

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

ROBERT GRANT GILBERT

Appearances:
Eric Marcoux
Bibhas Vaze

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCE

[1] COZENS J. (Oral): Robert Gilbert has entered a guilty plea to having committed an offence under s. 5(1) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19. The offence date is May 31, 2014, and the admission is to the trafficking in cocaine.

[2] There is an Agreed Statement of Facts filed, which I am not intending to go through. The bottom line is there was an undercover investigation in the months of May and June of this year. On May 31, 2014 two undercover officers attempted to purchase cocaine from Mr. Gilbert. They proceeded to do that. Mr. Gilbert ended up providing 0.21 gm of cocaine for which he received \$50 in exchange. This was part of what would be called fairly low-level trafficking on the part of Mr. Gilbert.

[3] There is a co-accused. His matter is being dealt with separately.

[4] The remainder of the facts are set out in the Agreed Statement of Facts and I do not propose to deal with them. Mr. Gilbert was found in possession of a mobile phone, \$485 in his wallet, and \$145 in the pocket of his sweatshirt.

[5] Mr. Gilbert has a prior criminal history. He was convicted in 2012 of possession of a scheduled substance for the purpose of trafficking. He received a six-month conditional sentence order and a s. 109 firearms prohibition.

[6] Because this is his second such offence in the last 10 years, there is a mandatory minimum punishment of one year for this offence. That is what the Crown is seeking in this case.

[7] Defence counsel had originally provided notice of an indication to bring a constitutional challenge to the mandatory minimum sentence of one year.

[8] However, Mr. Gilbert has been in custody for six months, Crown is not opposing him getting 1.5:1 months' credit, and the simple practicalities of the situation have caused Mr. Gilbert to decide to proceed to sentencing and not to challenge the legislation at this point in time. Nothing more can be made of it than that. Certainly, had there been a constitutional challenge, it would have consumed a considerable amount of court time. I am making no comment with respect to this, other than to point out that Mr. Gilbert has forgone an argument he could have made in order to accept responsibility and be sentenced and finish his sentence.

[9] Mr. Gilbert is 23 years of age. He has no prior criminal history, other than the offence in 2012, which I mentioned. His father left at a very young age. His mother, who has been on welfare and disability at times, basically did not provide him with a lot of supervision. He failed to complete school past grade eight, and he did not really have much to do in the interior of B.C., where he was, and so he followed friends up to Whitehorse and got involved in a low-level, street-level trafficking scheme.

[10] While in custody, he has been upgrading and it has been a real wake-up call for him, counsel submits, and I can understand that. He has a friend in support of him in Court here, who may have employment prospects for him when he is released from custody. He accepts, as I said, responsibility in the fact that he needs to move forward with his life.

[11] Therefore, you are sentenced for this offence to the mandatory minimum sentence of one year.

[12] There is a \$200 victim surcharge on this. I expect counsel would wish that to be payable forthwith and a warrant of default to be issued today so that he can serve his time in default concurrent to the time in custody that is remaining.

[13] For the one year, he is given credit of nine months for the time he has been in custody. That leaves a remanet of three months to be served and the default would be served, as I said, concurrent to that.

[14] I will, based on the submission of Mr. Vaze and Crown not being opposed, make a recommendation that Mr. Gilbert be considered for release at the earliest possible

time on parole, given the circumstances of this case, this offence, and this offender.

And so I make that recommendation. I obviously cannot order it; I can only make the recommendation.

[15] I had not mentioned it earlier, but I will mention it now, of course, that Crown had provided notice of their intention to seek the mandatory minimum punishment of one year.

[16] There is, of course, the necessary ancillary order under s. 109 with respect to firearms, as this is his second such offence. The prohibition is for life with respect to firearms, ammunition, explosive substances, and the other items as set out in s. 109.

[17] Probation is not sought and I do not intend to impose a period of probation.

[18] MR. MARCOUX: Actually, the Crown is seeking the forfeiture of the items listed at para. 14 of the Agreed Statement of Facts, so I would make it clear.

[19] THE COURT: And, Mr. Gilbert, insofar as any interest he may have in it, is prepared to consent to forfeiture of the items in para. 14 of the Agreed Statement of Facts, being the mobile phone, the \$485 in his wallet, and the \$145 in the pocket of his sweatshirt. He may have had a claim to these. He is forgoing that claim and allowing for forfeiture.

[20] There is a co-accused, and so any claim that the co-accused may have can be dealt with in that proceeding.

[21] MR. MARCOUX: Thank you.

[22] THE COURT: Subsequently, I do not believe there is anything further on this; is that correct?

[23] MR. MARCOUX: No.

[24] MR. VAZE: Thank you, Your Honour.

COZENS T.C.J.