

Citation: *R. v. Carr*, 2009 YKTC 65

Date: 20090605
Docket: 08-00644
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

REGINA

v.

SEAN KEVIN CARR

Appearances:
Ludovic Gouaillier
Elaine Cairns

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): Sean Kevin Carr has entered pleas of guilty to the following offences:

Count #1: On or about the 17th day of December, 2008, at or near Whitehorse, Yukon Territory, did unlawfully commit an offence in that: he did unlawfully 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.

Count #2: On or about the 17th day of December, 2008 at or near Whitehorse, Yukon Territory did unlawfully commit an offence in that: [he] did have in [his] possession property to wit: money of a value exceeding five thousand dollars, knowing that all 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 #3: [On or] between the 11th day of December and the 13th day of December, 2008, at or near Whitehorse, Yukon Territory, did unlawfully commit an offence in that: he did traffic in a substance included in Schedule I, to wit: Cocaine, contrary to Section 5(1) of the Controlled Drugs and Substances Act.

[2] In December of 2008, Whitehorse police conducted an undercover operation wherein a police officer, posing as a drug user, attempted to purchase drugs. On December the 11th, the undercover officer spoke to one John Walter Smarch about buying a gram of cocaine at an agreed price of \$125. Mr. Smarch, using the officer's cell phone, placed a call to arrange for the delivery of the cocaine. The accused, Sean Kevin Carr, later arrived and supplied Mr. Smarch with cocaine. Mr. Smarch then gave 0.4 grams of cocaine to the officer.

[3] On December 13th, the officer called the same telephone number Mr. Smarch had used and succeeded in reaching Mr. Carr. Mr. Carr and the officer agreed to meet. The meeting place turned out to be Mr. Carr's home and they had a discussion on the front steps. The officer complained about being short-changed by Mr. Smarch. Mr. Carr expressed some reluctance to transmit further business at his home but eventually produced a gram of cocaine for which he received \$100 from the officer.

[4] On December 17th, the officer again contacted Mr. Carr by telephone. The pair agreed to meet at Starbucks. When Mr. Carr arrived, he was arrested. A subsequent search of his person produced 11 bags of cocaine, containing in total 5.5 grams of the drug.

[5] Subsequent to his arrest Mr. Carr provided a statement to police. Based on their

prior investigation and this statement, a search warrant was obtained for Mr. Carr's residence. A search of the home revealed 819 grams of cocaine, much of it already divided into one-gram baggies, and some \$30,000 in cash, including the two \$100 bills the officer had used to purchase cocaine on December 11th and December 13th. Also seized were some drug-trafficking paraphernalia and a small quantity of marihuana.

[6] Mr. Carr is 39 years of age and is a member of the Tr'ondek Hwech'in First Nation. He currently lives common-law, and the couple have one young daughter. Mr. Carr and his partner each have two older children as well.

[7] Mr. Carr has a serious prior criminal record. It contains 26 prior entries. Of particular note are eight prior drug trafficking convictions, including 1998 convictions on five counts of conspiracy to traffic; however, as has been pointed out, there are no entries on his record since the year 2000.

[8] Mr. Carr reports a history of heroin addiction and blames this for his past drug-trafficking record. He says that after his last incarceration he obtained a gas fitting ticket and worked relatively steadily in that field for a number of years. He further claims that he returned to trafficking not because of addiction but because an old drug debt was being called in and he was attempting to raise money to pay it off by trafficking cocaine.

[9] The aggravating factors in this case are obvious. They include Mr. Carr's serious and related criminal record, the type of drug involved and the substantial amount of drugs and money uncovered, which clearly establish that Mr. Carr was engaged in a purely commercial operation, albeit at the street level, but nevertheless of a significant scale.

[10] On the other hand, it must be noted that Mr. Carr entered a guilty plea and was acknowledged to have been cooperative with the police after his arrest.

[11] I do not intend to review the cases in this jurisdiction dealing with commercial cocaine-trafficking. They are well-known. Both counsel agreed, as I do, that they establish a range of three to five years imprisonment in cases which might be said to be roughly equivalent to the present. Substantial terms of imprisonment are warranted in such cases because of the need to deter and denounce conduct which is so destructive to our community. To the extent possible, the courts must provide an antidote to the lure of easy money. In Mr. Carr's case, his extensive and related criminal record, coupled with the substantial quantity of drugs and money involved, clearly place his case toward the higher end of the range.

[12] In submissions on his behalf it was said that Mr. Carr is concerned about the effect of his incarceration on his wife and family. Unfortunately, the time for him to have been concerned about his family, and the families who would be touched by his drug-trafficking activities, was before, and not after, the commission of the offences.

[13] Having considered all of the factors and the cases cited by counsel, Mr. Carr, you are sentenced to a period of imprisonment of four years. You are entitled to credit for the time already spent in custody. I calculate this period as eight months, at the usual rate of 1.5 to one. Thus, there is a remanet of three years and four months left to be served.

[14] Surcharges will be waived.

[15] Pursuant to s. 109 of the *Criminal Code*, you are prohibited from having in your possession any firearm or restricted firearm, cross-bow, restricted weapon, ammunition or explosive substance during a period of ten years following your release from imprisonment; and you are prohibited from having in your possession any prohibited firearm, restricted firearm, prohibited weapon, prohibited device or prohibited ammunition for the remainder of your life.

[16] I further order and direct that the drugs, paraphernalia and money seized be forfeit to the Crown, pursuant to the provisions of the *Controlled Drugs and Substances Act* and the *Criminal Code*.

[17] The remaining counts?

[18] MR. GOUAILLIER: It'll be a stay of proceedings.

[19] THE COURT: Stay of proceedings.

[20] THE CLERK: Yes, Your Honour, perhaps Counts 4 and 5 have been -- have already been stayed.

[21] MR. GOUAILLIER: It's possible. If they weren't --

[22] THE CLERK: Thank you.

FAULKNER T.C.J.