

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

ROBERT CHRISTOPHER STEINER

Transcript of the Reasons for Sentence delivered by The Honourable Justice V.A. Schuler, sitting in Yellowknife, in the Northwest Territories, on the 2nd day of December, A.D. 1999.

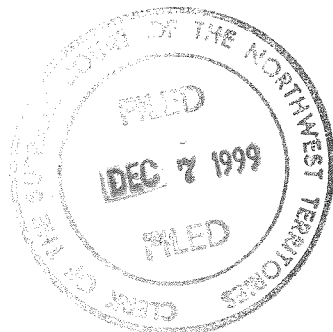
APPEARANCES:

Ms. B. Schmaltz:

Counsel for the Crown

Mr. S. Toner:

Counsel for the Defence



1 THE COURT: I know that quite often counsel
2 put quite a bit of work into a joint submission, and
3 that is what I have before me today is a joint
4 submission for a sentence of 15 months on this
5 one-count Indictment for trafficking in cocaine.

6 The Court is, of course, in most cases, reluctant
7 not to accept a joint submission unless the joint
8 submission is clearly inappropriate or inadequate. I
9 am familiar with some of the cases that were mentioned
10 today, and in all of the circumstances, I am satisfied
11 that the joint submission is appropriate in this case,
12 and I will impose the sentence that counsel have
13 jointly requested.

14 With respect to how this series of transactions
15 should be characterized, I have a great deal of
16 difficulty seeing this as social trafficking.
17 Obviously somebody somewhere was making some money on
18 this, and I think it's fair to say that it was the
19 sort of street-level trafficking that goes on all too
20 often and that does, as Miss Schmaltz pointed out, as
21 the cases and the courts have pointed out for many
22 years, cause so much devastation to society.

23 Mr. Steiner, I can't see how you can consider
24 that you were doing your friend a favour by getting
25 cocaine for him. If this was someone that you really
26 believed really wanted cocaine, then all you are doing
27 is contributing to a problem on his part.

1 You obviously have had a lot of experience in
2 carpentry. You have a resume that indicates that you
3 have been employed quite steadily over the years. You
4 have no record, no criminal record. Now you are in
5 the situation you are in because of what you did.

6 Now, I sentenced Mr. Fabien, and I believe I said
7 to him at the time, and he was a young man, quite a
8 bit younger than you, if you get involved in this kind
9 of activity, you can be sure, no matter how much you
10 think you can trust someone, that there will be
11 someone also involved who either is an undercover
12 police officer or is an agent of the police or simply
13 figures that he can make a good deal for himself by
14 pointing the finger at someone else. To throw away
15 everything that you have built up over the last 44
16 years in circumstances where you can virtually
17 guarantee that you will be caught, it is just throwing
18 your own life away, really, and at 44 years of age,
19 you should, I think, give some serious thought to
20 that, because it seems to me that if I give you the
21 benefit of the doubt that you really thought you were
22 just doing a favour for a friend, it was a pretty
23 naive supposition.

24 As I said, I think that the sentence that has
25 been suggested is appropriate in the circumstances and
26 I do, therefore, impose a sentence of 15 months on the
27 Indictment.

1 Now, is there anything else I should deal with?

2 MS. SCHMALTZ: I believe, My Lady, under Section
3 109 of the Criminal Code now a firearms prohibition
4 has to be imposed for trafficking in illicit
5 substances.

6 THE COURT: You're looking at 109(1)?

7 MS. SCHMALTZ: I'm not sure whether you're using
8 Martin's Criminal Code. I know there's a misprint in
9 the Martin's Criminal Code, in the 2000 edition. The
10 1999 edition was correct. But Section 109(1)(c) --
11 and it should read: An offence relating to the
12 contravention of sub-sections (sic) 5 sub (3) or sub
13 (4), 6 sub (3), or 7 sub (2) of the Controlled Drugs
14 and Substances Act.

15 THE COURT: That's quite an error. It's
16 completely different --

17 MS. SCHMALTZ: It is.

18 THE COURT: -- in the 2000 edition.

19 MS. SCHMALTZ: They've got the numbers of the
20 section wrong, in any event. On Quick Law it is
21 correct. Martin's has been advised that it is
22 incorrect.

23 THE COURT. Mr. Toner, do you --

24 MR. TONER: My Lady, I must admit that I have
25 been relying on the 2000 Martin's Code. I did look at
26 this before coming to court today and the version of
27 the Code that I have been relying on doesn't refer to

1 Section 5 of the Controlled Drugs and Substances Act.
2 The irony here is that I'm relying on Martin's because
3 of an error that I detected in Tremear's last year.

4 THE COURT: Has there been a release from
5 Martin's, Miss Schmaltz, acknowledging the error or...

6 MS. SCHMALTZ: Not that I'm aware of, My Lady.
7 I've only been advised that Martin's has been advised
8 of the error, and on the Quick Law, Criminal Code on
9 Quick Law, that it is the correct version.

