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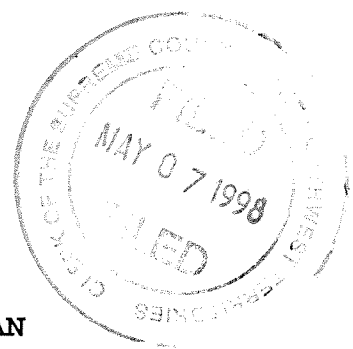
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

B E T W E E N:

HER MAJESTY THE QUEEN

- and -

MOHAMUD HADI-SALIM HASSAN



CR 03511

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

B E T W E E N:

HER MAJESTY THE QUEEN

- and -

HUSSEN MAHAMUD ALASOW

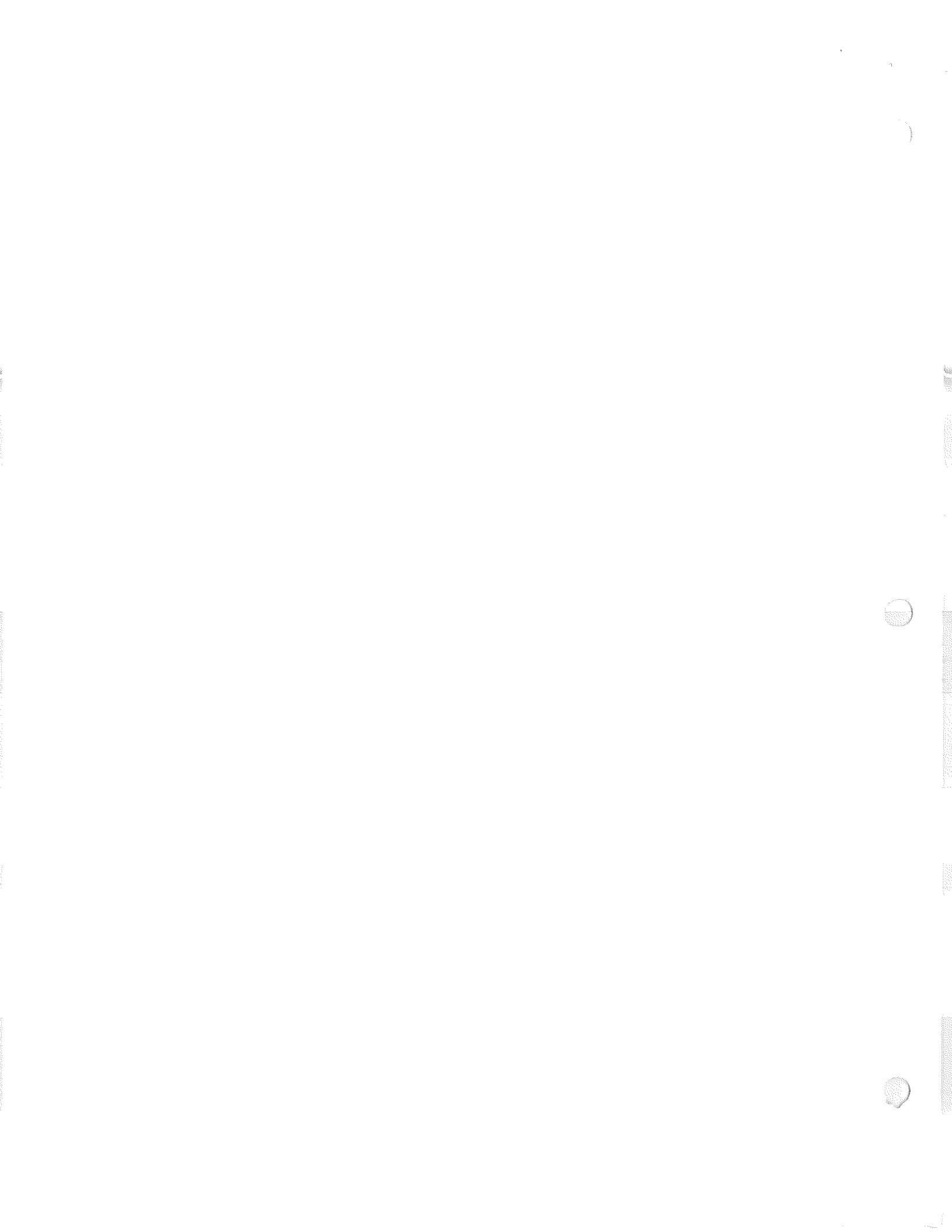
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Transcript of the Oral Reasons for Sentence by The Honourable Justice P. Chrumka at Yellowknife in the Northwest Territories, on Thursday, April 30th A.D., 1998.

