

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

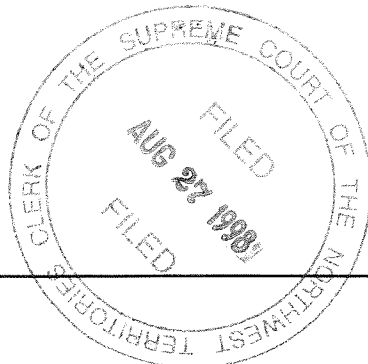
- v -

WING TOON LEE

Transcript of the Oral Reasons for Sentence of The Honourable Justice J.Z. Vertes, sitting in Yellowknife, in the Northwest Territories, on the 25th day of August, A.D. 1998.

APPEARANCES:

Mr. M. Scrivens:	Counsel for the Crown
Mr. A. Mahar:	Acting as Amicus Curiae
The Accused:	Appeared on his own behalf



1 THE COURT: On July 17th, after a two-week trial,
2 Wing Toon Lee was convicted of seven charges: Three of
3 obtaining for consideration the sexual services of a
4 person under 18 years of age contrary to Section 212(4)
5 of the Criminal Code; three of possession of child
6 pornography contrary to Section 163.1(4) of the Code;
7 and, one of making child pornography contrary to
8 Section 163.1(2) of the Code.

9 The general circumstances of these offences can be
10 described on an overall basis as revealed by the trial
11 evidence.

12 The accused, a man in his early 60's, lived in the
13 Gold Range Hotel. There he ran what has been termed as
14 a poker club. Several young women, teenagers, would
15 come to see him and to hang out at the club. These
16 young women would engage in sexual activity with the
17 accused for money. He would videotape some of the
18 activities and hold on to the tapes as a remembrance.
19 The women were unaware of the videotaping. Some of the
20 women told him they were older than what they really
21 were. All of them were over 14. There is no evidence
22 that the accused used force or coercion. There is no
23 evidence linking the accused to any drug trade. There
24 is no evidence of any particular sexual deviance on the
25 part of the accused (since I was told he also engaged
26 in sex for money and videotaped adult women).

27 The women testified that they engaged in these

1 activities so they could get money. Many of them, if
2 not all of them, had tragically developed drug habits
3 and wanted money so they could feed those habits. None
4 of this excuses the accused's conduct, but it does put
5 it into perspective.

6 The accused clearly exhibited a callous
7 indifference to the fact that these young women were
8 vulnerable to exploitation. But what the accused did
9 he did in private and, in fact, none of it would have
10 been criminal if he did not pay for it or record it.
11 There was no evidence that the accused was part of some
12 wider predatory group or that the tapes he made were to
13 be seen by anyone but himself.

14 These crimes are obviously serious ones.
15 Irrespective of the facts of the specific case, these
16 offences are meant to protect young people on a
17 society-wide basis. By the imposition of strict
18 sanctions against this activity, Parliament means to
19 discourage adults from taking advantage of young people
20 who may be in vulnerable situations. Therefore the
21 emphasis must be on deterrence and denunciation when it
22 comes to sentencing any particular offender.

23 Having said that, one must keep in mind that the
24 sentence in any particular case is very much dependent
25 on the circumstances of that case and that offender.
26 Other cases can offer limited assistance except perhaps
27 to give an indication of an appropriate range. For

1 example, in the Stroempl case (105 C.C.C. (3rd) 187),
2 the Ontario Court of Appeal imposed a sentence of ten
3 months imprisonment on a person convicted of possessing
4 a substantial collection of child pornography. As
5 another example in the Maheu case (35 W.C.B. (2d) 167),
6 the Quebec Court of Appeal imposed a total sentence of
7 one year imprisonment on five charges of obtaining the
8 sexual services of a person under 18, and in that case
9 by a person who was in a position of authority. On the
10 other hand, in the Leo case (24 W.C.B. (2d) 214), the
11 Alberta Court of Appeal imposed a three-month sentence
12 for a single incident on that offence.

13 In this case it is necessary to decide what would
14 be an appropriate sentence for each of the counts.
15 Then one has to examine the totality of those sentences
16 since one of the principles of sentencing is that the
17 combined sentence should not be unduly long or harsh.
18 Here there is a further factor to consider.

19 The accused has been in custody since late June,
20 1997. Approximately 50 days of that was a sentence
21 imposed on an unrelated charge. Therefore, he has
22 spent approximately 13 months on pretrial remand. That
23 time in custody must be taken into account. Usually
24 Courts account for remand time as some factor higher
25 than straight time due to the more stringent conditions
26 imposed on remand prisoners. There is no set factor,
27 but it is usually somewhere between one and a half and

1 two times the actual. So on that basis, the remand
2 time already spent by the accused would be the
3 equivalent of 20 to 26 months of a sentence. This is
4 significant because of the submission by Crown counsel
5 that an appropriate sentence would be one of three to
6 four years. If I add remand time to that, the total
7 equivalent sentence would be anywhere from five to
8 seven years. In my opinion, such a sentence would
9 clearly be excessive in these circumstances.

10 The accused is a first offender. That and his age
11 are mitigating circumstances. While he has shown no
12 explicit remorse, I think it is fair to say that he now
13 knows why his actions were criminal.

14 Counts 9 and 10 are charges involving the same
15 victim. The prostitution charge relates to an
16 arrangement that went on for approximately one year
17 when the victim was between 14 and 16. She would
18 regularly be paid \$100 in exchange for sex. Count 10
19 is a charge of possessing pornography, that being
20 videotapes and photographs of the same victim. I would
21 impose concurrent time of one year and six months
22 respectively on these counts if I were sentencing on
23 them separately.

24 Counts 20 and 21 are charges involving another
25 victim. The prostitution charge relates to two or
26 three incidents when she was 16 and 17. The charge of
27 making pornography relates to videotapes and

1 photographs of the same activities. I am not inclined
2 to draw too great a distinction between the offences of
3 "making" or "possessing" child pornography in this
4 case since the evidence showed that what he possessed
5 he made. Nevertheless, the Code draws a distinction in
6 terms of the penalties. I would impose concurrent
7 terms of one year and nine months respectively, again
8 if I were sentencing on these charges independently.

9 Counts 6 and 17 are charges of possession of
10 pornography involving two different complainants. I
11 would impose consecutive sentences of six months on
12 each count.

13 Count 22 is a prostitution charge related to one
14 incident involving the victim when she was 14 or 15.
15 The facts of this incident would put it at a very low
16 end of the scale. I would impose a sentence of six
17 months on this charge.

18 Thus, if I were sentencing independently on each
19 count, the total sentence would be one of 42 months.
20 But I must give the accused credit for the time spent
21 on remand. That would reduce the sentence to one of 16
22 to 22 months. In my opinion, this does provide an
23 appropriate range for a global sentence in this case.

24 I hereby impose a total sentence of 18 months
25 imprisonment. That is made up of concurrent sentences
26 of one year on each of the prostitution-related charges
27 and six months on each of the pornography charges

1 (concurrent to each other but consecutive to the
2 prostitution charges).

3 There will be no victim fine surcharge in this
4 case.

5 Is there anything else we need to deal with,
6 counsel?

7 MR. MAHAR: I don't believe so, Sir.


8 MR. SCRIVENS: Nothing further.

9 THE COURT: Very well then, we're adjourned.

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



Sandra Burns
Court Reporter

