

R. v. Hein, 2003 NWTSC 20

S-1-CR2002000086

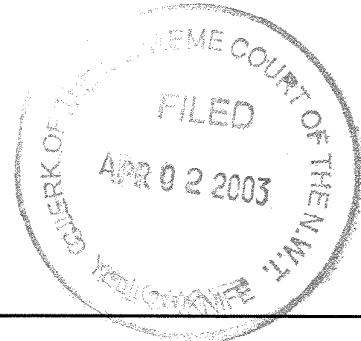
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

DAYL ELDON HEIN



Transcript of the Oral Reasons for Sentence by The Honourable Mr. Justice A. M. Lutz, at Yellowknife in the Northwest Territories, on April 1st A.D., 2003.

APPEARANCES:

Mr. S. Niblock: Counsel for the Crown
Mr. J. Brydon: Counsel for the Accused

Charge under s. 5(1) *Controlled Drugs and Substances Act*

1 THE COURT: The accused has pleaded guilty to
2 a charge that he, on or between the 14th day of
3 March and the 16th day of March, 2002, at or near
4 the city of Yellowknife in the Northwest
5 Territories, did unlawfully traffic in a controlled
6 substance, namely cocaine, contrary to Section 5(1)
7 of the *Controlled Drugs and Substances Act*.

8 In that respect, Crown counsel has recited
9 certain facts which have been admitted by the
10 accused through his counsel. They are, in summary,
11 as follows: That an undercover operator and an
12 agent of the Royal Canadian Mounted Police on three
13 occasions succeeded in purchasing cocaine from this
14 accused. The first occasion on March the 14th, two
15 grams for \$260; on the 15th of March, two grams for
16 \$280; and on March 16th, one gram for \$120. That is
17 in summary the facts that have been admitted by the
18 accused through his counsel.

19 One of the matters that one must take into
20 consideration in sentencing under the *Controlled*
21 *Drugs and Substances Act* is Section 10 is that it is
22 said that the fundamental purpose of any sentence
23 for an offence under this part is to contribute to
24 the respect for the law and the maintenance of a
25 just, peaceful and safe society while encouraging
26 rehabilitation, and treatment in appropriate
27 circumstances, of the offender and acknowledging the

1 harm done to victims and to the community.

2 Section 10(2)(b) indicates that an aggravating
3 circumstance is that an accused has been previously
4 convicted of a designated substance offence.

5 Exhibit 1 in the proceedings bears that out.
6 Mr. Hein does not have an enviable record. The Court
7 is not a Court without compassion however, and I
8 recognize that an addiction to narcotics is like an
9 addiction to alcohol and other matters such as
10 gambling and the like.

11 In that vein, I take into consideration the
12 eloquent address by Mr. Brydon on your behalf,
13 Mr. Hein, and the things that he said, in that you,
14 at age 35, are addicted. You are addicted to
15 cocaine and you have been for some time; that you
16 have to support two children of your own and two by
17 a woman you live with.

18 You have made your point quite clear in your
19 address to me that you are a bottom-feeder in the
20 scheme of things. You are an easy target, as your
21 counsel has said. You supply to like persons so
22 that one cannot point to your addiction being
23 satisfied by selling, on the facts before me, to
24 children or people who are more vulnerable than the
25 same kind of person that you are; that you have, on
26 occasion, assisted the local constabulary in their
27 efforts to control the sale of narcotics in

1 Yellowknife.

2 Your guilty plea is of course something that
3 the Court must take into consideration and give you
4 some credit for.

5 Your counsel has asked that we delay your
6 sentencing for a month and I'm prepared to do that,
7 we will discuss that in a moment, but I don't think
8 this is the time when I should be giving you a
9 lecture of the evils of narcotics. You know, and
10 you have known, and you are hooked and only you can
11 extricate yourself from the morass that you find
12 yourself in.

13 Your record indicates that you went from
14 lighter sentences for a like offence and then
15 another one and then another one and so on and now
16 you have reached the stage where you are hitting
17 federal time by way of incarceration. Crown counsel
18 has very kindly, I must say, put to me that a
19 sentence between 18 and 24 months is appropriate.
20 Your own counsel has indicated, because I know that
21 he knows, that that is an appropriate range but has
22 asked that I impose a sentence at the lower end and
23 I'm prepared to do so.

24 So the sentence that I impose upon you is this:
25 That you will serve two years less a day for this
26 offence; that your sentencing will be delayed for
27 one month from today. In the meantime, you will

1 report once a week in person to the Royal Canadian
2 Mounted Police detachment in Yellowknife. You will
3 consume no alcohol or nonprescription drugs. If you
4 violate those terms, your sentence will begin
5 immediately. Otherwise, your sentence will begin one
6 month from today. And of course you are not to leave
7 the jurisdiction.

8 Do counsel wish to make any further
9 submissions?

10 MR. BRYDON: Just a clarification, that on the
11 1st of May that he merely goes to the correctional
12 centre and turns himself in?

13 THE COURT: Yes, thank you very much.

14 MR. BRYDON: Thank you. Perhaps, Your Honour,
15 under the circumstances then, you should make a
16 probation order commencing today for a period of
17 let's say two months so as to bridge him into that
18 so that the terms are there and the people at the
19 correctional centre can then see what is happening.

20 THE COURT: Any problem with that, Mr.
21 Niblock?

22 MR. NIBLOCK: That makes sense, sir, and I
23 should have added that the conviction for this
24 charge would bring into play Section 109 of the
25 *Criminal Code*, the firearms prohibition, sir.

26 THE COURT: Yes, thank you.

27 MR. BRYDON: That is a firearms prohibition

1 for life given his previous convictions.

2 THE COURT: Yes, thank you for that; I had
3 forgotten that, Mr. Brydon, Mr. Niblock.

4 Yes, Mr. Hein, you are prohibited from
5 possessing any firearm, crossbow, prohibited weapon,
6 restricted weapon, prohibited device, ammunition,
7 prohibited ammunition, and explosive substance for
8 ten years.

9 MR. BRYDON: Sorry, sir, it has to be life
10 because of the previous convictions.

11 THE COURT: For life. And as well, under
12 Section 114 of the *Criminal Code*, you are required
13 to surrender to a peace officer, firearms officer,
14 or chief firearms officer anything that is
15 prohibited by the order that I just gave and every
16 authorization, license, and registration certificate
17 relating to any thing in your possession which is
18 prohibited by the order that is held by you at this
19 time.

20 MR. BRYDON: One day surrender clause is all
21 that is necessary in this case.

22 THE COURT: Then a one day surrender clause.
23 Anything further, gentlemen?

24 MR. NIBLOCK: No, sir.

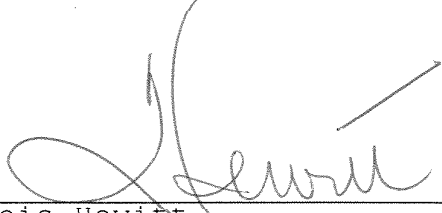
25 MR. BRYDON: No, sir.

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

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Certified to be a true and accurate transcript pursuant to Rules 723 and 724 of the Supreme Court Rules.



Lois Hewitt,
Court Reporter