

Citation: *R. v. Campbell*, 2009 YKTC 87

Date: 20090709
Docket: 08-00632A
08-00637A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Cozens

REGINA

v.

JAMES LEO CAMPBELL

Appearances:
Jennifer Grandy
André Roothman

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] COZENS T.C.J. (Oral): James Leo Campbell is before the Court for sentencing on two offences of trafficking in cocaine, contrary to s. 5(1) of the *Controlled Drugs and Substances Act*. He was found guilty as a party under s. 21(1) of the *Criminal Code* after trial on one charge and subsequently entered a guilty plea to a second charge.

Circumstances of the Offences

[2] The circumstances surrounding these offences are that in December 2008 the RCMP in Whitehorse were engaged in an undercover operation targeting the street

level trafficking of cocaine. On December 5th an undercover officer purchased four rocks of crack cocaine from Trish James, who is Mr. Campbell's stepdaughter, for \$100. On December 12th, the undercover officer again purchased four rocks of crack cocaine for \$100 from another male individual.

[3] On December 5th the undercover officer initially approached Ms. James. During the course of completing the transaction, however, Mr. Campbell provided direction to the undercover officer to Ms. James' location and was observed to be acting in somewhat of a supervisory role with respect to Ms. James' involvement.

Supplementing the undercover officer's observations, an RCMP officer conducting surveillance noted three individuals firstly approaching Mr. Campbell before then going to speak briefly with Ms. James. On one of those occasions the individual was subjected to a pat-down search performed by Mr. Campbell before approaching Ms. James.

[4] On December 12th the same undercover officer approached Mr. Campbell, who directed another individual to provide the crack cocaine to the officer for the price of \$100. Mr. Campbell was also observed at the same time directing this individual to complete a \$50 transaction with an unidentified male.

Positions of Counsel

[5] Crown counsel submits that the appropriate sentence would be custody in the range of 18 to 20 months, to be followed by a period of probation. Mr. Campbell's pre-trial custody since December 18, 2008 should be deducted from the custodial sentence at the usual credit of one and a half to one. This amounts to 10 months credit.

[6] Counsel argues that the leading sentencing principles in cases involving the trafficking of hard drugs are deterrence and denunciation, while recognizing that the principle of rehabilitation remains very much at play in this case, albeit in a subordinate position.

[7] Counsel points to the aggravating factors, being Mr. Campbell's criminal history of 16 convictions, including: a related conviction for an offence under s. 4(1) of the *Controlled Drugs and Substances Act* for which Mr. Campbell received a conditional sentence of six months; the fact of multiple transactions of crack cocaine; the involvement of his stepdaughter, Ms. James; and his role in the transactions in insulating himself from the actual handling of the drugs while providing direction, thus placing him higher up in the trafficking chain than the simple street level trafficker.

[8] Crown relies upon the sentencing range as set out in the cases of *R. v. Crompton*, 2009 YKSC 16; *R. v. Naiker*, 2007 YKTC 58; and *R. v. Silver*, 2006 YKTC 32. *R. v. Totten*, 2001 YKTC 2, was also filed, primarily for the purpose of illustrating a type of trafficking offence and offender that would receive a custodial disposition beyond the range sought in the present case. Crown counsel is opposed to any portion of the sentence being served conditionally in the community.

[9] Defence counsel submits that the appropriate sentence would be in the range of ten months time served, based primarily upon Mr. Campbell being considered as a lower scale middleman or strictly street level trafficker motivated by addiction. Counsel relies on the cases of *R. v. Webb*, 2003 YKTC 95; *R. v. Profeit*, 2003 YKTC 102; and *R. v. James*, 2009 YKTC 43. Counsel further submits that if there is going to be any

additional custodial disposition, such a disposition should allow Mr. Campbell to serve his sentence conditionally in the community.

Relevant Factual Findings

[10] I considered that the evidence at trial and in the factual admissions that were made with respect to the guilty plea place Mr. Campbell at a level of trafficking that is above that of a middleman. He was clearly providing direction and supervision to other individuals involved in cocaine trafficking.

[11] While there is also evidence in the pre-sentence report and in his own comments to the Court that Mr. Campbell has a serious drug addiction, the evidence falls short of persuading me that Mr. Campbell is an addiction-driven trafficker. A drug trafficker with an addiction problem can nonetheless be an addict who trafficks for profit without necessarily being an addict-driven trafficker. I consider Mr. Campbell to be a profit-motivated drug trafficker who has a drug addiction problem.

