

Citation: *R. v. Hale*, 2007 YKTC 79

Date: 20071102
Docket: T.C. 07-00244
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: Her Honour Judge Ruddy

REGINA

v.

GEOFF ALLAN HALE

Appearances:
Kevin Komosky
Gordon Coffin

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] RUDDY T.C.J. (Oral): Geoff Hale is before me in relation to an offence of being in possession of cocaine for the purpose of trafficking. The facts arise on the 12th of July, where Mr. Hale, along with his girlfriend, Amanda Ledgerwood, were found in a truck by the police. Also found in the truck was a significant amount of drugs, including 57.5 grams of cocaine, 2.7 grams of crack cocaine, and 29.3 grams of marihuana. Also found in the vehicle were some indicia of trafficking, including a scale, cell phones, and a wallet with a large amount of cash and at least one cheque in the amount of \$1,300.

[2] Mr. Hale does come before the Court with a prior related record. This includes a possession charge in '96, and a possession for the purpose of trafficking in 2001, for which he received 10 months in custody.

[3] As pointed out by the Crown, there are a number of aggravating factors that I do have to consider with respect to the offence before me. The first of those, as we have mentioned a couple of times today, is the impact of drugs on fairly vulnerable northern communities. We do not have the resource infrastructure that some of your large urban centres do, that allow us to be able to respond to the kind of impact that addictions have in the communities. I think, Mr. Hale, I took from the pre-sentence report that you understand that there is a significant negative spin-off effect from your behaviour.

[4] In addition to that, I take as an aggravating factor the fact that Mr. Hale has a prior related record. That is significantly aggravating, in my view. In addition, I take into account and consider it an aggravating factor that you were, at the time of this offence, on release for a similar offence, albeit I understand that that matter is going to be proceeding to trial, but clearly you were in the throes of your addiction at the point that you were picked up and released the first time.

[5] In mitigation, I do consider it mitigating that you have entered a guilty plea. I consider it mitigating, Mr. Hale, that you are still a relatively young man. I consider it significantly mitigating that you have chosen to take appropriate steps while in custody to use your time productively towards accessing treatment resources. It is my view, in looking at the pre-sentence report, in which Mr. Hale is described as being both cooperative and forthright, that he is an individual that appears both sincere in his desire

to get treatment, and also an individual who has a fair amount of insight into his own addictions.

[6] He has also had a past history of being able to successfully address his addictions for an extended period of time. In early 2000 or 2001, it appears that he took treatment and was able to maintain sobriety for quite an extended period of time. It appears he relapsed, I believe, in 2005; a relapse clearly related to the fact that he has a significant addiction problem, but also that he is involved with a partner who has an addiction problem as well. I think it is fair to say that it is incredibly difficult to maintain sobriety if you are in a living arrangement where somebody else is actively using.

[7] In addition, in his favour, he has an extremely supportive family, who have attended in court to indicate their support for him today; who understand that he is addicted. They understand the nature of that addiction, they understand the impacts of that addiction and they are prepared to continue to support him in his efforts to achieve and to maintain sobriety.

[8] In determining the appropriate sentence in this particular case, I should first say that I have a range that has been put before me of, essentially, eight months to 18 months. The Crown is suggesting that 18 months is, indeed, in their view, on the lower end of what the range ought to be. Defence is suggesting that a sentence of effectively eight to ten months would be more appropriate in the circumstances before me.

[9] In determining what is appropriate in all of those circumstances, the factors that I think are relevant in determining the appropriate sentence are the prior record, the nature of the offence, the fact that he was on release for similar offence. All of those, in

my mind, suggest that general deterrence has to be a significant factor. That, clearly, in my mind, takes us out of any kind of disposition where we would be looking at a community-based disposition.

[10] I do not believe that a conditional sentence can send the appropriate message of general deterrence. So it does have to be a custodial sentence. I am not saying anybody was suggesting to me that it should have been conditional today, but I did want to make those comments, that I think they have the impact of taking those types of sentences off the table because that message has to be sent.

[11] Now, I have to balance that off against the fact that we are talking about an offence that is addiction motivated as opposed to profit motivated. Now, I had a lengthy exchange with the Crown, who was urging me to consider it at least partly profit motivated, given that there was no other source of income identified for Mr. Hale, and he, therefore, would had to have been relying on his drug earnings to support his basic living expenses. My response, I think it will not be surprising to hear, given our exchange, is the fact that someone might cover basic living expenses does not change the motivation, in my view, from an addiction-motivated one to a profit-motivated one.

[12] I would have a very different view of that if there was some information or evidence before me that Mr. Hale had been spending some of those earnings from drug trafficking on things like fancy vehicles and cruises. I do clearly have information before me that he was not even meeting his basic financial obligations, and the fact that his mother had to assume responsibility for his half of the mortgage of the property that they have bought jointly, and she is continuing to do. So there is some information

before me to suggest that he was having some difficulty financially. The information that I do have, that I accept, is that he had a significant addiction, I guess it is fair to say still has, a significant addiction to cocaine, and he was therefore participating in trafficking in fairly significant amounts to support that addiction. So I do accept that it was addiction motivated.

[13] In my mind, that does change the way that I view the range. Many of the cases, and I have not, to be fair, for the record, I have not had a chance to look at them exhaustively, but glancing through them, most of the cases, I believe, that have been filed by the Crown were identified by -I believe they are all Judge Faulkner's cases - I believe that most of them are identified as commercially motivated, profit motivated, as opposed to addiction motivated. So that does change the view that I have as to what the appropriate disposition is.

