Citation: *R. v. Prowal*, 2016 YKTC 8

Date: 20160308
Docket: 14-00787B
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Luther

REGINA

v.

BRADLEY ARTHUR PROWAL

Appearances:
Eric Marcoux — Counsel for the Crown
David C. Tarnow — Counsel for the Defence

REASONS FOR SENTENCE

[1] LUTHER J. (Oral): In 2012, Mr. Prowal moved to the Yukon presumably with the hope of getting a job in the mining industry. This offender, now 27 years of age, was heavily involved in a drug trafficking operation in the Yukon, "Dial a Dope". The RCMP, through an undercover operation, caught Mr. Prowal involved in three transactions, the last two involved 4 ounces of cocaine sold for $17,000 in November 2014 and 116 grams sold for $10,000 in January 2015. The offender himself did not handle the drugs or the money but was clearly in a leadership position. In fact, he bragged that "Whitehorse is my ground and the guys work for me". Mr. Prowal was clearly

associated with a criminal gang “856” from British Columbia. The numbers 8 and 5 were tattooed on his lip.

[2] The Crown knew fairly early on that this man was pleading guilty. Court time, just for the preliminary hearing was estimated at four days. That knowledge, along with no criminal or drug record, are valid mitigating factors.

[3] This offender and his very unhealthy father are close and he has been of considerable help to his father in many ways over the years, and will be even more so in the future as he will be returning home to live and care for him.

[4] Another example of his kindness before these troubles, is supporting two African children through World Vision.

[5] Mr. Prowal comes from a large family, has other supports when he moves back to B.C. after his sentence of imprisonment, and vows not to get involved ever again in the nefarious business of drug trafficking. His ultimate plan is to become a longshoreman for which he has a significant contact.

[6] The Crown and defence put forward a joint submission of three years less 18 months credit for pre-sentence custody.

[7] As to joint submissions on sentence, we have guidance from a number of appeal courts throughout the country and, indeed, the Supreme Court of Canada has also spoken on that subject.

[8] One of the more helpful cases is from the Manitoba Court of Appeal.

Judge Steel, of that Court, in the case of *R. v. Sinclair*, 2004 MBCA 48, said this at para. 17:

> (1) While the discretion ultimately lies with the court, the proposed sentence should be given very serious consideration.
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> (2) The sentencing judge should depart from the joint submission only when there are cogent reasons for doing so. Cogent reasons may include, among others, where the sentence is unfit, unreasonable, would bring the administration of justice into disrepute or be contrary to the public interest.
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> (3) In determining whether cogent reason exist (i.e., in weighing the adequacy of the proposed joint submission), the sentencing judge must take into account all the circumstances underlying the joint submission. Where the case falls on the continuum among plea bargain, evidentiary considerations, systemic pressures and joint submissions will affect, perhaps significantly, the weight given the joint submission by the sentencing judge.
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> (4) The sentencing judge should inform counsel during the sentencing hearing if the court is considering departing from the proposed sentence in order to allow counsel to make submissions justifying the proposal.
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> (5) The sentencing judge must then provide clear and cogent reasons for departing from the joint submission. Reasons for departing from the proposed sentence must be more than an opinion on the part of the sentencing judge that the sentence would not be enough. The fact that the crime committed could reasonably attract a greater sentence is not alone reason for departing from the proposed sentence. The proposed sentence must meet the standard described in para. 2, considering all of the principles of sentencing, such as deterrence, denunciation, aggravating and mitigating factors, and the like.

[9] The remarks that I am about to make will apply, I would think, in the other, related cases that are also in court for sentencing.

[10] We have a long history of jurisprudence in the territories about drug sentencing. And if you go back to the case of *R. v. Jefferies*, (1996), 71 B.C.A.C, 125, that court, which essentially serves as the Yukon Court of Appeal, affirmed the principles from a long time ago - 34 years ago - as set out by Judge Stuart in the case of *R. v. Curtis*, [1982] Y.J. No. 4, (T.C.):

> People in remote Yukon communities are usually less aware of the destructive potential of drugs. Residents of these communities do not have access to the same preventive and curative resources. Limited professional resources to counsel against experimenting with drugs and the absence of extensive recreational activities, makes anyone in isolated communities relatively easy prey for drug traffickers. In small remote northern communities especially, the destructive and disruptive impact of even small amounts of drugs can be severe. Alcohol has well established its viciously destructive and insensitive capacity to undermine the spirit and well-being of life in small northern communities. Drugs pose an even greater threat.
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> The vulnerability of people and their communities in Yukon to the destructive potential of drug abuse, prompts the court to clearly signal by severe deterrent sentences that drug offences in Yukon are particularly condemnable.

[11] And then *R. v. Callahan*, [1990] Y.J. No. 64 (T.C.), a 1990 decision of Judge Lilles:

> Further, and most importantly, the impact of a major drug supplier such as Callahan on a Territory such as the Yukon with its small population base and rural values is likely to be significant. In Montreal, Mireault may be considered to be nothing more than a small-time supplier. In relation to what

> goes on in Montreal on a daily basis, his activities could be considered quite modest.

[12] I think it would be accurate to say that Yukon in 2016 is different than it was in 1982 at the time Judge Stuart made the ruling. That is to say that the people in Yukon communities are not as much in the dark as they would have been back in 1982, as to the scourge of drugs on their personal lives, on family lives, and on the lives of the communities. Many other cases have talked about this particular concern, including Judge Cozens in *R. v. Profeit*, 2009 YKTC 39; Chief Judge Faulkner in *R. v. Naiker*, 2007 YKTC 58; and myself, recently in *R. v. Brisson*, 2013 YKTC 15.

[13] The Crown and the RCMP have reviewed this case for, I would think, hundreds of hours and have come up with their position, have had discussions with experienced defence counsel, and they have come up with a joint submission in this case, and the cases to follow for sentence later today.

[14] In taking a look at the first case that I mentioned, that is *Sinclair* from the Manitoba Court of Appeal, I want to emphasize:

> Reasons for departing from the proposed sentence must be more than an opinion on the part of the sentencing judge that the sentence would not be enough.

[15] As a trial judge, I have been here since 1988, and in considering the situation in the Yukon, as I remember it from then and as I see it today, it seems to me that the sentence of three years is somewhat on the light side and I believe that I would have considered a sentence, perhaps, of four or five years. But given the fact that this has been reviewed extensively by the Crown, the RCMP, and the defence counsel, and

given what the Manitoba Court of Appeal and other courts of appeal say about rejecting joint submissions, I will not reject this joint submission.

[16] Thus, the Court will impose the sentence at three years, less time served. I will give 18 months credit, as agreed, and there will be a 10-year firearms prohibition.

(DISCUSSION)

[17] As to the victim surcharge, in the case of an offence punishable by indictment, the Court can impose a surcharge of $200 or, under the following subsection, an even greater amount.

[18] It is my opinion that drug trafficking is not a victimless crime. The Territory does have valuable victim programs, and I am not going to make this payable forthwith. The Court will impose a victim surcharge of $200. Given the fact that he is going to be serving a substantial period of time in prison and that he is going to be moving back to B.C., it would only be fair to grant an appropriate period of time for him to pay that, so the Court will give him a period of two and a half years to pay the victim surcharge of $200.

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LUTHER T.C.J.