

Citation: *R. v. Richards*, 2010 YKTC 57

Date: 20100514
Docket: 09-00896
09-00701
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: Her Honour Chief Judge Ruddy

REGINA

v.

JANET RICHARDS

Appearances:
Jennifer Grandy
David Christie

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] RUDDY C.J.T.C. (Oral): Janet Richards has entered pleas of guilty to one count of possession of cocaine for the purposes of trafficking, one count of breaching the abstain condition of her release terms, and one count of simple possession of cocaine.

[2] In December of 2009, by way of a police informant, the police became aware of the possibility of some drug trafficking occurring out of a room in the High Country Inn. They commenced an investigation by way of surveillance and, having arrested some individuals coming from the room, they were advised by at least one individual that he had purchased cocaine from the room.

[3] A search warrant was sought and executed. When the police arrived with the search warrant, Ms. Richards was in the room. There were a number of items found with respect to drugs, including 2.3 grams of cocaine and a small rock of crack cocaine; a fair amount of drug paraphernalia including used syringes, packaging and a mobile phone with a debt list that was in Ms. Richards' possession.

[4] She was a co-accused with Mr. Asuchak, who appears, by the birth dates on the Information, to be considerably older than Ms. Richards. It is my understanding through Crown that he appears to have been the leader with respect to the offences before the Court. Indeed, he provided a statement to the police admitting to having sold cocaine.

[5] Ms. Richards was arrested, spent some five days in custody, was released on conditions which included a condition that she abstain absolutely from the possession or consumption of drugs, and also that she abide by a curfew. On the 21st of February and then on the 25th of February, she was located out after her curfew, with cocaine in her possession on both occasions; .1 grams on the first occasion and .69 grams on the second. She was then taken into custody and has remained in custody until today's date, having served a total of 84 days in remand. Credit would apply pursuant to the old rules in this particular case. Counsel are jointly agreed that any sentence she receives ought to be reduced by four months credit.

[6] I have had the benefit of a pre-sentence report. It appears from that pre-sentence report that Ms. Richards had a relatively supportive and stable upbringing but in her teens appears to have become involved in drugs and the drug subculture and has developed an addiction to cocaine, which has clearly led to her having significant

problems which bring her before the Court today.

[7] She is still a young woman. She has just turned 21. She has clearly made some significantly poor choices in her life. The concerns raised in the pre-sentence report for me are, firstly, the suggestion on page 9 that she would not be prepared to comply with the conditions of a court order. She specifically references abstain and curfew conditions. Her counsel indicates that she does in fact understand that, regardless of her wishes, if I place her on any type of conditions, she will be required to abide by those, and that her seeming attitude in the pre-sentence report can be explained by the process itself being new to her; there is no criminal record being alleged before me today, as well as the recent loss of her sister, and also a concern about her own ability to comply with conditions, particularly abstain and curfew conditions, given her addiction.

[8] The other concern, and perhaps in some ways the bigger concern for me in the pre-sentence report, is the apparent indication that Ms. Richards has little motivation to change and to address her drug addiction. In saying that, I recognize she is still young and at times it takes younger people a little bit longer to come to the realization that maybe they need to start making changes. It is my hope, Ms. Richards, that this process will lead you to think long and hard about where you want to go with your life. I also do accept, through Ms. Richards' counsel, that she has begun to think more about the possibility of treatment and recovery as a result of some of the programming that she has been accessing while in custody.

[9] In terms of the appropriate sentence, these offences are extremely serious. I

accept, however, for the purposes of this sentencing, that they are largely addiction-motivated, and also that Ms. Richards played something of a lesser or middle-man type of role with respect to these offences. But, in my view, it is also important to note, for the purposes of this decision, that the Court views these types of offences extremely seriously.

[10] Drugs have a devastating impact on our community, particularly because we are ill-equipped to respond to the results that are occasioned by drug use in this Territory. We have limited treatment resources and there are any number of negative effects that we suffer as a community, as a whole, as a result of people selling, buying and using drugs. So we view them extremely seriously and, as a result, I would note that the principles of denunciation and deterrence must be paramount in any eventual sentence, but, as fairly pointed out by the Crown, Ms. Richards is still a fairly young person, so rehabilitation must also be considered at the end of the day.

[11] There have been two cases provided before me, in very similar circumstances, two other young women arrested and sentenced for similar offences within the Territory, one of whom received a six month sentence and the other received a nine month sentence. Counsel are suggesting that for this particular case I consider a sentence of six months in jail on the most serious of the offences, that being possession for the purpose of trafficking in cocaine, and 30-day consecutive sentences on each of the two remaining counts, to be followed by a period of probation. Questions arise as to what is appropriate in terms of both the length of probation and the conditions that ought to be included.

[12] I am satisfied that the sentence, from a custodial perspective, as suggested by counsel, is entirely appropriate in all of these circumstances and it would meet the appropriate principles of sentencing.

[13] With respect to the most serious of the offences, I am satisfied that a six month jail term is appropriate. Counsel, as indicated, are jointly agreed that Ms. Richards is entitled to some four months credit for time spent in remand. I would therefore reduce that term by four months in remand, leaving a remaining two months to be served with respect to the s. 5(2). Each of the two remaining counts will result in a sentence of 30 days on each, consecutive to each other and consecutive to any other sentence being served, Ms. Richards, which would leave you a remaining four months to be served with respect to all three counts. Sorry?

