

SUPREME COURT OF YUKON

Citation: *R. v. Graham*, 2016 YKSC 13

Date: 20160215
S.C. No.: 14-01509
Registry: Whitehorse

Between:

HER MAJESTY THE QUEEN

And

KUNTONIAH GRAHAM

Publication of information that could disclose the identity of the complainant or witnesses has been prohibited by court order pursuant to s. 486.5 of the *Criminal Code*.

Before Mr. Justice R. Wong

Appearances:
Eric Marcoux
David C. Tarnow

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] WONG J. (Oral): Kuntoniah Graham, also known as Jimmy Graham, you have been convicted after trial of possessing one kilogram of cocaine for the purpose of trafficking. The date of the offence is August 30, 2013, at Whitehorse.

[2] D.S., a former drug dealer, and turned police agent, who had previously engaged in illicit drug deals with you, attended at a house located at 11 Redwood Street in Whitehorse. This house was a known social clubhouse used by persons in the drug trade. D.S. had been instructed by his drug trafficking bosses to retrieve a kilogram of

cocaine from the Redwood residence. The drug had recently been couriered to the house from southern Canada. That drug would then be broken up into smaller quantities for street-level sales by street traffickers. The kilogram of cocaine had a wholesale value of \$75,000, and a possible retail value of \$90,000 to \$100,000 if sold in small individual street-level packets.

[3] On the day D.S. attended at the Redwood residence, you and another person were on the premises. You knew the reason for D.S.' attendance and pointed out where the cocaine was stored, in a plastic bag covered with an outer paper bag. D.S. removed the cocaine and turned it over to his police handlers. The plastic bag encasing the brick of cocaine had your fingerprints on it.

[4] A pre-sentence report with *Gladue* considerations has been prepared. You have a prior adult criminal record of minor offences, including a prior youth court crime record. The pre-sentence report SUMMARY AND RECOMMENDATIONS states the following:

Mr Kuntoniah "Jimmy" Graham is a thirty-four year old Champagne Aishihik First Nation man currently before the court having been found guilty of possession of cocaine for the purposes of trafficking contrary to section 5(2) of the Controlled Drug and Substances Act.

Jimmy has a limited adult criminal record. His upbringing would be described as somewhat chaotic and troubled. He comes from a large blended family of nine children. Many of his siblings have been involved with the Justice system.

Jimmy has a limited formal education in which he complete [sic] grade six and although he attempted to upgrade his education he has not been successful. Jimmy has a long history of employment and had worked mostly in the construction business until recently when he started his own cab company and wood cutting business.

Jimmy's risk assessments indicates he is a medium risk to reoffend. The areas of concern are his lack of education which he hopes to address sometime in the future. Another area of concern is his association with people who do come into contact with the Justice system which could be problematic to deal with as some of these people are his siblings.

Acculturation of Jimmy's First Nations have been discussed in the body of this report. Acculturation impacts and the attendance at residential schools by both his grandparents and parents have had much intergenerational impacts on Jimmy. His mother, Ms Viola Papequash had lost many of her traditions due to attending residential school however she has learned and embraces First Nation culture and traditions and tries to pass these traditions on to her children. Jimmy relays that he identifies himself as a First Nation man and practices some of his First Nation traditions.

Jimmy does not take responsibility for his offence, he does not believe he is guilty and plans to appeal his conviction and sentence. He has been somewhat non-compliant on his existing recognizance with two alleged breaches before the court. However, past community disposition indicate that Jimmy abided by his conditions.

Although Jimmy has some limited problem areas and appears to have addressed his substance abuse the writer has some reservation regarding his suitability for a community disposition. Jimmy does not take any responsibly [sic] for his offence nor does he show any remorse indicating some criminal thinking. Therefore, the writer would not support a community disposition.

[5] After considering the sentencing principles of denunciation and general and specific deterrence, your possible future rehabilitation, and the aspects of the *Gladue* requirements, a custodial sentence, in my view, is required in this case.

[6] Cocaine is a known social scourge that causes misery and suffering to many. The impact of cocaine use upon individuals using it and the communities in which they live can be devastating.

[7] Your mitigating feature is that you are generally gainfully employed, you financially support your dependents, and your prior criminal record is minor. Some additional financial gain was probably the motivation for your involvement in the illicit drug trade.

[8] The British Columbia and the Yukon Court of Appeal have repeatedly stated that jail sentences ranging from two and a half to five years is required in quantities of cocaine distribution such as found in this case.

[9] After balancing the proportion and gravity of this charge commensurate with the culpability of your participation, I have concluded that a custodial sentence of two and a half years' imprisonment is appropriate.

[10] Would you please stand?

[11] Accordingly, I sentence you to two and a half years' imprisonment.

[12] A copy of this pre-sentence report, my earlier reasons for conviction, and a transcript of my sentencing reasons will accompany the warrant for committal, in order to assist the prison officials with respect to security classification and any potential programs to be offered to you.

[13] There will also be a prohibition order under s. 109 under the *Criminal Code* for a period of 10 years to prohibit you from having in your possession any firearm, cross-bow, restricted weapon, ammunition, and explosive substance for a period of 10 years after your release from imprisonment.

[14] There will also be a DNA order for the databank to which you are required to give a sample.

[15] You may be seated.

[16] The victim surcharge is waived.

WONG J.