



1 IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

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4
5 HER MAJESTY THE QUEEN

Respondent

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8 and

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10 BARRY WAYNE BINGHAM

11 Appellant

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15 Judgment of His Lordship, the
16 Hon. Mr. Justice W.G. Morrow,
17 given at Yellowknife, N.W.T.,
18 on Friday August 2nd., 1974.

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22 APPEARANCES:

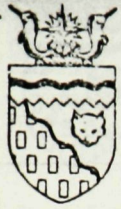
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24 Wm. Corbett, Esq.,
Murray Sigler Esq.,

For the Crown.
For the Appellant.



JUDGMENT BY HIS LORDSHIP:

1 In the quick few moments that I had out there, Gentlemen,
2 trying to check the un-reported judgments that have
3 been coming in to the library. I don't suggest that
4 I saw all of them, but I did see one or two, and there
5 is not much modification in attitude as I can see from
6 the Alberta Appeal Court. However, they do recognise
7 the principle that each case must be settled on its
8 own particular facts, and as Mr. Sigler says, the
9 individual must not be lost track of. At the same
10 time, I have already expressed my approval and support
11 of the remarks of Chief Magistrate Parker in several of
12 his cases dealing with this subject, in which he
13 points out how much more important it is in the North-
14 west Territories to discourage trafficking because of our
15 native people; so I am in the position where insofar
16 as the general picture is concerned, I feel that the
17 deterrent aspect is very important. At the same time,
18 in this particular case, looking at this young gentleman
19 that is before me now, he is certainly from my observ-
20 ation from examining the report and everything that
21 has been said on behalf of him, he is certainly not
22 what one would call a sophisticated person. I think
23 he has been very foolish; he has broken the law, and
24 certainly no one could get too much sympathy from a
25 court who would come before me, or before the Court
26 and say "well, it may be illegal but we don't believe
27 the law is right", that is not what I am going to do or



1 consider. But he has plead guilty; he has put some
2 time in jail already; his family have indicated that
3 they are prepared to look after him. We do have a
4 strong probation report in his favour. Taking all these
5 circumstances in mind and remembering the Doyle case
6 which is reported in 1971 1 W W R, page 70, which case
7 if not perhaps directly binding upon me is certainly
8 most persuasive.

9 Now, taking all these things into consideration --
10 will you stand up, Mr. Bingham?

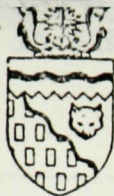
11 I am sentencing you to three months imprisonment
12 in the Correctional Institute at Yellowknife, following
13 which there will be a probation period of six months,
14 the conditions of which are, in addition to keeping
15 the peace and being of good order, will be: a, that
16 you will leave the Northwest Territories, and I hope
17 you go back to your home, but you will not, during that
18 period of six months, in any way use drugs or narcotics.
19 And b, that you will report to the probation authorities
20 wherever you may be each month.

21 Now I hope you will carry out what you have said
22 to the Probation Officer, that you will take this course
23 and try to rehabilitate yourself, I am not going to
24 put that as a term, I think that is a pure mental thing,
25 if you want to kill yourself you can do it.

26 Have I missed anything? I suppose we should
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- 1 MR. SIGLER: We would wish to make an application for the
2 return of the vehicle and the contents of the vehicle
3 during the raid.
- 4 THE COURT: Mr. Corbett?
- 5 MR. CORBETT: Sir, I am advised that the automobile is still
6 in Hay River and it is available to be moved from, I
7 believe, the Police Compound. I've no objection to
8 it being returned. The procedure is outlined I believe
9 in Section 10 of the Narcotic Control Act.
- 10 THE COURT: Is there anything that you have to do especially,
11 or is an order sufficient?
- 12 MR. CORBETT: The application appears to be made before a
13 Magistrate, I don't know why that would necessarily
14 be.
- 15 THE COURT: Well I wonder if Magistrate isn't in the broad
16 terms; let's put it this way: are you making any
17 objections to the return?
- 18 MR. CORBETT: No sir.
- 19 THE COURT: I will make a direction assuming that I am a
20 Magistrate within the meaning of that regulation, that
21 the automobile be returned to the owner by the Police,
22 and two, that this order would not only cover Bingham
23 but I will also have to cover the Grover and Wolfe cases,
24 do I not, that the substance is seized including the
25 pipes -- in the other two cases I believe there were
26 pipes -- and apparatus will be destroyed by the Police.
27 Have I missed anything?



1 MR. CORBETT: If I might just have a look at the Exhibit
2 Report first.

3 THE COURT: Fine. I think there were some other exhibits
4 that might not be involved.

5 MR. CORBETT: Perhaps the Court will order forfeiture of the
6 following items: Two plastic bags containing marihuana
7 one and a half pounds; one plastic bag containing green
8 plant material, marihuana one pound; one plastic bag
9 containing green plant material, marihuana one fifth
10 ounce; two hash pipes. These are the items that the
11 Crown would like forfeited.

12 THE COURT: Any hashish as well as any of those items that
13 you've outlined. All remaining exhibits that appear
14 to be not directly concerned with smoking or use of the
15 drug will be returned to the owners.

16 MR. SIGLER: Yes, I believe under Section 10 that automatically
17 occurs upon conviction.

18 THE COURT: That's right.
19 Does that dispose of today's procedures?

20 MR. SIGLER: Yes, My Lord.

21 THE COURT: I want to thank Counsel and I want to thank
22 Mr. Whitford for his report. We will adjourn.

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