

ORIGINAL

CR 03348

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

HER MAJESTY THE QUEEN

- vs. -

MICHAEL THOMPSON

Transcript of the Oral Reasons for Sentence by The Honourable Justice J.Z. Vertes, at Yellowknife in the Northwest Territories, on Wednesday, September 17th A.D., 1997.

APPEARANCES:

Ms. M. Nightingale:	Counsel for the Crown
Mr. J. Brydon:	Counsel for the Accused

Charge under s. 4(2) Narcotic Control Act

1 THE COURT:

In this case, Mr. Thompson has
2 entered a plea of guilty to a charge of possession of a
3 narcotic for the purpose of trafficking. The facts are
4 mundane to say the least.

5 The accused's vehicle was searched. In the search
6 of the vehicle, the police located drugs and other
7 paraphernalia. The total volume of drugs was
8 approximately three-quarters of a pound of marijuana
9 with an approximate street value of \$4,000. In
10 addition, there was other evidence indicating the
11 accused's involvement in sales of the drug although
12 there is no suggestion that he is part of any wider or
13 more nefarious trafficking ring. He does admit that he
14 was in possession of these drugs for the purpose of
15 trafficking.

16 The accused is 27 years old. I am told that he
17 has lived in Yellowknife for a lengthy period of time.
18 He has a Grade 12 education. I have been provided with
19 good references from people who have known him for many
20 years and have employed him in the past and are willing
21 to continue to employ him notwithstanding this
22 conviction.

23 All of that, of course, speaks to his credit as
24 does the fact that he has decided to accept
25 responsibility for his conduct, recognizing that it is
26 criminal, and entered a plea of guilty thereby avoiding
27 the necessity of a trial.

1 This is always a mitigating factor although in
2 this particular case, as noted by Crown counsel,
3 perhaps not as mitigating as it would ordinarily be
4 since it came literally at the last moment prior to the
5 start of his trial.

6 The question now of course is what would be an
7 appropriate sentence taking into account the
8 circumstances of this offence and the circumstances of
9 this offender.

10 Crown counsel is quite correct in pointing out
11 that traditionally in this jurisdiction, as in every
12 jurisdiction in Canada, trafficking-related offences,
13 no matter how small, no matter what type of drug, no
14 matter what type of offender, have resulted in the
15 imposition of sentences of imprisonment.

16 Based on the submissions that I have heard, and
17 certainly from my own experience, it seems to me that
18 it is fair to say that the traditional sentence has
19 been one anywhere in the range of six to 12 months
20 imprisonment, and here I talk of actual imprisonment.

21 The reason why actual imprisonment was imposed in
22 the overwhelming percentage of trafficking-related
23 offences was because the Courts deemed it necessary to
24 emphasize what we call general deterrence; that is,
25 sending a message to everyone else who may be
26 like-minded out there in society.

27 Drugs are viewed as a pervasive problem in this

1 society. It corrupts minds and pocketbooks and the
2 people who purvey drugs take advantage of the
3 weaknesses of others and are in it primarily for
4 greed. So because of that, it is felt necessary to
5 send a message to others who might think that this is
6 something that they could easily become involved in;
7 that if you get caught, you are going to go to jail no
8 matter who you are, no matter what the circumstances.
9 The question then only becomes how long a period of
10 jail. And, as pointed out by Ms. Nightingale, it is
11 only in the extraordinary circumstance that jail would
12 be avoided.

13 Frankly, there is nothing extraordinary in this
14 case. We have a young man of apparently good
15 background; a responsible young man who apparently has
16 developed a drug habit of his own and the drug habit
17 got to the point where he was financing part of it by
18 selling it. There is nothing extraordinary about
19 that. There are thousands of similar stories, and
20 there are lots of people who have ended up behind bars
21 in the same circumstances.

22 Now, the situation has changed somewhat with the
23 introduction of a codified sentencing regime in the
24 Criminal Code which has introduced the new option of a
25 conditional sentence.

26 I am asked by defence counsel, I am urged by
27 defence counsel indeed, to consider the imposition of a

1 conditional sentence in this case.

2 A conditional sentence can be imposed in a
3 situation where the sentence of imprisonment would be
4 under two years and where allowing the accused to serve
5 the sentence in the community would not endanger the
6 community and would be consistent with the fundamental
7 principles and objectives of sentencing.

