Citation: *R.* v. *Maynard*, 2016 YKTC 51

Date: 20161014
Docket: 15-00324
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

JACOB BOWIE MAYNARD

Appearances:
Eric Marcoux — Counsel for the Crown
Jennifer Cunningham — Counsel for the Defence

REASONS FOR SENTENCE

[1] Jacob Maynard has entered a guilty plea to having committed the offence of trafficking in cocaine, contrary to s. 5(1) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 ("*CDSA*").

[2] The circumstances are set out in an Agreed Statement of Facts as follows:

1. In May 2014, members of the "M" Division Federal Investigations Unit commenced an investigation as they had received information about a dial-a-dope cocaine trafficking line being run by Bradley Prowal in the Whitehorse, Yukon area;

2. As part of the investigation, an undercover operation was utilized with the intention of purchasing cocaine at street level quantities from the drug traffickers using the telephone number, then an attempt would be made to purchase larger quantities from individuals managing the street level drug traffickers;

3. On September 4, 2014, Cpl. Orstad contacted the dial-a-dope number and purchased 1.50 grams of cocaine from Houben-Szabo at the Porter Creek mini mall parking lot. Houben-Szabo was in the red sable and was being driven by "Barry", later identified as Jacob Maynard. Cpl. Dodd, acting in an undercover capacity, introduced himself to Houben-Szabo and told Houben-Szabo that he was interested in purchasing larger quantities of cocaine.

4. On October 2, 2014, Cpl. Orstad contacted the dial-a-dope number to purchase cocaine and have Cpl. Dodds speak to whomever showed up. As a result, Cpl. Orstad purchased 3.22 grams of soft cocaine from Jacob Maynard in the parking lot of The Ridge Bar and Grill. Cpl. Dodds spoke to Jacob Maynard and arranged to have his boss, Lucas Radatzke, contact Cpl. Dodds the following day.

5. Jacob Maynard is a resident of Whitehorse, has very limited police interactions and sold to an undercover police officer on one occasion. Jacob Maynard set up the purchase of a larger quantity of cocaine (one ounce) between Lucas Radatzke and Cpl. Dodds. He has no criminal record.

[3] Mr. Maynard has no prior criminal convictions. He was 19 years of age when he committed this offence. He is now 21.

[4] Crown counsel submits that an appropriate sentence is six months' custody, in addition to a s. 487.051(3) DNA order and the mandatory s. 109 firearms prohibition order. He submits that this crime was "profit-driven" although Mr. Maynard also had a drug habit. General deterrence and denunciation should be the leading objectives of sentencing in this case.

[5] Counsel for Mr. Maynard submits that an appropriate disposition is to suspend the passing of sentence and place Mr. Maynard on probation for a period of 18 months. Counsel stresses the objective of rehabilitation.

Pre-Sentence Report ("PSR") and other materials

[6] I note that there are some discrepancies or inconsistencies as to the dates of certain events that arise within the PSR and the other support letters filed. I do not, however, consider these discrepancies to be of significance and, as such, am not concerned about reconciling them.

[7] Mr. Maynard moved to Whitehorse from Ontario when he was approximately 12 years old. He moved here with his mother, step-father and younger sister.

[8] By all accounts he has been raised in a positive environment with a supportive and close family.

[9] However, shortly after moving to Whitehorse, Mr. Maynard began to act out somewhat, by being disrespectful to his parents and getting into minor trouble. His mother provided information that Mr. Maynard was subjected to some bullying at school which had a negative impact on him.

[10] At the age of 15 Mr. Maynard began using drugs, primarily marijuana at first, subsequently moving out of the family home when he was approximately 18. Due to his parents' concerns, Mr. Maynard had reluctantly attended two counselling sessions. He did not engage in the process at that time, deceived his parents about his lifestyle and increased his drug use, primarily involving cocaine, until he was a daily user. He stopped using cocaine in January 2015 and his friends and collateral sources confirm that he has not done so since then.

[11] Mr. Maynard now realizes that he should have used this early counselling opportunity in a more productive way

[12] He was able to complete his grade 12 education, albeit with some resistance on his part. He is now grateful that he did so and hopes to attend university in the future.

[13] Mr. Maynard has a positive network of friends from high school. He became alienated from these friends when he was involved with those individuals in the local drug trade, but has now re-connected.