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APPEARANCES:

- |                   |                                |
|-------------------|--------------------------------|
| Mr. D. McWhinnie: | Counsel for the Crown          |
| Mr. J. Brydon:    | Counsel for the Accused Hassan |
| Ms. J. Mercredi:  | Counsel for the Accused Alasow |



1 THE COURT: With respect to sentence, the  
2 Criminal Code has recently been amended to codify what  
3 are the principles and purposes of sentencing. Six of  
4 the matters were referred to by -- sorry, pardon me,  
5 six matters were referred as purposes by counsel.

6 Section 718 of the Criminal Code provides that the  
7 fundamental purpose of sentencing is to contribute  
8 along with crime prevention initiatives to respect for  
9 the law and maintenance of a just, peaceful, and safe  
10 society by imposing just sanctions that have one or  
11 more of the following objectives:

12 To denounce unlawful conduct, to deter the  
13 offender and others from committing offences, to  
14 separate the offender from society, to assist in  
15 rehabilitating, to provide reparations for harm done,  
16 to promote a sense of responsibility in offenders and  
17 an acknowledgment of the harm done to victims and to  
18 the community.

19 One that is the fundamental principle, however, is  
20 that a sentence must be proportionate to the gravity of  
21 the offence and the degree of responsibility of the  
22 offender.

23 One considers here, what is the gravity of this  
24 particular offence?

25 It involved the theft of telecommunication --  
26 pardon me, use of a telecommunications wire and a  
27 possible loss of revenue to a company.

1           It is a serious matter. It is serious because it  
2 has an affect on other subscribers because these type  
3 of matters have to be investigated and much time is  
4 required to properly investigate them and to prevent  
5 those who are industrious in crime to continue with  
6 this type of crime. But it is not the most serious  
7 offence in the Criminal Code even though the maximum  
8 penalty for this theft is ten years. There are thefts  
9 which have the same maximum which are far more serious  
10 and have far more serious consequences so I must keep  
11 in mind the gravity of the offence and the degree of  
12 responsibility of the offender.

13           The offender in this case was the initiator, both  
14 of them were initiators. They put the fraud into effect  
15 once they discovered the flaw.

16           The other sentencing principles that are referred  
17 to in Section 718.2 are relevant and in particular, one  
18 which is subsection (d),

19                     An offender should not be deprived  
20                     of liberty if less restrictive  
21                     sanctions may be appropriate in  
22                     the circumstances.

23           It is always an extremely serious matter to  
24 sentence an accused to imprisonment. To deprive a  
25 person of one's liberty is a very serious matter and  
26 serious considerations should be given to the nature of  
27 sentence, the type of sentence to be imposed, and those  
should all be ruled out before you impose a sentence of

1           imprisonment.

2           I will deal with Mr. Hassan first because what was  
3           said about him was said last.

4           The offence was committed over a brief period of  
5           time, 12 days, or 14 days, if my mathematics are  
6           correct, inclusive of the first and last days. The  
7           amount of loss, at a maximum, is \$33,569.86.

8           From Mr. St-Laurent's evidence, it could not be  
9           separated -- or the calls made on the fax line could  
10          not be separated from the calls made on the telephone  
11          line. There were problems of identifying whether the  
12          calls were only made on one line or whether they were  
13          made on both or made on the other line. Therefore I  
14          take up the accused when he says that it is his  
15          responsibility to pay for all of them and if there is  
16          collecting to be done, he can collect from the others  
17          unknown to me who were involved in this same matter.

18          I have considered whether or not he should be  
19          detained, whether -- that is incarcerated, pardon me,  
20          whether that is an appropriate sentence or whether a  
21          less severe sentence is appropriate.

22          I feel that this case does not call for him to  
23          lose his liberty even for a period of six months. But  
24          it does call for restitution to be made and therefore I  
25          suspend the passing of sentence for a period of two  
26          years. Mr. Hassan will be obliged to comply with the  
27          conditions prescribed in a probation order for that

1 period of time.

2 One of the conditions is that he maintain lawful  
3 employment; that he notify the probation officer of his  
4 address, telephone number, and change thereof; and he  
5 will not leave this jurisdiction without the consent of  
6 the probation officer or until that term of the order  
7 is varied; that he will do community service in the  
8 amount of 100 hours to be determined between himself,  
9 the community in which he will work, and the probation  
10 officer; that he will report to the probation officer  
11 within one week of today; and that he will make  
12 restitution in the sum of \$33,569.86 to Northwester  
13 Communications Incorporated at their office here.

14 MR. BRYDON: If I might interrupt you.

15 THE COURT: Yes?

16 MR. BRYDON: The usual practice here is to make  
17 it by way of the Court trust account so that the Court  
18 can be sure --

19 THE COURT: -- all right, one of the reasons  
20 that I said that because sometimes the clerk objects.  
21 He will pay it into court, that is fine. He can pay it  
22 periodically or he can pay it in one lump sum.

