Citation: *R.* v. *Asuchak*, 2012 YKTC 15 Date: 20120123
Docket: 11-00104
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Faulkner

REGINA

v.

RONALD RAY ASUCHAK

Appearances:

Jennifer Grandy Counsel for the Crown
Ann Pollak Counsel for the Defence

REASONS FOR SENTENCING

[1] FAULKNER T.C.J. (Oral): An investigation by the RCM Police drug section members in Whitehorse led them to believe that the offender, Ronald Asuchak, was trafficking in cocaine. On April 21, 2011, Mr. Asuchak was driving a motor vehicle in downtown Whitehorse. The police attempted to stop Mr. Asuchak and place him under arrest. However, Mr. Asuchak did not stop, but drove off, leading the police on a chase on the streets of downtown Whitehorse while Mr. Asuchak attempted, with substantial, but not complete success, to dispose of his stash of cocaine out the driver's window as he drove along.

[2] Once the cocaine had been disposed of, Mr. Asuchak stopped. He was arrested and charged with possession of cocaine for the purpose of trafficking, dangerous

driving, and failing to stop his vehicle for a peace officer. Following a trial, he was convicted on all three counts. The matter is now before the Court for sentencing.

[3] Obviously, the first and foremost consideration in sentencing in this case is that Mr. Asuchak is a trafficker in a dangerous drug, namely, cocaine. The views of the courts in this jurisdiction are well known and need not be repeated. Suffice it to say that drug traffickers are not welcome in the Yukon. Deterrence and denunciation must be the primary focus of sentence in such cases.

[4] In the particular case of Mr. Asuchak, the necessity for both denunciation and deterrence is even more plain because Mr. Asuchak has two prior convictions for possession for the purpose of trafficking in cocaine, which were entered in 2009 and 2010. By April of 2011, he was back at it again. I accept that Mr. Asuchak was himself a cocaine addict, but it is clear to this Court that his trafficking was accomplishing more than simply feeding his own habit. Even if it were otherwise, while an addict would not receive the same sentence as a purely commercial trafficker, an addict cannot traffic with impunity. If they do so repeatedly, and continue to spread the misery of drugs to other persons, the courts simply cannot stand idly by and do nothing.

[5] In this case, the quantity of cocaine cannot be determined. However, it was obviously a reasonably significant amount given that a cloud of cocaine billowed from the vehicle for some blocks as Mr. Asuchak attempted to evade the police. There was also cocaine powder on Mr. Asuchak's clothing and in his vehicle upon his arrest. Some further gauge of the scale of Mr. Asuchak's operation can also be gathered from the considerable quantity of cash on his person and the considerable traffic on his cell

phone in the hours following his arrest.

[6] In addition to the conviction for possession of cocaine for the purpose of trafficking, the accused also stands convicted of dangerous driving and failing to stop his vehicle for a police officer. I agree with defence counsel, Ms. Pollak, that a global sentence should be imposed in this case since all three offences were part of a closely connected series of events, but that the sentence should be, to use her words, “grossed up” for the fact that there are these additional offences in addition to the cocaine matter.

[7] With respect to the quantum of sentence, there is one other matter I should mention, and that is that Ms. Pollak also contended that there should be a sentence globally in the range of ten to 12 months. In my view, such a range of sentence would be completely unfit in this case. Mr. Asuchak could hardly expect such a sentence, given that he received ten months on his first conviction, and this is now his third. In my view, considering the range of sentence normally imposed and the fact that this is Mr. Asuchak’s third conviction in as many years, the least global sentence that would be fit is that of two years less a day, as contended for by the Crown.

[8] There remains the matter of credit for pre-trial custody. As I already indicated earlier in the proceedings, I am prepared to allow Mr. Asuchak credit at the rate of one and a half days for each served in pre-trial custody. The reports from the Whitehorse Correctional Centre indicate an unblemished institutional record, a cooperative attitude and attempts by Mr. Asuchak to involve himself in programming. I think it is safe to conclude that Mr. Asuchak would have received the full earned remission for the time he has spent in custody to date had he been a sentenced inmate.

[9] However, I am asked to go even further and to give, in effect, more credit in consideration of the conditions of Mr. Asuchak's confinement in the Whitehorse Correctional Centre. I think it is less than clear that the Court can, in effect, ignore the plain meaning of s. 719(3) and do as defence would suggest here, but I need not decide that in this case. Ms. Pollak makes the interesting argument that s. 719 deals only with quantitative and not qualitative aspects of pre-trial custody. Even assuming that she is right, in my view, Mr. Asuchak's affidavits and the other materials provided show only that he suffered the normal results of incarceration that would be experienced by anyone who found himself at the Whitehorse Correctional Centre, including, to note but a few of Mr. Asuchak's complaints, separation from family, loss of privacy and difficulty in communications with those outside the prison. I certainly accept that the Whitehorse Correctional Centre is an outdated and overcrowded facility. No one pretends that it is a nice place, but, as I say, it appears the complaints Mr. Asuchak made were not situations that were unique to him.

[10] In the result, the sentence of the Court with respect to the charge of possession of cocaine for the purpose of trafficking is that he be imprisoned for a period of two years less one day. With respect to the dangerous driving, two months concurrent. With respect to the failing to stop for a police officer, one month concurrent. I allow 13 and one half months credit for the nine months already served, leaving a remanet of ten and one half months yet to be served.

[11] The Crown, having proceeded by indictment, there will be a surcharge of $150 on each count.

[12] There remains the matter of the Crown's application for an order of forfeiture. That order is granted.

[13] There also remains the matter of a potential DNA order. In my view, Mr. Asuchak has now become a sufficiently prolific offender that it would be appropriate to make such an order.

[14] THE CLERK: Time to pay for the surcharges, Your Honour?

[15] THE COURT: Do you require time to pay the surcharges?

[16] MS. POLLAK: That's a total of $450, Your Honour?

[17] THE COURT: Yes.

[18] MS. POLLAK: Your Honour, two weeks after his release.

[19] MS. GRANDY: I have no submissions on that.

[20] THE COURT: Very well, so ordered.

[21] MS. POLLAK: Thank you, Your Honour.

[22] MS. GRANDY: The only other issue, Your Honour, is a firearms prohibition.

[23] THE COURT: Any submissions with respect to that?

[24] MS. POLLAK: It's mandatory, Your Honour.

[25] MS. GRANDY: It's mandatory.

[26] THE COURT: It is hereby further ordered that Mr. Asuchak not have in his possession any firearm, ammunition, explosive substance or any of the other items more completely described in s. 109(1)(d) of the *Criminal Code* for a period of ten years following his release from imprisonment, and any of the items described in sub-section 2(d) for the remainder of his life.

_____

FAULKNER T.C.J.