[14] I note that Mr. Maynard was originally charged on an Information sworn March 17, 2015, along with a significant number of co-accused. While no reason was provided for the delay in this charge being laid against Mr. Maynard, from my review of the court files it would appear that there was an ongoing investigation that delayed the swearing of the original Information. Mr. Maynard was subsequently charged as a single accused with the s. 5(1) offence on an Information sworn on August 27, 2015.

[15] Mr. Maynard's biological father moved to Whitehorse just prior to the charges being laid. He did so for work purposes but also in order to provide support for Mr. Maynard, who was struggling at the time. Mr. Maynard and his father have been able to establish a closer relationship and his father is a support for him. They have lived together since approximately October, 2015.

[16] Mr. Maynard has also mended his relationship with his mother and step-father. These conflicts were connected to the period of time Mr. Maynard was using cocaine.

He moved back into the family home approximately six months prior to being arrested and lived there until moving in with his father.

[17] Mr. Maynard's grandparents are also supportive of him and he has a positive relationship with his girlfriend of approximately five months (as of the date of the PSR being prepared for the August 12 court date). His girlfriend is considered to be a positive influence in Mr. Maynard's life by his parents.

[18] Mr. Maynard lost his first two jobs at the age of 18 due to his partying and missing work shifts. He then became involved in the local drug trade.

[19] After disengaging from the drug trade and approximately six months prior to his arrest, Mr. Maynard obtained employment at a local auto parts business where he continues to work as an auto parts specialist. He intends to challenge the exam in order to become a ticketed auto parts specialist. He also intends to obtain a university degree and work in the field of engineering or marketing.

[20] Mr. Maynard has been subjected to terms of a recognizance since he was originally released on a recognizance on March 20, 2015. Pursuant to two breach allegations from August 17, 2015, Mr. Maynard was released on a further recognizance on August 19, 2015. This recognizance was again amended on December 7, 2015. Other than the August 17 allegations, there have been no breach allegations since his release on August 19, 2015. Mr. Maynard was bound by a curfew between the hours of 10:00 p.m. to 7:00 a.m. from March 20 until August 19, 2015. Between August 19 and December 7, 2015, his curfew was between the hours of 7:00 p.m. and 7:00 a.m. This was amended on December 7, 2015 to the hours of 11:00 p.m. and 7:00 a.m.

[21] Due to the somewhat strict terms he is bound by, Mr. Maynard spends his time working, going to the gym and spending time at home with his girlfriend. He spent time on the weekends golfing with his friends when he was able to.

[22] Mr. Maynard's only debt is to his mother for his legal fees and for monies provided in order to allow him to purchase a vehicle. He has made monthly payments to her since May, 2015 and has not missed any payments.

[23] On the self-reported Drug Abuse Screening Test, Mr. Maynard's score of zero indicates a low level of problems associated with drug use.

[24] On the self-reported Problems Related to Drinking Scale, Mr. Maynard's score indicates no level of problems related to alcohol abuse.

[25] On the Criminogenic Risk Assessment, Mr. Maynard rates as having a low criminal-history risk rating, having a low level of criminogenic needs and requiring a low level of supervision.

[26] Mr. Maynard has accepted full responsibility for his participation in this offence. He states that he was only superficially involved in association with drug "gang" members and the drug scene, was not a member of any "gang" and that he has had no affiliation with any drug associates since he was charged. There is no indication that Mr. Maynard is not being truthful when he says this.

[27] Mr. Maynard acknowledged to the author of the PSR that he was involved with these drug associates for only a little over a month. During this time he manned the

dial-a-dope phone, drove these associates around a few times and dropped off some packages at their request.

[28] During Mr. Maynard's association with known drug dealers, his parents became increasingly concerned. They had talks with him in which they pointed out how this lifestyle would ultimately catch up with him and how it could potentially negatively affect his sister. On one occasion his mother followed him to a known crack house and sat in the car crying as she wondered whether she should go in and get him out or not. She stated that she felt that something scared him and he moved back home. Mr. Maynard's counsel confirmed that Mr. Maynard received some information in regard to other drug associates shortly "coming into town" from outside the Yukon that had an impact upon him. His mother noted that after this he seldom went out and spent a lot of time in his room until he obtained employment at the auto parts dealership in December 2014.

