

Citation: *R. v. Asuchak*, 2010 YKTC 41

Date: 20100406  
Docket: 08-00397A  
09-00701  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**

Before: His Honour Judge Cozens

REGINA

v.

RONALD ASUCHAK

Appearances:  
Peter Chisholm  
Malcolm Campbell

Counsel for the Crown  
Counsel for the Defence

**REASONS FOR SENTENCING**

[1] COZENS T.C.J. (Oral): Ronald Asuchak has entered guilty pleas to having committed offences contrary to s. 5(2) of the *Controlled Drugs and Substances Act*, 129(a) of the *Criminal Code* and s.733.1(1) of the *Criminal Code*.

[2] The circumstances of the most serious of these offences, the s. 5(2), as well as the other offences are set out in an Agreed Statement of Facts that was filed with the Court. I will not repeat that in detail. Suffice it to say that an RCMP investigation brought Mr. Asuchak and a Ms. Janet Richards to their attention as possible distributors of cocaine. The police acted on that information and on December 16th attempted to arrest Mr. Asuchak after he had left his hotel room. He, however, did not comply with

the direction from the RCMP and left in his vehicle at a high rate of speed, thus making out the s. 129 offence.

[3] Subsequently, the RCMP were able to enter the hotel room and also deal with Mr. Asuchak, who turned himself into the RCMP shortly afterwards, and, briefly, some items pertinent to the use of cocaine were found inside the room: syringes, a small rock of crack cocaine, and a wine glass that had 2.1 grams of cocaine residue scraped from it. Mr. Asuchak also told the police that he would sell two and a half to three eight-balls of cocaine a day and that he had hidden \$200 worth of cocaine when he evaded the police attempt to arrest him.

[4] The other offence, the s. 733.1(1), was made out when he failed to report to his Probation Officer upon his release from custody.

[5] There is a joint submission before me today for a sentence of ten months for these three offences, a suggestion that it be eight months for the s. 5(2) and one month consecutive for each of the other two offences.

[6] Mr. Asuchak's criminal record is somewhat dated, unrelated for the earliest offences, but of some significance is a conviction before me in April 2009 for a s. 5(2) offence for which he received ten and a half months of jail as a sentence. That involved a significant amount of cocaine, 50 grams, or in excess of 50 grams.

[7] The guilty plea was entered on the first day set for trial; however, arrangements had been made well in advance of the trial date to resolve this matter. So I have no problem treating it as a guilty plea, for which he receives some benefit.

[8] He is a cocaine addict. There was a pre-sentence report filed before the Court when he was sentenced in April 2009, and I am familiar with the details of that report.

[9] I have no problem with the joint submission. I have considered the cases filed by counsel, *R. v. Smarch*, 2008 YKTC 18, *R. v. Miller*, 2009 YKSC 36, *R. v. James*, 2009 YKTC 43, and *R. v. Webb*, 2003 YKTC 95, and accede to the joint submission.

[10] The sentence will be eight months on the s. 5(2) offence, of which five and a half months can be credited for his time in pre-trial custody. That leaves two and a half months on that offence. There will be an additional one month consecutive for the s. 129 offence and one month consecutive for the s. 733.1 offence. That adds up to ten months.

[11] There will be a period of probation of six months. Either Mr. Asuchak will take advantage of his opportunities to deal with his drug addiction problem while in custody and shortly thereafter, or he will not. That is why it is a shorter probation order, to give him the opportunity to involve himself in any counselling and supports that are available to him to help him deal with this addiction problem.

[12] The terms will be:

1. To keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. Notify the Court or Probation Officer in advance of any change of name or address and promptly notify the Court or Probation Officer of any change of employment or occupation;

4. Report to a Probation Officer within two working days upon your release from custody and thereafter when and in the manner directed by the Probation Officer;
5. Reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;
6. Take such alcohol and drug assessment, counselling or programming as directed by your Probation Officer;
7. Provide your Probation Officer with consents to release information with regard to your participation in any programming or counselling you have been directed to do pursuant to this probation order.

Those are the only terms on the probation order.

[13] The victim fine surcharges will be waived in the circumstances.

[14] MR. CHISHOLM: Your Honour, the only matter to be dealt with, as you're aware from the facts of the case, there is a co-accused in this matter. I understand that she has entered a guilty plea to the s. 5(2) charge as well, and if I may just have a moment to confirm when she'll be sentenced. It looks like the matter at least is back in Court tomorrow, but considering she's entered a guilty plea, I think that at this point in time I'll ask that the items seized by the RCMP be forfeited pursuant to s. 16 of the *Controlled Drugs and Substances Act*.

[15] THE COURT: No issue. There will be an order that these be forfeited.

[16] The remaining counts then, were they stayed?

[17] MR. CHISHOLM: No, but as against Mr. Asuchak, I'll direct a stay of proceedings.

[19] THE COURT: Right. Only with respect to the co-accused will they remain.

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COZENS T.C.J.

**CORRIGENDUM  
RELEASED APRIL 13, 2010**

1. This Corrigendum is issued with respect to my Ruling pronounced April 6, 2010.
2. This is Mr. Asuchak's second conviction under s. 5(2) of the *Controlled Drugs and Substances Act*. As such, pursuant to s. 109(1), (2) and (3) of the *Criminal Code of Canada*, he is prohibited from possessing any firearm, prohibited firearm, restricted firearm, cross-bow, prohibited weapon, restricted weapon, ammunition, prohibited ammunition, prohibited device and explosive substance for life.

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COZENS T.C.J.