

Citation: *R. v. Naiker*, 2007 YKTC 58

Date: 20070628  
Docket: T.C. 06-00769  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**

Before: His Honour Chief Judge Faulkner

**REGINA**

v.

**DARNELL AVINASH NAIKER**

Appearances:  
Jennifer Grandy  
Jamie Van Wart

Counsel for Crown  
Counsel for Defence

**REASONS FOR SENTENCING**

[1] FAULKNER C.J.T.C. (Oral): Darnell Naiker, a young man of 23 years of age and resident of Surrey, British Columbia, was convicted after trial on a charge of possession of cocaine for the purpose of trafficking, contrary to s. 5(2) of the *Controlled Drugs and Substances Act*.

[2] Following a police investigation, Mr. Naiker was arrested in a Whitehorse bar in possession of 95 rocks of crack cocaine. The cocaine weighed in total just under six grams, and would have been worth some \$1900 if sold for the usual street price of \$20 per rock.

[3] The evidence indicates clearly that Mr. Naiker was a street level trafficker. However, it also is clear that Mr. Naiker was strictly a commercial trafficker, in the business solely due to the lure of easy money. Mr. Naiker is not an addict. Drug trafficking was how he made his living. Indeed, he came to Whitehorse for the sole purpose of selling crack, a particularly destructive drug.

[4] The Crown, in my view, quite fairly seeks a sentence in the range of 12 to 15 months. They could well have contended for a higher sentence in the circumstances. The cases most on point at present are the cases of *R. v. Silver*, [2006] Y.J. No. 75 (QL), *R. v. Holway*, [2003] Y.J. No. 118 (QL), and *R. v. Totten*, [2001] Y.J. No. 41 (QL).

[5] Mr. Silver received 15 months imprisonment, but that was after taking account of several weeks of pre-trial custody and the global effect of an additional one year sentence on the firearms charge. Holway received 18 months plus 18 months probation. Mr. Totten received a sentence of two years less a day, but had been in custody for a year prior to disposition.

[6] Mr. Naiker has no criminal record, but neither did Mr. Silver. Holway's record was minor. Totten, however, did have a prior trafficking record, and the much higher sentence imposed on him is reflective of that fact. In contrast to Mr. Holway and Mr. Totten, Mr. Naiker did not enter a guilty plea and proceeded to trial.

[7] Given the nature of the drug trafficked, given the vulnerability of our community, and given the purely commercial nature of Mr. Naiker's activities, denunciation and deterrence must be the primary focus of sentencing. People who get it into their heads

to come into our community to sell drugs must know they will not be welcomed when they end up before the courts.

[8] Giving as much weight as I can to the fact that Mr. Naiker is still a young man, has a supportive family and still has a real chance of rehabilitating himself and making something of his life, I sentence him to a period of imprisonment of 14 months. I allow five months credit for the 100 days of pre-trial custody already served, leaving a remanet of nine months.

[9] Following release from imprisonment, Mr. Naiker, you will be subject to a probation order for a period one year. The terms will be:

1. Keep the peace and be of good behaviour and appear before the Court when required to do so by the Court;
2. Report within two working days after the order comes into force to a probation officer and thereafter when and in the matter required by the probation officer;
3. 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;
4. Do not attend at any place where liquor is sold, except a restaurant which may be incidentally licensed for the sale of alcohol with meals;
5. Take such assessment, counselling and programming as directed by your probation officer;

6. Provide your probation officer with the consent to release of information in regard to your participation in any programming, counselling, employment or educational activities you have been directed to partake;
7. Make reasonable efforts to find and maintain suitable employment and provide your probation officer with all necessary details concerning your efforts in that regard;
8. Not to be in the possession of a cell phone, blackberry, pager or any other mobile communication device.

[10] I will waive the imposition of a surcharge.

[11] I am asked to consider allowing Mr. Naiker to serve his sentence conditionally. In my view, such an order would not be appropriate in this case. Leaving aside the question of the maintenance of an effective deterrent in cases of this kind, I have come to my conclusion primarily because it seems to me that if Mr. Naiker were to serve his sentence in the community, there would be a real danger that he would simply take up where he has left off.

[12] If, as he proposes, he returns to British Columbia to live with his mother, I would simply be transferring that risk to the people of Surrey, since that is where Mr. Naiker was living, with his mother, the whole time he was trafficking in that community.

[13] I am also required by law to impose and do impose a prohibition order under s. 109 of the *Criminal Code*. You are prohibited from having in your possession any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device,

ammunition, prohibited ammunition or explosive substance for a period of 10 years following your release from prison.

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FAULKNER C.J.T.C.