[12] That said, I recognize that there is some evidence that Mr. Campbell also earned monies from snow removal services he provided. He submitted copies of cheques from a number of related and unrelated business entities dated from November 2008 through to January 2009 in support of this. While Crown counsel did not have the opportunity to confirm the authenticity of the cheques or services provided, becoming firstly aware of these documents at the sentencing hearing, I note, from a review of the exhibits filed at Mr. Campbell's bail hearing on December 19, 2008, the existence of a letter from Corline Management Services providing confirmation of Mr. Campbell's provision of snow removal services for three downtown businesses for the period from October

through March each year. Many of the copies of cheques filed in court at the sentencing hearing were issued by Corline Management Services or clearly related entities.

[13] I also note that Mr. Campbell's wife and children receive social assistance, as well as the information in the pre-sentence report as to the difficult financial situation his family is in. As such, I find that Mr. Campbell did not rely solely on profits received from trafficking drugs for his and his family's income. Clearly, however, at a minimum, he supplemented his income with these profits.

Personal Circumstances

[14] Mr. Campbell just turned 40 years old. He has been in a long-term common law relationship with Dianne Nolan. He has a stepdaughter, Ms. James, and he and Ms. Nolan have three teenage sons. The family's financial situation is somewhat precarious.

[15] His mother, who had been ill for some time, passed away on July 3, 2009, while Mr. Campbell was in custody. He has a close relationship with his father. One brother was killed in a firearms incident at the age of 27, when Mr. Campbell was approximately 22 years of age. Mr. Campbell feels some responsibility for this incident as he did not go out with his brother that night when asked by his brother to do so. It is clear that this incident weighs heavily on Mr. Campbell.

[16] Mr. Campbell has another older brother and three sisters. His relationship with his siblings, generally speaking, has not been particularly close historically, although there have been recent improvements.

[17] His employment history is replete with numerous short term and seasonal periods of work.

[18] Mr. Campbell has alcohol and drug abuse issues. These issues have increased markedly over the past year and one half, since the death of his brother-in-law in the basement living unit of Mr. Campbell's residence, an event for which Mr. Campbell, again, feels somewhat responsible.

[19] The Problems Related to Drinking Scale self-reporting questionnaire suggests he has a severe level of drinking-related problems. The Drug Abuse Screening Test self-reporting questionnaire also indicates a severe level of problems related to drug abuse. His Criminogenic Risk Assessment places him at a high risk to reoffend. This assessment emphasizes risk factors which, if not individually or collectively reduced, contribute to the increased level of risk for an individual. Mr. Campbell has a number of risk factors.

[20] While in custody Mr. Campbell has attended Alcoholics Anonymous meetings, met regularly with a drug and alcohol counsellor, Kevin Barr, met with Phil Gatensby for one-on-one counselling, participated in a talking circle and the Gathering Power and White Bison programs. He indicated a willingness to attend a 28-day residential treatment program at Alcohol and Drug Services.

[21] Mr. Campbell's criminal record shows two convictions in 1988, one in 1994, and then 13 other convictions between 2000 and 2006. He also received a conditional sentence order of 90 days on February 27, 2006, for breaching a probation order. The conditional sentence order was subsequently terminated on October 10, 2006, after 73

days had been completed. There are plausible explanations that could explain the delay between the imposition of the conditional sentence and its termination, although none were provided. Regardless, Mr. Campbell did not dispute the fact that the conditional sentence order imposed February 27, 2006 had been terminated.

[22] The author of the pre-sentence report cited a number of concerns including, in particular, prior statements by Mr. Campbell that he intends to change his behaviours, and is not supportive of a community disposition for Mr. Campbell. I make it clear that the opinion of the author is of assistance in the sense that Mr. Campbell is not before the Court with the benefit of a positive report that sets out a recent history of compliance with release orders and an established change of behaviour demonstrated within the day-to-day reality of a community setting.

[23] At the sentencing hearing, a number of individuals were present in the courtroom in support of Mr. Campbell and many of them also addressed the Court. Numerous letters were also filed in support of Mr. Campbell. The primary point expressed by these individuals is that they believe Mr. Campbell's attitude is different now than what they have observed before.

Law

[24] I will repeat what I said in *R. v. Tanana Mae Profeit*, 2009 YKTC 39, at paras. 24 to 28:

[24] The paramount sentencing factors in drug trafficking cases are deterrence and denunciation.

