

CR 03079

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

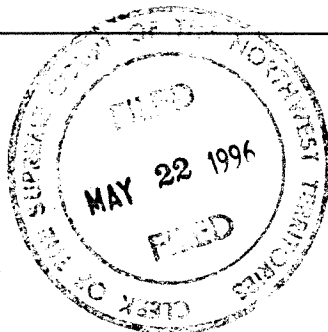
FRANCIS ADOLPH HERMAN

Transcript of the Oral Reasons for Sentence by The Honourable
Mr. Justice J.Z. Vertes, at Hay River in the Northwest
Territories, on Monday, April 29th, A.D. 1996.

APPEARANCES:

Mr. L. Rose:

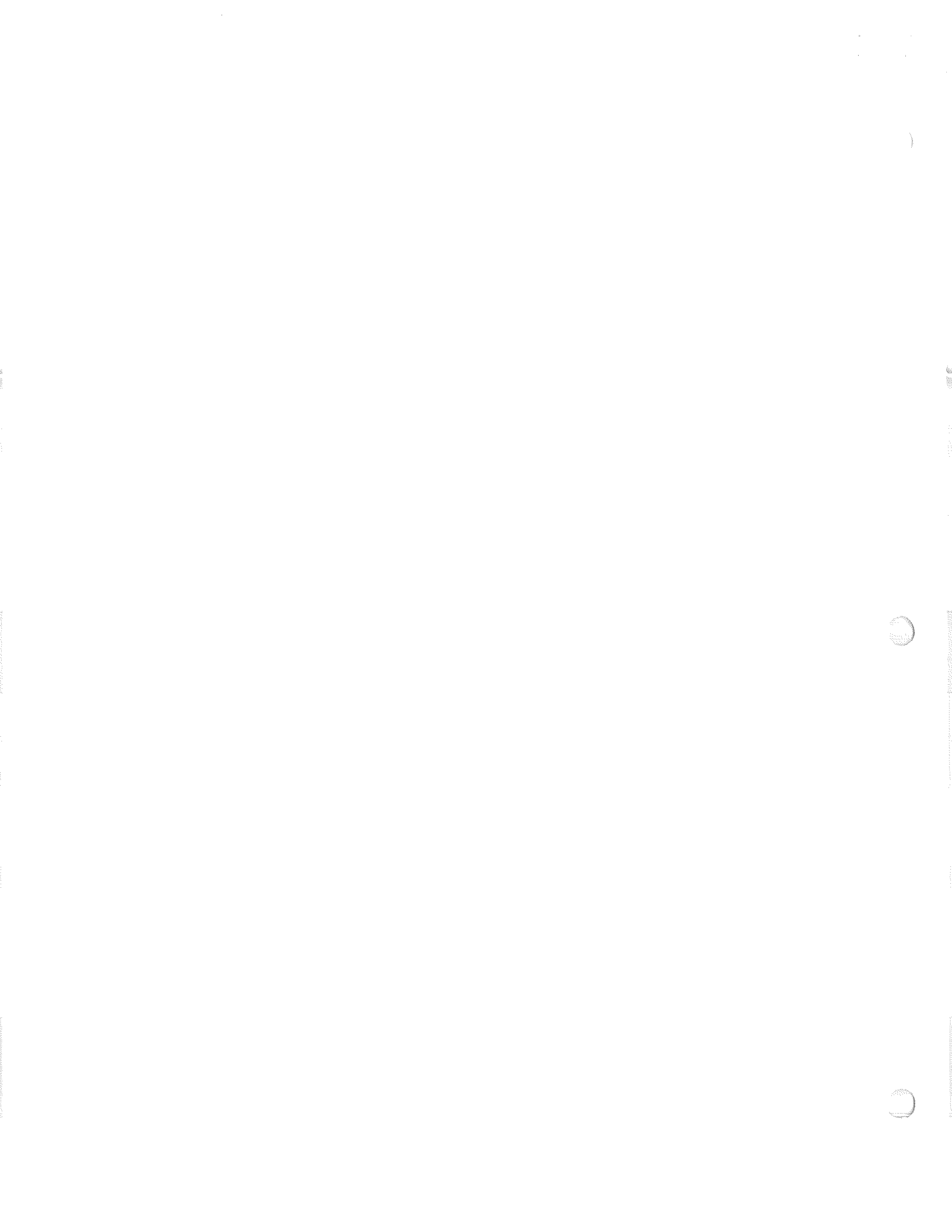
Mr. S. Shabala:



