

Citation: *R. v. Naidu*, 2009 YKTC 141

Date: 20091209  
Docket: 09-00491  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**

Before: Her Honour Chief Judge Ruddy

REGINA

v.

SHAUN NAIDU

Appearances:

Peter Chisholm  
Daniel Geller

Counsel for the Crown  
Counsel for the defence

**REASONS FOR SENTENCING**

[1] RUDDY C.J.T.C. (Oral): Shaun Naidu is before me having entered pleas of guilty to two offences, the first and most serious being trafficking a controlled drug, commonly known as Ecstasy. The second being breaching the keep the peace condition of his probation order.

[2] The facts arise in the context of an undercover police agent investigation beginning in May of this year. It appears that the RCMP enlisted the services of an individual who had been previously involved in the drug trade here in Whitehorse. He, on their behalf, engaged in a number of discussions and transactions with others involved in the drug trade. Those included Mr. Naidu.

[3] Mr. Naidu's involvement began in June of this year, at which point he offered the agent Ecstasy pills at a price of \$5 per pill. This led to two separate transactions between the two individuals in which Mr. Naidu provided the police agent firstly with 500 pills of Ecstasy in exchange for \$2,000, and a second transaction in which he received 300 pills from Mr. Naidu for the sum of \$1,200. There had been an indication from Mr. Naidu that if it were a cash sale that the price of the pills would be reduced to \$4 from \$5.

[4] Mr. Naidu was arrested September 24th. There was a search warrant executed on his residence and a number of items were located, including \$2,700 in cash, a small amount of marihuana and a number of weapons, including a machete, a bat and bear spray located near the front door of the residence. He was on probation at the time and was in breach of his keep the peace condition.

[5] He comes before the Court with a prior criminal record. There are no related drug offences; there is a failure to comply with a recognizance, however. Counsel have provided me with a joint submission, suggesting this matter be resolved by 15 months in custody, less credit for the 77 days he has spent in remand.

[6] In terms of the information that I have been provided with respect to Mr. Naidu, he is 28 years of age and has been in the Yukon for some six years. He has been involved in a couple of businesses, a power washing business and a dog breeding business, which I am advised he has lost as a result of his arrest with respect to these matters. I am also advised of some difficulties he experienced while in custody in relation to the H1N1 virus and some concerns that relate to the fact that he has not yet

been provided access to a doctor. It appears he has seen the nurse but he has not seen a doctor and they have some concerns about his ongoing condition, including migraine and blurred vision.

[7] I have been provided some cases which, not surprisingly, speak to, amongst other factors, the importance of denunciation and deterrence as the dominant sentencing principles, given the nature of the offence that is before me. I am not going to go on at length, given that this is a joint submission, but there is ample evidence in the Yukon with respect to the difficulties experienced in this community in relation to the sale of hard drugs, particularly given the limited resources to deal with the negative effects of drugs. I am also mindful of the fact, as pointed out by the Crown, this particular drug is one which is most commonly used by adolescents and young adults, a fact which is obviously very concerning.

[8] The cases that have been provided make it clear, however, that there is an extremely broad range of sentences for trafficking in Ecstasy. They are not of particular assistance in providing a sentence range for this particular case but they do clearly set out some of the aggravating factors, and they do clearly demonstrate to me that the sentence as suggested by counsel falls well within the range. For that reason, I take no issue with the joint submission as suggested.

[9] I am satisfied that the matter can be resolved by way of a 15 month sentence, which will be reduced by credit for remand. As I indicated, he spent some 77 days in custody. The practice here in the Yukon would be credit at one and a half to one. I am satisfied that it should be rounded up slightly to provide him with credit for four months,

which would leave the remaining sentence of 11 months on the trafficking charge. The sentence with respect to the keep the peace breach would be one of 45 days concurrent.

[10] As I said, I am satisfied that the sentence falls within the range and I am also satisfied that it meets the principles of denunciation and deterrence, in light of the aggravating factors of this case, which include the fact that there were two occasions of trafficking, the fact that it was profit motivated, and the fact that Mr. Naidu was on probation at the time of the incident.

[11] It is also indicated that a s. 109 mandatory firearms prohibition is appropriate in all the circumstances, is in fact mandatory in all of the circumstances. The record indicates that this will be the second firearms prohibition for Mr. Naidu. Accordingly, by law that prohibition will be a lifetime one, in the wording of the section.

[12] That leaves the issue of forfeiture. Mr. Naidu is not opposed to forfeiture of the majority of the items that were seized in the home. He, however, raises an objection in respect to forfeiture of the \$2,700, indicating that there is no proof that that money was connected in any way to the sale of Ecstasy. His counsel indicates that it must be remembered that he was involved in breeding and selling dogs at this point in time. The test, as set out in the *Controlled Drugs and Substances Act* in s. 16, is one of balance of probabilities. I am advised by the Crown that the RCMP had information indicating that none of the dogs had actually been sold at this point in time. As a result, I am satisfied on the balance of probabilities, in all of the circumstances, that the Crown has

established that the money is indeed connected to the illegal activities and I will order forfeiture of those funds as well.

[13] This leaves me with the issue of the request by counsel, in terms of the medical difficulties that Mr. Naidu has experienced while in the facility. I do not have any information from the facility with respect to what has happened from their perspective but Mr. Geller has asked that I use whatever power I have to make a recommendation that he be entitled to see a medical practitioner. My question relates to, quite frankly, my authority for making that order. I have no difficulty making a recommendation that perhaps it is advisable that he be given access to a doctor, just to confirm that there is not anything more serious. My view, though, is that I am not in a position to make a binding order.

[14] MR. GELLER: Your Honour, I appreciate that there's no jurisdiction to make that order, but the Court can use its authority to make a recommendation.

[15] THE COURT: I am not prepared to make it within 24 hours. I do not have enough information in terms of the logistics of organizing that, but I do not have any difficulty of making a recommendation that they strongly consider providing him access to a doctor within the next seven days. But what flows from that is, quite frankly, up to them.

[16] Victim fine surcharges?

[17] MR. CHISHOLM: Yes, I'll make no submissions with respect to those and I'll direct a stay of proceedings on the outstanding matters.

[18] THE COURT: Thank you. I will waive them in light of his custodial status. Anything further?

[19] MR. CHISHOLM: No, Your Honour, thank you.

[20] THE COURT: Okay. Thank you.

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RUDDY C.J.T.C.