[25] Trafficking in drugs, and in particular hard drugs such as cocaine, is a crime whose victims can be found far

beyond the individuals who become addicted to the drugs. Families can be torn apart by either the loss of the individual to the addiction itself or to the violence that all too often accompanies the drug trade. In Canadian society this violence has found innocent victims on numerous occasions, whether they be extended family members or passers-by caught in the crossfire of the violence.

[26] Children suffer immense harm from the effects of addiction in their home, whether this [harm] be from pre-natal impact or from physical and/or emotional violence in the homes that they should be safe in. The future of these children and their families is damaged and all of society pays the price.

[27] I am not going to attempt to compare the effects of drug trafficking in the Yukon to other communities south of us. These communities no doubt experience serious harm from the effects of the drug trade. I concur, however, with the comments of Faulkner J. in *R. v. Holway*, 2003 YKTC 75, where, in dealing with the impact of the drug trade in the Yukon, he states at paragraph 7:

...northern communities are already struggling with disproportionately high rates of addiction, while scant resources are available to deal with the problem. The last thing we need is more drug traffickers. Courts in the North have quite properly held that they are entitled to take these local conditions into account and have consistently held that deterrent sentences are warranted and that, given our circumstances, the need to maintain a deterrent trumps other sentencing considerations in cases involving trafficking in hard drugs.

[28] While rehabilitation of the offender is always an important sentencing consideration, it will, other than in exceptional circumstances, often involving drug treatment court participation such as the Yukon Community Wellness Court, take a back seat to deterrence and denunciation.

Sentencing Authorities

[25] The *Crompton* case involved guilty pleas to possession for the purpose of

trafficking of 2.4 grams of crack cocaine, trafficking in .9 grams of cocaine and a breach of recognizance. Justice Veale imposed a sentence of eight and ten months consecutive to each other for the drug-related offences. He stated that but for the guilty pleas the appropriate sentence would be 24 months. Aggravating factors were the profit-driven motivation, nature of the drugs involved, commission of the trafficking offence while on release on a recognizance for the first possession for the purpose of trafficking, and the use of his place of employment for the trafficking offence. Mr. Crompton was 26 years of age and had no prior criminal record.

[26] The **Naiker** case was a conviction after trial for possession for the purpose of trafficking of 95 rocks of crack cocaine, with no prior criminal record and Mr. Naiker being a strictly for-profit trafficker. Faulkner T.C.J. stated:

[8] Giving as much weight as I can to the fact that Mr. Naiker is still a young man, has a supportive family and still has a real chance of rehabilitating himself and making something of his life, I sentence him to a period of imprisonment of 14 months.

He also receives one year probation.

[27] The **Silver** case was a conviction after trial for possession for the purpose of trafficking, and a fit sentence for a cocaine user who was considered to be a for-profit trafficker was stated to be 18 to 24 months for 59.3 grams of powder and crack cocaine. I note that 2007 YKCA 4 clarifies the amount of the drugs involved. Mr. Silver had no criminal record, a wife and child, as well as two other children, had attended Yukon College while in custody, and had apparently ceased his cocaine use since being charged. His sentence was reduced to 15 months due to credit for three months pre-

trial custody and the totality principle, as he had the minimum one-year consecutive sentence imposed for a related weapons offence.

[28] The **Webb** case was a guilty plea to trafficking in 1.7 grams of cocaine in which Mr. Webb acted as a middleman for the drug transaction in exchange for a \$20 payment. He had 18 prior non-drug-related convictions. Taking into account the totality principle and Mr. Webb's status as an aboriginal offender, he was sentenced to a period of imprisonment of five months.

[29] Ellenise Alexis Profeit, which I referred to earlier as the **R. v. Profeit** case, was convicted of trafficking cocaine in the amounts of 2.5 and 2.6 grams on two separate occasions. Ms. Profeit acted as a middleman in the transaction and was considered to have an addiction to cocaine that may have motivated her to be involved in trafficking drugs. She had an unrelated, minor criminal record. She received a sentence of nine months custody plus one year probation.

[30] The **James** case was a guilty plea to selling a total of nine rocks of crack cocaine on two occasions, one of which was the December 5, 2008, transaction for which Mr. Campbell was convicted after trial. Ms. James was sentenced to a period of six months custody. The sentencing judge noted Ms. James' lack of a prior criminal record, early guilty plea, First Nations ancestry, family support and the steps she had taken to resolve her addiction issues.

