

Citation: *R. v. Lewis*, 2008 YKTC 10

Date: 20080201
Docket: T.C. 07-00196
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Chief Judge Faulkner

REGINA

v.

DUSTIN STUART LEWIS

Appearances:
Jennifer Grandy
Nils Clarke

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] FAULKNER C.J.T.C. (Oral): Dustin Stewart Lewis was convicted after trial with the charge of possession of cocaine for the purpose of trafficking, contrary to s. 5(2) of the *Controlled Drugs and Substances Act*. Subsequently, he has also entered a guilty plea to a charge of breach of recognizance, contrary to s. 145(3) of the *Criminal Code*. The specific breach alleged was a breach of curfew, although it was noted, when found, Mr. Lewis was also concurrently in breach of many other terms of the particular order.

[2] With respect to the charge of possession for the purpose of trafficking, Mr. Lewis was found in possession of 11.6 grams of powder cocaine with a street value of

something in the order of \$1,200. There was also evidence that he had, just prior to being stopped, disposed of, by eating, an undetermined quantity of crack cocaine.

[3] Mr. Lewis has a significant and persistent criminal record, and as the pre-sentence report makes clear, essentially he has lived a criminal lifestyle for most of his adolescent and adult years. About the best that can be said for him with respect to the drug charge is that it must be assumed that his trafficking activities were connected to his own addiction as opposed to being strictly for profit. It is quite clear from the pre-sentence report that Mr. Lewis has had serious drug addiction problems for essentially all of his adolescent and adult life.

[4] Having regard to the prior record of Mr. Lewis and having regard to the fact, as I say, that his trafficking activities appear to be related to his addiction, and having regard to the quantity involved, the Crown sought a sentence in the range of 12 months, and an additional 45 days with respect to the breach charge. In my view, that range of sentence is appropriate.

[5] I was provided with a number of cases, including *R. v. Naiker*, 2007 YKTC 58. Mr. Naiker received a slightly longer sentence than that, but his was a commercial trafficking. Mr. Devellano, in *R. v. Devellano*, 2007 YKTC 80, received slightly less, but he had no prior record. So the 12-month sentence contended for is, in my view, certainly within the range of appropriate sentence.

[6] The additional factor to be considered here is the question of remand time. Mr. Lewis has been in custody, it is agreed, some four and half months. Grossed up at the usual 1.5 rate would give him credit for something just short of seven months. So

allowing him full credit for the remand time and perhaps a little more besides, I am going to impose an effective sentence, in addition to the time he has already served, of six months. That can be shown as six months with respect to the drugs charge, one day with respect to the breach charge, as I say, in addition to time served, which I calculate at seven months. In addition, there will be a prohibition, pursuant to s. 109 of the *Code*, with respect to firearms and related items for a period of 10 years following Mr. Lewis' release from imprisonment. Additionally, following your release from imprisonment, you will be subject to a probation order for a period of nine months.

[7] The terms will be:

1. That 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 to a probation officer immediately upon your release from custody and thereafter when and in the manner directed by the probation officer;
4. You will notify the probation officer in advance of any change of name or address;
5. You will promptly notify her of any change of occupation or employment;
6. You will reside where the probation officer will approve and not change your residence without the prior written permission of the probation officer;
7. You will take such substance abuse assessment, counselling and programming as directed by the probation officer;
8. You will take such other assessment, counselling and programming as directed by the probation officer;

9. You will have no contact, directly or indirectly, or communication in any way with any known drug users or dealers named in writing by your probation officer;
10. You will not attend at or within 50 metres of any known drug houses or any address to be specified in writing by your probation officer;
11. You will not possess any cell phone, pager or wireless message sending or receiving device;
12. You will make reasonable efforts to find and maintain suitable employment. You will provide your probation officer with all necessary details concerning your efforts in that regard;
13. You will provide your probation officer with the consents for release of information with regard to participation in any programming, counselling, employment or educational activities you have been directed to engage in pursuant to the order.

[8] I will waive the surcharges.

[9] MS. GRANDY: If I could ask that the remaining counts on the 398 Information be marked as withdrawn, please?

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

[11] THE CLERK: Your Honour, is the probation order effective on both counts or just the 5(2)?

[12] THE COURT: Apply to both.

[13] THE CLERK: Pardon me?

[14] THE COURT: It can apply to both.

FAULKNER C.J.T.C.