[29] Mr. Maynard is considered to be an exemplary employee by his employer. Support letters filed indicate that he has progressed to being placed into a position of considerable responsibility. His professionalism is considered to be comparable to that of a seasoned veteran. He is noted to demonstrate excellent customer service skills. Mr. Maynard is considered to be dependable, responsible and an invaluable employee whose absence would significantly impact the operation of the business.

[30] Also provided were support letters from his mother, his father, his step-father and his grandparents, as well as a family friend.

[31] All speak to the positive changes Mr. Maynard has made in his life, their continued belief in him and their ongoing support for him. Also noted is that this process of change was initiated by Mr. Maynard well before he was charged with the s. 5(1) offence.

[32] The author of the PSR spoke to a close friend of Mr. Maynard's since Grades 7 and 8. He confirmed much of the information provided by others. He also confirmed the significant steps Mr. Maynard has made to separate himself from the drug culture he had been engaged in and to live a positive and pro-social life.

[33] Several of Mr. Maynard's supports believe that Mr. Maynard would benefit from some further therapy/counselling. The author of the PSR states that: "It is apparent that there are some cognitive distortions that should be explored, even though Mr. Maynard is doing well at this time".

Case Law

[34] Crown counsel filed numerous cases from the Yukon Territorial and Supreme courts in order to justify his position that a period of six months' custody was warranted.

[35] In ***R.*** v. ***Miller***, 2009 YKSC 36, the 30-year-old offender received a sentence of six months' incarceration for a guilty plea to having committed a s. 5(2) *CDSA* offence. The 5(2) offence involved possession of five grams of cocaine.

[36] The Court noted in para. 8 that:

> Drug offences are treated very seriously in the Yukon because they can do a great deal of damage in this community, even where we are involved

> with a small street trafficker. The effect of drugs can have very serious impacts on the community. As a result, specific attention is paid to the denunciation and deterrence aspects of sentencing, but nevertheless the importance of rehabilitation cannot be ignored.

[37] Veale J. noted that there was a glimmer of hope that Mr. Miller may have learned a lesson from his 30 days of remand incarceration and would carry that forward.

[38] In ***R. v. Crompton***, 2009 YKSC 16, the 26-year-old offender was sentenced to 18 months' jail on convictions after guilty pleas to a s. 5(2) and s. 5(1) offence and breaching the terms of a recognizance by being in possession of cocaine. The 5(1) offence involved 2.4 grams of crack cocaine found in his residence during a police search. The 5(2) offence involved the sale of two .9 gram spitballs of cocaine. Mr. Crompton had a positive work record and no prior criminal history. Aggravating factors were the profit-driven motive, the subsequent offence after being once charged, and the fact that he used his position of employment

[39] Veale J. stated in para. 11 that:

> There is no doubt that drug offences of this nature must be denounced and deterred. Drug trafficking is an insidious business that ruins lives and destroys communities. In Mr. Crompton's case, it is especially aggravating that he appears to have learned nothing from his first mistake and has continued with business as usual while he has been released pending trial and sentencing.

[40] In ***R. v. James***, 2009 YKTC 23, the offender entered a guilty plea to having sold crack cocaine to an undercover officer on two back-to-back days. The total amount was approximately 1.3 grams. The young woman was an addict herself, had no prior

criminal record, was of Aboriginal ancestry, had family support, and had taken steps to resolve her addiction issues.

[41] In sentencing her to a total of six months' custody, including four months' custody credit for time served, the Court stated in para. 17:

> The message has to go out to others and to you. If you allow yourself to be used to traffic drugs for whatever reason, you are going to go to jail. It is an individual decision and it is something that has to be deterred. So there will be emphasis on general and specific deterrence and denunciation for this very, very serious offence.

[42] In paras. 24-28 of ***R.*** v. ***Profeit***, 2009 YKTC 39, I discussed the principles of sentencing as they apply to drug trafficking cases in the Yukon:

> **24** The paramount sentencing factors in drug trafficking cases are deterrence and denunciation. These principles also apply equally to cases of violence that are related to the drug trade and culture, in particular when connected to the enforcement of drug debts.
>
> **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 addiction 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, wherein 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.

