

Citation: *R. v. Le Diuzet*, 2022 YKTC 24

Date: 20220419
Docket: 21-00171
21-00154
20-00743B
20-11032
Registry: Whitehorse and
Dawson City
Heard: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Plemel

REGINA

v.

ADRIEN CHRISTOPHER LE DIUZET

Appearances:
Benjamin Eberhard
Gregory Johannson

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] PLEMEL T.C.J. (Oral): Crown and defence have filed a 21-page Admission of Facts outlining, among other things, events which give rise to the charges before the Court today.

[2] Adrien Christopher Le Diuzet has pleaded guilty to the following offences:

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On or between the 28th day of May, 2019 and the 25th day of February, 2020 at the City of Dawson, in the Yukon Territory, did by deceit, falsehood or other fraudulent means defraud Northern Industrial Sales of money exceeding five

thousand dollars, contrary to Section 380(1)(a) of the *Criminal Code*.

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COUNT #1: on or about the 7th day of January in the year 2021 at Whitehorse, Yukon Territory, did possess a substance included in Schedule I to wit: Cocaine for the purpose of trafficking, contrary to Section 5(2) of the Controlled Drugs and Substances Act.

Mr. Le Diuzet is jointly charged with two adult females and one adult male for this offence. I am advised that their charges are still pending.

Court File 21-00154, there are several counts on this Information. I am dealing with counts 2 and 4.

Count 2

On or about the 25th day of February in the year 2021 at the city of Whitehorse, in the Yukon Territory did have in his possession proceeds of property, to wit: Canadian currency of a value exceeding five thousand dollars knowing that all of the proceeds of the property was obtained by the commission in Canada of an offence punishable by indictment contrary to Section 354(1)(a) of the *Criminal Code*.

Count 4

On or about the 25th day of February in the year 2021 at the city of Whitehorse, in the Yukon Territory, did have in his possession a firearm, to wit: a shotgun, without being the holder of a licence under which he may possess it, contrary to Section 91(1) of the *Criminal Code*

[3] I begin with a summary of the facts in order of their occurrence.

Facts

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[4] While Mr. Le Diuzet was working in Dawson City as a manager of Northern Industrial Sales, he defrauded his employer of \$31,652.62 through various means. The business records reflect that this occurred between May 28, 2019 and February 25, 2020. The fraud was discovered by the manager of the business who replaced Mr. Le Diuzet. He reported it to the RCMP, who conducted an investigation which resulted in the laying of this charge.

[5] Since then, he has paid some of the money back and continues to do so. On March 11, 2022, counsel advised the Court that the balance owing was \$15,585.04.

[6] Crown and defence are in agreement that an appropriate sentence for this offence is a suspended sentence or perhaps one day time served followed by two years probation with the main condition being that he continue to make payments until the full amount of the fraud is repaid.

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[7] Mr. Le Diuzet advises that though he used cocaine on occasion before moving to Dawson City, it was while working there that it became a problem for him and he used it every day over a six- to eight-month period.

[8] On January 7, 2021, while under police surveillance, Mr. Le Diuzet was observed to make three short duration meets with people and vehicles in the Whitehorse area

before returning to a residence. At the time, police were in the process of drafting a search warrant for that residence which he and others occupied.

[9] On one of the short stops that day, he was observed exchanging something with a man who was on foot. Police believed they had witnessed a drug deal and arrested the other male for possession of a controlled substance. After transporting that person to the Arrest Processing Unit (“APU”) on an outstanding warrant, they stopped the vehicle being driven by Mr. Le Diuzet and arrested him for possession for the purpose of trafficking. They searched him and located on his person, among other things; a phone, \$690 in Canadian currency, and a plastic bag with multiple plastic twists of cocaine. A second phone was found on the driver’s seat.

[10] A female passenger was also arrested and placed in the back seat of the police vehicle. Later, after processing her at the APU, they found a small ball of cocaine in the seat where she had been sitting, which was not there before she entered.

