

Citation: *R. v. Bullers*, 2016 YKTC 48

Date: 20160923
Docket: 14-00817
15-00321
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Chief Judge Ruddy

REGINA

v.

STEVEN JAMES BULLERS

Appearances:
Eric Marcoux
Jennifer Budgell

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] Steven Bullers has entered guilty pleas to two instances of simple drug possession, one of marijuana and one of cocaine.

[2] An Agreed Statement of Facts has been filed setting out the circumstances of the offences in greater detail. In summary, on September 18, 2014, Mr. Bullers was arrested at the Whitehorse International Airport and found to be in possession of 10 pounds of marijuana. While Mr. Bullers had an authorization from Health Canada allowing him to possess marijuana for medical purposes, that authorization was limited to possession of 1500 grams (or roughly 3.3 pounds), and had expired on March 14, 2014.

[3] Mr. Bullers came to the attention of the RCMP as part of a broader investigation in relation to a dial-a-dope operation. Mr. Bullers appears to have had some peripheral involvement with a group who were actively trafficking. On two occasions in which the RCMP purchased cocaine as part of the investigation, Mr. Bullers was noted to be the driver, but was not present for the actual transactions. On March 16, 2015, an RCMP member contacted the dial-a-dope number seeking to purchase cocaine and was told to meet someone driving a green Subaru at Trails North. Mr. Bullers was observed driving a green Subaru, turning into Trails North. A search of the vehicle netted three packages of cocaine weighing a total of 2.41 grams. The Crown concedes that it cannot prove that Mr. Bullers possessed the cocaine for the purpose of trafficking.

[4] Mr. Bullers comes before the court with a dated, but related criminal record. In 1998, Mr. Bullers received a suspended sentence for possession of a restricted drug, namely LSD, contrary to the *Food and Drugs Act*, R.S.C., 1985, c. F-27.

[5] The Crown takes the position that a conditional sentence of four months is appropriate in these circumstances, noting that while Mr. Bullers is pleading to possession, the facts as admitted suggest some tangential involvement with a broader drug trafficking operation which raises this beyond the normal case of simple possession. Defence suggests that a conditional discharge with a probationary term of 12 months is appropriate in light of Mr. Bullers' successful rehabilitation efforts.

[6] Mr. Bullers is 41 years old. He was born in Ontario, but has lived in the Yukon since the age of six. He has a solid employment history as both an electrician and a heavy equipment operator. Since his release from custody, he has been employed by

Norcoppe as a heavy equipment operator. He hopes to be promoted to superintendent within the next few months.

[7] Mr. Bullers was married in 2009, and he and his wife assumed custody of her sister's three children, as both parents suffer from Fetal Alcohol Spectrum Disorder ("FASD"). The children, two boys age eight and 13 and a girl age 10, are members of the Champagne Aishihik First Nation. Mr. Bullers and his wife separated five years ago. The younger two children reside primarily with Mr. Bullers' mother, while the oldest resides with Mr. Bullers and his new partner. Mr. Bullers has all three children on the weekends, and transports them to their weekday activities. Care of the children also includes Mr. Bullers taking them to various First Nation events, including some in Alaska.

[8] Much of defence counsel's submissions focused on Mr. Bullers' desire to provide the children with a stable environment.

[9] Mr. Bullers suffers from two medical conditions which have significant bearing on his use and abuse of substances. Shortly after separating from his wife, Mr. Bullers was diagnosed with depression. He was prescribed anti-depressants, but stopped taking them shortly thereafter. He also suffers from rheumatoid arthritis and experiences significant pain as a result. Indeed, his medical marijuana authorization was granted in relation to pain management of his arthritis.

[10] Mr. Bullers obtained his supply from a designated grower in Vernon, B.C. When one of his shipments was lost in the mail, Mr. Bullers began flying to Vernon to pick up

his supply. To keep costs low, he took to purchasing more than the amount allowed by his authorization.