[43] In para. 47, I also referred to the case of ***R.*** v. ***Naiker***, 2007 YKTC 58, also filed by Crown counsel in this case. In para. 7 of ***Naiker***, Faulkner J. stated:

> Given the nature of the drug trafficked, given the vulnerability of our community, and given the purely commercial nature of Mr. Naiker's activities, denunciation and deterrence must be the primary focus of sentencing. People who get it into their heads to come into our community to sell drugs must know they will not be welcomed when they end up before the courts.

[44] Ms. Profeit, who I found was between the profit-driven and the addict-driven trafficker, had entered guilty pleas to a number of offences, including ss. 5(2) and 4(1) *CDSA* offences. The circumstances in which the s. 5(2) offence occurred were considerably aggravated, in that she participated in a vigilante-type assault. Ms. Profeit had a criminal record consisting of 43 entries, including numerous assaults and three convictions of possession for the purpose of trafficking and two counts of trafficking. She was 33 years old at the time of the offences. Citing the numerous positive steps Ms. Profeit had taken towards rehabilitation while in custody on remand (para. 34), I

determined that a sentence of 15 months would be appropriate for the s. 5(2) offence. I reduced this to 12 months on the principle of totality.

[45] In ***R.*** v. ***Campbell***, 2009 YKTC 87, the 40-year-old offender was convicted after trial of one count of trafficking in cocaine contrary to s. 5(1) of the *CDSA*. After conviction on this count, he entered a guilty plea to having committed a second s. 5(1) *CDSA* offence. Mr. Campbell was involved in two transactions wherein an undercover police officer purchased four rocks of crack cocaine.

[46] Mr. Campbell had 16 prior criminal convictions, including one prior 4(1) *CDSA* offence. As a profit-driven trafficker with a drug addiction problem, he was operating at above a middleman level in cocaine trafficking and was providing direction and supervision to others.

[47] Mr. Campbell was sentenced to 10 months time served for the first transaction and a further eight months to be served conditionally on the second.

[48] The final two cases filed by the Crown (***R.*** v. ***Radatzke***, 2016 YKTC 16 and ***R.*** v. ***Prowal***, 2016 YKTC 8) were joint submissions for sentences, in the case of Mr. Radatzke, of 14 months, with three months consecutive for a second out-of-territory drug charge, and three years for Mr. Prowal, for three separate trafficking transactions. Mr. Radatzke was a mid-level trafficker and a cocaine addict. Mr. Prowal occupied a leadership position in an out-of-town drug gang.

[49] Defense counsel has filed 15 cases in support of her sentencing position. The majority of these cases are from outside of the Yukon. In the circumstances, I intend to review only the ***R.*** v. ***Voong***, 2015 BCCA 285 case in detail.

[50] In ***Voong***, the Court dealt with Crown appeals of four different offenders for drug trafficking offences. All four offenders had originally received suspended sentences with probation for their offences. The Court upheld two of the sentences (Mr. Voong and Ms. Charlton). In the case of Mr. Galang, the Court, while upholding the suspended sentence, increased the period of probation from one to three years. In Mr. Taylor's case, the sentence was replaced by one of six months' custody to be followed by 12 months of probation.

[51] All four of the offenders were involved in dial-a-dope operations.

[52] The Court points out in para. 21 and 22:

> **21** Suspended sentences were imposed in drug trafficking cases before CSOs became available in 1996 (introduced by the *Act to amend the Criminal Code (sentencing) and other Acts in consequences thereof*, S.C. 1995, c. 22). A suspended sentence is still a sentencing option in law in the cases at bar, as there is, at this time, no minimum sentence for the offences at issue.
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> **22** Where a suspended sentence was imposed in drug trafficking offences prior to the availability of a CSO, there was always an indication of exceptional mitigating circumstances. For example, in *R. v. Harding*, [1977] B.C.J. No. 839 (C.A.), this Court dismissed a Crown appeal and upheld a suspended sentence with three years' probation with strict conditions, for a heroin addict who sold four caps of heroin. She had made significant steps towards overcoming her heroin addiction, and the majority concluded they should not interfere with the carefully reasoned sentence. The majority found that the trial judge had recognized that deterrence was of foremost importance but concluded that in the circumstances of the case before him, rehabilitation was worth the effort. The trial judge was alive to the fact that he could sentence her if his

> expectations of rehabilitation were not born out, and she breached the probation order.