10 I meant to bring my 1999 Criminal Code with me
11 where it's correctly stated. It's been for some time
12 now that trafficking in narcotics has attracted a
13 firearms prohibition. If there's a question that I'm
14 incorrect and that Section 5 is covered, maybe we can
15 take an adjournment. I'm not sure whether my friend
16 is agreeing with me. I've been advised by the firearm
17 section in Edmonton of the mistake in Martin's.

18 THE COURT: I don't recall the Crown raising
19 it in other cases, but perhaps I've just forgotten
20 that.

21 MS. SCHMALTZ: And I know I have missed raising
22 it in other cases myself. But it is a mandatory
23 section and has been, I think, at least for two years.
24 At least since the Controlled Drugs and Substances Act
25 came out that the trafficking in narcotics, a firearms
26 prohibition is imposed.

27 THE COURT: Well, perhaps what we should do

1 is take a brief adjournment and I'll just have a look
2 at the 1999 Code.

3 MR. TONER: I would appreciate an adjournment.

4 THE COURT: We'll adjourn for approximately
5 10 minutes.

6 MR. TONER: Thank you, My Lady.

7 **(BRIEF ADJOURNMENT)**

8 THE COURT: Counsel, I don't know if you've
9 been able to resolve the problem. I had our student
10 doing some work on it, but he hasn't been able to,
11 other than identify the fact that obviously there's a
12 difference between Martin's and others.

13 MS. SCHMALTZ: Yes, My Lady, I haven't been able
14 to resolve it completely to my friend's satisfaction.
15 I have found that it came into force May 14th, '97,
16 from the *Canada Gazette*, but I haven't been able to
17 find the actual section that came into force other
18 than in italics in an old Martin's, which I understand
19 isn't acceptable, and I apologize to the Court, I
20 didn't realize this would be an issue as to whether or
21 not that was, in fact, the case that a firearms
22 prohibition is mandatory on a trafficking offence.
23 But perhaps if we could adjourn it either to this
24 afternoon or whenever is convenient for my friend just
25 to complete the sentencing with respect to that
26 matter.

27 MR. TONER: My Lady, it's correct I'm not

1 satisfied that trafficking in a narcotic is covered by
2 this firearms prohibition. Every authority I've seen,
3 or the most recent ones, in any event, the 2000
4 Tremear's and the 2000 Martin's both do not have a
5 reference to Section 5 of the Controlled Drugs and
6 Substances Act.

7 THE COURT: Both Tremear's and Martins?

8 MR. TONER: That's correct. So I'm certainly
9 not prepared to consent to a mandatory prohibition
10 order.

11 THE COURT: Mr. Brydon?

12 MR. TONER: Mr. Brydon has showed me his copy
13 of Tremear's, and I have a copy of Martin's with me.

14 THE COURT: So it also refers to Section 6
15 and 7 but not Section 5?

16 MR. TONER: That's correct.

17 THE COURT: I see. All right. Well, we
18 could put this over to 2 o'clock this afternoon.

19 MR. TONER: If that's necessary. There seems
20 to be two authorities to suggest that this prohibition
21 is not mandatory in this case, and I would certainly
22 submit that it's not required if it's a discretion
23 matter. There's no allegation that firearms were used
24 in any of the commission of these transactions or that
25 there would be any danger.

26 THE COURT: So you're submitting that it's
27 discretionary. Miss Schmaltz, you're saying that

1 under the amendments it's mandatory.

2 MS. SCHMALTZ: Yes, My Lady. My information is
3 that it's mandatory, but I don't have the paper to
4 show that.

5 THE COURT: All right. Well, either it's a
6 misprint in both of the new editions or there's been
7 some problem when the section was enacted. I think,
8 Counsel, that you should take a look at it and it
9 would be better that we're all clear on exactly what
10 sections it applies to. So I will set the matter over
11 to 2 o'clock this afternoon and we'll deal with it
12 then.

13 MR. TONER: My Lady, I should also advise the
14 Court that if this mandatory provision does exist and
15 it can be substantiated, I may be wishing to seek
16 instructions from Mr. Steiner to seek an exemption on
17 the basis that he requires ammunition and firearms for
18 his livelihood as a carpenter.

19 THE COURT: Well, did you want to put it over
20 longer then? For a longer period of time?

21 MR. TONER: I could get to the bottom of that
22 by next Thursday. So perhaps an adjournment until
23 next Thursday would serve everyone's purposes here.

24 THE COURT: I don't know that I'm scheduled
25 to sit next Thursday. That's the only difficulty.
26 We'll set it to next Thursday at 10 a.m., and if I'm
27 not sitting then, you'll just have to speak to another

1 adjournment. I'll check my schedule in the meantime.

2 MR. TONER: Thank you, My Lady.

3 THE COURT: Now, Mr. Steiner you have been
4 sentenced so you are in custody now. But there will a
5 remand warrant, then, to Thursday at 10 a.m.

6 THE ACCUSED: I have to come back then?

7 THE COURT: Yes. Hopefully we'll be able to
8 resolve the issue at that time. Thank you, then,
9 Mr. Toner, Miss Schmaltz.

10 (PROCEEDINGS ADJOURNED TO DECEMBER 9, 1999, AT 10 A.M.)

11

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Certified correct to the best of
my skill and ability.



Jane Romanowich, CSR(A)
Court Reporter