Counsel for the Crown

Counsel for the Accused

CHARGE UNDER s. 253(b), s. 255(2) CRIMINAL CODE OF CANADA



1 THE COURT: The accused, Francis Adolph
2 Herman, has entered guilty pleas to two counts of
3 impaired driving causing bodily harm. The facts are
4 set forth in an Agreed Statement of Facts.

5 On July 2nd, 1995 near Enterprise, Northwest
6 Territories, the accused drove a motorhome through a
7 road construction zone and sideswiped a dump truck
8 shearing away one side of the motorhome. This caused
9 two of his passengers to fall out and be seriously
10 injured. The accused had been drinking at the time and
11 his blood alcohol content was estimated to be at least
12 over the legal limit.

13 The accused is 62 years old.

14 He appears to have a long-standing problem with
15 alcohol abuse as evidenced by the fact that he has
16 seven previous convictions for impaired driving since
17 1975. The last three convictions were entered in 1990
18 at which time he was sentenced to a total term of 12
19 months' imprisonment with a three-year driving
20 prohibition.

21 Given this background, and the circumstances of
22 these offences, there is no doubt in my mind that
23 sentences of anywhere from three to five years would be
24 justified from the perspective of public safety,
25 deterrence, and denunciation.

26 Appellate authorities generally reflect the
27 conclusion that Parliament intends for the impaired

1 drivers who cause serious consequences to themselves
2 face more severe consequences. Drivers are warned that
3 if they drink and drive then they are taking
4 unacceptable chances, and one of them, the chance of
5 injury or death, will result in an increased penalty.
6 Simply put, drivers must not take these chances.

7 In this case, however, Crown and defence counsel
8 have joined in a submission that an appropriate penalty
9 would be one of 30 months. Ordinarily, I would say
10 that this was overly generous.

11 But I recognize, as Crown counsel does, that a
12 guilty plea, even as here at the last moment, should
13 always be considered to be somewhat mitigating.

14 Furthermore, I think that a certain degree of
15 credit should be given to the fact that counsel make
16 this joint submission after no doubt carefully
17 evaluating their positions. A joint submission made in
18 the context of a guilty plea should not be overridden
19 unless it is unreasonable in the sense that the
20 resulting sentence is not fit.

21 In my view, in this case it can not be
22 conclusively said that a sentence of 30 months is not
23 fit in the circumstances.

24 Please stand, Mr. Herman. Stand up, sir.

25 You're a mature man who obviously hasn't yet come
26 to grips with the fact that one simply does not drink
27 and drive. And as you said, it is just fortunate that

1 no one was killed in this accident.

2 The sentence of this Court, on both counts, to be
3 served concurrently, is that you serve a term of
4 imprisonment of 30 months.

5 In addition, I direct that your driving privileges
6 be prohibited for a period of six years. Under the
7 circumstances, there will be no fine surcharge,
8 counsel.

9 You may have a seat, sir.

10 Is there anything else that we need to deal with
11 with respect to this matter?

12 MR. ROSE: Not from Crown, sir.

13 MR. SHABALA: No, nor defence, My Lord.

14 THE COURT: Then we stand adjourned until 9:30
15 tomorrow morning.

16

17 (AT WHICH TIME THIS SENTENCING HEARING CONCLUDED)

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

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Lois Hewitt,
Court Reporter

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