

Citation: *R. v. Nipp*, 2011 YKTC 06

Date: 20110128
Docket: 09-00922B
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Lilles

REGINA

v.

TAI PENG NIPP

Appearances:

Jennifer Grandy
Edward Horembala, Q.C.

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] LILLES T.C.J. (Oral): This is the matter of *R. v. Tai Peng Nipp*. Mr. Nipp has been charged with the possession of cocaine and heroin for the purpose of trafficking, both Schedule I drugs, contrary to s. 5(2) of the *Controlled Drugs and Substances Act* (1996, c.19).

The Facts

[2] Around 11:45 p.m. on March 11, 2009, Corporal Walker, an RCMP officer assigned to "M" Division and based in Whitehorse, was returning to the police detachment when he observed the accused, Mr. Nipp. He observed Mr. Nipp at the door of the Town and Mountain Hotel, initially, and then saw him get into a Toyota

Matrix hatchback. Corporal Walker recognized the vehicle as one that had been driven by a Mr. Guan when Corporal Walker arrested him on a drug charge several months earlier. Corporal Walker was aware that Mr. Guan worked for Mr. Nipp and lived with Mr. Nipp. He also had information from an anonymous informant that implicated Mr. Nipp as a drug dealer. For those reasons, he decided to place Mr. Nipp under surveillance when Mr. Nipp left the Town and Mountain Hotel. He contacted Constables Greer and Douglas in their separate vehicles to assist with the surveillance. The officers were in constant communication with each other by radio.

[3] Constable Douglas followed the Nipp vehicle up Robert Service Way to the Alaska Highway, and stopped behind the Nipp vehicle. He observed Mr. Nipp alone in the vehicle. He followed Mr. Nipp north on the Alaska Highway and turned off at the Mount Sima Road, where Constable Greer took over the surveillance of Mr. Nipp. Constable Greer observed Mr. Nipp pull into a laneway off the highway with mailboxes directly opposite the Pioneer R.V. Park, which was deserted at the time. Constable Greer drove past, then returned to see that Mr. Nipp had driven across the highway, turned around in the deserted R.V. park and pulled to a stop at the highway. Constable Greer drove past again, and radioed to Constable Douglas to continue the surveillance.

[4] Constable Douglas caught up with Mr. Nipp's vehicle at the McCrae Gas Bar and Restaurant. He saw Mr. Nipp's vehicle parked at the restaurant, with the engine running and lights on, next to a sports utility vehicle. He drove past and entered the large parking area using the northern entrance, and as he drove by the parked vehicles again, he observed a person known to him as a Dan Eriksen standing and leaning into Mr. Nipp's passenger window. He then observed both vehicles leave, Mr. Eriksen

travelling south, and Mr. Nipp travelling north. He noted that the lights were not on in the restaurant and concluded that the restaurant was closed. To him, this appeared to be a “suspicious meeting” as there was no obvious, legitimate reason for this kind of meeting at this deserted and remote location, and at this time of night. At this point, Corporal Walker directed that both vehicles should be stopped and Mr. Erikson and Mr. Nipp should be arrested. Constable Douglas stopped Mr. Erikson’s vehicle, and Constable Greer stopped Mr. Nipp’s vehicle and arrested him.

[5] No drugs were found on Mr. Erikson or in his vehicle when he was arrested. When Mr. Nipp was arrested, Constable Greer observed a package of material wrapped in pages from a magazine on the floor of the vehicle just in front of the driver’s seat and near the door. The package was seized and found to contain a plastic bag with white powder, which, according to Constable Greer, had the odour of cocaine. Subsequently, the material was weighed and analyzed. There were 76 grams or 2.68 ounces of material that was comprised of 18 percent heroin and 18 percent cocaine. A quantity of money was seized from Mr. Nipp: \$190 Canadian was found in his front pocket, and \$1,300 Canadian and \$142 U.S. were found in his wallet.

