

Citation: *R. v. Mills*, 2012 YKTC 70

Date: 20110202
Docket: 10-00211B
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Worship Justice of the Peace Cameron

REGINA

v.

STEPHEN DONALD MILLS

Appearances:
Jennifer Grandy
Michael Reynolds

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] CAMERON J.P.T.C. (Oral): Mr. Mills has pled guilty to one count under s. 253(1)(b) and one count under s. 5(2) of the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19.

[2] The facts presented to the Court, on May 20th, early morning hours, a routine patrol observed three vehicles travelling in a manner that drew their attention. The vehicle in the back of the column appeared to be in excess of the speed limit, it came up towards the middle vehicle, looked like it might pass, and then just stayed tucked in close behind. The police then decided to stop that vehicle.

[3] When they did so, they found Mr. Mills was the driver. He had one passenger with him. He was getting his particulars out of the glove box. There was a glass

marihuana pipe that became visible. There was a baggie of a green leafy substance in the backseat. The police then asked him to step out and searched the vehicle more thoroughly, found a second baggie, digital scales; he was in possession of a mobile phone, and was displaying some signs of impairment. He was given an Approved Screening Device demand and blew a fail; breathalyzer demand and rights. He provided two samples of his breath, 150 and 130. As the police then started to investigate his phone, they found that there were numerous text messages on his cell phone that indicated that he was operating, perhaps on a small scale, as a supplier of drugs for money.

[4] Joint submission from counsel in regards to the impaired driving being a \$1,200 fine and one year prohibition. Counsel have both filed case law in support of their differing opinions as to what would be appropriate. Defence is seeking a conditional discharge and probation, and the Crown is seeking a fine, along with forfeiture of the confiscated items.

[5] Crown has indicated that a discharge of any kind would be contrary to the public interest simply because this is a possession for the purpose of trafficking enterprise, and although it is low-level, it is still a commercial operation. The Crown is relying on *R. v. Delafosse*, 2008 YKTC 82, as a similar set of circumstances and in that, Judge Faulkner outlines that only in the most exceptional circumstances could a discharge be considered when dealing with a trafficking offence.

[6] Defence cited *R. v. Moore*, 2005 YKTC 10, another young fellow in similar circumstances to Mr. Mills. Judge Lilles outlines that if there are exceptional

circumstances a discharge can be considered. So that then brings us to whether or not Mr. Mills' circumstances can be considered exceptional enough.

[7] Clearly, Mr. Mills does have very solid support from family and friends. His family and friends are here today. He has filed many letters of support indicating that he is certainly a productive individual within the community and shows a lot of potential. I think it is of critical note that the amount of drugs that was found in possession of Mr. Mills was 19 grams, less than 20 grams. It is, in my view, a borderline amount that could have been considered for personal use and I think, but for the evidence from the cell phone, Mr. Mills probably would not have been charged with anything more than simple possession. But the cell phone is very damning evidence, and it does show that you were involved, although not in a very sophisticated way, in marketing this product.

[8] Defence indicated that the marketing that Mr. Mills was doing was simply to his friends and it was only the excess that he was selling off from the amount that he had purchased for himself and his girlfriend's personal use. The Crown has pointed out that the cell phone records show that this, though, was not a one-time scenario, that he had, in fact, sold in the past. It clearly would appear that it is the lack of sophistication in the operation that would show that Mr. Mills was certainly new in this enterprise to have kept his text messages and not cleared them; to have the drugs, and so on, in the car, very evident; all would indicate a lack of sophistication.

[9] But I think, for the most part, the most critical consideration that the Court has to give is to Mr. Mills' performance since this offence, and he has performed very well. He has been on restricted conditions and has certainly not violated those conditions,

including an abstain condition, which took him through his graduation period during which there was no indications of breaches in that matter. He has secured himself employment that has potential. He is enjoying it. He has made a \$500 donation to Many Rivers Counselling organization. He has attended seven out of ten appointments with ADS and Health and Social Services.