[14] MR. CHRISTIE: I'm sorry, Your Honour, maybe I misunderstood or maybe I was just hopefully thinking that I had thought that one was concurrent, one could be consecutive but I -- or I don't know if we clarified that.

[15] THE COURT: Sorry, Ms. Grandy, was I wrong? I had written -- or were they intended to be concurrent to each other but consecutive to the -- I had written consecutive after both.

[16] MS. GRANDY: You know, Your Honour, I may have misspoke but the conversation that Mr. Christie and I had was that the 30 days consecutive and then 30 days concurrent. So the total we discussed was seven months.

[17] MR. CHRISTIE: Yes.

[18] THE COURT: Okay. So on the two remaining counts, the breach and the simple possession, they will each attract a sentence of 30 days that will be concurrent to each other but consecutive to the sentence on the s. 5(2); so it is a remaining three months.

[19] I am of the view that there does need to be a probation order after. The big questions with respect to the probation order really are whether or not I include an abstain condition and what the length of the order ought to be. In terms of length, defence is suggesting six months, Crown is suggesting a year. Defence is also concerned about the abstain condition, in terms of setting her up. I am of the view that a lengthier probationary term is needed, but I am also of the view that I do not want it to be something that sets you up. So I am going to go with a lengthier order but I am not going to include the abstain condition. It is my hope that you get yourself into some programming so that we do not see you back, because you are at the beginning of a road that is only going to get uglier, if you keep using, and particularly if you keep associating with individuals that are selling.

[20] THE ACCUSED: I understand.

[21] THE COURT: Okay. But I do want it to be a lengthier period so that there is supervision of what you are doing, and referral into some programming. That might take you some time to both adapt to and to develop the motivation to follow through on it.

[22] There is going to be a probation order of one year. It will be on the following terms and conditions:

1. That you keep the peace and be of good behaviour and appear before the Court when required to do so by the Court;
2. That you remain within the Yukon Territory, unless you have written permission from your Probation Officer;

You need to be talking to them if you are going to go down to where your mother is, okay?

3. You are to notify your Probation Officer of any change of name or address and promptly notify the Probation Officer of any employment or occupation;
4. You are to report to a Probation Officer immediately upon your release and thereafter when and in the manner directed by the Probation Officer;

As indicated, I am not of the view that a curfew is appropriate, and I am not going to include the abstain condition, but I am going to require that:

5. You take such alcohol and/or drug assessment, counselling and programming as directed by your Probation Officer;
6. Participate in educational or life skills programming as directed by your Probation Officer;

They can take a look at what other things that you might need. I am going to add a condition that:

7. You take such other assessment, counselling and programming as directed by your Supervisor as well;

They may want to explore some issues; for instance, with respect to your sister, there may well be some grief-related issues that are going to exacerbate your addiction if you do not address those. So, that is intended for them to look at what other things might help you. I am going to require that you:

8. Make reasonable efforts to find and maintain suitable employment and provide your Probation Officer with all necessary details concerning your efforts;
9. Provide your Probation Officer with consents to release information with regard to your participation in any programming, counselling or educational activities that you have been directed to do pursuant to this order.

So the focus of the probation order is, hopefully, to encourage you to take a serious look at getting some counselling and programming.

[23] THE ACCUSED: Mm-hmm.

[24] THE COURT: I will waive the victim fine surcharges in light of her custodial status.

[25] MS. GRANDY: If the remaining counts could be marked as withdrawn, please?

[26] THE COURT: Thank you. I am sorry, I believe I neglected to address the s. 109.

[27] MR. CHRISTIE: It's mandatory, so.

[28] THE COURT: It is mandatory under the *Criminal Code*, under s. 109, that I order that you be prohibited from having in your possession any firearms, ammunitions or explosive substances for a period of ten years. That flows from the possession for the purpose.

[29] So you have three months left to go and probation to hopefully support you in getting some help. I do wish you good luck.

[30] MS. GRANDY: Your Honour, Mr. Asuchak's matters have also been resolved and I understand Mr. Christie doesn't have any difficulty with the information be noted, that the items that were seized in the room, the drug paraphernalia, the phone, et cetera, and the drugs themselves be forfeited.

[31] MR. CHRISTIE: I think, though, there might have been one -- well, there was one phone that I agree with my friend, but my client is saying there was another phone that didn't have any involvement with that.

[32] THE ACCUSED: Yeah, it just had pictures on it and stuff.

[33] MR. CHRISTIE: So personal photos.

[34] MS. GRANDY: So perhaps if we say the phone with the debt list on it is to be forfeited.

[35] MR. CHRISTIE: Yeah.

[36] THE COURT: So any items having been seized as a result of the execution of the search warrant, with the exception of the phone that does not have the

debt list on it, are hereby forfeit to the Crown. I will leave it you to determine what happens with the other phone.

[37] MS. GRANDY: Thank you.

RUDDY C.J.T.C.