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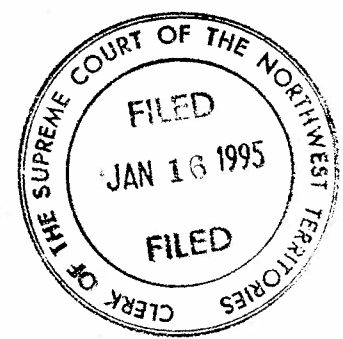
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

TIMOTHY NORBERT VORNBROCK



Transcript of the Oral Reasons for Sentence of The Honourable
Mr. Justice J. Z. Vertes, at Yellowknife in the Northwest
Territories, on Thursday, January 12th A.D., 1995.

APPEARANCES:

MS. L. CHARBONNEAU: Counsel for the Crown
MR. T. BOYD: Counsel for the Accused

(CHARGED UNDER s. 145(3) CRIMINAL CODE OF CANADA)

1 THE COURT: The accused has been convicted by a
2 jury on a charge of breach of undertaking. This
3 charge proceeded by way of indictment so the potential
4 maximum penalty is two years' imprisonment. Also, the
5 accused has been acquitted of two other offences which
6 I will refer to so as to put this conviction in
7 context.

8 On October 1, 1993, the accused was charged with
9 sexual assault. The complainant was then 14 years
10 old. He was released on an undertaking which
11 contained, as a condition, that he have no contact
12 direct or indirect with the complainant. In July of
13 1994, the accused was charged with an attempt to
14 obstruct justice by trying to bribe the complainant.
15 These two charges are the ones on which the jury
16 acquitted the accused.

17 The complainant at trial said, in reference to the
18 obstruction charge, that she and the accused had
19 contact on February 9th, 1994, at which time he
20 offered a bribe for her to change her story. The
21 accused testified that he did have contact with her on
22 that date but denied attempting to bribe her. He also
23 said that he continued to have contact with her for an
24 extended period in February and also in December of
25 1994. The complainant testified that there was no
26 further contact.

27 Having regard to the acquittals on the other two

1 charges, the clear implication of the jury's verdict
2 is that the complainant's evidence failed to convince
3 them. If her evidence of the bribe was doubted and
4 her evidence of further contact doubted yet the jury
5 convicted the accused on the breach charge, it seems
6 to me that the clear implication of that verdict is
7 that the jury accepted the accused's evidence of
8 ongoing contact. I raise this only because defence
9 counsel seemed to suggest that I consider as the
10 underlying facts to this conviction that version of
11 the evidence most favourable to the accused, that
12 being evidence of only one contact. Yet that would be
13 tantamount to repudiating the evidence given by his
14 client under oath. That cannot be.

15 Accordingly, my sentence is based on what I take
16 to be facts implicitly accepted by the jury: there was
17 contact on February 9th, 1994; there were periods of
18 extended contact of several days each in February and
19 December; and there were sporadic contacts at other
20 times. I accept that these contacts were initiated by
21 the complainant. Yet that does not excuse the
22 accused. He is 20 years older than the complainant;
23 he knew and understood the condition in his
24 undertaking; and he realized that his undertaking was
25 the price that he paid for his continued release until
26 trial.

27 He tells me that he did not know what to do. That

1 is no excuse. I find it extremely aggravating that he
2 continued these contacts when he should have acted as
3 a more mature and responsible adult.

4 The Crown alleges no record of previous criminal
5 convictions. So I must keep in mind that I must treat
6 the accused as a first-time offender. It is my
7 fervent hope that the accused will never find himself
8 in Court again so that the question of personal
9 deterrence is not the over-riding factor.

10 As Crown counsel noted, this is an offence against
11 the administration of justice. Our system, in order
12 to give meaning to the presumption of innocence,
13 favours bail for people awaiting trial. As a
14 condition of bail, this type of no-contact clause is
15 often used so as to protect complainants and to
16 prevent interference with evidence. Disregard for the
17 conditions of one's undertaking usually results in the
18 accused being held in jail until trial since it shows
19 that he cannot be trusted. Hence sentencing for a
20 breach such as this must be viewed seriously as an
21 interference with the administration of justice. As
22 such, general deterrence becomes the prime factor.

23 The Crown in this case seeks a custodial sentence
24 in excess of three months as a reflection of how
25 seriously this breach is viewed.

26 The accused is 35 years old. He has his own
27 business. His business cannot go on without his

1 active participation. I take that into account.

2 I have concluded that a custodial sentence is
3 required but not to the extent sought by the Crown.
4 This man comes before me as a one-time offender. He
5 has been acquitted of the substantive charges. That
6 is not a mitigating factor but it is a factor. Any
7 custodial sentence under these circumstances would
8 ordinarily be considered unusual. But my sentence, I
9 hope, reflects the seriousness of my view of the
10 accused's behaviour.

11 Please stand, Mr. Vornbrock.

12 Mr. Vornbrock, my sentence is that you serve a
13 term of 60 days' imprisonment. Now, I have taken into
14 account what your counsel has said and what you have
15 said about the impact that incarceration would have on
16 your business so I direct that you serve that term on
17 an intermittent basis. I am going to direct that you
18 serve it on that basis from Friday nights to Monday
19 mornings. What is -- can you assist me, Ms.

20 Charbonneau? What is the usual time? I know that
21 there is an officer here.

22 MS. CHARBONNEAU: I am advised, My Lord, suitable times
23 would be 5 p.m. on Fridays until 7 a.m. on Mondays.

24 THE COURT: You will serve your sentences from 5
25 p.m. Fridays until 7 a.m. Mondays. And you are to
26 report to the Yellowknife Correctional Center starting
27 this Friday, January 13th at 5 p.m., and every weekend

1 until your sentence is served.

2 You will be, in addition, on probation for a
3 period of one year. And as a term of that probation,
4 you are required to report every weekend.

5 THE ACCUSED: Yes, sir.

6 THE COURT: Do you understand? And this probation
7 will continue after your intermittent sentence is
8 over, for one year from today's date. The conditions
9 of that probation are simply that you are to keep the
10 peace and be of good behaviour. And if required to do
11 so, to report to the probation officer.

12 THE ACCUSED: Yes, sir.

13 THE COURT: Now, if there are further directions
14 required with respect to the intermittent sentence, I
15 don't believe so, but if there are counsel can see me
16 and I can have them incorporated into the terms of the
17 probation order. You can have a seat.

18 In addition, there will be a Victim Fine
19 surcharge of \$150. That is to be payable within 30
20 days. In default, seven days in jail.

21 That surcharge, Mr. Vornbrock, will go into a
22 fund, a general fund, to help victims of crime. It
23 will be your small contribution to the broader
24 community. That's to be paid within 30 days otherwise
25 you will serve an additional seven days in jail.

26 Anything else required, counsel?

27 MS. CHARBONNEAU: No, My Lord.

1 MR. BOYD: Nothing by defence, sir.

2 THE COURT: Thank you, counsel.

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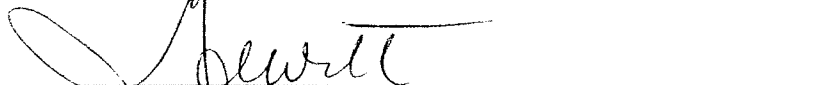
Certified Pursuant to Practice Direction #
dated December 28, 1987.

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10 Lois Hewitt,
11 Court Reporter

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