Citation: *R.* v. *Vanderheide*, 2010 YKTC 55

Date: 20100507
Docket: 09-00492
Registry: Whitehorse

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

REGINA

v.

JOHN ANTHONY VANDERHEIDE

Appearances:
Peter Chisholm — Counsel for the Crown
Neil Cobb — Counsel for the Defence

REASONS FOR SENTENCING

[1] COZENS T.C.J. (Oral): John Vanderheide has entered a guilty plea to a charge that between the 15th day of April 2009 and the 20th day of September 2009 he conspired to commit the indictable offence of trafficking in cocaine in the Yukon Territory, contrary to s. 465(1)(c) of the *Criminal Code*.

[2] Crown counsel set out before the Court the chronology of events that led up to the arrest of Mr. Vanderheide and I do not propose to repeat those in any detail. However, what happened is, beginning in May 2009, an individual who was arrested and charged with possession of cocaine for the purpose of trafficking subsequently became an agent for the RCMP and participated in a number of transactions involving Mr. Vanderheide and another individual in Whitehorse, who was working, basically, for Mr. Vanderheide in the distribution of cocaine. The agent was able to provide the

RCMP with considerable information over the next several months with respect to the nature of the cocaine transactions that were taking place and the role of Mr. Vanderheide and this other individual in them.

[3] In brief, there was the regular provision of one-half to one kilogram of cocaine by Mr. Vanderheide to this other individual in the Yukon, who then would distribute it to individuals such as the agent, who would then supply it and have it distributed out onto the streets. The kilogram of cocaine was selling for about $65,000 and a half kilogram for about $32,500. These lower level distributors would then pay the money that they made from the sale of the cocaine to this other individual, who would then provide the money to Mr. Vanderheide. On occasions Mr. Vanderheide attended in Whitehorse to see what was going on and to arrange for some of the transfer of funds from Whitehorse back into British Columbia, where Mr. Vanderheide was residing.

[4] Ultimately, on September 24, 2009, the police, acting on the information that they had obtained from the agent and through wiretaps, arrested Mr. Vanderheide. One of the searches at his residence resulted in the RCMP seizing $8,000.

[5] There is a joint submission before me with respect to virtually all of the sentence, with the exception of how his time in custody should be credited. Joint submissions are sentences the Court should be careful to interfere with unless there is something that is clearly inappropriate about them. In this case, I have senior counsel in front of me, well versed in the law in the Yukon, and very familiar with the case. I have been provided with a number of cases from the Yukon, *R.* v. *Callahan*, [1990] Y.J. No. 64; *R.* v. *Do*, [2000] Y.J. No. 150; *R*. v. *Lee*, [2007] Y.J. No. 78; *R.* v. *O'Brien*, [2002] Y.J. No. 130,

and *R.* v. *Peck*, [1995] Y.J. No. 113, that set out the range of sentences that have been applied to offenders in the Yukon for conspiracy with respect to cocaine and, at times, heroin.

[6] I will say at the outset that I am satisfied that the joint submission is fair and an appropriate sentence. It takes into account all of the factors that need to be addressed in a sentencing of this nature.

[7] Mr. Vanderheide has a limited criminal record that includes four convictions in total. Of significance are the convictions in 1997 for possession for a scheduled substance for the purpose of trafficking, for which he received a sentence of two months and two weeks, and in 1999, in Vancouver, for possession of a narcotic for the purpose of trafficking. It appears that the latter arose out of a file in Teslin, Yukon, according to the Information, and would likely have simply been waived to British Columbia and sentenced, based on the record as I see it. In that case, he received a sentence of two years less one day, to be served conditionally, and there is nothing on the record that would indicate that he did not serve out the full balance of that conditional sentence without being found guilty of any breach.

[8] Crown has pointed out, in support of its joint submission, the aggravating factors, which clearly exist, that Mr. Vanderheide was a principal player in this conspiracy, that this was an ongoing enterprise for profit, that we are dealing with cocaine, which is, of course, a very dangerous drug, and that he has this criminal record with the two related offences.

[9] In mitigation, certainly, we have a guilty plea, and indications were made early on

with respect to this, as far as Mr. Vanderheide, and that he has accepted responsibility for his offence.

