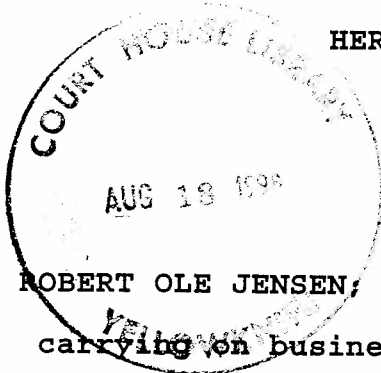


CR 03469

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES
IN THE MATTER OF:



HER MAJESTY THE QUEEN

- and -



ROBERT OLE JENSEN; SPUR AVIATION LTD.; SPUR AVIATION
carrying on business under the firm name and style
of "Great Bear Aviation"; and GREAT BEAR AVIATION

Transcript of Reasons for Sentence delivered by The
Honourable Justice J.Z. Vertes, sitting at Yellowknife, in
the Northwest Territories, on Thursday, April 30,
A.D. 1998.

APPEARANCES:

Mr. A. Regel: On behalf of the Crown
Mr. J. Bassie: On behalf of the Defence

(Charge under s. 7.3(1)(f) of the Aeronautics Act)

1 THE COURT: Robert Jensen and Spur Aviation
2 Ltd. have been convicted of the offence of operating a
3 commercial air service without the necessary
4 authorization, contrary to Section 7(1) of the
5 Aeronautics Act. The offence, essentially was that
6 Mr. Jensen gave flying instruction with the use of
7 airplanes that were in his or Spur's possession and
8 charged for the use of those airplanes. Thus that
9 activity constituted a commercial air service. At the
10 time, Spur's authorization to operate a commercial air
11 service had been suspended. My reasons for the
12 conviction were released on April 16th.

13 The Aeronautics Act provides that this offence
14 could be prosecuted by way of summary conviction or by
15 indictment. The Crown chose to proceed by indictment.
16 The maximum penalties therefore are imprisonment of up
17 to five years for an individual plus unlimited fines
18 for individuals or corporations. Here the Crown seeks
19 what I term a "strong" denunciatory and deterrent
20 penalty: imprisonment of up to two years less one day,
21 fines in the range of seventy-five to one hundred
22 thousand dollars, plus forfeiture of two of the
23 aircraft used in these activities.

24 These are regulatory offences. There is a
25 significant public protection aspect and a high level
26 of culpability. The primary sentencing principle must
27 be deterrence, both specific and general. But I cannot

1 lose sight of the principle generally applicable to all
2 sentencing matters, that being proportionality to the
3 gravity of the offence.

4 Here the accused Jensen had authority to give
5 flying lessons. He was licenced to do so. He and Spur
6 could not, however, charge for the use or rental of the
7 airplanes for these lessons. That is what made this an
8 offence. There was no evidence that the instruction
9 was incompetent or that the aircraft were operated in
10 an unsafe manner or that the aircraft were in an unsafe
11 condition. I agree with Crown counsel that the lack of
12 an incident or accident is not mitigating, but the
13 nature of the charge is not what I would term
14 "operational". It is licencing. I recognize that
15 there is a fundamental safety issue at play when the
16 authorities decide to licence a commercial air service
17 and when they decide to suspend and cancel that
18 licence. But the reasons for the suspension and
19 cancellation of Spur's licence are not the issue before
20 me.

21 There are some aggravating features. The evidence
22 revealed other regulatory infractions (although many of
23 them were related also to certifications and other
24 paperwork, if I may use that term). These defendants
25 were convicted in 1984 of similar offences and fined.
26 There is also a long history of non-compliance with
27 regulatory issues (although I recognize that many of

1 those are disputed by the defendants).

2 Defendant's counsel characterizes this offence as
3 a "technical" one. I do not regard it as such. It is
4 far more serious than that. If someone chooses to
5 enter an area that is regulated in the interests of
6 public safety, then that person has the legal and moral
7 obligation to make sure that his actions are within the
8 regulations. This is a complex area, aeronautics, but
9 that is because of the significant public safety
10 component to this industry.

11 Some deterrent element must be shown. Crown
12 counsel suggests that a conditional sentence would not
13 sufficiently meet the aims of deterrence. Generally
14 speaking, and with particular reference to true crimes,
15 he is right. But in this case, the very fact that a
16 sentence of imprisonment, albeit conditional but with
17 the chance that it could become real incarceration, is
18 imposed would reflect the more serious nature of this
19 conduct and serve as a more effective deterrent than
20 merely a fine. I note that this sanction was employed
21 in the Krolyk case from Ontario in another aeronautics
22 prosecution. Mr. Jensen poses no danger to the
23 community so I see no valid point in having him
24 actually incarcerated.

25 With respect to a fine, there is evidence of
26 Mr. Jensen's inability to pay a fine. He is 68 years
27 old and he has no income other than his old-age

1 pension.

2 With respect to the company, there is no evidence
3 as to its assets, although it is a reasonable inference
4 that it has some. A fine is the only penalty available
5 here and, of course, if it is not paid, then civil
6 enforcement proceedings can be taken.

7 The Crown seeks forfeiture of the two airplanes.
8 The evidence was that one is in the legal title of
9 Jensen's common-law partner. The other is in the legal
10 title of another company which is in litigation with
11 Spur over this and other assets. The Crown position,
12 and it is a generally accepted one, is that any
13 disputes or questions over ownership can be resolved in
14 a subsequent hearing where the true owners can
15 establish their interests and thus obtain relief from
16 forfeiture. In this case, I think all that would
17 happen is a multiplicity of proceedings over issues
18 that have very little, if anything, to do with these
19 offences. While I may have some suspicions, the
20 evidence established that, on its face, legal ownership
21 of these airplanes rests with others. I therefore
22 decline to order forfeiture.

23 In conclusion, I hereby sentence the defendants as
24 follows:

25 Robert Jensen is sentenced to serve a conditional
26 sentence of imprisonment of 12 months. The sentence is
27 to be served in the community, under supervision and

1 subject to the usually statutory conditions.

2 Spur Aviation Ltd. is ordered to pay a fine of
3 \$50,000. Such payment is to be made within six
4 months.

5 Now, Mr. Jensen, I want you to understand that the
6 conditional sentence means that you are not going to be
7 actually incarcerated, but you will have to report to a
8 supervisor and there will be some conditions that you
9 have to comply with which will be contained in an order
10 that the clerk will fill out and let you read over in
11 the company of your lawyer, and you will have to sign
12 it. If you do not comply with the conditions, if you
13 commit any other offences, then that conditional
14 sentence can be converted into an actual sentence of
15 imprisonment. Do you understand, sir?

16 THE ACCUSED: Yes, I do.

17 THE COURT: So you'll have to stay behind when
18 we're finished here and wait until the clerk finishes
19 filling out the conditional sentence order, and as I
20 said, you can have an opportunity to review it and sign
21 it. As I'm sure you can appreciate, I did not make any
22 order requiring you to pay the fine because of the
23 evidence I heard about your personal financial
24 circumstances. The order directing the company to pay
25 a fine is a different matter.

26 Is there anything else we have to deal with,
27 Counsel? Mr. Regel?

1 MR. REGEL: Not that I'm aware of, My Lord.

2 THE COURT: Mr. Bassie?

3 MR. BASSIE: No, My Lord.

4 THE COURT: Thank you for your submissions.

5 We'll close court.

6 (AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED)

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


Jane Romanowich
Court Reporter