

Citation: *R. v. Abdullahi*, 2020 YKTC 11

Date: 20200401
Docket: 18-00180
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

AYUB ABDULLAHI

Appearances:

Amy Porteous

Gregory Johannson

Counsel for the Crown

Counsel for the Defence

REASONS FOR SENTENCE

[1] Ayub Abdullahi has entered a guilty plea to having committed an offence contrary to s. 5(2) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 (“CDSA”). The guilty plea was entered on April 16, 2019.

[2] Mr. Abdullahi was co-accused with another individual, Dawson Aguilera Jimenez.

[3] The sentencing hearing proceeded on November 8, 2019. After the Crown noted that I had heard many of these facts previously¹, a brief recap of the facts was put forward by the Crown as follows:

¹ During the sentencing hearing for Mr. Jimenez an Agreed Statement of Facts was filed. A copy is attached as Appendix A to these Reasons for Sentence.

On June 15, 2018, Mr. Abdullahi was a passenger in a vehicle being driven by Mr. Jimenez. Mr. Abdullahi and a 16-year-old youth were seated in the rear seat.

The vehicle came to the attention of the RCMP as a result of a complaint that the vehicle was being driven erratically. The RCMP conducted a patrol to search for the vehicle that had been described. A vehicle matching the description was observed. The police cruiser emergency lights were activated and the vehicle turned into a parking lot.

The RCMP officer observed movement in the car and he believed something was being passed around.

The car was restarted and moved backwards briefly before stopping.

The driver was detained under the Yukon *Motor Vehicle Act* [RSY 2002, c. 153]. Due to various observations made by the RCMP officer and his resultant concerns, he conducted a pat-down search of all the individuals for officer safety reasons.

During this pat-down search, items were noted to be in the detainees' pockets, which turned out to be wads of cash, and also drugs.

There were three telephones in the back seat of the vehicle, one of which rang repeatedly and received text messages. This was consistent with drug trafficking activity.

After the detainees had been held overnight, five individually wrapped packages of crack cocaine were found in the possession of Mr. Abdullahi. The total amount of this cocaine was 2.26 grams.

Mr. Abdullahi, after being informed that a strip search would be conducted, then turned over a further 53.43 grams of crack cocaine that had been in a bag taped to his testicles.

The cocaine had a street value at the time of between \$100 and \$120 a gram.

At the time of his arrest, Mr. Abdullahi had \$1,625 in cash on him. There was just over \$5,900 in cash found in total on all of the three individuals.²

[4] Crown counsel submitted that Mr. Abdullahi should receive a custodial disposition of 14 months, to be followed by a period of probation. Counsel submitted that the circumstances of Mr. Abdullahi warranted a higher sentence than Mr. Jimenez, at least in part due to the fact that Mr. Abdullahi was found in possession of more cocaine than Mr. Jimenez had on his person. Although the Crown maintained that Mr. Abdullahi and Mr. Jimenez were parties to the s. 5(2) CDSA offence, the Crown

² I note that in the Court of Appeal decision of *R. v. Jimenez*, 2020 YKCA 5, the total amount of cash found was stated to be \$3,585. I also note that the Crown submission differs from the \$2,060 Mr. Abdullahi was stated to have in his possession in the Agreed Statement of Facts filed at Mr. Jimenez's sentencing hearing, and corrects this earlier error.

submitted that the moral culpability of each should be apportioned differently due to the differing amount of cocaine found on each.³

[5] Counsel for Mr. Abdullahi submitted that a suspended sentence attached to a period of probation would be an appropriate disposition.

[6] In my Reasons for Sentence in the case of Mr. Abdullahi's co-accused, (*R. v. Aguilera Jimenez*, 2019 YKTC 42), at para. 9, I noted that the Crown had submitted that a sentence of 15 to 18 months' custody should be imposed on Mr. Jimenez as he, "...was operating as a mid-level dealer in a dial-a-dope operation", aggravated by the fact that a 16-year-old youth was involved at the time of arrest.