[14] So when I consider that it is addiction motivated and I consider the fact that this is an individual that has begun to take appropriate steps to address that addiction, and who is sincere and motivated in those efforts, I am of the view that the sentence should be somewhat less than what is being sought by the Crown. I cannot lose sight of the fact that we are talking about drug trafficking, which is an offence which requires a sentence that speaks to general deterrence, and does send a message to the community that this kind of behaviour is not acceptable in this jurisdiction.

[15] When I consider all of those factors, I am of the view that an appropriate disposition would be one of 12 months, less the time that Mr. Hale has spent in remand. I am prepared, in all of the circumstances, to give him credit for six months for the four

months that he has done in custody. We did have some discussion, Mr. Coffin and I, about the appropriate credit, given the steps that Mr. Hale had taken to avail himself of the programming that was in the facility. I just want to make it clear for the purposes of the decision, that the issue for me in granting credit is whether or not they are given access to programming, as opposed to whether they choose to avail themselves of it. He was given access to that programming. The fact that he did choose to avail himself of it is something that I have clearly, if it is not already obvious, taken into account in the overall length of the sentence that I feel is appropriate in these circumstances.

[16] So reducing that 12-month sentence by the six month credit would make it effectively an additional six months that needs to be served by Mr. Hale.

[17] In addition to that, there is going to be a period of probation. I am of the view that Mr. Hale does require a fairly significant amount of support over the long term to assist him in maintaining sobriety and addressing his addictions. That being the case, there is going to be a probation order of 18 months to follow the additional six months in custody. It is going to include the following terms and conditions, Mr. Hale:

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 approved by your probation officer and abide by the rules of the residence and not change that residence without the prior written permission of your probation officer.

The reason for that is if you are going to maintain sobriety, you cannot be in a place where other people are using, and I think you have learned that, okay? So I want your probation officer to have approval of where you are living so they can make sure you are not somewhere where somebody is actively using.

6. Abstain absolutely from the possession or consumption of controlled drugs or substances, except in accordance with a prescription given to you by a qualified medical practitioner;
7. Take such drug assessment, counselling or programming as directed by your probation officer;
8. Take such other assessment, counselling or programming as directed by your probation officer;
9. Participate in such educational or life skills programming as directed by your probation officer;
10. Make reasonable efforts to find and maintain suitable employment and provide your probation officer with all necessary details concerning your efforts;
11. 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.

[18] Any submissions or issues in relation to the conditions on the probation order?

[19] MR. COFFIN: No, Your Honour.

[20] MR. KOMOSKY: I note that the pre-sentence report suggested a not attend any bar or licensed premise?

[21] THE COURT: It also suggested alcohol programming, but I did not have any information before me to suggest that alcohol was an issue. It appears to be a straight drug addiction issue, although, I suppose I should be mindful of the fact that there is a fair amount of drug trafficking that occurs in and around the bar and club scene. So for those reasons I am prepared to include it.

12. Not attend any bar, tavern, off-sales of other commercial premises whose primary purpose is the sale of alcohol.

[22] Anything else? Mr. Coffin, do you have submissions on the firearms prohibition? I think your friend was suggesting it is a mandatory one. I will have to double check s. 109.

[23] MR. KOMOSKY: Section 109(1)(c) lists 5.2 of the CDSA.

[24] THE COURT: It does.

[25] MR. COFFIN: Yes, I have nothing to comment.

[26] THE COURT: Okay. Sorry, I am just trying to find the length.

[27] MR. KOMOSKY: Your Honour, the Crown did not serve any notice of greater punishment so --

[28] THE COURT: So it puts us at the 10 years.

[29] MR. KOMOSKY: -- we should go with 10 years.

[30] THE COURT: Okay, thank you. So there will be an order that you not possess any firearm, cross-bow, prohibited weapon, restrictive weapon, prohibited device, ammunition, prohibited ammunition and/or explosive substance for a period of 10 years.

[31] Any submissions on the victim fine surcharge?

[32] MR. COFFIN: He has had no income and will not for some period of time, so I would ask that it be waived.

[33] THE COURT: Any submissions from the Crown's perspective?

[34] MR. KOMOSKY: No submissions.

[35] THE COURT: Victim fine surcharge is waived in the circumstances.

[36] MR. COFFIN: I would ask that the 177 Information be stood down to 1:00 to fix a date for trial.

[37] THE COURT: Okay, stood down to 1:00 p.m. to fix a date.

[38] MR. KOMOSKY: Your Honour, I would ask that the items seized be forfeited to the Crown with respect to at least Mr. Hale.

[39] THE COURT: Okay. Any issue?

[40] MR. COFFIN: No.

[41] THE COURT: Okay. Those items seized with respect to the Information upon which Mr. Hale was just sentenced and relating to that offence are forfeit, at least as it relates to him. I take it the issues with respect to Ms. Ledgerwood will have to be resolved at a later time. Okay, good.

[42] So Mr. Hale, you have a few more months to try and build a good base of sobriety before you are out there. So make sure you stay focused and access what you can and take advantage of the support of your family, okay? Good luck.

[43] MR. KOMOSKY: If the remaining count on that Information could be stayed.

[44] THE COURT: Great, thank you.

RUDDY T.C.J.