

Citation: *R. v. Smith*, 2011 YKTC 62

Date: 20110831
Docket: 10-00556
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

EUGENE GEORGE SMITH

Appearances:
David McWhinnie
Brook Land-Murphy

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): Eugene Smith is before me for sentencing in relation to a single count of possession of marihuana for the purposes of trafficking, contrary to s. 5(2) of the *Controlled Drugs and Substances Act*, SC 1996, c 19.

[2] The charge stems from a lengthy investigation which included information from four confidential informants, six months of police surveillance on Mr. Smith's residence observing activity consistent with drug-trafficking, and the apprehension of individuals leaving Mr. Smith's residence who were subsequently found to be in possession of marihuana.

[3] The police obtained a search warrant for Mr. Smith's residence, which was executed on November 24, 2010. The search netted 3.75 pounds of marihuana, located in Mr. Smith's locked bedroom, \$585 found in his possession, and various items indicative of trafficking, including a scale and baggies.

[4] Mr. Smith was cooperative throughout the proceedings, and later provided a warned statement in which he absolved his co-accused of responsibility. He further advised that he pays \$2,600 to \$3,000 per pound of marihuana, which he then sells at \$10 a gram. The value of the marihuana located in Mr. Smith's residence, if sold at \$10 a gram, would be approximately \$15,000. Mr. Smith went on to say that he sells marihuana to help people sober up and that he does not sell to children, although he acknowledged that those he does sell to may well pass the drugs on to children.

[5] It was evident from the investigation and Mr. Smith's admissions that he had been purchasing and selling large quantities of marihuana over an extended period of time. Mr. Smith advised it would take him, on average, two to three weeks to sell the amount of marihuana found within his home on November 24th. Furthermore, on page 5 of the Pre-Sentencing Report, there is an indication that Mr. Smith had been trafficking marihuana over an eight-year period.

[6] To assist in determining the appropriate sentence, I have been provided with a great deal of information about Mr. Smith's background and personal circumstances through a Pre-Sentence Report and numerous letters of support. To summarize, Mr. Smith is a 42-year-old member of the Kwanlin Dun First Nation. He does come before the Court with a prior criminal record; however, it is both dated and unrelated. His early

childhood is characterized by both exposure to substance abuse and some instability, with his parents both drinking heavily and separating when he was young. From approximately age five, he was raised primarily by his grandparents, living a traditional lifestyle. By age 16, he began using drugs and alcohol, with a resulting drop in his school performance. He quit school in Grade 9, with some upgrading completed while in custody in 1990. His employment history consists of off-and-on contract work for his First Nation and community, including general labour, basic construction, mechanical work, and hunting to provide meat for gatherings and elders.

[7] Mr. Smith does not have a permanent residence, but is unconcerned as he is able to stay in any number of family fish camps. He is also being considered for a contract to work and live at the Jackson Lake Healing Camp. Finally, consistent with his traditional lifestyle, he is also comfortable living in the bush. Mr. Smith was able to successfully deal with his own alcohol problem and has been abstinent from alcohol for the past eight years. However, he continued to abuse marihuana, describing in the Pre-Sentence Report, a significant pattern of usage, between one-half and one ounce per day, up until his arrest in November 2010. He advises that he has not used marihuana since his arrest.

[8] In addition to the background information provided in the Pre-Sentence Report, I have also reviewed numerous letters of support from family and community members, all of whom speak highly of Mr. Smith; universally describing him to be a respectful, caring, generous individual who has contributed greatly to his community by helping others and by passing on traditional teachings. He is clearly seen as a valuable member of his community who plays a vital role in assisting those in need.

[9] In terms of appropriate sentence, while the positions of counsel differ somewhat with respect to sentence length, with the Crown suggesting seven to nine months and defence suggesting six months, the primary issue to be determined is whether a conditional sentence would be appropriate in this case.

[10] Section 742.1 of the *Criminal Code* sets out four pre-conditions which must be met before a conditional sentence can be imposed. The offence cannot be one for which a conditional sentence is precluded by operation of law, including serious personal injury offences and offences punishable by a minimum term of imprisonment. The sentence imposed by the Court must be less than two years. The Court must be satisfied that service of the sentence in the community would not endanger the safety of the community, and a conditional sentence must be consistent with the fundamental purpose and principles of sentencing.

[11] In this case, the first pre-condition is obviously satisfied as the nature of the offence does not preclude the imposition of a conditional sentence. The second pre-condition is also not at issue as the applicable sentencing range falls well below the two-year ceiling. This is evident both from the positions of counsel, but also from the cases which have been provided to me by counsel with respect to the appropriate range of sentence.