[7] In sentencing Mr. Jimenez, I did not accede to the Crown submission, and imposed a suspended sentence attached to a two-year probation order. The Crown appealed this decision, and Crown counsel advised me during the sentencing hearing for Mr. Abdullahi that the Yukon Court of Appeal had heard the Crown appeal of the sentence I imposed on Mr. Jimenez that same morning.

[8] I advised counsel at the conclusion of submissions at Mr. Abdullahi's sentencing hearing that I would await the decision of the Court of Appeal in Mr. Jimenez's case before imposing sentence on Mr. Abdullahi.

³ I am unclear as to how to reconcile the Crown submission for a 14-month sentence to be imposed on Mr. Abdullahi on the basis that he merits a higher custodial disposition than Mr. Jimenez, with the Crown submission, both at trial and on appeal, for a custodial disposition of 15 to 18 months to be imposed on Mr. Jimenez. I will not attempt to do so, as it has no bearing on my disposition of this case.

[9] The Court of Appeal released its decision on February 20, 2020 (*R. v. Jimenez* 2020 YKCA 5). The Crown appeal was allowed to the extent that the sentence was varied to extend the period of probation to three years, and to vary the terms of the probation order. The suspended sentence portion of the disposition was upheld.

[10] For the reasons that follow, I find that an appropriate disposition for Mr. Abdullahi is to suspend the passing of sentence and place him on a period of probation for three years.

Circumstances of Mr. Abdullahi

[11] Mr. Abdullahi was 18 years old at the time this offence was committed, and 19 at the time of the sentencing hearing. He has no prior criminal record.

[12] On April 18, 2019 the preparation of a Pre-Sentence Report (“PSR”) was ordered for a sentencing date of August 16, 2019. On that date, upon application by Mr. Abdullahi, in part based upon a submission related to a death in his family, the sentencing hearing was adjourned to November 8, 2019. The PSR was not completed for the August 16, 2019 sentencing date. Nor was it available for the sentencing hearing before me.

[13] The Probation Officer tasked with preparing the PSR stated as follows in his letter to legal counsel and Court Services:

Given significant geographical separation and ongoing communication difficulties the writer has been unable to connect with Mr. Abdullahi in a manner that would permit the preparation of a pre-sentence report. As such please be advised that a PSR will not be available for sentencing at this time.

[14] Counsel for Mr. Abdullahi advised that one of the issues that had arisen that affected the preparation of the PSR was that Mr. Abdullahi's half-brother had been shot and killed during the summer.

[15] In mitigation for sentencing purposes, counsel submits that Mr. Abdullahi has entered a guilty plea and, in doing so, abandoned arguing a *Charter* breach issue.

[16] He further submits on behalf of Mr. Abdullahi that:

- he is remorseful for his actions;
- he is young;
- he has no criminal record;
- he has complied with his bail conditions;
- he was an addict at the time of the offence, including an addiction to Zanex;
- his involvement in the drug trafficking enterprise was at the lower end;
- there was no violence and there were no weapons involved in the commission of the offence;
- he has taken significant steps towards rehabilitation and a pro-social life; and
- he has the support of his family, in particular his four aunts.

[17] Counsel stated that Mr. Abdullahi came to the Yukon after meeting a girl in Vancouver who he proceeded to follow here. He states that Mr. Abdullahi did not come to the Yukon with the intent of selling drugs here. I note that there is nothing before me that contradicts or challenges this submission.

[18] Counsel filed documentation in support of Mr. Abdullahi from his family members, his employers, and his youth workers, that provide details about his background, and about the positive pro-social and rehabilitative steps he has taken since returning to Ontario on bail conditions.

[19] Three of Mr. Abdullahi's four aunts were present in support of Mr. Abdullahi for the sentencing hearing by telephone, Naima Mohamood, Rahma Togane and Khadiza Togane. Each addressed the Court. In addition Ms. Mohamood and Ms. R. Togane provided letters of support. Ms. R. Togane stated they spoke "as a family" in support of Mr. Abdullahi.

[20] Ms. R. Togane, currently a doctoral student at York University in social work, noted that while Mr. Abdullahi was "an exceptionally bright and kind-hearted young boy who did well in school and always excelled in sports, especially soccer", he was also noted by his grandmother to be struggling at times with issues related to his childhood trauma.

