

Citation: *R. v. Moustakas*, 2017 YKTC 60

Date: 20171027  
Docket: 16-00682  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**  
Before His Honour Judge White

REGINA

v.

MARIUS MICHAEL MOUSTAKAS

Appearances:  
Kevin MacGillivray  
Vincent Larochelle

Counsel for the Crown  
Counsel for the Defence

**REASONS FOR SENTENCE**

[1] WHITE J. (Oral): Mr. Moustakas is a 76-year-old gentleman, who has lived for most of his life in Canada and, specifically, in the Yukon. He was born outside of Paris, towards the end of the Second World War. He has no previous criminal record.

[2] As a result of an undercover police investigation, he was arrested and charged with the crime of trafficking in a Schedule 1 oxycodone drug contrary to s. 5(1) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19. The date of the offence was January 10, 2017.

[3] From all of the information that has been provided to me, I do not find that he is suffering any debilitating medical condition. He experiences pain, as older people often do, but he has a history of drug use for his own pleasure. That is my conclusion from

reading all of the evidence and hearing the evidence in this particular case. He financed this use, in part at least, through trafficking in this drug.

[4] To his credit, he has pled guilty to the offence and he has no previous criminal record.

[5] In the usual course, credits like that have to be taken into account, and properly so. However, the law is very clear in these kinds of cases that there must be a jail sentence.

[6] Why is that so? Because Parliament has decided that a jail sentence served in the community is not open to a person accused of this kind of a crime in these circumstances and it would be clearly inappropriate to assess a penalty other than jail — for example, a fine or probation — in a case of this seriousness.

[7] Why is it serious? Because in North America, there is an opioid epidemic and people are dying. It is as simple as that. This is the tip of the iceberg when it comes to the sale and consumption of opioids.

[8] Courts have made it quite clear that in sentencing, particularly in a case like this, where specific deterrence is not an issue at all, having regard to the fact that this man has no previous criminal record and he is 76 years of age, the key principles are general deterrence and denunciation of the crime. Denunciation is serious in a case like this because, in all too many cases, people are dying as a result of consumption of opioids and other related drugs.

[9] Secondly, with respect to general deterrence, general deterrence simply means, in its simplest terms, that somebody out there in the public thinking about using and trafficking in opioids, for whatever reason — for their own pleasure or whatever — will have to think very carefully and hard before doing so, recognizing that there is no free pass. If you get caught, you go to jail.

[10] In this particular case, the range of sentence indicated by counsel for the Crown was six to 12 months. Defence asked for three months and the Crown asked for nine months. The Crown indicates that in less egregious cases, where there have been more factors weighing in favour of an accused, sentences have been around six months. Again, the Crown says this case justifies a sentence of nine months and defence says three months, having regard to all the circumstances.

[11] I have come to the conclusion that six months is sufficient. I believe six months for a 76-year-old man with no previous record would be sufficient for a member of the public looking at the matter to conclude that trafficking in opioids is not worth it. I do not think any useful purpose would be served by imprisoning him for any longer period of time. Having taken into account all the facts and circumstances of the case, I have concluded that six months is the appropriate sentence.

[12] There will be a DNA order. He is to give a sample of his blood for DNA analysis within seven days.

[13] The law requires that he be prohibited from possessing or using firearms, ammunition, and explosive substances for a period of 10 years.

[14] There will be a victim surcharge of \$200. It is to be paid or worked off within the next year.

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WHITE T.C.J.