[53] The Court states, in regard to the deterrent effect of a suspended sentence and probation, as follows, in paras 39-43:

> **39** A suspended sentence has been found to have a deterrent effect in some cases. Because a breach of the probation order can result in a revocation and sentencing on the original offence, it has been referred to as the "*Sword of Damocles"* hanging over the offender's head. For example, in *R. v. Saunders*, [1993] B.C.J. No. 2887 (C.A.) at para. 11, Southin J.A. said:
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>> Deterrence is an important part of the public interest but there are other ways of deterring some sorts of crime than putting someone in prison who has no criminal record as this appellant did not. The learned trial judge did not turn her mind to whether the deterrence which is important might be effected by certain terms of a discharge or a suspended sentence such as a lengthy period of community service.
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> **40** This Court, in *Oates*, recently confirmed that *Saunders* stands for the proposition that deterrence might be effected with a suspended sentence (*Oates* at para. 16).
>
> **41** In *Shoker*, at para. 15, the Court concluded that supervised probation is a restraint on the probationer's freedom.
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> **42** Other Courts have confirmed the deterrent effect of a suspended sentence and a probation order in certain circumstances. See, for example, *R. v. George* (1992), 112 N.S.R. (2d) 183 (C.A.) at 187 (and a number of cases following, including *R. v. Martin*, 154 N.S.R. (2d) 268 (C.A.); *R. v. R.T.M.*, 151 N.S.R. (2d) 235 (C.A.)) and *R. c. Savenco* (1988), 26 Q.A.C. 291 (C.A.).
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> **43** The statutory phrase "protection of the public" now found in the *Criminal Code* gives a broad discretion to sentencing judges to impose conditions (see *Shoker* at para. 3). The public is protected when a former criminal is rehabilitated and deterred from committing more crimes (see *R. v. Grady* (1971), 5 N.S.R. (2d) 264 at 266). It is also protected when other offenders are deterred by the sentence imposed. Thus, imposing conditions for the protection of the community may have a deterrent and denunciatory effect in addition to a rehabilitative effect. Put another way, a condition need not be punitive in nature in order to achieve deterrence or denunciation. In *D.E.S.M.* (and affirmed in *R. v. Sidhu*

(3d) 26 (B.C.C.A.)), this Court concluded that "home confinement" was an appropriate term of a probation order for the purpose of the maintenance of rehabilitation. The court concluded, at p. 381:

> It should not be thought that home confinement, if we may call it that, should readily be substituted for regular imprisonment. Such a disposition is suitable, in our judgment, only where very special circumstances are present such as where the accused demonstrates that he has rehabilitated himself prior to arrest, where he is not a danger to anyone, where others are dependent upon him, and where there are no factors that make it necessary in the public interest that punishment should be by conventional imprisonment.
>
> [Emphasis added.]

[54] The Court states in regard to range of sentence for dial-a-dope traffickers as follows in paras 44-46:

> **44** What then is the range of sentence for dial-a-dope traffickers? We know the statutory range is from a suspended sentence to life imprisonment. We also know, from an abundance of cases decided by this Court, that the normal range of sentence for a first offence dial-a-dope drug trafficker is between six to nine months incarceration, and upwards to eighteen months in some cases, absent exceptional circumstances. A brief review of some of the cases will demonstrate this range.
>
> **45** The exceptional circumstances must engage principles of sentencing to a degree sufficient to overcome the application of the main principles of deterrence and denunciation by way of a prison sentence.
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> **46** For example, in *R. v. Preston* (1990), 47 B.C.L.R. (2d) 273 a five-justice division of this Court examined the general principles of sentencing in the context of possession of heroin offences by a long-time heroin addict, with a lengthy criminal record. Ms. Preston had made substantial efforts at rehabilitation. Wood J.A., speaking for the Court, said, at 281:
>
>> The object of the entire criminal justice system, of course, is the protection of society, and I say at once that if incarceration is the only way of protecting society from a particular offender, then transitory and expensive though it may be, that form of protection must be invoked. But where, as in this case, the danger to society results from the potential of an addict to commit offences to support her habit, and it appears to the court that there is a reasonable chance

> that she may succeed in an attempt to control her addiction, then it becomes necessary to consider the ultimate benefit to society if that chance becomes a reality.
>
> With respect, that benefit seems obvious. If the chance for rehabilitation becomes a reality, society will be permanently protected from the danger which the offender otherwise presents in the fashion described above. As well, the cost associated with her frequent incarceration will be avoided.