[31] In addition to the cases filed by counsel, I have considered the following authorities. In **R. v. Hale**, 2007 YKTC 79, on a guilty plea to possession for the purpose of trafficking of 57.5 and 2.7 grams of crack cocaine and 29.3 grams of marihuana, a

sentence of 12 months plus 18 months probation was given to an addict-driven trafficker with a 2001 prior related conviction that had resulted in a custodial sentence of ten months. Particularly aggravating was the fact that Mr. Hale was on release for a trafficking offence at the time of his arrest on this charge. He had sought help for his addiction while in custody awaiting sentencing.

[32] **R. v. Lewis**, 2008 YKTC 10. On conviction after trial for possession for the purpose of trafficking of 11.6 plus grams of powder cocaine as well as an undeterminable amount of cocaine he had consumed at the time of his arrest, a fit sentence for a young man with a significant and persistent criminal record who was considered to be an addict-driven trafficker was 12 months plus nine months probation.

[33] In the **Tanana Mae Profeit** case I referred to earlier, on a guilty plea to possession for the purpose of trafficking of 15.8 grams of cocaine and two rocks of crack cocaine, a fit sentence was considered to be 15 months. Ms. Profeit was an aboriginal offender and situated somewhere between the purely addict-driven trafficker and the purely for-profit trafficker. Her five prior trafficking-related offences resulted in a total of 13 months imprisonment, with four months being the longest individual sentence. The actual sentence imposed of 12 months was due to the application of the totality principle as Ms. Profeit was also sentenced for other serious offences at the time.

[34] The difference between a guilty plea and taking a matter to trial is a relevant factor in considering the appropriate sentence. While Mr. Campbell did enter a guilty plea to one of these offences, it was only after a conviction at trial for a similar

transaction caught on the same undercover RCMP operation. As such, while some credit for the guilty plea nonetheless should be given, it is not as much as would be the case if this had been an early guilty plea.

[35] Considering the principles of sentencing, the aggravating and mitigating factors, and all the information I received in the pre-sentence report, and through those individuals who spoke and provided letters in support of Mr. Campbell, I find that an appropriate sentence for the two s. 5(1) offences would be a custodial period in the range of 18 months.

The Appropriateness of a Conditional Sentence

[36] The question is whether Mr. Campbell should be allowed to serve any of this period of custody in the community as a conditional sentence. The relevant considerations set out in s. 742.1 of the *Code* require me to be satisfied that the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in s. 718 to s. 718.2.

[37] Section 718 states, in part, that:

The fundamental purpose of sentencing is to contribute ... to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;

- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and to the community.

[38] Section 718.2 sets out a number of other relevant principles to be considered in sentencing, including:

- (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
- (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders...

[39] Even in cases where restorative or rehabilitative prospects for an offender are of limited applicability, the principle of restraint set out in s. 718.2 (d) and (e) can be applied when considering whether a custodial sentence should be served conditionally in the community rather than in a custodial institution, provided that a conditional sentence can achieve the objectives of denunciation and deterrence as effectively as incarceration (*R. v. Proulx*, [2000] 1 S.C.R. 61).

[40] The offences Mr. Campbell has committed must be denounced and he and others must be deterred from committing the same or similar offences. Denunciation and deterrence are the leading principles of sentencing applicable to this case and, generally speaking, to other cases involving the trafficking of drugs in the Yukon. The sentence I impose today gives pre-eminence to these two sentencing principles. Mr. Campbell's rehabilitative prospects are still an important, albeit lesser, factor that I must

take into account.

[41] Much of the information I have before me points to Mr. Campbell as being one of those cyclical offenders who, when deprived of liberty, makes some efforts towards changing behaviours, indicating to others that this time is different, this time he or she, as the case may be, has really hit rock bottom, only to find him or herself at some point after regaining liberty making the same wrong choices and ending up in the same or worse situation than before.

[42] That is not to say that the intention or belief, while experiencing the deprivation of liberty, is deliberately misleading. The offender unfortunately all too often simply has little in the way of an extended root and support structure to enable sustained growth in the real world environment.

[43] Is anything different this time for Mr. Campbell? He addressed the Court at the conclusion of the sentencing hearing, in large part reading from a hand-written letter he had prepared. He acknowledged from the outset that his actions were wrong, particularly in regard to the involvement of his stepdaughter, that these actions were the responsibility of himself alone, albeit in large part due to his addiction issues, and that his family has suffered greatly as a result. He further admitted to being a “self centred, egotistical person full of self pity and fear.” He acknowledged that he has to change himself and his way of thinking.