[6] Corporal Todd Monkman is in charge of “M” Division Drug Section, and was qualified as an expert to give opinion evidence regarding street and mid-level trafficking in narcotics. In particular, he is familiar with the drug trade as conducted in the Whitehorse area. Corporal Monkman provided the following information that is relevant to the case bar [as read in]:

In general the purity of cocaine on the street is in the range of 80 to 85 percent. A recreational user of cocaine might

split one half gram between two people, while one gram could be split between three or four recreational users. Addicts who are heavy users could use as much as two to five grams daily. Using current prices in Whitehorse, the cost of 76 grams or 2.68 ounces of 80 to 85 percent pure cocaine sold by the ounce would be approximately \$2,600 per ounce or \$6,900 in total. If sold in one-half gram packets, the street value would be around \$12,000.

[7] Courts typically make a distinction between so-called hard drugs, like cocaine and heroin, and soft drugs, like marihuana, for the purpose of sentencing. The drugs in this case are properly classified as hard drugs. A distinction is also often made between the street level seller who is doing so to feed his or her own addiction, and others who, as mid-level dealers or higher, deal in larger quantities. These individuals are often viewed as running businesses. The amount of drugs in Mr. Nipp's possession suggests that he falls into the mid-level dealer category.

[8] Mr. Nipp, I was advised, has been using drugs for a long time. When his wife divorced him in 2009, he became a heavier user. I was advised that he used all his earnings from his restaurant, from his gambling, and from his drug dealing, to feed his addiction. Courts often view the addiction which motivates the drug dealer to be a mitigating factor.

[9] I have reviewed a number of cases from the Yukon and elsewhere with respect to sentencing. The amount of drugs seized is usually a major factor. In this case, the amount seized is considerable, two and a half ounces, containing a mixture of cocaine and heroin. These cases also indicate that the sentences imposed are fact specific, specific to the offender, the nature of the business enterprise, and also whether guns were seized. It is an important factor that Mr. Nipp has no prior criminal record, and no

weapons were seized.

[10] The primary principles of sentencing in drug trafficking or possession for the purpose of trafficking cases emphasize specific and general deterrence. Because of the harm drugs cause in our society, denunciation is also considered. In *R. v. Profeit*, [2009] Y.J. No. 78, Judge Cozens stated as follows:

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.

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.

[11] In *R. v. Holway*, 2003 YKTC 75, Judge Faulkner stated:

... 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 involved trafficking in hard drugs.

[12] Crown counsel highlighted two cases in particular that she submitted were relevant. In *R. v. Bourne et al.*, 2007 YKTC 81, Mr. Bourne entered a guilty plea and

was in possession of 40 grams of hard drugs, and also some firearms. He received a sentence of 18 months on the s. 5(2) charge. In *R. v. Silver*, [2006] Y.J. No. 75, Mr. Silver received a sentence of 15 months for the possession of 59 grams of cocaine.

[13] In the result, I accept the joint submission of counsel. Mr. Nipp is sentenced to 18 months incarceration for the single charge of possessing cocaine and heroin for the purposes of trafficking, contrary to s. 5(2) of the *Controlled Drugs and Substances Act*.

[14] Now, Madam Crown, you also made several other applications. One was with respect to a firearm order. That order should go, in my opinion, for a period of ten years from the date of this order, or actually, in this case, because he is in prison, from the date of his release from prison. He should be given two weeks after his release from prison to surrender any firearms, either to the police or to the chief firearms officer, and these are firearms that he either has in his possession or owns, and/or any other restricted weapons as defined in the *Code*. He should also surrender to the same individuals every authorization, licence, and registration certificate that he might hold pursuant to s. 114 of the *Criminal Code*. That is all the standard prohibition order. I take it there is no issue with respect to that. There was something else that you --

[15] MS. GRANDY: I submitted a draft order for forfeiture.

[16] THE COURT: I signed those.

[17] MS. GRANDY: Thank you.

[18] THE COURT: Thank you.

[19] Now, neither counsel spoke or suggested that a probation order would be appropriate. I have concluded myself that one is not, in these facts. We are not dealing with a young person; we are dealing with an older individual who knows what his issues are and what needs to be done better than I or you. So it is up to him to deal with that.

LILLES T.C.J.