[21] She stated that during Mr. Abdullahi's final year of high school, his mother, Shuqri Hassan, was admitted into a hospital Intensive Care Unit due to severe alcohol-related trauma, where she was induced into a coma. She immediately relapsed back

into alcohol abuse upon being discharged. This incident had a significant negative impact upon Mr. Abdullahi.

[22] Mr. Abdullahi's mother is a drug addict. Documentation was provided in the form of a Medicine Discharge Summary dated November 4, 2019, confirming Ms. Hassan's struggles with addictions, depression and anxiety. I note that Ms. Hassan's mother emigrated to Canada from Somalia at the age of 32. Ms. Hassan remained in Somalia with her father for approximately six more years, until he died. She then spent two years in a refugee camp in Egypt before coming to Canada to join her mother at the age of 12. She married at the age of 18, however the marriage ended while Mr. Abdullahi was young. Her grandmother died which precipitated a descent into depression and alcohol addiction.

[23] Mr. Abdullahi moved into his maternal grandmother's home when he was seven. This was due to his mother's inability to parent as a result of her addictions, and the estrangement of Mr. Abdullahi's father. Mr. Abdullahi was primarily raised by his grandmother, who was his guardian, along with his aunts who were living in the home at the time. Although I was not provided much information in this regard, I did not understand Mr. Abdullahi's father to have had any significant role in Mr. Abdullahi's upbringing after he and Ms. Hassan separated.

[24] Nevertheless, and although struggling with a defeatist attitude towards the subject of his mother's recovery, Mr. Abdullahi managed to graduate from High School and was admitted into the General Arts and Sciences program at Seneca College. Unfortunately as soon as his initial semester began, a teacher's strike ensued. During

this time, Mr. Abdullahi was observed to exhibit signs of what appeared to his aunt to be depression. It was later learned that Mr. Abdullahi was abusing drugs (pills). His motivation to pursue his education disappeared at this time.

[25] Education and employment are important factors for Mr. Abdullahi's family. In addition to Ms. R. Togane's doctoral student credentials, one of Mr. Abdullahi's aunts is a pension administrator at the Ontario Municipal Retiree System, another, (I believe Ms. Mohamood), manages the Early Years Centre at the Guelph Community Health Centre, and another works in food security at the Black Creek Urban Farm in Toronto.

[26] Ms. R. Togane writes that all four of his aunts, as well as his grandmother, have maintained a close relationship with Mr. Abdullahi that is "centered around love, support and healing". She states that as a family they are hard-working, and have overcome poverty despite living in a dangerous government-housing community surrounded by violence and criminal activity rooted in the Somalian refugee background. His family provide Mr. Abdullahi with a "really, really strong support system".

[27] Ms. R. Togane reaffirms the positive rehabilitative steps Mr. Abdullahi has taken while on bail for these charges. She states that Mr. Abdullahi has been very remorseful from the outset for his commission of this offence and for the wrong choices he made, including with respect to his peer associations. She asserts that Mr. Abdullahi has an understanding of what he needs to do to rehabilitate himself back into his previous non-criminal life, and into his relationships with his family and friend associations. She stated that he has made more connections to better coping mechanisms. She is

concerned about the possibility of incarceration for this offence disrupting the rehabilitative track Mr. Abdullahi is currently on.

[28] Ms. Mohamood indicated her hope that Mr. Abdullahi would move in with her, her husband and their daughter. She states that she has been involved in Mr. Abdullahi's life since he was born and that he is like a son to her. She is saddened by his struggle with drug addiction, but states that she is willing to provide him support and a missing sense of wellbeing, in order help him in dealing with his addiction. This includes assisting him with enrollment in a drug treatment program, and in volunteer work.

[29] Ms. K. Togane concurred with her sisters' comments and spoke strongly about the family support they all have to offer Mr. Abdullahi. She stated that the family has plans, moving forward, to assist Mr. Abdullahi in his rehabilitative efforts.

