

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *R. v. Chapman*, 2007 YKSC 55

Date: 20071018
Docket: S.C. No. 06-01520
Registry: Whitehorse

HER MAJESTY THE QUEEN

JASON CHAPMAN

Before: Mr. Justice C.S. Brooker

Appearances:
Noel Sinclair
Malcolm Campbell

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING DELIVERED FROM THE BENCH

[1] BROOKER J. (Oral): In this case, Mr. Chapman has pled guilty to the possession of a substance included in Schedule I, to wit, cocaine. The amount in issue is 20.5 grams of powder and one gram of crack cocaine, the 20.5 grams being cocaine powder or salt, which is a significant amount of cocaine.

[2] He is before me for sentencing. He has a record, which has been marked Exhibit 1. The most significant parts, from my standpoint, are the fact that he has two previous convictions and sentencings for drug offences, single possession, it would appear. Also before me is a pre-sentence report, marked Exhibit 2, which is somewhat disconcerting

in as much as it indicates that Mr. Chapman, despite being out on bail, has continued to use drugs, cocaine, in particular, right up until a very recent time.

[3] The aggravating factors I see in this case are the significant quantity of cocaine involved here, as well as the two prior convictions for drug offences. The mitigating factors I see to be the early offer of a guilty plea, as well as the accused's cooperation with the police at the time of the arrest by admitting to the ownership of the drugs.

[4] No one has been able to give me a precedent as to the appropriate or common sentence in this jurisdiction for a similar crime, which leads to me to believe it is not that common a crime in this jurisdiction.

[5] I have considered, as I must, the various principles of sentencing set out in the *Code*, as well as the objectives. In this case, I think the primary considerations in a sentence must be general and specific deterrence, as well as the rehabilitation of the offender. The Crown seeks a term of imprisonment between four and five months. The defence seeks a conditional sentence, which would be a sentence of imprisonment served in the community, in the range, as I recollect, of 60 to 90 days.

[6] I have weighed in my mind which of the various possibilities, in terms of a sentence, would be most effective in achieving these purposes, whether it should be a period of jail, such as the Crown seeks, in an actual jail, whether it should be a short sharp term of imprisonment followed by a period of probation, or whether it should be a conditional sentence. The offender has a family, which he supports, and he apparently has a job. He clearly has strong family support. I have decided that, and indeed the Crown concedes, that the technical requirements of a conditional sentence could be

met, and are met in this case. I have decided, with perhaps some reluctance, that I will impose a conditional sentence as opposed to a term of actual imprisonment.

[7] I do this because the conditional sentence that I intend to impose will be a significant term, and will have significant and stringent conditions. I particularly move in the direction of the conditional sentence because of my ability to impose testing requirements on the offender, because if he is not sincere in rehabilitating himself and stopping the use of drugs, then he will be in jail. There is no doubt about that in my mind, because the conditional sentence order, certainly if it comes back in front of me, is likely to be collapsed.

[8] Therefore, I impose a term of imprisonment to be served in the community of 12 months. During the first six months of that term, you will be under a curfew. That curfew will be that you remain in your parent's home, which is where I understand you will be living, at Lot 250, Ross River, 24 hours a day, except when you are going to, from, and participating in your employment or scheduled medical or dental appointments. You will reside at Lot 250, Ross River, or such other residence as your supervisor approves in advance, in writing.

[9] I suppose for ease of doing this, I should follow the form here.

[10] MR. SINCLAIR: I think the clerks are used to some deviation from time to time.

[11] THE CLERK: Yes, My Lord.

[12] THE COURT: All right. The statutory conditions, of course, are that you:

1. Keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. Report to a supervisor within two working days of today and thereafter when and in the manner required by your supervisor;
4. Remain within the Yukon Territory, unless you have the written permission from your supervisor;
5. Notify the Court and your supervisor in advance of any change of name, and promptly notify the Court or your supervisor of any change of employment;
6. As far as the curfew I have given you, present yourself at the door or answer the telephone during reasonable hours for curfew checks. Failure to do so will be presumptive breach of this condition. Your supervisor may, for special circumstances, in advance and in writing, permit an exception to the curfew;
7. Throughout the term of this conditional sentence order, abstain absolutely from the possession or consumption of alcohol or non-prescription drugs or substances;
8. Provide a sample of your breath or urine for the purposes of analysis upon demand by a peace officer or your supervisor;

9. Take and complete the 28-day drug rehabilitation program, the name of which I do not know offhand but counsel can put that in, the residency program as soon as it can be arranged with the program;
10. Take and complete such other programs as your supervisor may direct;
11. Provide to the community of Ross River 75 hours of community service as directed by your probation supervisor, and you will complete that service within the first nine months of the conditional sentence order;

I contemplate that your supervisor will provide you written permission to be outside your curfew for the purposes of completing your community service.