[11] Meanwhile, there had been other activity at the residence which resulted in the arrest of an adult male and a male youth who was under the age of 18. The youth left the residence with a grocery bag and got into a taxi, which was subsequently stopped by police. The bag in the youth’s possession was found to contain multiple boxes of Ziploc baggies, a small scale, and approximately 1.25 kilograms of cocaine.

[12] In the Admission of Facts, at para. 73, it is agreed that:

In addition to the cocaine located by RCMP upon his arrest, Mr. Le Diuzet jointly or, in the alternative, constructively possessed the 1.25kg of cocaine seized from [the youth] and had the intention to traffic this cocaine

as part of a joint venture to traffic all of the cocaine seized by RCMP in this investigation. ...

[13] At the residence, police arrested two of Mr. Le Diuzet's co-accused for trafficking. They were Paul Louis William Middleton and Havanna Lynn Rose Papequash. Approximately two ounces of cocaine were in plain view on a table when police entered, pieced into gram and one-half grams, and located in individual baggies. The residence was secured.

[14] The next day, while two police officers were guarding the house, Christine Denechezhe arrived. She was also arrested for trafficking a controlled substance and transported to the APU. That day, January 8, 2021, several items were seized by police from a bathroom and closet off Christine Denechezhe's bedroom, including three bags of crack cocaine, a glass vial with several unknown white pills, three bags of various unknown pills, a vacuum sealer, and \$34,315 in Canadian currency. Among items seized from other locations in the residence were binders of score sheets, mail addressed to Mr. Le Diuzet and three other individuals, digital scales, a crack pipe, a video surveillance base station, three bags of cutting agent, multiple LSD tabs, mushrooms, a bag with several rocks of crack cocaine, a razor blade, a vacuum sealer, and a mortar and pestle, which tested positive for cocaine.

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[15] After his release on the January 7, 2021 offence, Mr. Le Diuzet was arrested on February 25, 2021, while he was again under police surveillance. A small amount of crack cocaine was found in the car he occupied. He was again charged with trafficking,

but that charge is not being dealt with by the Court at this time. A shotgun was located in a rifle scabbard in the backseat of the car. There was no ammunition in the car. He admits that he did not have a licence to possess that firearm, which is the subject of Count 4 on this court file.

Sentencing Positions of Crown and Defence

[16] A search of the residence the accused occupied with others was subsequently conducted on February 25, 2021. Inside, the police located approximately \$8,700 in Canadian currency, which Mr. Le Diuzet admits was his and that it was proceeds of crime referred to in Count 2.

[17] As previously mentioned regarding the fraud charge, Crown and defence agree that a suspended sentence or a sentence of one day time served followed by probation would be appropriate. They both agree that the main condition should be full restitution to the victim.

[18] Crown and defence could not agree on sentences for the offences of January 7 and February 25, 2021. They referred to cases to support their respective positions.

[19] The Crown urges the Court to impose a sentence of two years less a day followed by two years probation with appropriate terms. As aggravating factors, the Crown refers to the seriousness of trafficking in cocaine and the resultant harm to individuals and communities; the total amount of cocaine involved, which is 1.9 kilograms; the fact that isolated northern communities are particularly vulnerable; and

the sophisticated circumstances of this case as demonstrated by the use of scales, score sheets, cutting agents, and the “dial-a-dope” features involved.

[20] Defence, on the other hand, argues that an appropriate sentence would be time served followed by probation of up to two years. Mr. Le Diuzet’s counsel advises, and I accept, that the accused was on remand for 132 days as a result of these charges and with enhanced credit of 1.5 days for each day served, that is equal to 198 days. He states that Mr. Le Diuzet has been doing very well in the community in recent months, as shown in his favourable Pre-Sentence Report; a letter from his Bail Supervisor dated March 10, 2022; a report from the Assistant Program Manager for the Supervised Residential Housing and Reintegration Program (“SHARP”), where Mr. Le Diuzet currently resides; and letters of support from his current employer. As well, his parents have written a letter indicating their support of Mr. Le Diuzet.