[10] Counsel have briefly submitted to the Court the familiarity with cases, not all of which were mentioned here, that deal with the issue of the impact of drugs such as cocaine on the Yukon, and acknowledge that, clearly, in sentencing for offences of this nature, that the impact of such drugs on Yukon society is significant. It was significant when the *R.* v. *Curtis* case, [1982] Y.J. No. 4, was decided in 1982 and referred to by Judge Stuart, and it has continued to be the theme throughout cases dealing with the trafficking of drugs such as cocaine, right through to the present.

[11] Mr. Vanderheide, through counsel, spoke of the devastating impacts upon him that his arrest has had. I do not doubt that he has suffered significant personal consequences as a result of his choice to involve himself in the trafficking of cocaine, but I would expect that these personal consequences on him would pale beside the personal consequences suffered by the many individuals who are the direct victims of cocaine addiction in the Yukon Territory. These devastating consequences go not only on the individuals who choose to buy and use the cocaine but on their families and on the other individuals who they touch through their lives. So I would hope that Mr. Vanderheide, in weighing out the balance of his life, and realizing what it has done to him, would take into account that much worse has probably happened to many people in the Yukon.

[12] Therefore, the sentence that I am going to impose is that suggested by counsel, which will be five years imprisonment.

[13] With respect to the seven and a half months of pre-trial custody that Mr. Vanderheide has served, approximately three months of this was spent in the Yukon Territory and the balance of approximately five months was spent in British Columbia. Now, the normal rate for remand custody in the Yukon, as the law existed at the time that Mr. Vanderheide was brought into custody, was one and one half months credit; which recognized that at the Whitehorse Correctional facility, generally speaking, remand prisoners are not in a different situation with respect to access to programming than they are if they were in general population. The Yukon was somewhat unique in that situation. In other jurisdictions, generally speaking, remand was often credited at two to one because the facilities in which remand prisoners were held in those jurisdictions did not provide the same access to programming. Now, I do not have evidence from these institutions before me. I have the submissions of Mr. Cobb on behalf of Mr. Vanderheide with respect to what the normal rate for pre-trial custody was in the Fraser Correctional facility that Mr. Vanderheide was held in, and that was two to one.

[14] What I am going to do is take into account the two different places and give credit between the two of 13.5 months for pre-trial custody, less than two to one; more than one and a half to one. Therefore, the balance of the sentence to be served will be 46.5 months.

[15] There will be an order for forfeiture of the $8,000 that was seized from Mr. Vanderheide's residence.

[16] There will be a firearms prohibition under s. 109 of the *Criminal Code*. Counsel

have jointly submitted that that should be for ten years. That is, today, the prohibition that I will impose, that Mr. Vanderheide is prohibited from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, and explosive substance for a period of ten years. This does not end until ten years after release from imprisonment.

[17] This is a secondary designated offence for DNA. Defence counsel has submitted that Mr. Vanderheide would have no issue if that order were made. It is not something Crown specifically sought but I will make that order.

[18] THE CLERK: Your Honour, with respect to time served, it's 13.5?

[19] THE COURT: From 60.

[20] THE CLERK: From 60 months?

[21] THE COURT: Right. 46.5.

[22] THE CLERK: Thank you.

[23] THE COURT: Is there anything further?

[24] MR. COBB: No. There were some personal items. I'll speak to my learned friend about that. If we can't work it out between us, you may see a desk order approved as to form restoring certain personal items seized, but I'm confident my friend and I can work that out without the need for such an order.

[25] MR. CHISHOLM: That's fair. The victim fine surcharge, I'm assuming that you're waiving that?

[26] THE COURT: I will waive the victim fine surcharge, Mr. Vanderheide.

[27] THE ACCUSED: Thank you, Your Honour.

[28] MR. CHISHOLM: With respect to the remaining charges?

[29] THE COURT: Remaining counts?

[30] MR. CHISHOLM: Yes, I'm going to deal with that. As per Mr. Vanderheide, I'll direct a stay of proceedings, but obviously the other matters, as per Mr. Leslie, remain active.

_____

COZENS T.C.J.