8 Among those fundamental principles and objectives
9 are, as has been pointed out, that incarceration should
10 be considered as a last resort, that other less severe
11 sanctions should be considered, if appropriate, and
12 that the individual should be segregated from society
13 only if necessary.

14 The accused is a first offender. There is no
15 history or record of violence. He appears to have the
16 support of other individuals and organizations in the
17 community. It appears that he has taken some steps
18 since his arrest and charge to try and address what he
19 says are his own drug abuse problems. So in terms of
20 the personal circumstances of the offender, I think
21 that I can conclude that allowing him to serve his
22 sentence in the community with appropriate conditions
23 would not endanger the community.

24 I have to now though consider whether the
25 circumstances of the offence are such that the
26 community may be endangered and here I touch on what I
27 said during the course of argument.

1 There is a line of argument that for those crimes
2 where general deterrence is important, is perhaps more
3 important than in some other types of crimes as opposed
4 to the other factors of sentencing, that the lack of
5 incarceration would send a less meaningful generally
6 deterrent message and thereby others may be more
7 inclined to commit the same type of crime and thereby
8 endanger the community.

9 Frankly, I have some difficulty with that type of
10 argument because in effect what it means is that for
11 those types of crimes where the emphasis in sentencing
12 was on general deterrence, such as drug
13 trafficking-related crimes, it seems to me what we are
14 really doing is setting up a classification of offences
15 for which conditional sentences would not be
16 available. It seems to me that we would then be
17 undermining the clear intent of Parliament in enacting
18 this new regime.

19 So I am not prepared to adopt the sentiment of the
20 Ontario Court of Appeal in the Ly case, as referred to
21 by Crown counsel, in which they said that it would
22 ordinarily be in the rare case where a conditional
23 sentence would be imposed for a drug trafficking
24 offence.

25 I note only that that case came before Wismayer,
26 also a decision out of the Ontario Court of Appeal, and
27 in my view that case modifies the earlier comment of

1 the Court of Appeal and makes it clear that really
2 there is no category of offence for which a conditional
3 sentence is not available provided the statutory
4 prerequisites are met.

5 In this particular case, I have concluded that an
6 appropriate sentence would be a term of nine months.
7 However, I have also concluded that that sentence may
8 be served in the community on conditions without
9 endangering the community.

10 Stand up, Mr. Thompson.

11 Mr. Thompson, I impose upon you a conditional
12 sentence of nine months. The conditions will be as
13 follows:

14 You are to keep the peace and be of good
15 behaviour. That means that you are to stay out of
16 trouble. You are to appear before this Court if and
17 when required to do so. You are to report to the
18 conditional sentence supervisor within 48 hours and
19 continue to report when and as required by your
20 supervisor. You are to remain within the jurisdiction
21 of this Court, that is within the Northwest
22 Territories, unless you receive written permission to
23 go outside of the jurisdiction either from your
24 supervisor or from this Court. You are to notify your
25 supervisor of any change in your address or in your
26 employment.

27 Now, do you understand those conditions?

1 THE ACCUSED: Yes, sir.

2 THE COURT: In addition, you are to abstain
3 absolutely from the possession of nontherapeutic
4 drugs. I am not going to restrict that to just
5 prescription drugs. I am not going to say abstain
6 absolutely from the possession of nonprescription drugs
7 because then a bottle of aspirin would be precluded.
8 How shall we put it? Recreational drugs are a no no.
9 So you are to abstain absolutely from the consumption
10 and possession of nontherapeutic drugs. I do not
11 include nicotine or alcohol in that prohibition.

12 That you are to attend at such rehabilitation,
13 therapy, or counselling sessions or programs as may be
14 directed from time to time by your supervisor. Now, by
15 that, I mean to include whether it is at the Tree of
16 Peace, you can do so voluntarily; you don't need to
17 have your supervisor's direction to do so but if your
18 supervisor does direct you to attend some program, you
19 have to attend it. Do you understand that?

20 THE ACCUSED: Yes.

21 THE COURT: I am going to further place as a
22 condition that you perform 120 hours of community
23 service work under the direction of your supervisor.
24 And if your supervisor can arrange it, certainly it can
25 include the requirement to go and perhaps give public
26 talks to school children and others who may be tempted
27 by narcotics.

