

Citation: *R. v. Graham*, 2017 YKTC 29

Date: 20170601
Docket: 16-00191
Registry: Whitehorse
Heard: Haines Junction

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

LEVI WILLIAM GRAHAM

Appearances:
Keith D. Parkkari
Amy Steele

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] COZENS J. (Oral): Levi Graham has entered a guilty plea to having committed an offence contrary to s. 4(1) of the *Controlled Drugs and Substances Act* (the *Act*).

[2] He had originally been charged with the offence of trafficking contrary to s. 5 of the *Act*. The Crown accepted a plea on a summary election to the simple possession of marijuana.

[3] The circumstances are that police pulled over a motor vehicle that was being operated by Mr. Graham. There were passengers in the vehicle. There was a smell of fresh marijuana noted by the officer, who had been trained to note the distinction between fresh marijuana and burned marijuana.

[4] Mr. Graham admitted to smoking marijuana earlier. He was arrested. He was located with two 8.2 gram bags of marijuana, which is approximately two quarter-ounce

bags, \$350, and a cellphone. The cellphone was searched and there was information on it that was consistent with perhaps more than simply possession.

[5] I am well aware of the fact that I am dealing with a plea to a simple possession charge and not a trafficking charge or possession for the purpose of trafficking.

[6] The passengers in the vehicle had small amounts of marijuana on them, but they were not charged.

[7] Mr. Graham is a 28-year-old member of the Champagne and Aishihik First Nations. He has no prior criminal history. He is a very positive contributor to his community, providing guidance and instruction in the bush. At the time of the original sentencing four months ago, he was working as a FireSmart crew leader and a trapping coordinator. Today, counsel has provided me with more information about all the positive things Mr. Graham has done in the community.

[8] Support letters were filed at the original sentencing date, four months ago, from both Dixie Smeeton, Renewable Resource Manager and Jacquie Chambers, community member, with regard to his participation in the community-based wolf trapping program and the Elders' program, both being Champagne and Aishihik First Nations initiatives or departments.

[9] He has the support of his First Nation. He is a person of good character and he is a hard worker.

[10] The submission before me on the date that this was first set for sentencing, approximately four months ago, was that Mr. Graham has a significant dependency on marijuana and uses it daily. He uses it for anxiety, depression, and insomnia.

[11] Crown is seeking a fine of \$500. Defence counsel was seeking a conditional discharge.

[12] The problem that arose for me with respect to the discharge at the original sentencing date was that Mr. Graham, quite candidly and quite honestly, said that he used marijuana daily and that was not going to stop. I was confronted with the difficulty

of imposing a conditional discharge with a probation order on someone who has candidly admitted that he is going to be using illegal drugs every day to deal with the issues he has been dealing with, and how that reflects upon the public interest.

[13] In order to use illegal drugs, one has to buy these drugs from somewhere. Since there is nowhere that can sell them legally except to a person with a medical marijuana exemption, it meant that Mr. Graham had to be buying from someone who was trafficking illegally, and he himself becomes part of the trafficking transaction. That, of course, facilitates illegal trafficking on a bigger scale. The people trafficking the marijuana that he is purchasing may be doing more — I do not know — and nothing turns on that, but the bottom line is that the public interest remains clear, that the trafficking of illegal drugs in the Yukon can have a very negative impact on the larger community.

[14] The countervailing point is, of course, the Liberal government's indication at that time that it was going to legalize marijuana and the fact that they have moved forward towards doing that. At some date in the future there is a very good likelihood, given the majority government, that marijuana use and purchase will be legal in certain prescribed amounts and under certain rules and regulations.

[15] Because of my concerns, I spoke to counsel, and Mr. Graham was given the opportunity to come back with more information. The information I was looking for was whether he had, in fact, sought a medical marijuana exemption that would allow him to purchase marijuana legally and use it. I am not taking any issue with the fact that what he is using it for may provide help in the areas in which he has concern.

[16] The second aspect of information I was looking for was information that would actually show that the imposition of a fine was going to have a negative impact on him, because I had no information before me that would show any specific negative impact that he would suffer if he had a criminal record.

[17] I certainly do not have a problem, generally speaking — every case being individual — in accepting that imposing a criminal record on an Aboriginal individual with

no prior criminal history, especially considering the good character of Mr. Graham, is something that he would likely be better off not having to deal with, and it would be in his best interests to receive a discharge.

[18] This said, the information as to whether a conviction would have an impact on his employment was speculative. There is the generally accepted principle that crossing the border to the United States could be more difficult if you have a drug conviction. This said, I do not have any evidence before me that Mr. Graham crosses into the United States through traditional border crossings for employment or any other purpose. The Champagne and Aishihik First Nations land, of course, crosses into the United States. I had that information provided before me, but I also had information that there may well be a treaty agreement that allows Aboriginal individuals who are members of the Champagne and Aishihik First Nations to cross the border onto their traditional lands regardless of whether they have a criminal history. I do not know whether that, in fact, is exactly the case. I have no evidence to refute that or to point otherwise.

[19] So I was looking for evidence as to what the actual negative impact would be.

[20] We are back here today. I learned today that Mr. Graham has, at the last minute, put in an application for medical marijuana exemption. I have no further information about cross-border impacts on him or as to whether his employment would be impacted.

[21] Frankly, these days, I would be surprised if employment within Canada was significantly impacted by a simple marijuana possession charge, but there may be jobs in which that is the case. However, I do not know that any of those jobs affect Mr. Graham.

[22] Counsel submits that the discharge should still be imposed, notwithstanding the little information before me compared to what I had before, other than the last-minute application for medical marijuana exemption, and taking also into account the fact that although Mr. Graham is still using marijuana daily, he says he uses it less than he did.

[23] The public interest in having an individual like Mr. Graham, an Aboriginal individual of good character with no criminal record, get a criminal conviction is certainly something generally that is not going to be in the public interest, as I have said in many decisions in which I have imposed discharges. The public interest is greatly served when Aboriginal individuals are given every opportunity to avoid incarceration and involvement in the legal system.

[24] But the problem is that the public interest is greatly involved where we are considering the trafficking of illegal drugs, marijuana or otherwise. The fact that this government may end up legalizing marijuana does not necessarily mean trafficking is going to stop. People may not like the quality of the marijuana; they may not like the quantities they are allowed to purchase it in. I do not know. But there is no guarantee illegal trafficking is going to stop. It is analogous to the legal sale of alcohol not putting a stop to bootlegging.

[25] Primarily for the reason that I believe the public interest is not served by granting a discharge to a person — even a person with all the positives of Mr. Graham, an Aboriginal person — when he still continues to facilitate the illegal trafficking of drugs, I do not find that the public interest component of a discharge can be met.

[26] There will be a fine of \$300 and the fine surcharge will be \$90 with three months' time to pay.

COZENS T.C.J.