. v. J.D.Y.*, 2009 SKPC 104; *R. v. T.(C.S.)*, 2008 ONCJ 157; *R. v. C.D.J.*, 2005 ABCA 293

² One example being *R. v. B.B.*, NWT TC, October 28, 2009, unreported, Court File: YIYO 2009 000120; 18 month global sentence imposed for 2 counts of possession of cocaine [12 months and 6 months consecutive].

D. SENTENCE

[30] Taking into account that rehabilitation has to be a primary consideration in sentencing a young person, that this is the first time B.S. has been found guilty of an offence, and his circumstances as set out in the Pre-Sentence Report, along with the fact that B.S. has been in custody now for close to one month, and balancing that with the seriousness of the offences which he has been found guilty of, along with the aggravating aspects of the circumstances, I find that a custodial sentence would be appropriate. But also keeping in mind what B.S.'s uncle said on his behalf, "that we should see his future and not his past", I find that the goals and objectives of sentence could be met with the imposition of a deferred custody and supervision order.

[31] On each count, there will be a sentence of 6 months deferred custody and supervision, concurrent, followed by 12 months' probation.

B.E. Schmaltz
Territorial Court Judge

Dated at the City of Yellowknife,
Northwest Territories, this 15th day
of June, 2017

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