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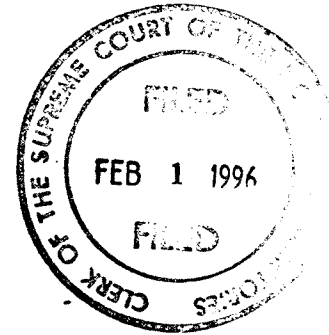
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

VAN PHAC PHAM



Transcript of the Reasons for Sentence Delivered by The Honourable Mr. Justice J. Z. Vertes, sitting in Yellowknife in the Northwest Territories, on the 29th day of January, A.D. 1996.

APPEARANCES:

MR. L. ROSE:

Counsel for the Crown

MR. S. TARRABAIN:

Counsel for the Defence

1 THE COURT: Counsel, there are two points
2 that I wish to deal with before delivering my
3 decision. First, I want to thank both of you for your
4 submissions and the materials that you presented to
5 me. Second, Mr. Tarrabain, I would like to give your
6 client an opportunity to say anything that he may wish
7 to say.

8 MR. TARRABAIN: My Lord, he doesn't wish to say
9 anything.

10 THE COURT: Very well, thank you. The accused,
11 Van Phach Pham, has entered pleas of guilty to three
12 offences. The first is a charge of possession of
13 cocaine for the purpose of trafficking arising in
14 October of 1993. The second is a charge of trafficking
15 in cocaine arising in September of 1994, and the third
16 is a breach of recognizance arising in January of this
17 year.

18 The circumstances as related to me reveal a
19 large scale commercial operation. In October of 1993,
20 the police acting on undercover information arrested
21 the accused and seized over 457 grams of high quality
22 cocaine. By my calculations this is just over 16
23 ounces. I am told that the police estimate a retail
24 street value for this cocaine of approximately
25 \$320,000.

26 In September of 1994, just days after the
27 accused was committed to stand trial on the first

1 offence, he was arrested and charged with trafficking
2 in cocaine. The circumstances reveal that he
3 facilitated the sale of one and a half grams of cocaine
4 for \$200 to two undercover police officers. He was
5 arrested after the September offence, and eventually
6 served three months in pre-trial custody.

7 In December of 1994, upon his application I
8 granted him bail with various conditions. One of those
9 conditions was that he not leave the Northwest
10 Territories except to consult with counsel, and even
11 then, only by prior arrangement. As it turned out, on
12 January 21, just 8 days ago and 8 days prior to the
13 scheduled start of his trial, he was arrested trying to
14 get into the United States.

15 There is no disagreement over the guiding
16 principle in sentencing in drug related cases. Courts
17 have consistently said that those convicted of drug
18 trafficking, especially cocaine trafficking and other
19 harder drugs, will be sentenced to lengthy terms of
20 imprisonment in the absence of exceptional
21 circumstances. This was the position enunciated by the
22 Alberta Court of Appeal in the well-known case of The
23 Queen and Maskell that has been referred to. This has
24 also been the position enunciated by the courts in this
25 jurisdiction now for well over 20 years.

26 The offender is 37 years of age. He has no
27 criminal record. He is an immigrant to this country

1 having been born in Vietnam and sponsored to come to
2 Canada by the Lutheran church. He is now a Canadian
3 citizen. He has lived in Yellowknife since 1984 and I
4 am told that between then and 1993 he worked as a taxi
5 driver. All this is of course to his credit. But as
6 all of the cases cited to me have shown, even a good
7 personal background will not avoid a lengthy term of
8 imprisonment in these types of cases. Deterrence and
9 denunciation are the primary factors that must be
10 emphasized, and in my view, there are no exceptional
11 circumstances here.

12 These types of crimes, drug trafficking
13 crimes, are usually motivated by profit, by greed.
14 They are crimes that prey on people who cannot control
15 their own impulses. There is certainly nothing in this
16 situation to suggest any other motivation than greed on
17 the part of the accused. The evidence indicates that
18 this was an ongoing commercial operation that went on
19 for a lengthy period of time. It was certainly
20 substantial by any means. The accused's conduct was
21 aggravated by the repetitive nature as revealed by the
22 fact that he was arrested on the trafficking charge
23 mere days after being committed to stand trial on the
24 original charge. So it is a continuous course of
25 conduct that is extremely serious.