[44] What Mr. Campbell said, and the way in which he said it, gives me no reason to believe that he is not being honest in his assessment of himself and his actions. At the end of the day, and regardless of what I do today in sentencing, Mr. Campbell will either

live out these words and change his life and his family's lives for the better, or he will not. Time will tell.

[45] As has been said before, "What you are speaks so loudly that I cannot hear what you say." Words can come from an internal belief and intention and, if kept in the forefront of the thought process, can lead an individual towards the day-to-day realization of what has been said. In this way, the past is no longer an enemy that must be wrestled with daily, because a new life has replaced the old one. Words can also, even if well intended, lead nowhere, if there is not a consistent effort made to live by those words, an effort that may at times need to be doubled up when there are slips along the way. Sadly, each time an individual gives up and stops trying to make the changes expressed, the hole dug is deeper and it is more difficult to get out of the next time.

[46] So, Mr. Campbell, what you have said will only remain true and permanently change your life and your family's lives for the better if you choose on a daily basis to make it happen.

[47] Mr. Campbell's father spoke in support of Mr. Campbell, indicating that he could really use Mr. Campbell's assistance at this time with a number of projects. He stated that he would notify the authorities if Mr. Campbell "stepped out of bounds."

[48] Dianne Nolan provided information about the difficulty she is having raising the three teenage boys without Mr. Campbell's assistance, the children's "desperate need for their father in their lives", and that the family is steadily falling apart without him. His sisters, Cheryl and Loretta (Tammy), spoke and indicated their support for him, stating

that Mr. Campbell has apologized to them and has taken the blame for his actions “for the first time.”

[49] Of particular note are the few words spoken by Mr. Campbell's sister, Faye Dorian, who did not, I believe from my observation, necessarily originally intend to speak at all. She said that she and Mr. Campbell had been estranged for approximately ten years and, as a result of what she believes is a recent change in his attitude, for the first time in those ten years she is hopeful.

[50] Mr. Gatensby, who also addressed the Court, Mr. Barr and Scott Smith gave information from their involvement with Mr. Campbell in providing counselling and programming to him while he was on remand at Whitehorse Correctional Centre. They all expressed the belief that Mr. Campbell is taking responsibility for his actions and is sincere in his desire and efforts to change his life. Mr. Gatensby spoke of a noticeable change in attitude he has observed in the four months he has spent time with Mr. Campbell. Mr. Campbell has an offer of steady employment commencing immediately with Power Saw Professionals, both in and out of the Whitehorse area. He has worked with Mr. Minet before and Mr. Minet spoke on Mr. Campbell's behalf from the perspectives of both an employer and a friend.

[51] In considering the appropriateness of a conditional sentence I am cognizant that there is an inherent endangering of the safety of the community by the offence of drug trafficking, particularly when the drug involved is crack cocaine or something similar. So while I understand the logic that may exist, to some extent, in the notion that there is little to lose by way of the imposing of a conditional sentence, given the high level of

supervision of such orders in the Yukon and the likelihood of the detection of breaches, coupled with the rebuttable presumption that, upon a breach of the conditional sentence order, the remainder of the sentence will be served in custody, the endangerment of the safety of the community is a much broader notion.

[52] If the objectives of denunciation and deterrence are not met, then the likelihood of others and of Mr. Campbell engaging in drug trafficking in the future poses a risk to the safety of the community, given the inherent danger not only in the trafficking of drugs but in the use of the drugs and the resultant widespread harm. In trafficking cases, while the safety risk may not be as apparently immediate as in the case of an offender convicted of an offence of serious personal violence, the risk exists nonetheless.

[53] In Mr. Campbell's case, on a consideration of all the relevant information and of the law, and on a balancing all of these factors, I am satisfied that the imposition of a conditional sentence with restrictive terms will not endanger the safety of the community and can achieve the fundamental principles of denunciation and deterrence, which are the leading principles in this case, as well as the other principles of sentencing. As such, in order to achieve the appropriate sentence of 18 months, I will structure the sentence as follows.

[54] There will be a sentence of ten months time served for the December 5, 2008 offence, and a consecutive sentence of eight months to be served conditionally in the community for the December 12th offence.

