

Citation: *R. v. James*, 2009 YKTC 43

Date: 20090423
Docket: 08-00629
08-00632A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Maltby

REGINA

v.

TRISH JAMES

Appearances:
Eric Marcoux
Elaine Cairns

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] MALTBY T.C.J. (Oral): There are no routine cases in this Court but as far as the drug trafficking, this particular matter is similar to many others, the facts, in any event.

[2] In this case, on December 4 and 5, 2008, you were found to be selling crack cocaine to an undercover operator and offered to be able to get him further drugs, perhaps later on. It would appear that you were accessible and you were willing to provide this crack cocaine to an undercover operator. That, of course, is trafficking and trafficking is extremely serious.

[3] Crack cocaine is one of the most addictive of the drugs that is out there and it is one of the most destructive. I do not know if you have ever been to downtown Vancouver on Main and Hastings, around that area, and seen the forms that are walking around, apparently human beings, who are covered with scabs. They are like skeletons with skin over them. They are talking to something that does not exist. They are shells of their former selves. At one point they were human beings and they were probably given, to start with, and then bought, crack cocaine and probably other drugs.

[4] That is the reason the courts take these offences so seriously. For whatever reason that you were selling it, you were selling this drug to persons not caring about what it was going to do to them. You were caring about yourself, whether it is your addiction or your greed or whatever. In your case I understand and I accept that you are addicted to crack cocaine as well, but you did not care about those people. No drug dealers do. The ones higher up are in it for the money, and they make lots of money and they live off the backs of people like you.

[5] But you have responsibility; responsibility to society, to your family, who care about you, and your little brother who was there at one stage before you pushed him out of the way, or pushed the officer out of the way. But there comes a time when you have to take responsibility. I accept that you have taken responsibility by your guilty plea and that you have addressed your addiction or are addressing it, because, as I understand crack addiction, it is not an easy process.

[6] Quite frankly, being arrested may have saved your life by getting you detoxed and helping you on the way to recovery and making you realize that that is no life for a young woman. You will get old very fast with addiction.

[7] The aggravating factor in this particular case is the fact that it happened, there were two separate incidents, it was not one isolated incident. The amounts are not particularly large quantities of the drug and just, as I understand it -- I am just trying to see if I actually had the amounts. Did you give me the amount of the drugs that were --

[8] MR. MARCOUX: On December 4 there were five rocks and the weight was .3 grams.

[9] THE COURT: That is right.

[10] MR. MARCOUX: The second night was four rocks that were not weighed.

[11] THE COURT: It was supposed to be a gram, was it not?

[12] MR. MARCOUX: He asked for a gram, yes.

[13] THE COURT: And he paid for a gram, so it was something around a gram. Anyway, they are not major or high amounts but they are significant amounts. Also, as I said, the aggravating factors are it was not a one-time offence, and you hung out at the bars, or at least at these times, and made arrangements and sold this very addictive drug.

[14] There are a number of mitigating factors that make this fall within the low range of the sentence suggested by the Crown. You have no criminal record, you entered an early guilty plea, which shows your willingness to try and get this over with and try and deal with this matter, you are of First Nations origin, who have their own difficulties with addiction and other issues in the criminal justice system warranting special consideration under s. 718 of the *Criminal Code*. Your family is here supporting you. You have taken very important steps to resolve your own addiction issues. You were in Grade 12. You have a goal in mind for the future, and that bodes well for the future.

[15] I listened to your mother, who wanted to take the blame herself. There are circumstances in everyone's background that are unfortunate. I do not think there is anyone around who has not had difficulties in their background. At some point you have to take responsibility for your own actions, but I was pleased to hear from Mrs. Nolan because I think she added something to this matter. But I do think that she cannot take responsibility for something you have done as an adult.

[16] As I said, the sentence suggested by the Crown, in the eight to ten months, goes along fairly well with the case law, and I give great deference to the case law in the Territory because things are different here to a certain extent. There are unique problems to this area, but in a lot of ways there are various unique problems in each area. But as I understand it, from the principles set out in the other court decisions in the Yukon, there are scant resources here to deal with the addiction problems. That has to be taken into consideration, the difficulties that are created by drug trafficking.