[55] After reviewing a number of cases, the Court summarizes the principles as follows in para. 59-63:

> **59** In summary, absent exceptional circumstances, the sentence for a first offence or with a minimal criminal record, dial-a-dope drug seller will be in the range of six to eighteen months imprisonment, depending on the aggravating circumstances. Exceptional circumstances may include a combination of no criminal record, significant and objectively identifiable steps towards rehabilitation for the drug addict, gainful employment, remorse and acknowledgement of the harm done to society as a result of the offences, as opposed to harm done to the offender as a result of being caught. This is a non-exhaustive list, but at the end of the day, there must be circumstances that are above and beyond the norm to justify a non-custodial sentence. There must be something that would lead a sentencing judge to conclude that the offender had truly turned his or her life around, and that the protection of the public was subsequently better served by a non-custodial sentence. However, Parliament, while not removing a non-custodial sentence for this type of offence, has concluded that CSO sentences are not available. Thus, it will be the rare case where the standard of exceptional circumstances is met.
>
> **60** A CSO was considered a sentence of imprisonment because of the strict <u>and punitive</u> conditions that could be imposed. As we have seen above, a suspended sentence can attract similar strict conditions, but only if they are aimed at protection of the public and reintegration of the offender into society. Rehabilitation clearly plays a significant role in both of those conditions.
>
> **61** A suspended sentence can achieve a deterrent effect, as noted above, as well as a denunciatory effect. And, as Esson J.A. stated in *Chang*, the fact of being arrested, tried and convicted, can also address these principles. In other words, the stigma of being a convicted drug trafficker and the consequences of that conviction--for example, restricted

> ability to travel outside of Canada and exclusion from many forms of employment--may also play a deterrent effect.
>
> **62** Thus, while it is an error to simply substitute a suspended sentence for a CSO, as they are not governed by the same principles, that does not end the inquiry into whether these non-custodial sentences are fit.
>
> **63** The issue then for each of these appeals becomes whether there were sufficient exceptional circumstances to justify going outside the normal range of sentence and imposing a non-custodial sentence. In each case, the sentencing judge concluded that there were exceptional circumstances.

[56] Mr. Voong was 40 years old at the time he committed the offence contrary to s. 5(2) of the *CDSA*. He was suspected of committing over 16 transactions before he was arrested. He was an addict-driven trafficker. He had a prior criminal record, including two 1994 convictions for possession for the purpose of trafficking.

[57] After his arrest, Mr. Voong attended a drug treatment program and had been free of illicit drugs since May 2013. His original sentence was imposed in July 2014.

[58] In para. 73 the Court stated:

> In my view, given all of the circumstances, and taking into account all of the principles noted above, this offender does present an exceptional circumstance by his commitment to rehabilitation and his apparent success to date. I would not interfere with this sentence.

[59] Mr. Galang was involved in one trafficking transaction of 1.04 grams of cocaine. He became involved in the drug transaction to help a friend who owed money to his superiors in the drug trade. He was considered to be at the very low end of the drug trafficking business.

[60] Mr. Galang was 22 years old at the time of sentencing. He had no prior criminal record and was running a legitimate business with two others at the time of sentencing. The Court, in increasing the period of probation from one to three years stated in para. 81:

> …In my view, one year probation does not satisfy the deterrence or denunciatory aspect of sentencing. The proverbial "*Sword of Damocles*" plays a significant role in satisfying both of these principles, and one year is not sufficient. I would increase the probation order to three years' probation. I would also impose a curfew. …

[61] Ms. Charlton had pleaded guilty to two counts of possession for the purpose of trafficking. In one case the drug was cocaine and in the other it was heroin. When she was arrested she was in possession of 5.7 grams of cocaine, 1.51 grams of powdered cocaine and 1.75 grams of heroin. She was 28 years old at the time of sentencing. She had a lengthy criminal record with convictions for possession of illegal drugs. She was on probation for drug offences when she committed the additional offences. She was an addict. The positive steps Ms. Charlton had taken towards her rehabilitation, both with respect to addressing her mental health and addiction issues and obtaining employment and the support of her employer, were significant enough to cause the sentencing judge to consider that her circumstances were exceptional enough to warrant a suspended sentence and probation. The Appeal Court agreed.