26 I take into account the fact that the accused
27 has entered guilty pleas to these charges. Guilty

1 pleas are always to be rewarded to some extent. They
2 usually save the administration of justice expense and
3 time and of course avoid the necessity of lengthy
4 proceedings.

5 But the value of any guilty plea must be
6 judged in the context of all of the circumstances.
7 Here I must say that the guilty plea is certainly worth
8 far less than it would under other circumstances. It
9 comes very late in the day. Indeed, it comes only
10 after the accused's apprehension and return to this
11 jurisdiction.

12 Counsel have cited numerous cases to me. They
13 are all helpful, of course, to emphasize once again the
14 general principles in sentencing in these types of
15 cases. The particular sentences in each case, of
16 course, must be read always in the context of the
17 particular facts and circumstances of that case. And
18 they always differ, of course, from case to case. But
19 the general principle is the same. These types of
20 crimes must be denounced. Sentences must be imposed
21 that send a message to deter others from engaging in
22 this type of activity, and indeed, where as here there
23 are no exceptional circumstances, the court must impose
24 a lengthy period of incarceration.

25 I have given consideration to the over-all
26 effect of my sentence. I must keep in mind the global
27 effect so as not to impose a sentence that is

1 inordinately high taking into account the fact that
2 there were three separate offences here. But all of
3 them are worthy of a deterrent and denunciatory
4 sentence.

5 Stand up, Mr. Pham. On count 1 of the
6 indictment number 02700, that is the charge of
7 possession of cocaine for the purpose of trafficking
8 dating from October of 1993, I sentence you to serve a
9 term of imprisonment of five years. On the charge of
10 trafficking in cocaine dating from September of 1994, I
11 sentence you to serve a term of imprisonment of one
12 year, but I will make that concurrent to the five year
13 sentence. On the charge of breach of recognizance
14 dating from January of 1996, I sentence you to serve a
15 term of imprisonment of six months to be served
16 consecutively. That is a total of five and a half
17 years. You may have a seat. Under the circumstances I
18 will not impose a victim of crime fine surcharge.

19 Now, with respect to the other two outstanding
20 matters, there is an application by the Crown for
21 forfeiture of the cash bail of \$5,000 as well as for
22 forfeiture of the sum of \$4,980 cash seized upon the
23 accused's arrest for the October 1993 offence.

24 With respect to the bail, there was a breach
25 of the bail conditions. It was a serious breach.
26 There is no doubt about that, and indeed, I must say
27 that were it not for my consideration of the global

1 effect of the sentences I imposed, I might have been
2 inclined to impose a sentence far lengthier than the
3 six months that I did. But the accused was
4 apprehended. He was returned to this jurisdiction.
5 These proceedings did go ahead without delay.

6 I am told that the bail proceeds have been
7 assigned to counsel. There is some merit to the
8 argument that the system of justice benefits from
9 having experienced counsel involved in these types of
10 serious cases. All things considered, I will therefore
11 not order the forfeiture of the bail funds and I will
12 direct the clerk to return those funds to the accused
13 or pursuant to any assignment that may be on file.

14 With respect to the sum of \$4,980 of Canadian
15 currency seized in October of 1993, I am satisfied
16 based on all of the circumstances that have been
17 explained to me that those funds are on a balance of
18 probabilities the proceeds of crime. Therefore, I see
19 no reason why they should not be forfeited to the
20 Crown, and I so order pursuant to Section 462.37 of the
21 Criminal Code.

22 Is there anything else we need to deal with,
23 counsel?

24 MR. TARRABAIN: My Lord, there is only one other just
25 housekeeping matter. I take it that as a result of
26 hardship there is no victim surcharge?

27 THE COURT: Yes, I directed that there will be no

1 surcharge.

2 MR. TARRABAIN: Thank you, My Lord.

3 THE COURT: Mr. Rose?

4 MR. ROSE: Following the appeal period may we
5 dispose of the exhibits?

6 MR. TARRABAIN: No objection, My Lord.

7 THE COURT: Yes at the expiry of the appeal period
8 all of the exhibits may be disposed of in the normal
9 course. Anything else, Counsel?

10 MR. ROSE: No, My Lord.

11 MR. TARRABAIN: No, My Lord.

12 THE COURT: Very well. Once again thank you,
13 Counsel for your submissions. We will stand adjourned.

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Certified Pursuant to Practice Direction
#20 dated December 28, 1987

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L. Young

Laurie Ann Young
Court Reporter

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