[12] The case of *R. v. (Paul) Delafosse*, [1991] Y.J. No. 55, involved a mid-level dealer and seven and three-quarter pounds of marihuana. The sentence combined a 90-day jail term and a substantial fine. It should be noted this is a 1991 case, making it somewhat dated and also one which pre-dates the availability of the conditional

sentence.

[13] The sentence in *R. v. Brockman*, 2010 YKTC 32, with respect to possession of one pound of marihuana for the purpose of trafficking was four months conditional, following one month of pre-trial custody for an effective five month sentence. However, Mr. Brockman was not involved in a commercial trafficking enterprise, rather, he intended to traffic by sharing rather than selling the pound of marihuana with his fellow workers.

[14] In *R. v. Bodaly*, 2010 BCCA 9, Mr. Bodaly, however, was actively involved in the sale of marihuana, including selling to minors. After pleading guilty to possession of an unidentified amount of marihuana for the purpose of trafficking, his sentence was varied on appeal to three months conditional following 21 days spent in actual custody.

[15] In *R. v. (Keefer) Delafosse*, 2008 YKTC 82, Mr. Delafosse received a four-month conditional sentence for trafficking, having been found in possession of approximately one pound of marihuana.

[16] In *R. v. Loyer*, 2009 YKTC 36, the case resulted in an 11 and a half month sentence for trafficking in small amounts of marihuana, with an additional ounce of marihuana found in his residence. However, Mr. Loyer had a previous related and recent record, including one prior conviction for drug possession, and two prior convictions for drug-trafficking. When reviewing the cases provided, I find the *Loyer* case to be distinguishable on the basis of the prior related convictions, which do not exist in this case. The *Paul Delafosse* case is also of limited relevance as it is substantially dated. The remaining cases indicate a range of four to five months for

offences on a somewhat lesser scale in terms of both the volume of drugs and duration of the enterprise.

[17] Comparing the facts in these cases to those in the case at bar, I am satisfied that the offence before me would appropriately fall in the six to seven month range, well below the two year ceiling for a conditional sentence, thus the second pre-condition for a conditional sentence is met. I would further note that the cases filed clearly demonstrate that conditional sentences have been found to be appropriate for offences of marihuana trafficking.

[18] With respect to the third pre-condition, namely, whether a conditional sentence would endanger the community, the Crown argues that this pre-condition has not been met because of the risk of re-offence, citing the LS/CMI risk assessment, placing Mr. Smith at medium risk to re-offend, along with the lack of both consistent employment and an established drug-free residence. I do not share the Crown's concern with respect to community safety when I consider that Mr. Smith has no history of non-compliance with court orders beyond two fail to appear convictions in 1990. Ms. Geddes, the author of the Pre-Sentence Report, indicates that Mr. Smith would likely do well on a community order, and Mr. Smith has been compliant with the terms of his release since November of last year, even without consistent employment and a permanent residence. Based on these factors, I am satisfied that Mr. Smith can be compliant with conditions such that the community would not be endangered by service of his sentence in the community. Accordingly, the third pre-condition to a conditional sentence has been met, in my view.

[19] This leaves us with what is really the crux of this case, whether a conditional sentence would be consistent with the fundamental purposes and principles of sentencing. This case requires consideration and balancing of the principles of denunciation and deterrence, promoting a sense of responsibility in the offender, rehabilitation, and lastly, s. 718.2(e), consideration of:

(e) all available sanctions other than imprisonment that are reasonable in the circumstances [of an offender], with particular attention to the circumstances of aboriginal offenders.

[20] Turning first to denunciation and deterrence. In our courts and in our communities we confront on a daily basis the devastation caused by drug abuse. As a comparatively isolated community with limited resources, we are ill-equipped to meet the needs of the multitude of people who suffer harm as a result of drug abuse, from the addicted to their families, to those victimized by addicts while under the influence of drugs or when desperate to find the resources to feed their habit. Drug traffickers, as the source of the drugs, are in many ways the source of the problem or, at the very least, feed the problem. For these reasons, denunciation and deterrence must always be paramount considerations when sentencing those who engage in drug trafficking. The nature and length of a sentence must send a clear message to the offender and to the community that drug trafficking will not be tolerated. That being said, how we send that message is influenced by a number of factors which commonly impact on sentences for drug trafficking, including the scale of the operation, the nature of the drug involved, and the motivation of the trafficker. In other words, a street level trafficker selling small amounts of marihuana to support a drug habit will be treated less harshly than a major supplier of cocaine motivated by personal gain.