[21] It is appropriate for me to consider the court-ordered conditions that he has been required to follow while on release in the community (see *R. v. Downes*, 79 O.R. (3d) 321 (C.A.), referred to me by defence counsel; *R. v. Nghiem*, 2009 BCCA 170; *R. v. L.I.*, 2017 BCCA 444; and *R. v. Lever*, 2014 SKCA 58).

[22] In Mr. Le Diuzet’s case, his release conditions have been very stringent.

Sentencing

[23] It appears that Mr. Le Diuzet is doing his best to leave this dark chapter of his life behind and has full intentions to never get involved in the trafficking of illicit drugs again.

[24] The Pre-Sentence Report indicates Mr. Le Diuzet is 33 years of age. He does not have a prior criminal record.

[25] Since his latest release from custody on August 3, 2021, Mr. Le Diuzet's Bail Supervisor reports that he has not breached any conditions of his release and there have been no known compliance issues. He has been residing at the Connective Support Society, previously known as the John Howard Society, at SHARP. The residence was, at one time, one of the custodial units at the Whitehorse Correctional Centre. The primary purpose of SHARP is to provide a structured and safe environment for men in the criminal justice system to reintegrate back into society. The Assistant Program Manager of SHARP has provided a letter, dated March 10, 2022, in which she writes that conditions in place for Mr. Le Diuzet include:

... being on 24-hour house confinement, meaning he only has allotted time in the community in which he requires written permission from his bail supervisor. At the beginning of Mr. Le Diuzet's transition, his time was limited to a few hours in a week. Other conditions imposed have also been no access to internet or use of phones unless under SHARP staff supervision. ... It should be acknowledged that as he has positively progressed during his time at SHARP, Mr. Le Diuzet has earned more freedom within his bail order such as being permitted to maintain a full-time job offsite and more time out in the community to attend to personal activities.

[26] Mr. Le Diuzet's Bail Supervisor also reports that he has been employed with Yukon Nissan since January 3, 2022, where he works Monday through Saturday from 7:30 a.m. to 5:00 p.m. The General Manager of that business and Mr. Le Diuzet's Supervisor have both provided letters stating that in his short time working there, his service has been exemplary. He was forthcoming with them about his outstanding

charges. They speak about him having a successful, secure role with the company for years to come, should he desire that.

[27] Mr. Le Diuzet is well aware of the dangers of illicit drugs. In June 2020, his then girlfriend died of a fentanyl overdose while she was sleeping in a bed beside him.

[28] Cocaine is a dangerous and addictive drug, and the penalty for its possession for the purpose of trafficking is dealt with in s. 5(3) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 (the “Act”). It is an indictable offence and carries with it a potential term of life imprisonment. There is no minimum sentence however, unless it relates to or is for the benefit of a criminal organization.

[29] I consider it an aggravating factor that Mr. Le Diuzet was in constructive possession of cocaine which was seized from the youth. I take into consideration, however, that it appears the youth was more closely associated with one of the other occupants of the residence and that the Admission of Facts does not state that he was using this youth’s services to distribute drugs.

[30] Crown and defence have filed materials and cases in support of their respective sentencing positions. I have reviewed them and many others in deciding on a suitable sentence for Mr. Le Diuzet.

[31] Cases referred to by the Crown are:

R. v. Turner, 2006 NWTSC 64;

R. v. Carelse-Brown, 2013 ONSC 7042;

R. v. Kenyon, 2008 CanLII 30304;

R. v. Cole, 2017 ONSC 138;

R. v. Ceballos, 2015 ONSC 720; and

R. v. Lecompte, 2012 ONSC 2170.

[32] Counsel for Mr. Le Diuzet argued that society's attitudes on illicit drugs and how to deal with offenders who may themselves be addicted have changed and this change has been reflected in reported cases from the Yukon and other Canadian jurisdictions.

[33] By way of example, he refers to:

R. v. Aguilera Jimenez, 2019 YKTC 42;

R. v. Figueroa, [2019] O.J. No. 5693 (ONCJ); and

R. v. Ellis, 2021 BCPC 280.

In these cases, as defence counsel points out, suspended sentences were imposed for trafficking of illicit drugs. Defence counsel also cites *R. v. Dodman*, 2021 ONCA 543, in support of his position that Mr. Le Diuzet's strict bail conditions are a factor the Court should consider in deciding an appropriate sentence.