[30] The owner/supervisor at Easy Seasons, (a weather-dependent lawn restoration and driveway sealing business, as well as miscellaneous other jobs), noted Mr. Abdullahi to be one of his main employees, one who is reliable, shows up at work on time, and is eager. His employer further states that Mr. Abdullahi has risen from a weekend worker through the ranks of the company to become a fulltime worker. His employer provides assurances that he will help Mr. Abdullahi earn income to support his family, and to stay out of trouble.

[31] Another employer from Calderon Flooring noted that Mr. Abdullahi worked part-time for them from October 2018 to April 2019. He stated that Mr. Abdullahi was a responsible and excellent worker, who showed up for work on time.

[32] Mr. Abdullahi's Youth Peer Mentor Coordinator at The Community Healing Project (the "Project") has written a letter stating that Mr. Abdullahi has "exhibited an exceptional amount of leadership when it comes to creating a safe space for vulnerable youth in the community". He states that Mr. Abdullahi is punctual, helpful and a "cherished member" of the Project. He notes that Mr. Abdullahi has contributed over 250 volunteer hours to the Project.

[33] Mr. Abdullahi addressed the Court. He apologized generally to the Yukon for his crime and called it the biggest mistake of his life. His drug use, in order to "fit in", led to one and one-half years of "living hell" for him. He stated that, regardless of the sentence imposed on him, he will take advantage of the opportunity to start fresh.

Analysis

[34] In sentencing Mr. Abdullahi's co-accused, Mr. Jimenez, to a suspended sentence and probation, I stated the following in paras. 56 – 63:

[56] The factors that are weighted towards a custodial disposition for Mr. Jimenez are as follows:

- The need to stress deterrence and denunciation;
- The nature of the s. 5(2) offence, including the fact that it was primarily profit and not addict driven; and
- Mr. Jimenez's role in the offence, including his participation in involving the 16-year-old youth.

[57] The factors that are mitigating, and therefore more weighted towards a non-custodial disposition are as follows:

- The guilty plea and acceptance of responsibility;
- Mr. Jimenez's youth and lack of a criminal record;

- His decision, followed by steps taken, to separate himself from negative peer associations;
- The positive rehabilitative steps Mr. Jimenez has taken since being charged with respect to education, employment and counselling;
- His family background and his re-connecting with his parental support;
- His future prospects which are considered to be reasonable and realistic; and
- His demonstrated ability to comply with court-ordered conditions since his release on bail.

[58] In imposing sentence, I must balance all of the above circumstances of the offence and Mr. Jimenez with the purpose, principles and objectives of sentencing as set out in the *Code* and the *CDSA*. I must bear in mind the aggravating and mitigating factors. I must treat Mr. Jimenez as the individual he is and sentence him accordingly with all of the above in mind.

[59] I find that removing Mr. Jimenez from his present stable and positive rehabilitative structure and supports, in order to bring him back to the Yukon, far from where these structures and supports are readily available, in order to stress denunciation and deterrence would be unjust. It would sacrifice the importance and success to date of his rehabilitation in a manner unfairly disproportionate to the need to emphasize denunciation and deterrence.

[60] When I say “unfairly”, I am not just speaking of Mr. Jimenez; I am speaking of being unfair to society and to the importance of preserving the safety and security of the public. The extent to which a custodial sentence would denounce this offence and deter others from committing this or similar offences, must be balanced against the potential such a disposition would have to undermine the rehabilitative steps to date that Mr. Jimenez has taken to separate himself from a criminal lifestyle and embark on a positive and pro-social one. I find that a custodial disposition is not in the interests of society, rather it is contrary to it.

[61] Denunciation and deterrence can also be a part of a non-custodial disposition as noted in the law above. Further, if Mr. Jimenez fails to comply with the terms of this non-custodial sentence, he can find himself in the position where this sentence has been revoked and he is resentenced. This is the proverbial Sword of Damocles referenced in *Voong* [R. v. Voong, 2015 BCCA 285].

[62] In its own way, such a re-sentencing hearing could also serve to get the point across not only to Mr. Jimenez, but to others under the umbrella of a suspended sentence, that compliance with the court-ordered conditions is a serious matter.