[11] After seizure of his supply in September 2015, and the closure of his designated grower, Mr. Bullers resorted to using cocaine to manage his pain. His habit quickly ballooned to between \$500 and \$750 per day. His counsel advised that Mr. Bullers became increasingly involved with drug dealers to get easy access to cocaine, but concedes that these associations and his use of cocaine did begin prior to his arrest for possession of marijuana.

[12] Upon his release from custody in relation to the cocaine offence, Mr. Bullers went to detox. He was then placed on a 14-month wait list for individual counselling at Alcohol and Drug Services. As a result of the lengthy delay, Mr. Bullers sought counselling from Many Rivers. He completed six sessions. He has been attending Narcotics Anonymous meetings, and has stayed clean since the day of his second arrest in March of 2015.

[13] He is now managing his depression through the use of prescribed anti-depressants, and is managing his rheumatoid arthritis through the use of appropriate prescription medication. His doctor has advised him that he is no longer an appropriate candidate for medical marijuana given his issues with addiction.

[14] I have little difficulty concluding that a conditional sentence is not called for in these circumstances. While Mr. Bullers' association with known drug dealers and peripheral involvement in the dial-a-dope operation is concerning, it is balanced out by

his efforts at rehabilitation, such that jail is not warranted. The real issue, in my view, is whether the appropriate sentence is a conditional discharge or a suspended sentence.

[15] The test for a discharge is two-fold: I must be satisfied that a discharge would be in the offender's best interests and that the imposition of a discharge would not be contrary to the public interest.

[16] Counsel for Mr. Bullers has provided a number of cases in support of her proposition that a discharge is appropriate. As is not unusual, none is directly on point, but there are common themes that become evident in a review of the case law.

[17] Firstly, cases involving marijuana, either possession or cultivation thereof, where the offence is medically motivated, are viewed somewhat sympathetically when considering whether to impose a discharge, even where the amounts are considerable and there is a prior dated but related record (see *R. v. Santos*, 2014 BCPC 266, *R. v. Lange*, 2002 BCPC 483). Secondly, the two factors most consistently used to justify the imposition of a discharge in cases of possession of cocaine are the lack of a prior criminal record and the relative youth of the offender (see *R. v. Le*, 2012 BCSC 725, *R. v. Price*, 2016 BCPC 216).

[18] These factors are relevant in determining the appropriate disposition for Mr. Bullers. Though his authorization was expired and the amount of marijuana in his possession was in excess of that allowed under his authorization, the existence of the authorization nonetheless provides some confirmation that his possession was medically motivated. The cases filed provide some support for the conclusion that the moral culpability of offenders convicted of possession of marijuana in such

circumstances should be viewed as low, particularly given the changing attitudes of our society in relation to marijuana (see *R. v. Santos*).

[19] While this rationale would seem to open the door to consideration of a conditional discharge, this case is complicated by the fact that Mr. Bullers is being sentenced not just for the medically motivated possession of marijuana, but also for the possession of cocaine, a drug whose harmful effects and devastating impacts on individuals and communities are not viewed sympathetically by the courts or, by the general public. Furthermore, Mr. Bullers is not the youthful offender with no prior criminal history most commonly considered as a candidate for a discharge in cases of cocaine possession.

[20] Some parallels can be drawn between Mr. Bullers' case and that of *R. v. Ilicic*, 2012 BCSC 1486. Mr. Ilicic pleaded guilty to one count of addiction motivated trafficking of seven grams of marijuana and possession of 5 grams of cocaine. He was 31 years old and had a longstanding substance abuse problem. He had undergone extensive rehabilitation, including a 90-day residential treatment program, followed by a second stage residential rehabilitation program. However, Mr. Ilicic had no prior record, and the court concluded that a criminal record would have a detrimental impact on his rehabilitative efforts, particularly on his ability to secure employment.

