

Citation: *R. v. Cheung*, 2007 YKTC 43

Date: 20070524  
Docket: T.C. 05-00640A  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**

Before: Her Honour Judge Ruddy

**REGINA**

v.

**KWOK YIU CHEUNG**

Appearances:  
Noel Sinclair  
Gordon Coffin

Counsel for Crown  
Counsel for Defence

**REASONS FOR SENTENCING**

[1] RUDDY T.C.J. (Oral): Mr. Cheung is before me in relation to one offence for unlawfully producing marihuana. The facts have been filed by way of an agreed statement of facts. It is not my intention to go through that agreement in length.

[2] Suffice it to say that it appears that Mr. Cheung was the signatory to a lease to a local residence here in Whitehorse, which essentially made him the front for a marihuana grow operation, located by way of execution of a search warrant, in which the police netted 744 marihuana plants and approximately \$14,000 worth of equipment required for the marihuana grow operation.

[3] I have before me a joint submission. This is a somewhat strange situation in that counsel in their submissions have referred back to dispositions, submissions and cases filed on earlier sentencing hearings in this case. I will similarly do so in my decision. It is not my intention to belabour this decision. I think we have all covered it at length in the previous ones.

[4] Suffice it to say, materials that have been filed before me in the past, as well as submissions made, are such that the joint submission placed before me today is one that falls well within the range of cases in this area. I have less of a discomfort with this one than I did with the one previous. I am satisfied that there is parity in what is being suggested both between dispositions for offences of this type generally, and also between dispositions for other offenders within this particular investigation. I am satisfied that it meets the dominant sentencing principles for this type of offence, which I note to be denunciation and deterrence.

[5] The only comment that I do want to reiterate in this decision, because I think it is a crucial one for this jurisdiction, is the fact that I view, in this case, the introduction of this type of offence into a relatively small, isolated northern community as being a significant aggravating factor. That is a feature that is referred to in a number of the cases that were filed previously by the Crown. It is something that I view and consider to be a significantly aggravating factor, which, in my view, supports the joint submission being put forward, notwithstanding Mr. Cheung's representations, through his counsel, of his relatively limited involvement in the actual production of the marihuana.

[6] Accordingly, I am prepared to accede to the joint submission. There will be a sentence as follows: 12 months in jail. That will be straight jail. In addition, there will be an order, Mr. Cheung, prohibiting you from having in your possession any firearms, ammunition, explosives, cross-bows, prohibited devices, et cetera, et cetera. All of the items enumerated in s. 109 of the *Code* will be included in that order. That will be for a period of 10 years.

[7] I will also make the order that any of the property recovered that is related to the offences, that being the grow equipment, any of the plants, and anything else that is directly related to the offences, will be forfeited to the Crown. Anything, as indicated, that is clearly the personal property of Mr. Cheung will be returned to him.

[8] Anything further?

[9] MR. SINCLAIR: Just for the sake of clarity, at the beginning of your remarks you referred to your comments on other dispositions and you are referring to the *R. v. Zhu* disposition from May 7, 2007?

[10] THE COURT: Sorry, yes.

[11] MR. SINCLAIR: Thank you.

[12] THE COURT: I believe I made some comments in there about concerns regarding aggravating features and the relevant principles of sentencing, et cetera. In the same way that in your previous submissions you elaborated somewhat more --

[13] MR. SINCLAIR: Yes.

[14] THE COURT: -- as well, but that was that sentencing I was referring to.

[15] MR. SINCLAIR: Thank you.

[16] THE COURT: Thank you. Mr. Coffin, anything further?

[17] MR. COFFIN: Nothing further, Your Honour.

[18] THE COURT: Mr. Cheung, they will be taking you into custody now. So you will need to go with this gentleman here.

[19] Mr. Sinclair, do you need to deal with any of the outstanding matters as they relate to him?

[20] MR. SINCLAIR: The remaining charges as they relate to Mr. Cheung are stayed.

[21] THE COURT: Thank you. We did not speak to victim fine surcharge. Any issue in the circumstances with it being waived? I got the sense that he was not employed.

[22] MR. COFFIN: I will ask that it be waived in his circumstances.

[23] THE COURT: Any issue, Mr. Sinclair?

[24] MR. SINCLAIR: No.

[25] THE COURT: Okay, victim fine surcharge is waived. Thank you.

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RUDDY T.C.J.