[34] The purposes and principles of sentencing are outlined in s. 718 of the *Criminal Code*. I find that the primary purpose of sentencing Mr. Le Diuzet for possession for the purposes of trafficking cocaine on January 7, 2021, is to denounce

his unlawful conduct and the harm it has done to victims and the community of Whitehorse.

[35] Another purpose of today's sentence is to deter him and others from committing similar offences. These are also the principal purposes for sentencing him for possession of Canadian currency on February 25, 2021, knowing that it was obtained by trafficking in illegal drugs.

[36] Section 10 of the *Act* reads as follows:

10 (1) Without restricting the generality of the *Criminal Code*, the fundamental purpose of any sentence for an offence under this Part is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation, and treatment in appropriate circumstances, of offenders and acknowledging the harm done to victims and to the community.

[37] I am satisfied that a jail sentence is required and appropriate in this case. I am also satisfied that the serving of this sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purposes of sentencing set out in s. 718 to 718.2 of the *Criminal Code*, as well as s. 10 of the *Act*. Section 5(1) of the *Act* is not one for which a conditional sentence of imprisonment is available; however, s. 354(1)(a) of the *Criminal Code* is.

Sentence

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[38] The sentence for possession of the Canadian currency on February 25, 2021, and possession of the firearm is a sentence of 18 months' imprisonment concurrent on

each. However, due to the progress he has made following strict bail conditions, I am satisfied that the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in s. 718 to 718.2 of the *Criminal Code*. I therefore order that Mr. Le Diuzet serve an 18-month sentence in the community on a conditional sentence order.

[39] The conditions of that order are that he:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;
3. Report to a Supervisor at 301 Jarvis Street, Whitehorse, Yukon Territory, within two (2) working days, and thereafter, when required by the Supervisor and in the manner directed by the Supervisor;
4. Remain within the jurisdiction of the court unless written permission to go outside of the jurisdiction is obtained from the court or the Supervisor;
5. Notify the court or the Supervisor in advance of any change of name or address, and promptly notify the court or Supervisor of any change of your employment or occupation;
6. Have no contact directly or indirectly or communication in any way with Christine Angelique Denechezhe, Havanna Papequash, Courtney Alfred, Paul Fraser, or Paul Middleton, and not be in their residences or yards;

7. Reside at Connective Support Society, and specifically at SHARP, 25 University Drive, Whitehorse, Yukon Territory, and abide by the rules of the approved residence and not change that residence without the prior written permission of your Supervisor;
8. At all times, remain inside your approved residence or on the property at Connective Support Society, and specifically at SHARP, except with the prior permission of your Supervisor or the court for the purposes of attending counselling, the Canada Games Centre, or other pro-social activities which are not to exceed two hours per day, except for the purposes of employment approved in advance by the court or your Supervisor.
9. Not possess any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, or explosive substance.
10. Not possess or use any cell phone, smart phone, other mobile electronic device, except with the prior written permission of your Supervisor or except while on the premises of SHARP or while at work at the business premises of Yukon Nissan; and
11. Disclose the record of cell phone communications to your Supervisor within a week of receipt of your monthly statement.

[40] On this court file, 21-00154, I also make the following ancillary orders.

[41] Pursuant to s. 110(1) of the *Criminal Code*, you are prohibited from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, or explosive substance, or all such things for a period of 10 years.

[42] Pursuant to s. 491(1)(b) of the *Criminal Code*, the shotgun seized and detained by the police is forfeited to Her Majesty and shall be disposed of as the Attorney General directs.

[43] Pursuant to the *Criminal Code* and the *Act*, appropriate authorities are authorized to take the number of bodily substances that are reasonably required for forensic DNA analysis. You are to report to the Whitehorse detachment of the RCMP by April 25, 2022 — in other words, within the next week — to provide these samples or to have them tell you when the samples are to be taken. This order is to remain in effect until executed.

