

IN THE COURT OF APPEAL FOR THE NORTHWEST TERRITORIES
EDMONTON CRIMINAL SITTINGS

September 5, 1986

	<u>COUNSEL</u>	<u>TRIAL JUDGE</u>	<u>THE COURT</u>
CARLOS CARNEIRO APPELLANT	R.C. REHN, ESQ.	DAVIS, T.B.J.	BELZIL, J.A. IRVING, J.A. HETHERINGTON, J.A.

-v-

HER MAJESTY THE QUEEN RESPONDENT	JAMES D. SUTTON, ESQ.
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APPEAL NO. C.A. #650

MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH

HETHERINGTON, J.A. (for the Court):

On the 4th of April, 1986, the Appellant pled guilty to the following charges:

"between the 10th day of January 1985 and the 10th day of March 1985 at or near the town of Frobisher Bay in the Northwest Territories, did unlawfully traffic in a narcotic namely Cannabis Resin contrary to Section 4(1) of the Narcotic Control Act."

"between the 10th day of January 1985 and the 10th day of March 1985 at or near the town of Frobisher Bay in the Northwest Territories, did unlawfully traffic in a narcotic namely Cannabis Resin contrary to Section 4(1) of the Narcotic Control Act."

"between the 10th day of January 1985 and the 10th day of March 1985 at or near the town of Frobisher Bay in the Northwest Territories and elsewhere in Canada, did unlawfully conspire with each other and with unknown persons to commit the indictable offence of trafficking in a narcotic namely Cannabis Resin contrary to section 4(1) of the Narcotic Control Act thereby committing an indictable offence contrary to section 423(1)(d) of the Criminal Code."

He was sentenced to be imprisoned for three years with respect to each of these offences, those sentences to be served concurrently with each other and with the sentence which he was then serving. He has appealed from the sentences of three years.

The Appellant was convicted in 1978 and in 1983 of possession of narcotics and was fined in each case. In addition, in August of 1984 he was charged with possession for the purpose of trafficking in cannabis resin. However, he was not convicted of this offence until the 18th of November, 1985, at which time he was sentenced to be imprisoned for 14 months following which he was to be on probation for two years. The offences with which we are concerned were therefore committed

after he was charged with possession for the purpose of trafficking in cannabis resin, but before he was convicted of that offence and sentenced.

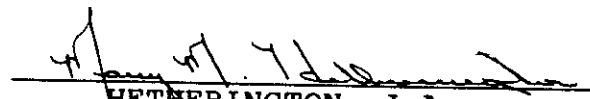
The Trial Judge found that the Appellant not only sold cannabis resin, he supplied it to others for sale. In his view the Appellant was to some extent sophisticated in these business dealings. He noted with respect to one of the charges of trafficking in cannabis resin which was before him, that the Appellant had sold a quantity of this drug of a street value of \$3,200.00 - \$4,200.00 to a person in Cape Dorset in the Northwest Territories.

The Appellant was 29 years of age at the time of his trial. He was, of course, a serving prisoner. He had been a taxi driver in Frobisher Bay. In 1984 the Appellant was advised that he had an incurable, but apparently not fatal, disease. He became upset and increased his use of drugs including cocaine, to which he probably became addicted. A cocaine seizure in April of 1985 cut off his supply and after that time he took steps to rehabilitate himself. While in custody he had taken courses to this end.

The Trial Judge referred to the adverse effect of the use of drugs in small communities in the North. He considered

the prospects for rehabilitation of the Appellant, but was of the view that deterrence was a more important factor in his sentencing. While we do not disagree with the Trial Judge, it is our view that the sentence which he imposed was excessive in the circumstances.

We therefore allow the appeal, and direct that in lieu of the sentences imposed by the Trial Judge, the Appellant is sentenced to imprisonment for one year with respect to each of the three offences of which he was convicted, those sentences to be served concurrently with each other, but consecutively to the sentence received by the Appellant on the 18th of November, 1985.


HETHERINGTON, J.A.