[62] Mr. Taylor pleaded guilty to possession of cocaine for the purpose of trafficking. He had nine grams of cocaine on him when he was arrested.

[63] Mr. Taylor was 25 years old at the time of sentencing. He was noted to have been making some effort towards his rehabilitation and tackling his drug addiction. He

reported that he had employment. He was noted to have tested positive for cocaine use post-offence. Much of the information regarding his post-offence conduct was from his mother and there was little in the way of confirmation from independent sources. The Appeal Court considered that the sentencing judge did not give enough weight to the principles of deterrence and denunciation and that Mr. Taylor had not taken sufficient steps towards his rehabilitation to meet the threshold of exceptional circumstances sufficient to warrant the imposition of a suspended sentence and probation. A sentence of six months' imprisonment and 12 months' probation was substituted for the suspended sentence and probation.

[64] The following cases filed by defense counsel do not differ in their approach from ***Voong*** in that sentences other than incarceration are available for drug traffickers dependent on the circumstances of the offence and of the offender. Where unusual or exceptional circumstances, primarily related to rehabilitation, are considered to exist, non-custodial sentences can be imposed. Where they do not, custodial sentences are imposed. (***R.*** v. ***Cisneros***, 2014 BCCA 154; ***R.*** v. ***Carrillo***, 2015 BCCA 192; ***R.*** v. ***Oates***, 2015 BCCA 259; ***R.*** v. ***Pepper***, 2015 BCCA 476 – sentence reduced from six months to 90 days intermittent because of sentencing judge's misdirection on the question of what can constitute exceptional circumstances; ***R.*** v. ***Dickey***, 2016 BCCA 177; ***R.*** v. ***Owens***, 2014 BCSC 32; ***R.*** v. ***Voss***, 2014 BCPC 43; ***R.*** v. ***Lo***, 2015 BCSC 1821; ***R.*** v. ***Orr***, 2015 BCPC 206; ***R.*** *v.* ***McGill***, 2016 ONCJ 138).

[65] Clearly, in sentencing Mr. Maynard for his trafficking offence, I must consider the important role of denunciation and deterrence, both specific and general. It is clear from the case law that drug trafficking is an extremely serious offence with devastating

consequences on individuals, their families and their communities. In sentencing trafficking offenders, and in particular when hard drugs such as cocaine are the nature of the drug, sentencing judges must ensure that the sentence imposed reflects the seriousness of this offence and societies denunciation of it.

[66] I am mindful of the Purpose and Principles of sentencing set out in ss. 718 through 718.2 of the *Code*. Section 718 and 718.2(e) state:

> **718** The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, 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 and the harm done to victims or to the community that is caused by 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 acknowledgment of the harm done to victims or to the community.
>
> **718.2** A court that imposes a sentence shall also take into consideration the following principles:
>
> …
>
> (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

[67] The reasonableness of a non-custodial disposition needs to be balanced against the harm done to victims and the community. As stated, the harm caused by the drug trade is considerable. That is why denunciation and deterrence are the leading principles in sentencing offenders convicted of trafficking in drugs, in particular hard drugs like cocaine. There is a balancing in determining an appropriate sentence, and the law is clear that denunciation and deterrence do not necessarily require a custodial disposition.

[68] The Crown has submitted that a six month custodial disposition be imposed. This is a sentence at the lowest end of the six to 18 month range set out in ***Voong***, a range of custodial sentence I am in agreement with. The Crown has clearly considered the efforts Mr. Maynard has made towards rehabilitation in his submission that this is the appropriate sentence.

[69] I am in agreement that a sentence in the six-month range would, absent exceptional circumstances, be an appropriate disposition. Such a sentence at the low end of the range is a recognition of Mr. Maynard's positive steps towards rehabilitation.

[70] Outside of the circumstances of the offence itself, there is little in the way of aggravating circumstances in this case. There is much in the way of mitigation.