[44] Pursuant to s. 16 of the *Act*, the property of Mr. Le Diuzet which was related to the commission of this offence and seized by the police is forfeited to Her Majesty in the right of Canada to be disposed of or otherwise dealt with in accordance with the law by the member of the Queen's Privy Council for Canada as designated by the Governor in Council for that purpose. To be clear, this includes the estimated \$8,700 seized by the RCMP on or about February 26, 2021, as stated at page 19, at para. 121, of the Admission of Facts.

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[45] The sentence for possessing cocaine for the purposes of trafficking contrary to s. 5(1) of the *Act* is 198 days time served plus a term of probation of two years, which begins today.

[46] The conditions of the probation order will mirror many of the conditions on his conditional sentence order. They are as follows, that you:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;
3. Report to a Probation Officer at 301 Jarvis Street, Whitehorse, Yukon Territory, within two (2) working days, and thereafter, when required and in the manner required by the Probation Officer;
4. Remain within the jurisdiction of the court unless written permission to go outside of the jurisdiction is obtained from the court or the Probation Officer;
5. Notify the court or the Probation Officer in advance of any change of name or address, and promptly notify the court or Probation Officer of any change of your employment or occupation;
6. Have no contact directly or indirectly or communication in any way with Christine Angelique Denechezhe, Havanna Papequash, Courtney Alfred, Paul Fraser, or Paul Middleton, and not be in their residences or yards;

7. Reside at Connective Support Society, and specifically at SHARP, 25 University Drive, Whitehorse, Yukon Territory, and abide by the rules of the approved residence and not change that residence without the prior written permission of your Probation Officer;
8. At all times, remain inside your approved residence or on the property at Connective Support Society, and specifically at SHARP, except with the prior permission of your Probation Officer or the court for the purposes of attending counselling, the Canada Games Centre, or other pro-social activities which are not to exceed two hours per day, except for the purposes of employment approved in advance by the court or your Probation Officer;
9. Not possess any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, or explosive substance;
10. Not possess or use any cell phone, smart phone, other mobile electronic device, except with the prior written permission of your Probation Officer or except while on the premises of SHARP or while at work at the business premises of Yukon Nissan;
11. Disclose the record of cell phone communications to your Probation Officer within a week of receipt of your monthly statement; and

12. Attend and actively participate in all assessment and counselling programs as directed by your Probation Officer, and complete them to the satisfaction of your Probation Officer, for substance abuse and provide consent to release information to your Probation Officer regarding your participation in any programs you have been directed to do pursuant to this condition.

[47] The ancillary conditions that I imposed on the previous court file also apply to this one. Just to be clear, I will repeat them.

[48] Pursuant to the *Criminal Code* and the *Act*, appropriate authorities are authorized to take the number of bodily substances that are reasonably required for forensic DNA analysis. You are to report to the Whitehorse detachment of the RCMP by April 25, 2022, to provide those samples or to have them tell you when the samples are to be taken. This order is to remain in effect until executed.

[49] Pursuant to s. 16 of the *Act*, the property of Mr. Le Diuzet which was related to the commission of these offences is forfeited to Her Majesty in the right of Canada to be disposed of or otherwise dealt with in accordance with the law by the member of the Queen's Privy Council for Canada as designated by the Governor in Council for that purpose.

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[50] On this offence of fraud, I suspend the passing of sentence and place Mr. Le Diuzet on probation for a period of two years to pay Northern Industrial Sales of

Dawson City the balance remaining to be paid on the fraud of \$31,652.52. I understand that he has paid back in excess of \$9,780 of that amount. Normally, I would have him pay the balance into court in trust for the victim but as I have not been given the total amount currently owing, he is to continue paying the victim directly until the full amount is paid.

[51] That concludes sentencing in this case.

[DISCUSSIONS]

[52] I am not imposing the surcharges in this case because I believe it would amount to an undue hardship making it very difficult for Mr. Le Diuzet, if not impossible, for him to pay them and still comply with the other conditions that are imposed here.

PLEMEL T.C.J.