[21] In this case, the scale of Mr. Smith's operation was not a minor one. He dealt in not insignificant amounts of marihuana over an extended period of time. He is clearly not a street level dealer, but neither can he be described as a major supplier. In my view, he falls in the mid-range where denunciation and deterrence could be effectively met through the imposition of either a jail term or a strict conditional sentence.

[22] With respect to the nature of the drug involved, namely marihuana, it must be noted that sentencing ranges clearly reflect the degree of harm associated with a particular drug. Drugs, commonly referred to as soft drugs, like marihuana, are generally seen to be less harmful than hard drugs like cocaine or heroin, and thus attract shorter sentences and are more commonly considered as appropriate for conditional sentences. But while marihuana may be a less harmful drug, that is not to say that it is a harmless drug. Marihuana is, for many, a gateway drug which opens the door to experimentation and ultimately addiction to harder drugs.

[23] This brings me to a consideration of Mr. Smith's motivation, which is, in many ways, the most troubling aspect of this case when I consider how it affects Mr. Smith's acceptance of responsibility for his actions and recognition of the negative impact his trafficking has had on the community. Firstly, Mr. Smith maintains that he was, in some ways, his own best customer, describing a habit of excessive daily marihuana consumption. I do accept that Mr. Smith was a regular user, addicted to marihuana; however, his self-described level of consumption is inconsistent with the other information before me, particularly the support letters which depict Mr. Smith to be a very active member of his community, generous with both his time and energy. Were he truly consuming at the rate described, one would expect to see a much more notable

impact on his daily functioning.

[24] In addition to what is, in my view, an exaggeration of his own dependency on marihuana, Mr. Smith maintains that he did not profit from the sale of marihuana, but rather used the proceeds to buy gas and groceries to allow him to support those struggling in his community by taking them out on the land. This is inconsistent with both his own description to the police as to his rate of trafficking, being roughly three pounds sold over a two to three week period, which would suggest a profit beyond the cost of gas and groceries, and also with the invoices found in his home which indicate that Mr. Smith paid thousands of dollars on a snow mobile, although his mother maintains that some of those payments would have been made with funds provided by her from her residential school settlement. But even if I accept that all profits were put towards taking others out on the land rather than on luxury items, this would still be a situation in which Mr. Smith profited beyond the amount necessary for basic sustenance and to support his own habit, as is normally the case with a purely addiction-motivated trafficker.

[25] At the end of the day, it is perhaps most accurate to describe Mr. Smith as having a blended motivation, partly addiction-motivated, partly profit-motivated. However, this does not end the trouble that I have with Mr. Smith's stated motivations. In addition to asserting that any profits were used for the good of others, Mr. Smith indicated both to the police and to Ms. Geddes that many of his regular clients were individuals struggling with alcohol abuse who had turned to marihuana to help them remain abstinent from alcohol. Furthermore, at least two of Mr. Smith's support letters reference Mr. Smith's provision of marihuana to such clients in such a manner as to

suggest his drug trafficking should be viewed as a public service and that this, in turn, should be considered a mitigating factor on sentencing.

[26] While I am fully aware that it is not uncommon for individuals struggling with addictions to alcohol or harder drugs to resort to marihuana use as a harm reduction strategy, and one can even appreciate why they may do so, I have a great deal of difficulty with Mr. Smith's characterization of his drug trafficking as some sort of public service. To do so, would be tantamount to condoning drug trafficking and would be completely contrary to the principles of deterrence by sending entirely the wrong message to both Mr. Smith and to the community at large. As well, this professed motivation strikes me as having an element of exploitation, in that Mr. Smith stood to personally gain from the vulnerable position of his clients. This also causes me significant concern. Accordingly, I am left with a real question in my mind as to how to effectively address both general and specific deterrence in this case and, more specifically, whether the principle of deterrence can be met through the imposition of a conditional sentence.

[27] With respect to general deterrence, the materials seem to indicate that some members in the community see Mr. Smith's behaviour as acceptable, even laudable. If this perception is widespread, a conditional sentence could be seen as condoning or reinforcing this misperception. I must say that this was, in my mind, a very real danger; however, my concerns were alleviated somewhat when Ms. Smarch, the author of one of the two letters earlier referred to, made it clear that she does not condone the use of any drug and that she promotes a substance-free lifestyle. As well, Jeanie Dendys, Director of Justice at KDFN, speaking on her own behalf and on behalf of KDFN council

member Jessie Dawson, stressed that the Kwanlin Dun First Nation does not condone drug trafficking, and, indeed, works hard to eliminate it, including working cooperatively with the SCAN initiative.

