

Citation: *R. v. Delafosse*, 2008 YKTC 82

Date: 20080612
Docket: 07-00458
07-00458A
07-00528
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

REGINA

v.

KEEFER PAUL DELAFOSSE

Appearances:
Jennifer Grandy
Elaine Cairns

Counsel for Crown
Counsel for Accused

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): In this case, Keefer Paul Delafosse has entered pleas of guilty to charges of trafficking in marihuana, contrary to s. 5(2) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, and a further charge of a breach of undertaking.

[2] The circumstances of the CDSA charge are that Mr. Delafosse was found by the RCMP in possession of approximately a pound of marihuana. Given the quantity of marihuana and given that he also had scales, baggies, and was receiving phone calls from prospective clients, there is no question whatsoever that Mr. Delafosse was engaged in commercial, albeit low level, trafficking in marihuana. From all of the

circumstances it can be inferred that he was engaged in what is often colloquially called a "dial-a-dope" sort of operation.

[3] The breach charge arose after his arrest on the drug matter and involved him breaching a condition of his undertaking which required him to report to a bail supervisor. It should be noted that after that failure he was ultimately arrested and served 13 days in custody prior to being again released on a rather compendious recognizance, which has now been in effect for a period of some seven months.

[4] Mr. Delafosse entered guilty pleas and has no prior record. The Crown indicated that it was suggesting a custodial sentence in the range of three to five months but conceded that a conditional sentence would be appropriate, having regard to the favourable pre-sentence report and Mr. Delafosse's performance on his recognizance that, as I have already indicated, has been in effect these last seven months.

[5] For the accused, Ms. Cairns argued that I should consider imposing a conditional discharge. In my view, in cases of drug trafficking, even trafficking in so-called "soft" drugs such as marijuana, it would not be in the public interest to impose a discharge save in exceptional circumstances, which I do not find to be present in the case at bar.

[6] There is, in my view, nothing in the material before me that takes this case out of the range of sentences which would customarily be imposed, and the range of sentence that would customarily be imposed is precisely the sort of range for which the Crown contends, or indeed even higher than the range for which the Crown contends.

[7] There are some reasons to mitigate the range of sentence. Certainly, I have

already mentioned the guilty plea and the lack of prior record, and certainly Mr. Delafosse's performance, not initially but latterly, on his release conditions is worthy of note.

[8] In my view, having regard to the circumstances of the offence but giving full credit for the fact that Mr. Delafosse has been compliant with his recognizance conditions, which were extremely strict, amounting virtually to house arrest, I am going to impose a sentence of imprisonment of four months. I will, however, allow that sentence to be served conditionally, subject to the following terms:

1. You will keep the peace and be of good behaviour.
2. You will report to the Court as and when required.
3. You will report within two working days to a conditional sentence supervisor and thereafter as, when and in the manner directed.
4. You will advise the conditional sentence supervisor in advance of any change of name or address and promptly notify him of any change of occupation or employment.
5. You will remain within the jurisdiction of the Court and not go outside of the Yukon without the prior written permission of your conditional sentence supervisor.
6. You will diligently seek and maintain employment and provide your conditional sentence supervisor with any information he requires in that regard.
7. You will reside where directed by the conditional sentence supervisor.
8. You will abide by a curfew by remaining within your place of residence

between the hours of 8:00 p.m. and 7:00 a.m. daily except with the prior written permission of your supervisor, or in the case of medical emergency. You must present yourself at the door or answer the telephone in response to curfew checks and your failure so to do will be a presumptive breach of this condition.

9. You will abstain absolutely from the possession or consumption of alcohol or controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner. You will provide samples of your breath or urine for the purpose of analysis upon demand by a peace officer or your conditional sentence supervisor if either has reason to believe you may have failed to comply with this condition.
10. You will take such drug assessment counselling and programming as directed by the conditional sentence supervisor.
11. You will not have in your possession any mobile communication device except with the written permission of your conditional sentence supervisor.

[9] Counsel, there was some reference in the recognizance and in the pre-sentence report to a no-contact with a Mr. Rousseau. I presume that was the gentleman --

[10] MS. GRANDY: At the second arrest --

[11] THE COURT: -- at the second arrest.

[12] MS. GRANDY: Yes.

[13] THE COURT: Any submissions on that?

[14] MS. CAIRNS: I'll just indicate that I spoke to -- or his counsel, Ms. Hill, approached me a short time ago and indicated that should a no-contact condition be proposed, she wished to advise me that Mr. Rousseau had indicated he did not seek it. He was not particularly desirous of a no-contact condition at this point, so it was not for his benefit, if that was what the Court was considering. So that was the information she conveyed to me.

[15] THE COURT: I was not thinking it was for Mr. Rousseau's benefit. I was --

[16] MS. CAIRNS: No, sometimes it is.

[17] THE COURT: Yes, well.

[18] MS. CAIRNS: So I just wished to advise the Court of that.

[19] MS. GRANDY: No, there is no suggestion that there was any pressure or otherwise to Mr. Rousseau. It was more for --

[20] THE COURT: He is an associate with whom he should no longer associate.

[21] MS. GRANDY: Exactly.

[22] THE COURT:

12. He will have no contact, directly or indirectly, with Skylar Rousseau.

13. Additionally, you are prohibited from having in your possession any firearm, ammunition or other related items as more compendiously set out

in s. 109 of the *Code*, for a period of ten years.

[23] I will order the forfeiture of the cell phone, the scales and the other paraphernalia that was seized, as well as the \$290 in cash.

[24] With respect to the breach charge, one day plus time served, which I calculate at 20 days. The surcharge on the controlled drugs and substances matter is \$100 with \$50 on the breach charge.

[25] MS. CAIRNS: Your Honour, 30 days time to pay?

[26] THE COURT: Thirty days time to pay.

[27] MS. GRANDY: Your Honour, if I could ask for the remaining charges to be marked as withdrawn, please?

[28] THE COURT: Any objection?

[29] MS. CAIRNS: No.

[30] THE COURT: Withdrawn at the request of the Crown.

[31] Mr. Delafosse, you need to be aware that a conditional sentence order is not like a probation order and it is not like a recognizance. It is a custodial sentence. If you breach it, you will be subject to being summarily arrested and the most likely result is that you will be committed to prison for the remainder of the sentence.