

Citation: *R. v. Close*, 2011 YKTC 36

Date: 20110608
Docket: 10-00888A
10-00888B
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

ROBERT BRIAN JOHN CLOSE

Appearances:
Bonnie Macdonald
Nils Clarke

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): Robert Close is before me having entered a plea of guilty with respect to a single count of possession of cocaine for the purpose of trafficking. The offence occurred March 26, 2011, when the police received an anonymous tip that Mr. Close was in the downtown area in a blue truck, in possession of a large amount of cocaine.

[2] He was located following patrol and arrested for possession for the purpose. There was a passenger as well who gave information with respect to Mr. Close having had in his possession a green pill bottle. A subsequent search of the vehicle located the pill bottle, which contained 12 half-gram spit balls of cocaine. An additional spit ball of cocaine was found under the floor mat. The passenger provided a statement

indicating that Mr. Close had thrown it there when the RCMP stopped him. He had, rather, thrown it to the passenger side, and the passenger had put it under the mat out of concern that he may, too, be arrested.

[3] In addition to the drugs found there were a number of items consistent with possession for the purpose of trafficking, which have been included by way of photographs as Exhibit 1 in these proceedings. As well, there was a cell phone found and some subsequent text messages on the cell phone were consistent with drug trafficking.

[4] Mr. Close was released on a recognizance with a condition, amongst others, that he not be in possession of a cell phone. On May 4th he was observed in a vehicle at the liquor store where he appeared to be texting. He was arrested for breach. A cell phone was located under the arm rest in the vehicle.

[5] He has not entered a plea with respect to that breach charge. The facts have been entered by way of agreement as an aggravating factor with respect to his sentencing on the possession for the purpose charge.

[6] He comes before the Court with a prior criminal record. It is an interesting record in that the majority of his convictions, which are property-related, occurred in the 1980s. There is a single count of spousal assault in 1997, for which he received a suspended sentence, and then there is nothing on his record until 2010. Between 2010 and today's date it appears that an issue with drugs has arisen in Mr. Close's life. He has two prior convictions for possession of drugs, one being a small amount of marihuana and the other a small amount of cocaine, both in 2010, and of course he is before the Court

today with another drug-related offence.

[7] There is a joint recommendation before me for a sentence of eight months less time spent in remand, to be followed by a one-year probationary term.

[8] I have been provided information with respect to Mr. Close which indicates that up until 2008, it appears, he had been doing extremely well. He was alternating back and forth between completing his Bachelor degree in management and accounting, and working full-time in a supervisory position with MacKenzie Petroleum, which is owned by his First Nation, the Tr'ondek Hwech'in First Nation. In 2008, it appears his life began to unravel, with there having been a difficult break-up with his on again/off again spouse and mother of his two children; a new relationship which also ended in a break-up; and a conflict at work which led to his being fired. He did successfully complete his degree, but seems to have spiralled from there into cocaine use and appears to have been trafficking to support that habit. It had become serious enough that even at six foot seven, Mr. Close was only 152 pounds when taken into custody.

[9] I understand he has some future options from an employment perspective, and he has a concern with respect to his children. He has in the past been the primary caregiver for them. They are now in the care of extended family and it is his hope, once he has completed his custodial term, that he will be in a position to assume responsibility for his children once more. I have also heard that he has hopes of reconnecting with his mother, who is active in both language and cultural preservation for the First Nation, something that he is interested in exploring as well.

[10] So in all of the circumstances, the joint submission that is put before me,

considering the nature of the offence (which I think it would be fair to characterize as being on the low-end) and the two recent related convictions, and recognizing that it is a joint submission, I am satisfied that it is entirely appropriate in all of the circumstances and I would accede to the joint submission.

[11] I understand there are 61 or 62 days in remand. I will give Mr. Close the benefit of the doubt and call it 62. So I am satisfied the appropriate sentence is one of eight months to be reduced by 62 days in custody. By my calculation, that leaves a remaining 178 days to be served.

[12] That will be followed by a probationary term of one year on the following terms and conditions, Mr. Close:

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 notify the Probation Officer of any change of employment or occupation;
4. Report to a Probation Officer immediately upon your release from custody and thereafter when and in the manner directed by the Probation Officer;
5. Reside as directed by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;
6. Abstain absolutely from the possession or consumption of controlled drugs or substances as defined by the *Controlled Drugs and Substances Act*, except in accordance with a prescription given to you by a qualified

- medical practitioner;
7. Not to possess drug consumption or trafficking paraphernalia including, but not limited to, digital scales, spring scales and utility razors;
 8. You are to take such alcohol and drug assessment counselling or programming as directed by your Probation Officer;
 9. You are to provide your Probation Officer 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 order;
 10. You are to make reasonable efforts to find and maintain suitable employment.

[13] I am also advised and aware that certain other orders must be addressed, given the nature of the offence that is before me, the first of those being a DNA order. It is a primary designated offence, so Mr. Close will be required to provide such samples of his blood as are necessary for DNA testing and banking.

[14] This is also an offence which requires me to make a mandatory firearms prohibition order pursuant to s. 109. Accordingly, there will be an order prohibiting Mr. Close from having in his possession any firearms, ammunition or explosive substances for a period of ten years.

[15] I also understand that there is agreement that the items seized in the investigation of the offence that is before me today will be forfeited to the Crown, and I hereby make that order.

[16] Given his custodial status, I would waive the victim fine surcharge.

[17] That just leaves us the remaining count, I believe, unless I have forgotten anything else?

[18] MS. MACDONALD: No, Your Honour, and the Crown is entering a stay of proceedings on the breach charge.

[19] THE COURT: Okay, thank you.

[20] MR. CLARKE: Yes, Your Honour, just for the record, with respect to the firearms order, I spoke to my client about that and it must go by law. He does participate in hunting and I've advised him that going forward, he could make an application pursuant to s. 113. He also advised that he can participate in hunts perhaps with his First Nation or in other manners, but obviously not have the firearms. So that has been a component of his life, but obviously he's got some work to do as far as getting his health back and.

[21] THE COURT: Yes, those would seem to be the bigger priorities right now, but it is open to you to make an application for an exemption with respect to the prohibition, down the road for cultural purposes. If that is something that you wish to look into doing, you should speak to counsel further.

RUDDY T.C.J.