[21] Viewing Mr. Bullers' case through the lens of the case law provided, I have some concerns in relation to both branches of the discharge test. With respect to the first branch, whether a discharge would be in Mr. Bullers' best interests, I am mindful of the decision of *R. v. Shortt*, 2002 NWTSC 47, a decision of the Northwest Territories

Supreme Court, frequently quoted with approval in this jurisdiction, in which Vertes J. made the following observations:

[32] A review of the case law reveals that in many cases a discharge was granted where a conviction would result in an accused losing his or her employment, or becoming disqualified in the pursuit of his or her livelihood, or being faced with deportation or some other significant result. These are examples of highly specific repercussions unique to the specific accused. But, such specific adverse consequences are not a prerequisite. In my opinion, it is sufficient to show that the recording of a conviction will have a prejudicial impact on the accused that is disproportionate to the offence he or she has committed. This does not mean that the accused's employment must be endangered; but it does require evidence of negative consequences which go beyond those that are incurred by every person convicted of a crime (unless the particular offence is itself harmless, trivial or otherwise inconsequential). ...

[22] In this case, it is difficult to see how the imposition of a criminal record would have negative consequences for Mr. Bullers beyond those incurred by anyone convicted of a crime. Unlike Mr. Ilicic, Mr. Bullers already has a criminal record for a related, albeit dated, offence, and there is no suggestion that his ability to maintain sobriety or to maintain his employment will be adversely affected by additional entries on his criminal record.

[23] Defence counsel points to the negative impact a record may have on his ability to be a father, but this impact seems limited to potential trips into Alaska with the children for First Nation events. I was not provided any details on the nature or frequency of these events, nor the impact on the children of someone other than Mr. Bullers accompanying them. Nor was there information to suggest that Mr. Bullers could not apply for and obtain an exemption, notwithstanding the addition of these criminal convictions to his existing record. Defence counsel also points to the impact the stigma

of a criminal record will have on Mr. Bullers' family; however, I am hard pressed to see how the registering of convictions would adversely impact the family in light of the fact that Mr. Bullers already has a criminal record.

[24] With respect to the second branch of the discharge test, whether a discharge would be contrary to the public interest, the question is whether a discharge would adequately meet the principles of denunciation and deterrence. This does not appear to be a case in which there is the need to impose a sentence to ensure specific deterrence. Mr. Bullers' rehabilitative efforts suggest that his arrest and prosecution have had the desired effect of deterring him from committing similar offences. However, there is a public interest in sending a strong message that such offences, particularly where cocaine is involved, will not be tolerated.

[25] Defence counsel points to the decision out of this court in *R. v. Moore*, 2005 YKTC 10, as support for the proposition that a conditional discharge can have a deterrent effect (see paragraph 31). However, there are significant differences in the two cases. While the *Moore* case did involve addiction motivated trafficking rather than just possession of marijuana, Mr. Moore was only 18 years of age and had no prior criminal record. In his decision, Lilles J. was clearly concerned about the potential of a conditional discharge to send a deterrent message to Mr. Moore's peer group. Mr. Bullers' contemporaries would be a decidedly different group.

[26] In all of the circumstances, I am simply not satisfied that the test for a discharge has been met. Instead, I am satisfied that it is appropriate to suspend the passing of sentence and place Mr. Bullers on probation. Given Mr. Bullers' rehabilitative efforts

and the fact that he has been subject to conditions for an extended period of time, I am satisfied that a probationary term of six months is sufficient. The terms and conditions will be as follows:

1. Keep the peace and be of good behaviour;
2. Appear before the court when required to do so by the court;
3. Notify the Probation Officer, in advance, of any change of name or address, and, promptly, of any change in employment or occupation;
4. Have no contact directly or indirectly or communication in any way with Bradley Arthur Prowal, Jeffery Paul Redick, Gerritt Laszlo Houben-Szabo, Stewart James McCarthy, Lucas James Radatzke, Jacob Bowie Maynard, Augusto Joseph Duminuco, Amy Lynn Duminuco, James Charles Miller, Taylor Joseph Wallace and Jason Reece Morgan.
5. Report to a Probation Officer within two working days and thereafter, when and in the manner directed by the Probation Officer;
6. Not possess or consume controlled drugs or substances that have not been prescribed for you by a medical doctor;
7. 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,

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;

[27] As the Crown has elected to proceed by indictment, victim surcharges of \$200 will be imposed on each count for a total of \$400. Time to pay will be one month.

RUDDY C.J.T.C.