[28] With respect to specific deterrence, Mr. Smith's stated motivation for drug trafficking can be described at best as misguided, and at worst as exploitative. Having considered the totality of the material before me, however, I think his position most likely reflects an attempt to rationalize his bad and illegal behaviour after the fact, in an effort to minimize responsibility. When I consider these factors, it is difficult not to conclude that the principles of denunciation and deterrence would be most easily accomplished through the imposition of a custodial sentence.

[29] Turning to the next principle, promoting a sense of responsibility in the offender, Crown suggests that this principle cannot be met by a conditional sentence as the material illustrates that Mr. Smith has not grasped that his actions were harmful to the community. I, however, am satisfied that this particular sentencing principle can be addressed through the imposition of a conditional sentence. As I indicated earlier, Mr. Smith's stated motivation or rationalization for his drug trafficking does raise concerns for me with respect to the degree to which Mr. Smith accepts responsibility for his behaviour and the degree to which he appreciates that his behaviour was harmful to others and to his community. This concern, however, is balanced out by other factors which do suggest that Mr. Smith has begun to come to this realization and has taken steps to make reparations to his family and community. Those factors include his cooperation with the police, his efforts to ensure his co-accused was not held accountable for Mr. Smith's actions, and his early guilty plea.

[30] In addition, I am advised that Mr. Smith has agreed to participate in a circle with members of his family and representatives of his First Nation, where he will be expected to accept responsibility for his actions and to abide by the recommendations of the circle, which will be monitored by both his family and his First Nation.

[31] Lastly, letters from Jeanie Dendys and Dianne Smith confirm that Mr. Smith has begun to make reparations to his community by performing upwards of 500 community work service hours for the community since his arrest.

[32] These factors satisfy me that even if Mr. Smith does not fully recognize the error of his ways, members of his family, community and First Nation are actively engaged in efforts to hold him accountable and to promote a sense of responsibility in him. A conditional sentence would certainly support these efforts in a way that a jail sentence could not.

[33] I am equally satisfied that the principle of rehabilitation would best be met through the imposition of a conditional sentence. In addressing the Court, Mr. Smith indicated that he was sorry for what he had done and that he believed he could change with help. Help is certainly available to him in the community. I am advised by Ms. Dendys of the services available to Mr. Smith through Kwanlin Dun Health and Justice Departments including a three-week men's program to be offered in September, which has been designed to incorporate First Nations traditions and cultural values, along with mainstream treatment approaches. The First Nation will also assist Mr. Smith with referrals to other agencies where appropriate.

[34] Furthermore, the numerous letters filed, along with the number of people who

attended the sentencing in support of Mr. Smith, clearly demonstrate that Mr. Smith has overwhelming support in the community to help him make those necessary changes, changes which indeed he has already begun to make by remaining abstinent since his arrest and attending for counselling through Alcohol and Drug Services.

[35] Finally, given Mr. Smith's aboriginal status, I must also give serious consideration to s. 718.2(e), which requires me to consider all available sanctions other than imprisonment that are reasonable in the circumstances of an offender, with particular attention to the circumstances of aboriginal offenders. It is well established that there is a disproportionate number of individuals of First Nations ancestry within our jail system, largely as a result of historical systemic factors, including the residential school system. Section 718.2(e) is aimed at addressing this overrepresentation.

[36] There is information before me indicating that both of Mr. Smith's parents attended residential school. Mr. Smith's mother, Ms. McDiarmid, writes of the fact that as a result of the residential school system neither she nor Mr. Smith's father were able to develop the requisite parenting skills to enable them to provide a healthy environment for their young children. I also heard of the ongoing impacts of the residential school system on the community and of the community's support for community-based sentences to promote both individual and community healing.

[37] In this case, a conditional sentence does offer, in my view, a reasonable alternative to imprisonment. A conditional sentence would certainly promote and encourage Mr. Smith's efforts at rehabilitation and his efforts to make reparations to his community. In addition, the level of community support, along with the community's and

the family's efforts to hold Mr. Smith accountable for his actions, ensure that Mr. Smith will be subject to a high level of public scrutiny, encouraging, in turn, a high level of compliance.

