

Citation: *R. v. Quesnel*, 2009 YKTC 108

Date: 20090925
Docket: 09-00100
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Overend

REGINA

v.

RAYMOND EMILE QUESNEL

Appearances:
Kevin Komosky
Gordon Coffin

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] OVEREND T.C.J. (Oral): The accused appears before the Court charged with trafficking in cocaine. The Crown has set out the circumstances of the offence, which are not in dispute save for the dollar amount charged for some transactions rather than the number of transactions put in issue by Mr. Coffin, and the Crown does not dispute Mr. Coffin's position on that; therefore, it is not necessary to go into detail. I accept as fact that which is put before me by the Crown and it is not necessary to repeat it.

[2] The issue here is the length of the term of imprisonment that Mr. Quesnel should be required to serve. The Crown suggests that the range I should consider, having in mind other cases in the territory, should be between eight and ten months, and has provided me three cases from the Territorial Court, *R. v. Smarch*, 2008 YKTC 18, *R. v.*

Devellano, 2007 YKTC 80, and *R. v. Naiker*, 2007 YKTC 58, which cover a range of between eight and 12 months, plus probation.

[3] The accused appears, generally, to fall within the range of those cases, but I do note that in *Naiker* the Court was particularly mindful of the fact that the accused was, in that case, not an addict, that he came to Whitehorse for the purpose of engaging in the commercial trafficking of narcotics, and undoubtedly that was a significant, if not the primary, consideration for the Court in imposing the sentence which was imposed at that time. That sentence was greater than the amount suggested by Crown today, that is, outside the range suggested by Crown today.

[4] Mr. Quesnel is addicted to cocaine and, at least in part, has used the trafficking of cocaine to service his own habit. That is a consideration for me today because it differentiates his behaviour from that of Mr. Naiker, and, to some extent, from that of both Mr. Smarch and Mr. Devellano.

[5] Mr. Quesnel is 50 years of age. His rehabilitation is not a major factor. It would likely not be a major factor even if he -- it would certainly not be the major factor if he were even younger, as I certainly adopt what has been said in other cases, that deterrence and denunciation are the primary factors when dealing with persons who choose to deal in drugs.

[6] Mr. Quesnel, would you stand, please, sir.

[7] Mr. Quesnel, I have considered your prior unrelated convictions. Clearly they are not drug-related. I have considered the fact that you are an addict. I have considered

your early guilty plea. I have taken into consideration the fact that you were cooperative with the police.

[8] Having considered all those matters, I have also considered the important matter that trafficking of substances such as cocaine in this territory are to be dealt with severely, in the sense that denunciation must be my primary consideration.

[9] You are at the lower end of the range suggested by counsel of the Crown. I am sentencing you to a term of imprisonment of eight months.

[10] There will be a probation order for a period of one year following your release from custody. The terms of the probation order are as follows.

1. You are to keep the peace and be of good behaviour.
2. You are to appear before the Court when required to do so by the Court.
3. You are to report to a Probation Officer forthwith upon your release from custody and thereafter at the times and in the manner directed by your Probation Officer.
4. You are to reside as approved by your Probation Officer and not change your residence without the prior written approval of your Probation Officer.
5. 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.
6. You are to take such drug assessment, counselling or programming as directed of you by your Probation Officer, and to complete any program of counselling to the satisfaction of your Probation Officer.

7. You are to provide your Probation Officer with consents to release information with respect to your participation in programming or counselling.

[11] There will be a DNA order and there is a -- is it \$50; is it \$50 or \$100?

[12] MR. KOMOSKY: One hundred.

[13] THE COURT: \$100 victim fine surcharge. Mr. Coffin, time to pay that?

[14] MR. COFFIN: I would suggest ten months.

[15] THE COURT: All right.

[16] MR. COFFIN: He will be in custody for --

[17] THE COURT: Eight. Well, or is he going to be custody for six, probably?

[18] MR. COFFIN: Six.

[19] THE COURT: Maybe.

[20] MR. COFFIN: In that range.

[21] THE COURT: I will give him until July 31st, next year. That is ten months. Is there -- there is no firearms prohibition in respect to this offence?

[22] MR. KOMOSKY: Your Honour, that entirely slipped my mind. I believe

there may -- there is.

[23] THE COURT: It may also be a --

[24] MR. KOMOSKY: Yes, Your Honour. It is, I believe, a ten-year firearms prohibition.

[25] THE COURT: Ten-year, all right. Do you have any comment on that, Mr. --

[26] MR. COFFIN: I do not.

[27] THE COURT: All right. There will be a ten-year firearms prohibition. You are prohibited from being in possession of any of the firearms, cross-bows, prohibited weapons, restricted weapons, prohibited devices, ammunition, prohibited ammunition or explosive substance for a period of ten years.

[28] There will also be a forfeiture of the drugs, the cash and the cell phone.

[29] MR. KOMOSKY: Your Honour, I have a suggested forfeiture order for your signature.

[30] THE COURT: Show it to your friend and see if he has any problem with it.

[31] MR. KOMOSKY: It also includes the drug packaging material that was seized.

[32] THE COURT: The drug packaging; all right, that will also be

included then.

[33] MR. COFFIN: That's fine.

[34] THE COURT: All right.

OVEREND T.C.J.