[63] In simplest terms: I am not going to remove this youthful offender from where his life is stabilizing and progressing positively, in order to bring him back into the Yukon to spend his time in jail amongst other offenders, the very group with whom he should not be mixing, in order to stress denunciation and deterrence, when the risk of fracturing and undermining his rehabilitative efforts does not warrant it. In my opinion, this would be contrary to the purpose, principles, and objectives of sentencing set out in the *Code*, the *CDSA* and case law. Jail is not necessary in this case and I will not impose it.

[35] I have repeated what I stated in regard to Mr. Jimenez at length because these comments are equally applicable to Mr. Abdullahi. The aggravating circumstances remain the same. With respect to mitigation, while Mr. Abdullahi was charged with a s. 145(3) offence for failing to report between December 5 and 26, 2019, that charge was stayed by the Crown on February 14, 2020. No reasons for the Stay of Proceedings were provided. Therefore I cannot conclude anything one way or the other. I am left without any conclusive evidence that Mr. Abdullahi failed to comply with the terms of his release on bail.

[36] Mr. Abdullahi has re-connected with the support of his family, in particular his aunts, rather than parents, as was the case of Mr. Jimenez. This difference, in my opinion, is of no consequence.

[37] Further, while there may be the basis for an argument that Mr. Abdullahi should be more morally culpable, because he was found in possession of more of the drugs, that does not lead inexorably to a factually accurate conclusion that therefore he was more of the leader in the commission of the offence. An intelligent and street-wise

leader could quite possibly ensure that he or she is holding less of the drugs, and ensure that a lower-placed individual is holding them, in order to escape a determination of having a heightened degree of culpability, in the event of an arrest and search. Obviously, I do not have any evidence that this is the case here. Regardless, each event needs to be assessed in the entirety of the circumstances surrounding it.

[38] I have some concerns in assessing differing levels of moral culpability in the commission of this offence as between Mr. Abdullahi and Mr. Jimenez. I view them as somewhat equal parties, notwithstanding the differing amount of drugs found on each. In addition, I am not certain that the placement of Mr. Abdullahi in the back seat with the youth and Mr. Jimenez as the driver necessarily means one is more culpable than the other, even when considered in conjunction with the differing amount of drugs found on each.

[39] In the present case, even were I to accede to the Crown submission to the extent that I considered there to be a heightened degree of culpability for Mr. Abdullahi, on the basis he was in possession of more of the drugs when he was searched than Mr. Jimenez was, I would nonetheless not consider this to be of such significance that a different sentence should be imposed than Mr. Jimenez received.

[40] All said, I am not prepared to find Mr. Abdullahi more morally culpable than Mr. Jimenez in the commission of the s. 5(2) offence, at least not to the extent that it would justify placing them in such disparate positions that a different sentence for each would be appropriate.

[41] I find that Mr. Abdullahi and Mr. Jimenez are in almost all respects similarly situated offenders and, when considering the sentencing principle of parity, I find that each should receive the same sentence.

[42] In the Court of Appeal decision of **Jimenez**, the Court stated:

[56] In summary, dial-a-dope trafficking in cocaine is a serious offence for which deterrence and denunciation are the primary sentencing principles for consideration. In the absence of exceptional circumstances, which are rare, the normal range of sentence for a first time dial-a-dope drug trafficker is imprisonment for a period of between six to eighteen months, depending on the aggravating and mitigating factors. The term "exceptional circumstances" describes the kinds of circumstances which justify going outside the normal sentencing range in order to craft an appropriate individualised proportionate sentence. While there are no exhaustive criteria, they may include a constellation of factors such as no criminal record, significant rehabilitative steps, gainful employment, genuine remorse and an appreciation of the harm done to society. Most importantly, to qualify as exceptional in the dial-a-dope context the circumstances must show that an offender has genuinely turned away from crime and that the public is best protected by a noncustodial sentence.

...

[63] Contrary to the Crown's submission, the judge did not focus solely on Mr. Jimenez's successful rehabilitation in reaching his conclusion. Rather, he considered all the circumstances, weighed the mitigating and aggravating factors and found that Mr. Jimenez's rehabilitative efforts would be undermined by a custodial sentence, which would endanger, not protect, society. This was an entirely appropriate concern. As Justice Wood pointed out in *R. v. Preston* (1990), 47 B.C.L.R. (2d) 273 (C.A.), the object of the criminal justice system is the protection of society, which is permanently protected when an offender's rehabilitation is sustained in the future. Bearing this object in mind, the judge determined that, on balance, it was undesirable to endanger society by removing this youthful first-time offender from his stable home environment, jailing him with other offenders and thus placing his ongoing rehabilitation at unnecessary risk.

