

Citation: *R. v. Profeit*, 2003 YKTC 102

Date: 20031205
Docket: T.C. 00-00755D/E
03-00085/A/C
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Faulkner

Regina

v.

Ellenise Alexis Profeit

Appearances:
Cindy Freedman
Gordon Coffin

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): Ellenise Profeit stands convicted on a charge of trafficking in cocaine and a charge of failing to appear.

[2] The trafficking in cocaine actually involved two separate incidents wherein Ms. Profeit sold cocaine to an undercover police officer. In the first case, Ms. Profeit received \$300. In the second case, she received \$300 plus a \$20 tip. The cocaine trafficked in the first case weighed 2.5 grams, and in the second case weighed 2.6 grams. Ms. Profeit expressed a willingness to provide larger amounts of cocaine to the undercover operators.

[3] The circumstances as described to the court established that Ms. Profeit was acting as a middleman in these transactions. The material before the court also suggests strongly that Ms. Profeit has a problem with cocaine addiction and that her involvement in drug trafficking may have been motivated by that fact.

[4] Ms. Profeit has a prior criminal record but none of it is related to the present circumstances saving and excepting a conviction in 1995 for possession of a narcotic, which, judging by the fact that a modest fine was imposed, I can more or less conclusively presume was for possession of a small quantity of marihuana.

[5] Given our well-known and often stated problems with drug trafficking in this community, there appears to me to be no alternative to a custodial sentence. Given the fact that there were multiple transactions, something in the range of up to a year might well have been fit; however, there are some other considerations. I have already mentioned that Ms. Profeit is an addict and that is certainly a relevant consideration. There is also the fact that she has spent some 45 days in custody for which she is entitled to credit.

[6] The Crown has urged that that credit not be in excess of the actual 45 days served, but regardless of whether or not there is a difference between being on remand and being a sentenced prisoner, apart from the uncertainty of one's situation on remand, there is still, nevertheless, the undisputable fact that a remand prisoner does not benefit from any remission or early release. So I think it is fair to credit remand time at above the one-for-one basis.

[7] Ms. Profeit is also to be sentenced on a charge of failing to appear. That failure to appear was actually a failure to appear to be sentenced with respect to the

cocaine charge.

[8] In respect to failing to appear, Ms. Profeit does have a prior related record; there are two prior entries for similar offences.

[9] Taking into account all the factors that I have indicated, I am satisfied that a global sentence for both offences of nine months would be appropriate, but I give Ms. Profeit credit of three months for the time already served; leaving a remanet of six months.

[10] For the greater certainty, that should be the sentence on the cocaine charge, and with respect to the failing to appear, the sentence should be 30 days concurrent.

[11] Following her release from imprisonment, Ms. Profeit, you will be subject to a probation order for a period of one year.

[12] The conditions of the probation order are:

- (a) That you keep the peace and be of good behavior.
- (b) That you report to an adult probation officer forthwith upon your release from imprisonment and thereafter as directed by your probation officer.
- (c) That you appear before the court when required to do so.
- (d) That you notify the probation officer in advance of any change in name, or address, and promptly notify your probation officer of any change in occupation or employment.
- (e) That you reside at such residence as your probation officer will approve, and you will not change your residence without the prior written permission of the probation officer.

- (f) That you will attend and participate in such assessment, counselling and treatment as directed by your probation officer, including but not limited to substance abuse counselling.

[13] In the circumstances the victim fine surcharges are waived.

[14] The remaining counts, Ms. Freedman?

[15] MS. FREEDMAN: Yes, Your Honour, the Crown is directing a stay of proceedings on the remaining counts, and I am wondering whether Your Honour has given consideration to the firearms prohibition?

[16] THE COURT: Yes, that prohibition is mandatory. Ms. Profeit, you are prohibited from having in your possession any firearms, ammunition or explosive substances for a period of ten years following your release from imprisonment. You are directed to surrender forthwith to the Royal Canadian Mounted Police in Whitehorse any such items now in your possession.

FAULKNER T.C.J.