[38] In balancing the competing sentencing principles, I would note again the importance of denunciation and deterrence in cases of drug trafficking. As indicated previously, a jail sentence would certainly be the easiest and most obvious way to address the principles of denunciation and deterrence by sending an unequivocal message to both Mr. Smith and the community at large that drug trafficking will not be condoned under any circumstances. However, this is not the only manner in which such a deterrent message may be sent, and indeed is often not the most effective manner. In *R. v. Gladue*, [1999] 1 S.C.R. 688, the Supreme Court of Canada noted:

[57] Thus, it may be seen that although imprisonment is intended to serve the traditional sentencing goals of separation, deterrence, denunciation, and rehabilitation, there is widespread consensus that imprisonment has not been successful in achieving some of these goals.

[39] In exploring the utility of a conditional sentence in meeting the principles of sentencing, the Supreme Court of Canada stated in *R. v. Proulx*, [2000] 1 S.C.R. 61:

[22] The conditional sentence incorporates some elements of non-custodial measures and some others of incarceration. Because it is served in the community, it will generally be more effective than incarceration at achieving the restorative objectives of rehabilitation, reparations to the victim and community, and the promotion of a sense of responsibility in the offender. However, it is also a punitive sanction capable of achieving the objectives of denunciation and deterrence (emphasis in original) ...

The Court went on to say:

[100] ... To the extent that both punitive and restorative objectives can be achieved in a given case, a conditional sentence is likely a better sanction

than incarceration. Where the need for punishment is particularly pressing, and there is little opportunity to achieve any restorative objectives, incarceration will likely be the more attractive sanction. However, even where restorative objectives cannot be readily satisfied, a conditional sentence will be preferable to incarceration in cases where a conditional sentence can achieve the objectives of denunciation and deterrence as effectively as incarceration. This follows from the principle of restraint in s. 718.2(d) and (e), which militates in favour of alternatives to incarceration where appropriate in the circumstances.

[40] In the case at bar, there are valid restorative objectives to be achieved, including rehabilitation, reparations to the community and promotion of a sense of responsibility, objectives which would clearly be best achieved through the imposition of a conditional sentence. There are also valid punitive objectives to be achieved through the passing of a sentence which sends a clear message that drug trafficking will not be tolerated, objectives which can be achieved through the imposition of a custodial sentence, but which may also be achieved through the imposition of an appropriately restrictive conditional sentence.

[41] Considering both restorative and punitive objectives and being mindful of s. 718.2(e), a conditional sentence, in my view, most appropriately and effectively balances the competing sentencing principles in this case. Accordingly, Mr. Smith, I sentence you to a term of imprisonment of seven months to be served conditionally in the community, to be followed by a 12-month probationary term.

[42] The terms of your conditional sentence will be as follows:

1. That you keep the peace and be of good behaviour;
2. That you appear before the Court when required to do so by the Court;
3. That you report to a Supervisor immediately and thereafter when required

by the Supervisor, and in the manner directed by the Supervisor;

So you will need to go to Probation Services today to start that reporting as soon as your orders are signed, okay?

4. You will be required to remain within the Yukon Territory unless you have written permission from your Supervisor;
5. Notify the Supervisor in advance of any change of name, address, and promptly notify the Supervisor of any change of employment or occupation;
6. You are to reside as approved by your Supervisor and not change that residence without the prior written permission of your Supervisor;
7. At all times you are to remain within your place of residence, except with the prior written permission of your Supervisor;
8. You must present yourself at the door or answer the telephone during reasonable hours for curfew checks, failure to do so will be a presumptive breach of this condition;

[43] So it is house arrest. It is a jail sentence. You need to stay home unless you have permission in advance from your Supervisor. You need to speak to the Supervisor about what kinds of exceptions you might need, in terms of your day-to-day living. If there is employment, they can give you an exception for that, those types of things, but speak to them and get the permission in advance.

9. You are to abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances, except in accordance with a

- prescription given to you by a qualified medical practitioner;
10. You are not to attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
 11. You are to take such alcohol and/or drug assessment, counselling or programming as directed by your Supervisor;
 12. You are to take such other assessment, counselling, and programming as directed by your Supervisor;
 13. You are to perform 200 hours of community service as directed by your Supervisor or such other person as your Supervisor may designate; this community service is to be completed within the first six months of your order;
 14. You are to make reasonable efforts to find and maintain suitable employment, and provide your Supervisor with all necessary details concerning your efforts;
 15. Provide your Supervisor with consents to release information with regard to your participation in any programming, counselling, employment or educational activities that you have been directed to do pursuant to this order.