[64] The judge was in a privileged position to make this determination. In my view, he did not overemphasize the mitigating factors in making it and his conclusion was available on the record and the relevant authorities. It is entitled to appellate deference.

...

[69] The judge dealt at length with the primacy of denunciation and deterrence in dial-a-dope cases, particularly those involving vulnerable, under-resourced northern communities such as Whitehorse. Nevertheless, he decided that a suspended sentence would have a denunciatory and deterrent effect, personally and generally, by operating as “the proverbial Sword of Damocles” over Mr. Jimenez’s head in the event of a breach. I do not accept the Crown’s bald assertion that inter-jurisdictional cooperation is unlikely or unreliable, particularly as no such submission was made to the judge and no such evidence was presented. Although, as explained below, I consider the effect of the probation order insufficiently denunciatory and deterrent in some respects to render the sentence fit overall, I am not persuaded that, in crafting it, the judge failed to apply the principles of denunciation and deterrence.

[70] Nor am I persuaded that the judge failed to account for the aggravating factors. He expressly listed the profit-driven nature of the offence and the involvement of a 16-year-old as aggravating factors that weighed in favour of a custodial disposition. As to the latter, he also found Mr. Jimenez’s moral culpability was attenuated because he was only 18 years old when he committed the offence with the 16-year-old. In my view, the Crown’s real complaint is not that the judge failed to consider or account for the aggravating factors. Rather, the complaint is that the judge assigned them insufficient weight

[43] In paragraphs 34 to 48 of my Reasons for Sentence in **Jimenez**, I stressed the importance of deterrence and denunciation for offences of this nature and the impact of such offences on the Yukon community. I further reviewed relevant case law. Without repeating what I stated in **Jimenez** in these written Reasons for Sentence, I fully adopt the same reasoning as applicable here.

[44] Therefore, and in consideration of the Court of Appeal decision in Mr. Jimenez’s case, I sentence Mr. Abdullahi to a suspended sentence attached to a three-year probation order. In doing so, I am aware that Mr. Abdullahi has been on conditions for a longer period of time than Mr. Jimenez was when he was sentenced on September 9, 2019.

[45] However, the conditions of Mr. Abdullahi's release on bail were not particularly restrictive⁴, and I see no reason to shorten the period of probation that the Court of Appeal found was appropriate in Mr. Jimenez's case. Certainly, if Mr. Abdullahi's circumstances warrant it, the probation order can be reviewed in future and shortened by the Court.

[46] The terms of the Probation Order are as follows:

1. You will keep the peace and be of good behaviour;
2. You will appear before the court when required to do so by the court;
3. You will notify your Probation Officer in advance of any change of name or address, and promptly of any change in employment or occupation;
4. You will have no contact directly or indirectly or communication in any way with the two co-accused, Dawson Aguilera Jimenez and M.D.;

⁴ Mr. Abdullahi was released on consent on a Recognizance on June 16, 2018. The terms of this Recognizance were as follows:

1. Report to a bail supervisor within 24 hours of your release from custody, and thereafter when and in the manner directed by the bail supervisor.
2. Have no contact, directly or indirectly, or communication in any way with Dawson AGUILERA JIMINES [sic] or M.D.
3. Not possess any firearm, ammunition, explosive substance or any weapon as defined by the Criminal Code.
4. Not be in possession of more than one cell phone, smart phone, or other mobile electronic communications device that accesses the Internet.

This Recognizance was amended on April 16, 2019, and again on November 8, 2019. The latter two amendments were related to reporting and residency conditions. There was no curfew or related restrictive conditions on any of Mr. Abdullahi's recognizances.