[13] Did I miss anything, counsel?

[14] In terms of your employment, you have indicated in the submissions that were made, that you have employment, so there will be a requirement under the order to:

12. Maintain suitable employment; provide your supervisor with all necessary details concerning that. If your employment with your present employer terminates, you will make reasonable efforts to find and maintain employment.
13. 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 the conditional sentence order.

[15] Now, anything I have forgotten?

[16] MR. SINCLAIR: I may be predicting my friend's submission, but Mr. Chapman may require some time outside of going to and from work to attend to personal business and maybe family visits within the community of Ross River. Sometimes we see courts giving a little bit of a window for that periodically during the week. I know they can visit with him at his house, but certainly the Crown would not oppose.

[17] THE COURT: What about two hours on Saturday and two hours on Sunday?

[18] MR. SINCLAIR: I will allow my friend to speak to it.

[19] MR. CAMPBELL: I would ask for a block of time as well during the week as opposed to weekends so he can deal with banking and --

[20] THE COURT: Your submission was that he went to work at six in the morning and got back at eight at night.

[21] MR. CAMPBELL: That is true.

[22] THE COURT: So he is going to have to get his mother or dad to do the banking for him.

[23] MR. CAMPBELL: Okay.

[24] THE COURT: I will give him two hours on Saturday, two hours Sunday. Those will be between the hours of 12:00 and 2:00, which he can visit his

children or his children can visit him longer, obviously. So his curfew is amended to that effect.

[25] MR. CAMPBELL: My Lord, two things, one with respect to the curfew; obviously, that comes into effect immediately upon him signing the order, but he does have to get back to Ross River today, so.

[26] THE COURT: Curfew will start tomorrow.

[27] MR. CAMPBELL: Curfew will start tomorrow. He will be back in Ross River by 4:00 tomorrow afternoon.

[28] THE COURT: Why would he be in Ross River -- how far is it from here?

[29] MR. CAMPBELL: It is about a five hour drive. He will be leaving tomorrow morning.

[30] THE ACCUSED: My parents are coming in tonight.

[31] THE COURT: All right. The curfew will start Friday at 6:00 p.m. You better not have any view about going out and partying tonight, because the rest of the conditions come into effect immediately.

[32] MR. CAMPBELL: The only other concern I have with the wording of the order, My Lord, is that -- I am not sure I am going to be able to explain this particularly well because the reasons behind it are lost in the mists of time for me, but there is a reason why the taking assessment, treatment and counselling clause is worded the way

it is on that sheet, and it has to do with squabbles over funding, I believe. So usually what -- for example, to reflect what you have tried to accomplish in the order, we would usually say take such assessment, counselling or treatment as directed by your probation officer, including a 28-day residential treatment program, as opposed to you directing him to take the 28-day treatment program.

[33] I think that creates problems between who funds it, whether it is Health and Welfare or Justice. I believe that was the reason that was changed.

[34] MR. SINCLAIR: I am not familiar with that problem, but --

[35] THE COURT: All right, well, it will be worded in such fashion that it gets done. So you can have the wording according to the pink form and it will be noting that I have every confidence and anticipation that the supervisor will direct, and I anticipate that he will direct, the completion of the 28-day program.

[36] MR. CAMPBELL: Very good.

[37] MR. SINCLAIR: The only other term that we see sometimes in these orders is a requirement that the offender carry a copy of the order with him at all times.

[38] THE COURT: Yes, always carry a copy of the order when you are outside your home, because you might get picked up otherwise.

[39] Sir, you stand up. You better understand that this is your last chance, that if you breach this conditional sentence order, you will be liable to have the entire thing collapse and then you will be in jail for a significant period of time. It is entirely up to you.

I came very close to sending you off there right at the start, but I think this will accomplish everything we have to accomplish. So that is my decision. You can sit down.

[40] From the standpoint of general and specific deterrence, that accomplishes the goal. It is a lengthy period of sentence with stringent and onerous conditions. If anybody else is inclined to possess cocaine, you presumably are warned to the result if they are caught.

[41] MR. SINCLAIR: Victims of crime surcharge?

[42] THE COURT: Yes. No reason not to, is there?

[43] MR. CAMPBELL: One month time to pay.

[44] THE COURT: Yes.

BROOKER J.