

Citation: *R. v. Holway*, 2003 YKTC 75

Date: 20031009
Docket: T.C. 03-00086
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Faulkner

R e g i n a

v.

Christopher Holway

Appearances:

Leigh Gower

Gord Coffin

Counsel for Crown
Counsel for Defence

REASONS FOR SENTENCING

[1] Christopher Holway stands convicted of a charge of trafficking in cocaine. During a police undercover operation, the undercover operator was introduced to Mr. Holway during the course of a drug transaction with a man who was an acquaintance of Mr. Holway's. The operator indicated to Mr. Holway that he wanted to purchase two ounces of cocaine. Mr. Holway agreed to sell this quantity of cocaine for a price of \$1900 per ounce. Mr. Holway indicated to the operator that the price would be reduced for larger quantities. The operator went to Mr. Holway's residence where he was supplied with two bags of cocaine in exchange for \$3800 cash. The bags proved, on later analysis, to contain a total of 54 grams, or just shy of two ounces, of seventy five percent pure cocaine. At the time of this sale, Mr. Holway spoke of his ability to obtain larger quantities of cocaine. Whether this was fact, or (as the offender contends) merely puffery, remains undetermined.

[2] Mr. Holway is a young first nations man of twenty-three. He has a prior record for possession of a controlled drug and for driving a motor vehicle with in excess of the legal limit of alcohol in his blood.

[3] The offence is aggravated by the fact that this was a purely commercial, for profit operation. Mr. Holway is not an addict. He was attracted to drug trafficking solely by the lure of easy money. The offence is further aggravated by the fact that, although there was only a single transaction, Mr. Holway's involvement in cocaine trafficking was clearly not an isolated incident. A third aggravating factor is that there was a significant quantity of cocaine sold.

[4] In mitigation, I have already noted that Mr. Holway is still a young man with a limited prior record. He has also entered a guilty plea and is entitled to credit for that.

[5] The Crown submits that a deterrent sentence of two years less a day is warranted and cites several cases from the Yukon and Northwest Territories Courts in support. Many of these cases take as their starting point, the well-known decision of Judge Stuart of this Court in *R. v. Curtis*, [1982] Y.J. No. 4 (Y.T. Terr. Ct.).

[6] On behalf of the offender, Mr. Coffin sought to argue that the *Curtis, supra*, decision, while oft cited, is logically flawed. Mr. Coffin contended that suggesting drug trafficking is more serious in the North necessarily implies that it is less serious in the South. Southern Canadians, said Mr. Coffin, might be surprised to discover that we think the harm caused to them by drug trafficking is of relatively modest concern – that, in short, their lives are less valued.

[7] However, that is not the point to be drawn from *Curtis, supra*. *Curtis, supra*, simply points out that 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 involving trafficking in hard drugs.

[8] As the Crown seeks a sentence of less than two years, the possibility of a conditional sentence needs to be considered. Not surprisingly, Mr. Coffin submits that the requirement of deterrence can be met in the instant by just such a sentence. I find myself unable to agree. It is quite true, as the Supreme Court of Canada has pointed out in *R. v. Proulx*, [2000] 1 S.C.R. 61, that consideration of a conditional sentence is not automatically foreclosed for any particular category of offences. Indeed, there have been cases in the Yukon (my research found two) where a conditional sentence has been imposed for cocaine trafficking.

[9] It is also true that a conditional sentence can have a deterrent aspect. However, it must be pointed out that, from the point of view of preventing a recurrence of the offence, even house arrest would not necessarily prevent a return to drug trafficking. However, the much more compelling reason to reject a conditional sentence in this case is simply that it would be an inadequate response given, first, the local circumstances, second, that this was a purely commercial operation, third, the large quantity of cocaine sold and, finally, given the lack of any exceptional circumstances.

[10] Imposing a conditional sentence in this case would erode not only the deterrent effect on would-be traffickers, but would also indicate to the public at large that the courts have abdicated their responsibility to respond in an appropriate fashion to crimes so corrosive in their effect on our community.

[11] A review of the sentencing precedents for cocaine trafficking suggests a range of sentence from several months to several years. Sentences at the low end of the range have typically involved small “one time” sales, often by addicts and not by commercial traffickers. Sentences at the higher end, have involved larger scale and relatively sophisticated commercial operations.

[12] Of the cases to which I was referred or found in my own research, the following were closest to the present circumstances.

[13] In *R. v. Be Van Le*, (unreported, June 23, 1995, Y.T. Terr. Ct. T.C. 94-01489, T.C. 94-01594), a sentence of two and one half years was imposed in addition to 5 months in pre-trial custody. However, in that case, Mr. Le had sold cocaine on four occasions, with the largest quantity trafficked being some four ounces.

[14] In *R. v. Fisher*, [1997] Y.L.R. 410 (Y.T. Terr. Ct.), the offender was sentenced to sixteen months in jail plus two years probation. Mr. Fisher had been in custody for two months before sentencing, making the effective custodial sentence in the range of twenty months. He was twenty-three years old and had a minor criminal record. Mr. Fisher was acting as a courier bringing drugs from Vancouver to Whitehorse and was found in possession of two hundred grams of cocaine. The Court accepted that the incident was an isolated one.

[15] In *R. v. Law*, [1997] Y.L.R. 405 (Y.T.S.C.) the offender received two years less one day. He had been convicted on two counts of possession a total of 78.9 grams of cocaine for the purpose of trafficking. Mr. Law had a prior drug trafficking conviction.

[16] Taking into account the circumstances of this offence, a sentence in the range of two years less a day, as the Crown seeks, would be clearly fit and in accordance with sentences imposed on others. However, I am also bound to pay

some heed to the circumstances of the offender. The pre-sentence report suggests that, while Mr. Holway has not taken advantage of it to date, he is, nevertheless, a young man with considerable talent and ability. Moreover, he enjoys the support of a large and stable extended family. Given Mr. Holway's potential and degree of community support, I am prepared to mitigate the custodial portion of the sentence to the degree possible.

[17] Accordingly, Mr. Holway, you are sentenced to a period of imprisonment of 18 months. Following your release from imprisonment, you will be subject to a probation order for a further period of eighteen months. The terms of the order will be:

1. Keep the peace and be of good behaviour.
2. Appear before the Court when required to do so by the Court.
3. Report to a probation officer within two working days after the probation order comes into force and thereafter as and when directed by the probation officer.
4. Advise the probation officer in advance of any change of name or address.
5. Promptly notify the probation officer of any change of occupation or employment.
6. Take such alcohol or substance abuse assessment, treatment or counselling as the probation officer may direct.
7. Perform 80 hours of community service in the area of addictions as directed by the probation officer. Such community service work is to be completed within nine months after the probation order comes into force.
8. Use all reasonable efforts to seek, obtain and maintain employment or, in the alternative, to upgrade your level of education, and provide the probation officer with details of such efforts upon request.

[18] Pursuant to the provisions of the *Criminal Code*, you are prohibited from having on your possession any firearm, ammunition or explosive substance for a

period of ten years following your release from imprisonment, and you are directed to surrender forthwith to the Royal Canadian Mounted Police at Whitehorse, Yukon any such items now in your possession.

[19] In the circumstances, the surcharge is waived.

Faulkner T.C.J.