1 You will be on a curfew, house arrest, call it
2 what you will, which will require you to remain in your
3 residence between the hours of 9 p.m. and 6 a.m. every
4 day unless otherwise required to be at your
5 employment. But if it is not required for your
6 employment, you are to be at home between those hours
7 every day, and I include every day.

8 Do you understand those conditions?

9 THE ACCUSED: Yes.

10 THE COURT: Are there any other conditions that
11 counsel feel would be appropriate?

12 MS. NIGHTINGALE: That has covered most of them,
13 sir. One point that I would ask is that if the Court
14 would consider placing the community service work
15 requirement in a probation order as opposed to the
16 conditional sentence order or limit the time in which
17 the community service work must be completed so that if
18 there is a violation of that, it can actually be
19 remedied before the sentence expires.

20 THE COURT: Any comment, Mr. Brydon?

21 MR. BRYDON: I think that I know what Crown is
22 getting at. Perhaps a schedule of times within which
23 portions of the community service work are to be
24 accomplished. In other words, I can see the Crown
25 doesn't want a situation where eight months and 28 days
26 from now he has done two hours of community service and
27 all that can be done is to breach him because he

1 couldn't possibly do 120 hours in the time remaining.
2 Perhaps the easiest way to deal with that is to require
3 that the first 40 hours be done within two or three
4 months. In other words, to schedule the time within
5 which portions of that work is to be done. I can see
6 what the Crown is getting at.

7 THE COURT: I said 120 hours, is that right?

8 MR. BRYDON: Yes, I was thinking 40 and 40 in
9 terms of three months and three months and three
10 months.

11 THE COURT: Well, I don't think 20 hours a
12 month is too onerous. You are to do the first 60 hours
13 of that within the first three months, the next 60
14 hours within the next three months, so all 120 hours
15 within the first six months of the nine month
16 sentence. Does that cover your concern?

17 MS. NIGHTINGALE: Yes, sir.

18 THE COURT: Now, Mr. Thompson, as I said, if
19 you had been standing before me maybe a year or two ago
20 under the same situation, under the same circumstances,
21 you would be going off to jail. So I paid particular
22 attention to the expressions as to how you are now
23 coming to grips to what you consider to have been a
24 serious problem, I sincerely hope that you are. It is
25 obvious from what your counsel said and these letters
26 that you have alot going for you so get a life, don't
27 be a dope, stay out of drugs.

1 With respect to exhibits?

2 MS. NIGHTINGALE: Yes, before that though, I just
3 wanted to address the requirement under 742.2 that the
4 Court must address whether a firearm prohibition order
5 is required. We have made no submissions on that. We
6 are certainly not looking for that, I just want to make
7 sure that the process is fulfilled.

8 THE COURT: There is no relevance whatsoever to
9 a firearm prohibition order and I decline to consider
10 it.

11 MS. NIGHTINGALE: Thank you. With respect to the
12 exhibits that have been seized, particularly the
13 narcotics, we're asking for an order of destruction.
14 There was also money that was located on the accused at
15 the time of arrest which we are seeking to have an
16 order to return to the accused. And the police are in
17 custody of that money.

18 THE COURT: I take it, Mr. Brydon, you have no
19 problem with any of these provisions?

20 MR. BRYDON: No, My Lord. There is one other
21 matter that probably has to be addressed and that is
22 the matter of the victim service order -- or victim
23 impact. Because it is a jail sentence, I think it is
24 \$35 maximum.

25 THE COURT: There is a set scale, is there not?

26 MR. BRYDON: Yes. I believe it is \$35 because
27 of incarceration.

1 THE COURT: There will be, in addition, a
2 Victim of Crime fine surcharge of \$35. Mr. Thompson,
3 you are to pay that within two weeks.

4 THE ACCUSED: Okay.

5 THE COURT: That will go into a fund for
6 programs for victims of crime for your information.

7 In addition, there will be an order directing the
8 destruction of the drugs that were seized at the expiry
9 of the appeal period as well as the return of monies
10 presently under seizure by the police to the accused,
11 also at the expiry of the appeal period.

12 MS. NIGHTINGALE: Thank you.

13 MR. BRYDON: Thank you, My Lord.

14 THE COURT: Thank you, counsel.

15 **(AT WHICH TIME THE ORAL REASONS FOR SENTENCE CONCLUDED)**

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

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Lois Hewitt,
Court Reporter

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