

R. v. France, 2001 NWTSC 37

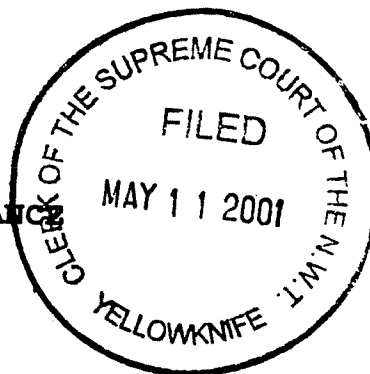
S-1-CR2001000044

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

HER MAJESTY THE QUEEN

- and -

MATTHEW JAMES FRANCE



Transcript of the Decision delivered by The Honourable
Justice R.P. Foisy, sitting in Yellowknife, in the
Northwest Territories, on the 10th day of May, A.D. 2001.

APPEARANCES:

Ms. S. Kendall: Counsel for the Crown
Mr. S. Tarrabain: Counsel for the Defendant

(Charge under s.5(1) and 5(2) of the Controlled Drugs and
Substances Act)

1 THE COURT: I can't second-guess the Justice
2 of the Peace in terms of the wording that she used,
3 but I tend to agree with Mr. Tarrabain. My
4 interpretation of what she says leads me to conclude
5 that because it is a serious charge and because there
6 was a lot of drug involved and because of the value,
7 she felt constrained to refuse his release under the
8 tertiary ground. That, as I read it, is a reversible
9 error. It is, in effect, as some of the cases
10 mentioned by Mr. Tarrabain have suggested, putting the
11 cart before the horse. In other words, punishment
12 before guilt is established.

13 The Crown here has probably a strong case, but it
14 is not so strong as to be totally immune from
15 successful attack during the course of a trial.

16 Having found error and having considered the
17 background of the accused and the circumstances
18 surrounding the commission of the alleged offence, it
19 seems to me that this is a proper case for granting of
20 release and that a right-thinking person of the
21 community would not be offended.

22 The conditions will have to be stringent, and
23 here I'm in counsels' hands in terms of what is
24 suggested by way of terms. The usual of course: keep
25 the peace and be of good behaviour, report to the
26 Court when required.

27 MR. TARRABAIN: The suggestion is to report once

1 per week in person to the Royal Canadian Mounted
2 Police at Yellowknife unless he's employed at Peterson
3 Point Lake Lodge, My Lord. He intends to go to
4 Peterson Point Lake Lodge, and I'm wondering if
5 there's an RCMP detachment there. Corporal Nowlan may
6 know.

7 MS. KENDALL: What I would suggest is that he
8 report once a week on Fridays, between the hours of
9 nine and five, to the RCMP detachment at Yellowknife
10 unless employed at Peterson Point Lake Lodge, in which
11 case he should report by telephone.

12 THE COURT: That's acceptable, Mr. Tarrabain?

13 MR. TARRABAIN: It is, My Lord.

14 THE COURT: Anything else?

15 MS. KENDALL: I would suggest he reside at
16 4 Phinney Court, Yellowknife, unless employed at Peter
17 Point Lake Lodge.

18 THE COURT: That's with his parents?

19 MR. TARRABAIN: Yes. No objection.

20 MS. KENDALL: That he notify Corporal Dan
21 Nowlan, of the RCMP, or his designate, of any change
22 of address or employment.

23 THE COURT: That's acceptable?

24 MR. TARRABAIN: That is acceptable.

25 MS. KENDALL: That he remain within the
26 Northwest Territories.

27 MR. TARRABAIN: That is also acceptable, My Lord.

1 THE COURT: Yes.

2 MS. KENDALL: And because this is a drug
3 offence, I would suggest the Court should consider a
4 weapons prohibition as well. I'm not sure if he's
5 going to be --

6 MR. TARRABAIN: I don't think that you should
7 direct a weapons prohibition. I'm not so sure --

8 THE COURT: Was there any violence --

9 MR. TARRABAIN: No.

10 MS. KENDALL: No.

11 MR. TARRABAIN: No, there's none.

12 THE COURT: No, I don't think so.

13 MR. TARRABAIN: There should be set out in the
14 affidavit cash bail in the sum of \$5,000. His
15 father's prepared to post surety in the amount. As
16 well, \$5,000 surety.

17 MS. KENDALL: I would agree with that, Your
18 Honour.

19 THE COURT: Crown agrees. All right, that
20 will be a condition of the order. Anything else?

21 MS. KENDALL: Nothing from the Crown, Sir.

22 THE COURT: If you want to prepare the order,
23 I will sign it.

24 MR. TARRABAIN: Thank you, Your Honour.

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3 Certified Pursuant to Rule 723
of the Rules of Court
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6 Jane Romanowich, CSR(A)
Court Reporter
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