

Citation: *R. v. Derkson*, 2010 YKTC 72

Date: 20100709
Docket: 09-00490
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Cozens

REGINA

v.

RYAN ELI DERKSON

Appearances:
Jennifer Grandy
André Roothman

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] COZENS T.C.J. (Oral): Ryan Derkson has entered a guilty plea to trafficking in cocaine, contrary to s. 5(1) of the *Controlled Drugs and Substances Act*. This is, as Crown characterized it, a somewhat unusual set of facts in that no cocaine was actually exchanged, and it was trafficking by offer.

[2] What happened is, as part of a larger RCMP investigation with the use of a police informant, subsequently an agent, a number of individuals were identified as being involved in the trafficking of cocaine in the Yukon. There was a division within the one group into two groups involving a Mr. Vanderheide and Asif Aslan (phonetic). Within these groups Mr. Derkson was identified as one of the individuals. He met with a police

agent and communicated with him on a number of occasions in order to arrange this police agent working for his group in the distribution of cocaine. As it turned out, Mr. Derkson and his group were not in a position to provide any cocaine because they were having some difficulty receiving it, and Mr. Derkson was arrested prior to actually having distributed any cocaine to the police agent, but certainly it was his intent to do so.

[3] There is, essentially, a joint submission before the Court for a 12-month conditional sentence order to be imposed without a period of probation. It appears that pre-trial custody was only a few days.

[4] Mr. Derkson has a prior related criminal record in the sense that it was a s. 4(1) CDSA conviction in 2008, for which he received a 90-day conditional sentence. He was able to complete that sentence without any breach. That is his only criminal entry. He is currently 27 years of age. He clearly was a mid-level distributor and trafficker in cocaine, without an addiction driving him, and he was quite candid about the fact that it was for money. He appears to be fairly candid throughout the pre-sentence report in his discussions with the author of the report. He is currently involved in a very stable relationship and his intent is to move to Vancouver when given the permission to do so, in order to take advantage of some of the job opportunities he has there, and to disassociate himself from some of the risk factors of association with individuals that, I take it, remain somewhat involved in the drug trade in the Yukon.

[5] There are letters filed from three employers that indicate that they are prepared to give him full time employment with, potentially, carpentry, electrical and at a disposal and transfer station. There are a number of letters filed from his friends, from his

partner, Ms. Lewis, from family, all of which are consistent with what I see in the pre-sentence report, that Mr. Derkson is an individual who should not be involved in the trafficking of drugs because he has a lot going for him and a lot of support.

[6] The author of the pre-sentence report indicated that he presents as engaging, intelligent and realistic, and identifies one of the most significant risk factors he has as not having stable, long-term employment, and being associated with the individuals that would offer him criminal employment. One significant change from the earlier pre-sentence report is that Mr. Derkson has altered his attitude towards his consumption of alcohol, and the indications I have are that he has changed his partying lifestyle considerably, and that may be in large part due to the parental responsibilities he has assumed and his plans for the future.

[7] In all of the circumstances, noting the aggravating factors as pointed out by the Crown, and the mitigating factors, and the guilty plea, which is certainly significantly mitigating in a case like this, that had the potential to be a very long and protracted trial, the submission for a 12-month conditional sentence is appropriate and that is what will be imposed. There will not be a period of probation to follow.

[8] The terms of the conditional sentence will be:

1. That you keep the peace and be of good behaviour;
2. Appear before the Court when required to do so by the Court;
3. That you report to a Supervisor immediately and thereafter when required by the Supervisor and in the manner directed by the Supervisor;

4. That you remain within the Yukon Territory unless you have written permission from your Supervisor or the Court;
5. Notify the Supervisor or the Court in advance of any change of name, address and promptly notify the Court or the Supervisor in advance of any change of employment or occupation;
6. You are to reside as approved by your Supervisor; abide by the rules of the residence and not change your residence without the prior written permission of your Supervisor;

[9] The norm in most cases that involve conditional sentences in the Yukon is to impose house arrest. That is not always what occurs; that is not what occurred on the conditional sentence proposal earlier. This was a case where, in the context of the joint submission, the proposal was not put forward that it be house arrest. Curfew is what is recommended in the pre-sentence report. Crown has suggested that if there is going to be house arrest in the circumstances of this case it would not necessarily require that there be house arrest for the entirety of the order.

[10] I note that Mr. Derkson's employment opportunities are somewhat difficult to monitor. He has plans to move. There is much in the way of support. He has been very compliant with bail conditions, and while I considered whether I should impose house arrest for any of the portion of this conditional sentence, I am going to consider these circumstances a little unique and I am going to simply go by way of a curfew.

7. You are to abide by a curfew by remaining within your place of residence between the hours of 9:00 p.m. and 6:00 a.m. daily, except with the prior

written permission of your Supervisor. You are to carry this written permission with you at all times when you are outside of your residence with the permission of your Supervisor;

8. You must present yourself at the door or answer the telephone during reasonable hours for curfew checks; failure to do so will be a presumptive breach of this condition;
9. You are to 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;
10. You are to not attend any bar, tavern, liquor store, off-sales or other commercial premises whose primary purpose is the sale of alcohol;
11. You are to take such alcohol and/or drug assessment, counselling or programming as directed by your Supervisor;
12. You are to take such other assessment, counselling and programming as directed by your Supervisor;
13. You are to have no contact, directly or indirectly or communication in any way with individuals known to be or having been involved in the drug trade as are identified in writing to you by your Supervisor or with any other individuals identified in writing to you by your Supervisor;
14. You are to perform 100 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 the end of the tenth month of this conditional sentence order.

Community service is an important part of dispositions involving the trafficking of drugs in the community because it is the community that is the victim.

15. You are to make reasonable efforts to find and maintain suitable employment and provide your Supervisor with all necessary details concerning your efforts;
16. You are to provide your Supervisor with consents to release information with regard to your participation in any programming, counselling or employment that you have been directed to do pursuant to this conditional sentence order;
17. You are not to have in your possession any cell phone or mobile communication devices except for the purposes of work as permitted by your Supervisor or for such other purpose as permitted by your Supervisor;
18. Having noted your consent, you are to provide copies of any cell phone or mobile communication records that you have in relation to any cell phone or mobile communication device you possess.

[11] Those are all the conditions that were requested; is that correct?

[12] MS. GRANDY: Yes.

[13] THE COURT: Any submissions? Those are fine?

[14] MS. GRANDY: No submissions on the conditions. The one thing that I neglected to mention, and I apologize, is that there is a mandatory firearms prohibition under s. 109.

[15] THE COURT: This offence falls within s. 109 of the *Criminal Code*. You are prohibited from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition, and explosive substance for a period of ten years.

[16] MS. GRANDY: If the remaining counts against both Mr. Ritchie and Mr. Derkson could be marked as withdrawn, please.

[17] THE COURT: Those remaining counts will be withdrawn. There will be a victim fine surcharge in this case, as you are working. It is \$100. How much time would you need to pay that?

[18] THE ACCUSED: Today.

[19] THE COURT: Forthwith. There will be some paperwork for you to sign. Anything further?

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

COZENS T.C.J.