5. You will also have no contact directly or indirectly or communication in any way with individuals involved in the drug trade as identified to you in writing by your Probation Officer;
6. You will report to your Probation Officer immediately, and thereafter, when and in the manner directed by your Probation Officer;
7. You will reside as directed by your Probation Officer, abide by the rules of the residence, and not change that residence without the prior written permission of your Probation Officer;
8. You are to abide by a curfew by being inside your residence or on your property between 10 p.m. and 6 a.m. daily, until August 14, 2020, except with the prior written permission of your Probation Officer. You must answer the door or the telephone for curfew checks. Failure to do so during reasonable hours will be a presumptive breach of this condition;
9. You are not to possess or consume illegal drugs that have not been prescribed for you by a medical doctor;
10. You are to attend and actively participate in all assessment and counselling programs as directed by your Probation Officer, and complete them to the satisfaction of your Probation Officer, for the following issues: substance abuse, alcohol abuse, psychological issues, any other issues identified by your Probation Officer, and provide consents to release information to your

Probation Officer regarding your participation in any program you have been directed to do pursuant to this condition;

11. You will perform 40 hours of community service as directed by your Probation Officer or such other person as your Probation Officer may designate. This community service is to be completed no later than 45 days before the end of this order. Any hours spent in programming may be applied to community service at the discretion of your Probation Officer;
12. You are to participate in such educational or life skills programming as directed by your Probation Officer and provide your Probation Officer with consents to release information in relation to your participation in any programs you may have been directed to do pursuant to this condition;
13. You are to make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts; and
14. You are not to be in possession of more than one cell phone, smart phone, or other mobile electronic communications device that accesses the Internet. You are entitled to have a computer in addition to any of the above devices. Any such device — cell phone, smart phone, or other mobile electronic device — in your possession must be registered in your name.

[47] There will be the mandatory s. 109 firearms prohibition for the period of 10 years.

[48] There will be a s. 487.051 DNA order

[49] There will be a forfeiture order, on the terms contained in the Order provided by the Crown and endorsed by me, for the following items:

- a) \$5,905 CAD;
- b) Alcatel cell phone (Model 5058);
- c) Apple cell phone (Model A1723 iPhone SE);
- d) Alcatel cell phone (Model 4044V);
- e) Green pill bottles; and
- f) Baggies.

COZENS T.C.J.

Appendix A

R v Dawson Aguilera-Jiminez
Information #18-00180

AGREED STATEMENT OF FACTS

- On June 15, 2018 Dawson Aguilera-Jiminez was a resident of Ontario
- EMS called RCMP to report erratic driving
- Two officers went looking for car, found it going southbound at Main and Fourth
- it turned left from Main onto Fourth on a yellow light
- Cst Smee activated lights, car turned off Fourth into a parking lot just past the RCMP Detachment and parked
- Smee approached. **Abdullah and [redacted]** were sitting in the back seat
- back windows were tinted and there was movement inside the car
- Driver briefly restarted car and moved backwards while Smee was trying to engage driver. This was unintentional by Mr. Aguilera.
- Smee detained Aguilera-Jiminez under MVA but had safety concerns so intended to search all for officer safety.
- Large amounts of cash found on [redacted] and **Abdullah** (later found to amount to \$1525 and \$2060 respectively)
- Smee had grounds to arrest and did so
- A more thorough search incident to arrest yielded 9 baggies of crack cocaine and one of powdered cocaine, all on **Aguilera-Jiminez**
- one of the phones in back seat rang repeatedly with calls and texts from people ordering drugs
- All 3 taken to APU after arrest, held overnight
- the next morning, shortly before 9 am, **Abdullah** was being taken to the fingerprinting room -a baggie containing five individually-wrapped packages of crack cocaine (weighing 2.26g combined) fell out of his pant leg
- he tried unsuccessfully to conceal it
- was told he would be strip-searched and brought to showers
- when given a last opportunity to turn over any contraband prior to search, he pulled out a rock of crack cocaine that had been taped to his testicles. The weight of the crack was 53.43 grams.
- He had these drugs on him in the car as well.

Aguilera-Jiminez was knowingly driving for a dial-a-dope-style operation.

I admit all these facts are true.



DAWSON AGUILEA-JIMINEZ

April 16, 2019