[55] The terms of the conditional sentence 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. Report to a supervisor immediately upon your release from custody, and thereafter when required by the supervisor and in the manner directed by the supervisor;
4. Remain within the Yukon Territory unless you have written permission from your supervisor or the Court;
5. Notify the supervisor in advance of any change of name or address, and promptly notify the supervisor of any change of employment or occupation;
6. Reside as approved by your supervisor and not change that residence without the prior written permission of your supervisor;
7. At all times you are to remain within your place of residence except with the prior written permission of your supervisor, with such permission to be granted for employment and for attendance at counselling programs and for such other purposes as are approved by the supervisor;

[56] At this point I will say that a conditional sentence is a custodial sentence which the offender is allowed to serve in the community. House arrest is a means by which this reality is brought home to the offender and to the community at large. There is a deprivation of liberty involved in the imposition of a conditional sentence although, as per the principle of restraint in s. 718.2(d) and (e), the deprivation of liberty is as minimally restrictive as possible while still meeting the principles and objectives of sentencing. The offender can still maintain employment, education and other important

activities, as well as being physically present in his or her family's lives on a daily basis. In some respect, house arrest terms can be quite difficult because the offender is not physically prevented from walking out of his or her residence, as contrasted to the circumstances in an institutional jail setting. I am not saying more difficult, but certainly conditional sentences, and in particular the house arrest portion of them, can have a positive impact on an offender and on others regarding the consequences that can attach themselves to the commission of criminal offences.

[57] While I have said that house arrest is to be the presumptive norm for a conditional sentence, each offence, offender and set of circumstances is different, and it may be appropriate in some cases to impose curfews rather than house arrest. This is not such a case.

[58]

8. Abstain absolutely from the possession or consumption of alcohol and controlled drugs or substances except in accordance with a prescription given to you by a qualified medical practitioner;
9. Not attend any bar, tavern, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
10. Take such alcohol and drug assessment, counselling or programming as directed by your supervisor;

Again, I will say this: notwithstanding Mr. Campbell's apparent willingness to attend at a residential treatment program for substance abuse, I am not going to make this part of my order. Any such attendance will have to be pursued by Mr. Campbell of his own

initiative. I am aware that certain such programs will not approve the attendance of an individual who is bound by a court order to do so and/or directed to do so by a conditional sentence supervisor or probation officer. Hopefully, if programs that follow this policy understand that this decision is not compelling Mr. Campbell to attend it, they may accept that such an application on his part would be voluntary.

11. Take such other assessment, counselling and programming as directed by your supervisor;
12. Have no contact, directly or indirectly, or communication in any way with any individuals known or presumed to be currently involved in the trafficking or use of illicit drugs as identified to you in writing by your supervisor. You are to provide your supervisor with the names of any such individuals as are known to you.
13. Perform 80 hours of community service as directed by your supervisor or such other person as your supervisor may designate. This community service is to be completed by December 31, 2009. Any hours involved in programming and treatment other than attendance at residential treatment can, at the discretion of the supervisor, be considered as counting towards these community work service hours.

Again I will say that community work service is a means by which offenders can make reparations for the harm done to the victims or to the community in which the offence took place and can promote a sense of responsibility in the offender and acknowledgement of the harm done, as per the fundamental principles set out in s. 718 (e) and (f) of the *Code*.

14. Make reasonable efforts to find and maintain suitable employment and provide your supervisor with all necessary details concerning your efforts;
15. Provide your supervisor with consents to release information with regard to your participation in any programming, counselling, employment or educational activities that you have been directed to do pursuant to this conditional sentence order.

[59] The conditional sentence will be followed by a period of probation of 15 months. The terms of the probation order will remain the same as those of the conditional sentence order with the exception that the house arrest clause will be deleted, as will the community work service hours.

[60] Section 109 of the *Code* requires that there be a mandatory ten-year prohibition against the possession of any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition and explosive substance.

[61] Defence counsel has raised an issue as to Mr. Campbell requiring a s. 113 exemption. There is insufficient evidence before me to grant such an exemption. I will, however, adjourn that application in order to allow Mr. Campbell to provide further evidence, should he wish to do so.

[62] The victim fine surcharge is waived in the circumstances, as I note the family's difficult financial situation.

[63] Are there any submissions by counsel on any of the terms of the conditional

sentence order or the probation order?