[10] To deal with the s. 253 is a simple matter, the joint submission is appropriate, and I am going to deal with that in this way. There will be a \$1,200 fine, Mr. Mills, and a victim fine surcharge of \$180; it is a total of \$1,380. How long do you figure you would need to pay that?

[11] MR. REYNOLDS: If we could have six months, Your Worship. He will likely be able to get it done quite earlier than that, but that may give him a range of options.

[12] THE COURT: Six months time to pay.

[13] Pursuant to s. 259 of the *Criminal Code*, Mr. Mills, you will be prohibited from today forward for a period of one year; that is the minimum period under the law that is prohibited from holding a driver's licence or operating any motor vehicle. This operation prohibition is for any motor vehicle on any highway, public property or public roadway. It includes cars and trucks, but is not limited to them. It also includes Ski-doo's, ATV's, motor cycles, and would include rock trucks. Now, I will make the exception here for you, so that you understand. As long as the rock truck is being operated on mine property, you can operate it, but if you take it off the mine property, then you would not be allowed to operate it for a year. Just so you understand where that might cause you

a bit of a pinch in your work.

[14] Now, in regards to the s. 5(2), I get the sense that it was probably more to your benefit that you got caught as early as you did in this enterprise, because you may very well have found that the money from it is very easy, quick, and it would have been easy to fall into it becoming a full-time thing. But my sense is that although this was not your first time, I do not think you were particularly well set-up in the business as yet. I am going to give you the benefit of the doubt that this was very early in your foray into this field, and from your behaviour and what you have done since this charge came down, I am going to accept that as evidence that you have, in fact, learned your lesson. For that reason, I am going to allow that your circumstances, I believe, are exceptional enough that a discharge can be granted.

[15] I am going to discharge you conditionally. I will place you on probation for a period of 12 months from today forward. The conditions of that probation are going to be as follows:

1. You must report to a Probation Officer within 24 hours; thereafter, as often and in the manner directed by the Probation Officer;
2. You have to abstain absolutely from the possession and consumption of alcohol and non-prescription drugs for that whole period;
3. Should a Peace Officer or a Probation Officer have reasonable suspicion that you are in breach of this condition, you will comply with a demand for a breath or urine sample.

Now, I understand that you would agree to do that.

4. You are not to be found in attendance in any licensed bar or tavern or any other premises whose primary purpose is the sale of liquor or alcohol.
You cannot go in there to see who is in there, to use the phone, use the facilities, get out of the weather. You cannot go in there to take a meal or anything like that, you just cannot go into those places.
5. You are to attend alcohol and drug counselling as directed by your Probation Officer;
6. You are to reside at the residence of your mother or your father and abide by the rules of their house, and you are not to change your address or your residence without the prior written permission of your Probation Officer;
7. You are to maintain employment or use your best efforts to find employment or engage in educational programming;
8. You are to perform 25 hours of community work service, as and when directed by your Probation Officer;
9. You are not to associate with anyone known to you or identified by your Probation Officer as a drug user or trafficker;

[16] Are there any of these conditions that are not clear to you, Mr. Mills?

[17] THE ACCUSED: Yeah.

[18] THE COURT: You understand them all?

[19] THE ACCUSED: Yes, sir.

[20] THE COURT: Okay. In addition, s. 109 is a mandatory prohibition and it is attached to the 5(2), Madam Clerk, and it requires that you are prohibited from possessing or owning any firearms, ammunition, prohibited weapon, prohibited ammunition or explosive device. That prohibition will be for a period of one year.

[21] MS. GRANDY: Sorry, Your Worship, the mandatory section requires ten years for the first offence.

[22] THE COURT: Ten years, I am sorry.

[23] MS. GRANDY: Yes, 109.

[24] THE COURT: Section 109 is for ten years. There will be a victim fine surcharge that would apply to the s. 5(2) of \$50 as well. The \$50 victim fine surcharge will be included in the six months time to pay. The items that were seized are to be forfeited to the Crown.

[25] MS. GRANDY: I have two copies of the order to pass forward, one for the Court and one for the Crown's file, and if Count 2 could be marked as withdrawn, please.

[26] THE COURT: Count 2 is withdrawn.

CAMERON J.P.T.C.