[44] Any issues or concerns as it relates to the conditions? One thing I will say, before I hear from counsel, is there was a suggestion of a curfew in the Pre-Sentence Report. In my view, in this case, a curfew is insufficient to meet the punitive aspects of a conditional sentence and that is why I have made it house arrest. That is what is

intended, to send that deterrent and denunciatory message. So just to be very clear as to why I have done that. Are there any concerns with respect to the conditions?

[45] MR. MCWHINNIE: Not from the Crown, Your Honour.

[46] THE COURT: Okay. The probationary term -- yes, sorry.

[47] MS. LAND-MURPHY: No, I -- no, no issue.

[48] THE COURT: Okay. With respect to the 12 month probation order to follow, it is intended primarily to be rehabilitative and supportive. So there will not be house arrest or curfew conditions on it, but you will be required to:

1. Keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. Notify your Probation Officer in advance of any change of name or address, and promptly notify the Probation Officer of any change of employment or occupation;
4. You are to report to a Probation Officer immediately upon completion of your conditional sentence, and thereafter when, and in the manner directed by the Probation Officer;
5. You are to abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances, except in accordance with a prescription given to you by a qualified medical practitioner;
6. You are not to attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;

7. You are to take such alcohol and drug assessment, counselling, or programming as directed by your Probation Officer,
8. You are to take such other assessment, counselling, and programming as directed by your Probation Officer;
9. Provide your Probation Officer with consents to release information with regard to your participation in any programming, counselling, employment or educational activities that you have been directed to do pursuant to this order.

So it is primarily counselling conditions and making sure you are not using.

[49] Any concerns as it relates to the probationary conditions?

[50] MS. LAND-MURPHY: No, Your Honour.

[51] THE COURT: Okay. In addition, there will be a forfeiture order pursuant to s. 16 of the *Controlled Drugs and Substances Act* in relation to the packaging material, money, phone, and scales seized pursuant to the execution of the search warrant.

[52] Given Mr. Smith's employment status, I would waive the victim fine surcharge, and this leaves me with the firearms prohibition.

[53] I am aware, from the materials filed, that there will likely be an application for an exception with respect to the firearms prohibition down the road, particularly given Mr. Smith's involvement in living a traditional lifestyle and passing on those traditional

teachings. At this point, however, I am required to make the order; it is a mandatory order because of the offence that has been charged. So there will be a ten year prohibition pursuant to s. 109 prohibiting from you having in your possession any firearms, ammunition, or explosive substances. As I have said, we will wait until your counsel sets the matter down for the application to be heard with respect to whether or not an exception is appropriate in this particular case for subsistence hunting.

[54] The last thing that I want to say is I have determined that a conditional sentence in this case is appropriate. I did so with a great deal of reluctance. I would say, Mr. Smith, that you owe a great deal of thanks to all of these people that showed up, that are willing to work with you, that are willing to hold you accountable, because that was significant for me in deciding that a conditional sentence would be appropriate in this particular case. So, I extend my thanks to all of you as well for taking the time to be here, several times; as we have been back and forth. I appreciate all of your time and all of your input, and I thank you in advance for the efforts I know will come in terms of assisting in supervising Mr. Smith and in assisting him in dealing with the issues that have brought him before the Court, so thank you all very much. Yes?

[55] MR. MCWHINNIE: A couple of housekeeping matters, Your Honour. I may have missed it, did you order the drugs forfeit?

[56] THE COURT: Pardon me?

[57] MR. MCWHINNIE: Did you order the drugs forfeit?

[58] THE COURT: That was not specifically requested in my notes, but

the drugs themselves would be forfeited as well.

[59] MR. MCWHINNIE: Should be forfeited. As I recall the provisions of s. 109, although I think Mr. Smith may have filed an affidavit saying he doesn't possess any firearms, I think he did mention some ammunition, and so it may be prudent to follow the strict wording of 109, and thus afford him a reasonable period of perhaps ten days, to surrender any firearms, ammunition, explosives or licensing documentation in his possession. I don't think he has any of the latter as either from one of his affidavits, but that should be provided.

[60] THE COURT: Okay. That order will go as well. So anything that you do have in terms of firearms, ammunition or licensing will need to be provided to the police within -- what period of time does he need for that? Ten days is sufficient?

[61] MS. LAND-MURPHY: Ten days.

[62] THE COURT: Okay. Ten days.

[63] MR. MCWHINNIE: Was the outstanding count already disposed of, Madam Clerk? If it wasn't, it should be stayed.

[64] THE COURT: Thank you.

RUDDY T.C.J.