(Submissions)

[64] THE COURT: Okay. Well, before I go back to the other house arrest term, with respect to that clause on the probation order, and I recognize that notwithstanding the family connection that there may be benefits in having no contact orders for convicted traffickers in illicit drugs, that in this circumstance I believe that, in order to give full prospect to the principles of rehabilitation, at least in Mr. Campbell's case, and I cannot speak to Ms. James because I do not have the information that the sentencing judge had in that case, but quite possibly, from sort of an objective look at the situation, contact may contribute also to perhaps working together to put this all behind them. I believe that the principles of denunciation and deterrence are not going to be compromised in that the overall potential benefits outweigh the potential negative risks attached. So I am going to have, on that clause where it says not to have contact with any individuals known to be involved in the drug trade, or however I worded it:

12. ... with the exception of Ms. Trish James.

That will deal with your order, Mr. Campbell. She will have to deal with her own and I would suggest she move on it quickly.

[65] As far as the house arrest clause goes, and again I will receive any comments on this as I am sort of thinking through this here, that where I had stated with such permission to be granted for employment and attendance at counselling and programming I will add:

7. ... recreational activities, family gatherings, medical appointments, and for

such other purposes --

I will even make it longer to make it a little clearer, I think when I finish.

-- and for medical appointments as approved by the supervisor, and for such other purposes as are approved in writing by the supervisor on a case-by-case basis, recognizing the fact that this is a house arrest term, and not a curfew term.

And we will see how that works. That will be part of the order. It provides them some basic guidelines, and then there are exigencies that are going to be outside of this and that hopefully will provide enough assistance. If it does not provide enough assistance, then the next time I am doing this I am going to ask what might work better.

[66] Ms. Nolan, you had your hand up?

[67] MS. NOLAN: Yes, there is a few other activities that Jim's counsellors, as well as I, have thought that might help him along the way with our traditional culture, to do -- go to things with some organizations to do some traditional harvesting and things like that as well, for cultural --

[68] THE COURT: In the phrasing of "recreational activities", I will add "cultural and recreational activities", but they still have to be approved by the supervisor. It does not mean that he automatically gets to go to these. Those are still not automatic. They have to be granted. So the way that the clause reads, as I believe we have it, is:

7. At all times you are to remain within your place of residence except with

the prior written permission of your supervisor, with such permission to be granted for employment, for attendance at counselling and programming, for cultural and recreational activities, for family gatherings, and for medical appointments --

Actually, how I will word this is:

-- at the discretion of the conditional sentence supervisor, and for such other purposes as are approved in writing by the conditional sentence supervisor on a case-by-case basis, with recognition of the fact that this is a house arrest clause and not a curfew.

[69] I will add a comment to this to the extent that, depending on how this all goes and everything, there is always the option available for anyone to bring an application some time down the road, not in the near future, even though the application can be brought, but I would suggest some time down the road, if there is seen to be some benefit in perhaps altering this term further. At this point in time, it is the entire eight months, so I am not staggering it within the order itself. If there is going to be any staggering or relaxation of that term, there will have to be a good reason brought forward for that, I would expect, before I would consider it. And there may be good reasons, there may be good progress, there may be a variety of factors that come into play, but at this point in time, we have it for the entire period.

[70] Anything on the probation order?

[71] MR. ROOTHMAN: Nothing from me, Your Honour.

[72] THE COURT: Nothing else? When would we like to adjourn this to fix a date for a potential s. 113 application?

[73] MS. GRANDY: I would suggest we just, unless the application is forthcoming, notice of application can just be served on the Crown with the appropriate materials and we can get a date at that point.

[74] THE COURT: Okay. Well, I will adjourn that generally, then, that application. Although we can adjourn it generally, but at some point in time I am going to have to make an order one way or the other, since it is mandatory, which is why --

[75] MS. GRANDY: I think -- I think the s. 109 order is made, it's in place.

[76] THE COURT: Okay.

[77] MS. GRANDY: And then because the s. 113 order can be brought at any point, as I understand it, during the prohibition, so that can just be -- that process can just be sort of started anew and then that, the prohibition still stays in place, the s. 109, but then if the pre-conditions are met and if the application is successful, then it --

[78] THE COURT: It will be basically an addendum to the s. 109 order.

[79] MS. GRANDY: Yes.

[80] THE COURT: Now the question I have for that is, are there any firearms in your client's residence or possession?

[81] MR. ROOTHMAN: Apparently, no.

[82] THE COURT: That is fine, then. So the s. 109 order is in effect, then, and we will adjourn that application generally for the s. 113.

COZENS T.C.J.