[71] I find that exceptional circumstances are present in this case. Mr. Maynard is clearly remorseful for his actions, not only as evidenced by his guilty plea but also by his actions. He began his steps towards rehabilitation with considerable effort and diligence long before he was charged with the commission of this offence. He has continued in these efforts. He has not only obtained employment, he has excelled in

this employment. He has a supportive family and friends that, in my opinion, have in the past and going forward are prepared not only to continue to provide their support but to hold Mr. Maynard accountable for his actions. I believe that Mr. Maynard has separated himself from his past involvement with the drug trade and is on a very positive track moving forwards. The protection of the public in this case is best served by recognizing the efforts Mr. Maynard has made and imposing a sentence that allows Mr. Maynard to continue on the path he started of his own initiative and with his family's and friend's support.

[72] As such I am suspending the passage of sentence and placing Mr. Maynard on probation. I am satisfied that this sentence, in these circumstances, meets the need to take into account denunciation and deterrence, allows for the rehabilitation of Mr. Maynard to continue as it has, and provides protection to the public. I am satisfied that Mr. Maynard has accepted responsibility for what he has done and is cognizant of the harm associated with his offence. Again, this is evidenced by his actions, not simply by his words.

[73] In determining the length of the probation order, I am aware of the substantial period of time that Mr. Maynard has spent on court-ordered terms to date, and the restrictiveness of the terms he has been bound by. I am certainly able, while not bound to do so, give recognition to Mr. Maynard's time on bail conditions in determining an appropriate sentence. (***R.*** v. ***Downes***, (2006) 79 O.R. (3d) 321 (C.A.) at paras. 29-33).

[74] In this case I am prepared to do so by reducing the length of the probation order somewhat.

[75] The length of the probation order will therefore be 20 months. The terms 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. Notify your Probation Officer, in advance, of any change of name or address, and, promptly, of any change in employment or occupation;

4. Remain within the Yukon unless you obtain written permission from your Probation Officer or the court;

5. Report to a Probation Officer immediately and thereafter, when and in the manner directed by your Probation Officer.

6. Reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer.

[76] With respect to whether a curfew or house arrest condition should be imposed, I keep in mind that the probation order should be designed to encourage the rehabilitation of Mr. Maynard. The curfew conditions that he has been on have served to do so. In saying this, I am aware that there is an Information alleging a breach of the curfew condition of his recognizance on August 17, 2015. In my opinion, placing Mr. Maynard on a house arrest or strict curfew condition at this point in time would be counterproductive to the rehabilitation of Mr. Maynard and I decline to do so.

7. For the first six months of this order you will abide by a curfew by being inside your residence between the hours of 11:00 p.m. and 7:00 a.m. daily except with the prior written permission of your Probation Officer. You must answer the door or the telephone for curfew checks. Failure to do so during reasonable hours will be a presumptive breach of this condition;

8. You will not possess or consume controlled drugs or substances that have not been prescribed for you by a medical doctor;

9. You will attend and actively participate in all assessment and counselling programs as directed by your Probation Officer, and complete them to the satisfaction of your Probation Officer for any issues identified by your Probation Officer and provide consents to release information to your Probation Officer regarding your participation in any program you have been directed to do pursuant to this condition;

[77] As the trafficking of drugs is an offence against the community:

10. You will perform 60 hours of community service as directed by your Probation Officer or such other person as your Probation Officer may designate. Any hours spent in programming may be applied to your community service at the discretion of your Probation Officer;

11. Participate in such educational or life skills programming as directed by your Probation Officer and provide your Probation Officer with consents to release

information in regard to your participation in any programs you have been directed to do pursuant to this condition; and

12. Make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with consents to release information in regard to your participation in any programs you have been directed to do pursuant to this condition.

[78] This is a secondary designated offence for the purpose of making a DNA order pursuant to s. 487.051 of the *Code*. Given the nature of this offence and the minimally intrusiveness nature of a DNA order, I am satisfied that it is in the best interests of the administration of justice to make this order and I do so.

[79] I make the mandatory s. 109 firearms prohibition order. This will be for a period of 10 years.

[80] There will be an order for forfeiture of all the items seized.

[81] There will be the mandatory $200.00 victim surcharge. There will be 30 days to pay this surcharge.

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COZENS T.C.J.