23 If the terms of this probation order are breached  
24 in any way, Mr. Hassan, you can be brought back before  
25 me and you can be sentenced. I can review the  
26 sentence, the suspended sentence, and I can sentence  
27 you to any sentence that I could impose now, which

1 would include imprisonment, or I can vary the terms of  
2 the probation.

3 Also, if you breach the terms of this probation  
4 order in any way, you can be charged with breach of  
5 probation and sentenced to up to six months.

6 A copy of the order will be given to you and read  
7 to you before you leave and you will sign it before you  
8 go.

9 With respect to Mr. Alasow, it's a little more  
10 complicated. He is no position to make restitution, I  
11 understand. He has limited knowledge of English.

12 Does he speak French, one of the other official  
13 languages?

14 THE ACCUSED: (through Interpreter) No.

15 THE COURT: How did he get his citizenship if  
16 he can't communicate?

17 THE ACCUSED: (through Interpreter) I can understand a  
18 little bit.

19 THE COURT: I see. They were going to take my  
20 citizenship away because I can't speak well enough.

21 I don't think that I should be ordering a more  
22 severe sentence in his case than I do with respect to  
23 Mr. Hassan.

24 In his case I also suspend the passing of sentence  
25 for two years and direct that he comply with the  
26 conditions prescribed in a probation order.

27 The probation order, he will report within two

1 weeks of today to the probation officer in Edmonton,  
2 Alberta, and the conditions will be exactly the same.  
3 That he keep the peace and be of good behaviour; that  
4 he maintain legal employment, lawful employment; that  
5 he notify the probation officer of his address and  
6 telephone number and any change thereof; and that he  
7 not leave the province of Alberta without the consent  
8 of the probation officer. Further, he will make  
9 restitution within two years in the sum of \$24,843.54  
10 payable to the Clerk of the Court in Edmonton. That is  
11 where you live, is it, Mr. Alasow?

12 THE ACCUSED: (nods in the affirmative).

13 THE COURT: He lives in Edmonton?

14 THE ACCUSED: (through Interpreter) Yes.

15 THE COURT: And he is going back to Edmonton?

16 THE ACCUSED: (through Interpreter) Yes.

17 THE COURT: I appreciate the problem that the  
18 restitution order makes, that it can be regarded as a  
19 breach of probation if he doesn't pay it but I will  
20 order it in the event that he somehow comes up with the  
21 money or makes an agreement with the corporation to pay  
22 less or makes an agreement to pay over a longer period  
23 of time. But I would leave that term be there but it  
24 can be varied upon -- probably best if there is  
25 negotiations with NorthWestTel Communications.  
26 Similarly with your client too, Mr. Brydon.

27 MR. BRYDON: Thank you, My Lord.



1 THE COURT: Mr. Alasow, I must also advise you  
2 that if you breach the terms of this probation order by  
3 committing another offence or by not abiding by its  
4 terms, you can be brought back before me and I can  
5 sentence you to any sentence that can be imposed at  
6 this time. That's imprisonment up to ten years, the  
7 maximum, or you can charged with breach of probation  
8 and sentenced to imprisonment of up to six months. I am  
9 not suggesting that you would ever be sentenced to ten  
10 years for this but that's the maximum.

11 You will also sign the order before you are  
12 released today and a copy of it will be given to you,  
13 and I would ask if it could be explained to him,  
14 please.

15 Is there anything else?

16 MR. McWHINNIE: I don't know, My Lord, whether you  
17 specified it, I don't recall on Hassan you specified a  
18 date by which he must pay the restitution by?

19 THE COURT: Within the two years. I should say  
20 within 23 months. In each case within 23 months so  
21 that proceedings can be instituted before the sentence  
22 expires.

23 MR. McWHINNIE: Thank you, you anticipated my next --

24 THE COURT: -- there will be no Victim Fine  
25 surcharge with respect to either accused.

26 MR. McWHINNIE: I believe that completes the  
27 matter.

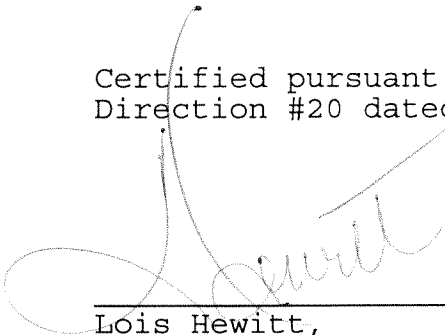
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THE COURT:

Thank you, we will adjourn then.

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Certified pursuant to Practice  
Direction #20 dated December 28, 1987.



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Lois Hewitt,  
Court Reporter