[17] You have spent 80 days in custody, which, when given the local credit of 1.5, works out to 120 days or four months time served. Keeping in mind the principles of sentencing it is my belief that deterrence has to be emphasized. The message has to go out to others and to you. If you allow yourself to be used to traffic drugs for whatever reason, you are going to go to jail. It is an individual decision and it is something that has to be deterred. So there will be emphasis on general and specific deterrence and denunciation for this very, very serious offence.

[18] But I do not believe that to deter you specifically, you will require a long period of time in custody. You have already spent the equivalent of four months and I am sentencing you to a period of 60 days on top of that. So it will be 120 days time served plus 60 days.

[19] This is to be followed by a period of nine months probation and the terms of that probation are that:

1. You are to keep the peace and be of good behaviour and appear before the Court when required to do so by the Court;
2. You are to report as directed when released from custody to a probation officer in Whitehorse and then report thereafter when and in the manner required by the probation officer;
3. You are to abstain absolutely from the possession or consumption of controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;

4. You must not attend at any place where liquor is sold except a restaurant which may be incidentally licensed for the sale of alcohol with meals;
5. You are to take such assessment, counselling and programming as directed by your probation officer;
6. You are to provide your probation officer with a consent to release of information in regard to your participation in any programming, counselling, employment or educational activities you have been directed to take;
7. You must make reasonable efforts to find and maintain suitable employment and provide your probation officer with all necessary details concerning your efforts in that regard;
8. You are not to be in possession of a cell phone, Blackberry, pager or any other wireless communication device;
9. You must provide your address and telephone number to your probation officer and not change either the address or telephone number without advising the probation officer in advance in writing.

[20] Are there other terms the Crown is concerned about?

[21] MR. MARCOUX: I'm not sure about the intent of the Court to impose an abstain consuming alcohol clause. I didn't hear the word alcohol, I just heard drugs. I'm not sure if that was the intention --

[22] THE COURT: Yes, there should be alcohol as well.

10. You are to abstain absolutely from the consumption or possession of alcohol;

[23] MR. MARCOUX: Thank you.

[24] THE COURT:

11. You are not to have contact, directly or indirectly, or communication in any way with any known drug users or dealers named in writing by your probation officer;

12. You are not to attend at or within 50 metres of any known drug houses, those addresses to be named in writing by your probation officer.

[25] Do you understand all of those terms?

[26] THE ACCUSED: Yes.

[27] THE COURT: All right.

[28] MS. CAIRNS: Your Honour, the only question I had was with respect to the reporting. I wasn't sure when she was --

[29] THE COURT: Report upon as directed upon release. I think the, I do not know, maybe that is not a term you use here, but --

[30] MS. CAIRNS: We normally say within two working days.

[31] THE COURT: Yes, that is probably better.

[32] MS. CAIRNS: It sounds just a little bit clearer.

[33] THE COURT: Report within two working days of your release from custody.

[34] MS. CAIRNS: Because I don't know if there's contact in advance of release, so thank you.

[35] THE COURT: And then report thereafter, yes, all right. Furthermore, pursuant to s. 109 of the *Criminal Code* you are prohibited from having in your possession any firearms, ammunition or explosive substance for a period of ten years following your release from imprisonment. No, there was no forfeiture of anything; that has already been done.

[36] MR. MARCOUX: I was asking for forfeiture of the drugs seized, Your Honour.

[37] THE COURT: All right. There will be a forfeiture of any drugs seized.

[38] MR. MARCOUX: Thank you.

[39] MS. CAIRNS: And with respect to the victim fine surcharge, given that she was --

[40] THE COURT: I will waive the victim fine surcharge.

[41] MS. CAIRNS: Thank you.

[42] THE CLERK: And the 632A file, Your Honour?

[43] MR. MARCOUX: Yes, the Crown will direct that the Clerk enter a stay of proceedings on that matter.

[44] THE COURT: All right, thank you.

MALTBY T.C.J.