

Citation: *R. v. Brown*, 2011 YKTC 33

Date: 20110603
Docket: 10-00731
10-00731A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Chief Judge Cozens

REGINA

v.

JAMIE DARRELL BROWN

Appearances:
Kevin MacGillivray
Melissa Atkinson

Appearing for the Crown
Appearing for the Defence

REASONS FOR SENTENCING

[1] COZENS C.J.T.C. (Oral): Jamie Brown has entered a guilty plea to an offence under s. 5(1) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19.

[2] An agreed statement of facts was filed; I will therefore not go through the facts in any detail. Suffice it to say that on January 11th, based on information the RCMP had obtained regarding an apartment on 24 O'Brien Road, an undercover officer knocked at the door of apartment number 6. Subsequent to that, Mr. Brown, who resides in apartment number 4, came up, spoke with the undercover officer and negotiated a sale of crack rock cocaine, held out to be a full gram. This was sold by Mr. Brown to the

undercover officer. The cocaine was confirmed to weigh .3 grams.

[3] The following day, the undercover officer again attended the apartment. Mr. Brown came up to the apartment and agreed to sell some more cocaine to the undercover officer, and, for the price for \$100, dropped another rock of cocaine into the undercover officer's hand. Mr. Brown obtained this from a cupboard inside apartment number 6.

[4] The police then obtained and executed a search warrant, and in the course of the search of the apartment located in the cupboard where Mr. Brown had been getting the cocaine, nine rocks of cocaine weighing 2.4 grams, with a value of \$900, along with the \$50 bills that had just been used to buy the cocaine. In another bedroom, 110 rocks of cocaine weighing 36 grams were located.

[5] The agreed statement of facts sets out that Mr. Brown was unaware of the presence of these additional rocks of cocaine. There was another individual involved in the apartment who is currently facing charges in relation to the cocaine that was found there. Clearly, Mr. Brown was part of a larger organization that was distributing crack cocaine in the Yukon community.

[6] Mr. Brown has entered a guilty plea. He is clearly remorseful for his actions. There is a joint submission before me for a sentence of 18 months, less credit for the 60 days time in custody that Mr. Brown has.

[7] Case law has been filed. The Court is familiar with the principles in the Yukon. The range of sentence suggested, without going through the cases, is completely

appropriate. Mr. Brown has a prior criminal history, but it is quite dated, and the only related offence was in 1989 for simple possession under s. 3(1) of the *Narcotics Control Act*, CRC, c. 1041, for which he received a \$250 fine. With respect to trafficking of drugs in the Yukon community, and, in particular, drugs like crack cocaine, which cause significant harm in the Yukon community, the principles have been well stated. I will repeat what Judge Faulkner said in the *R. v. Naiker* case, 2007 YKTC 58:

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.

[8] Mr. Brown was selling these drugs purely for commercial profit. Although he was a user, he was not dependent to the point that he would fall into one of those user trafficker categories, who were trafficking purely to sustain their own habit. I might point out that in the *Naiker* case it was crack cocaine as well. Although not referred to in the cases before me, in *R. v. Holway*, 2003 YKTC 75, Judge Faulkner dealt with the issue of trafficking in the Yukon and the comparison to southern jurisdictions, and, really, in the end, what he said, and what is very important, is that, "The last thing we need (in the Yukon) is more drug traffickers." It causes significant, serious harm in our communities, and general deterrence and denunciation are, and will likely always be, the primary factors in sentencing.

[9] Therefore, Mr. Brown, who is 42 years of age, will be sentenced to 18 months custody, less credit for two months time served, leaving a remanet of 16 months in custody.

[10] There will be an order under s. 109 of the *Criminal Code* that Mr. Brown be prohibited from possessing any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition and explosive substance for a period of ten years.

[11] There will be a DNA order, as this is a secondary designated offence.

[12] I will waive the victim fine surcharge.

[13] Probation has not been suggested. I am not inclined to impose it in any event.

[14] I believe that is all that needs to be dealt with here?

[15] MR. MACGILLIVRAY: That's correct, that's my understanding, Your Honour.

[16] MS. ATKINSON: In relation to the remaining counts as it pertains to Mr. Brown?

[17] MR. MACGILLIVRAY: Yes, I was going to deal with those, actually, now that it comes to mind. If the Court could order a spring order for Mr. Brown to attend this court on July 6th.

[DISCUSSION RE SCHEDULING A COURT DATE]

[18] THE COURT: All right. So --

[19] MR. MACGILLIVRAY: And with respect of the Information 10-00731A, the Crown's directing a stay of proceedings on both counts. Now, in respect of the

Information 10-00731, my understanding is that the two counts were rolled up into Count 3.

[20] THE COURT: That is correct.

[21] MR. MACGILLIVRAY: For trafficking, that's correct. Okay. So regarding all other counts naming Mr. Brown, the Crown directs a stay of proceedings.

[22] THE COURT: Yes, that is fine. There will be a stay of proceedings on Count 4.

[23] MR. MACGILLIVRAY: But not against Mr. Pegg, as long as that's clear.

[24] THE COURT: Right.

[25] MR. MACGILLIVRAY: I gather -- my friend has kindly shared with me that the process here is to state on the record that the Crown is releasing the recognizance cash deposit of \$1,000 that he put on his bail.

[26] THE COURT: That is right. He will have that \$1,000 returned to him as the Crown has decided not to proceed in seeking a conviction on the breach charges

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[27] MR. MACGILLIVRAY: That's correct.

[28] THE COURT: -- to allow for estreatment of the monies. Yes, all of those charges in so far as they affect Mr. Brown are stayed. The charges against Mr. Pegg will continue before the Court.

[29] There will be a spring order for July 6, 2011, at 10:00 a.m. for Mr. Brown. It is in circuit point 2. Thank you, counsel.

COZENS C.J.T.C.