

R. v. Huynh, 2003 NWTSC 19

S-1-CR2002000085

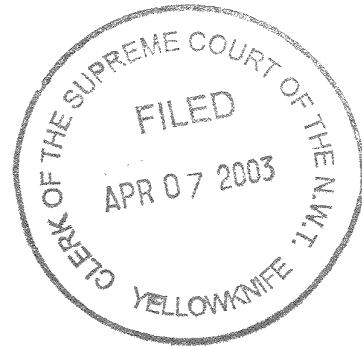
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

LONG HAI HUYNH



Transcript of the Oral Reasons for Sentence by The Honourable Justice V.A. Schuler, at Yellowknife in the Northwest Territories, on March 6th A.D., 2003.

APPEARANCES:

Ms. C. Carrasco: Counsel for the Crown
Mr. J. Brydon: Counsel for the Accused

Charge under s. 5(1), s. 264(1)(a) *Criminal Code*

1 THE COURT:

2 I am going to pronounce the
3 sentence now with respect to Mr. Huynh's
4 convictions. Mr. Huynh pleaded guilty to a charge
5 of trafficking in a substance held out to be
6 cocaine. He has also been found guilty by a jury of
7 making a death threat. The trafficking conviction
8 involves facts which I found after hearing evidence
9 as well as facts which Mr. Huynh admitted.

10 Very briefly, the essential facts are that on
11 April 3rd, 2002, he was sought out by an undercover
12 police officer who told Mr. Huynh that he was a
13 legitimate businessman who was also in the business
14 of delivering cocaine to people in northern Alberta
15 and that he was interested in doing the same outside
16 Yellowknife and in purchasing cocaine from Mr. Huynh
17 for that purpose. There was discussion about amounts
18 that he wanted to purchase. Mr. Huynh wanted to know
19 if the officer was who he purported to be and he set
20 that as a condition of dealing with him and said
21 that any dealing would be through an associate. They
22 arranged to meet later for a test and did so with
23 Mr. Huynh giving the officer a spitball of cocaine,
24 approximately one gram of cocaine, which the officer
25 simulated snorting. The accused told him to snort a
26 line of cocaine, the officer refused to do so and
27 they left the scene of the test. Mr. Huynh admitted
to that aspect of the trafficking, that is, to

1 giving the officer the cocaine for the test.

2 Mr. Huynh and the officer had further
3 discussion before leaving the scene and at one point
4 Mr. Huynh said that "the only thing keeping us from
5 me dealing with you as much as you want is that thin
6 line", referring to the line of cocaine. I found
7 yesterday that the accused had said those words and
8 on all of the evidence, there was an offer to sell
9 cocaine to the undercover officer.

10 After they left the scene, and this is the
11 subject of the jury's finding of guilt on the
12 threatening charge, the accused told the officer "if
13 we deal and I go to jail, you better leave town, dig
14 a hole and hide 'cause you're dead, I'll kill you",
15 or words to that effect as testified to by the
16 officer.

17 They parted soon after this and the accused was
18 arrested several weeks later.

19 It is obvious from the discussions that the
20 accused had with the police officer, whose version I
21 have accepted and I'm satisfied beyond a reasonable
22 doubt is in fact what happened, that the accused was
23 prepared to get into what was at least a mid-level
24 commercial enterprise so long as the officer proved
25 that he was "true".

26 The accused is 29 years old. He grew up in
27 Yellowknife and works in his family's retail

1 business here. He has a Grade 12 education and two
2 years of college in mechanics and autobody courses.
3 He is involved in a relationship and his partner and
4 his parents, I'm told by defence counsel, are
5 supportive of him.

6 Mr. Huynh has a criminal record with related
7 charges, being a 1995 conviction for trafficking in
8 a narcotic in which I am advised by counsel he was a
9 party to transportation of six ounces of cocaine to
10 Yellowknife and for which he received a sentence of
11 two years less a day in jail. I note that that
12 record is almost eight years old at this point. That
13 is the only drug related conviction.

14 Related to the threatening charge is a
15 conviction for spousal assault causing bodily harm
16 for which Mr. Huynh received 60 days in jail in
17 2001. And I say it is related because offences of
18 violence or threatening violence are obviously
19 related. In 1997, Mr. Huynh was also convicted of
20 impersonation with intent and received 14 days in
21 jail. And in 2002, he was convicted of a breach of
22 the recognizance he was on in relation to these and
23 other charges and he received a \$200 fine.

24 Crown counsel has referred to a number of cases
25 in which Judges of this Court and others have given
26 the reasons why trafficking in cocaine must be
27 treated severely. I won't repeat what has been said

1 many times before in this Court and others and what
2 I'm sure Mr. Huynh heard from the Judge who
3 sentenced him in 1995.

4 I bear in mind that Mr. Huynh did not actually
5 sell cocaine to the undercover officer, that he gave
6 him only a small quantity and that no further
7 transactions took place. The evidence clearly
8 indicates however that Mr. Huynh knew where to get
9 cocaine, he was able to get cocaine on short notice,
10 he did it because he did get some in fact, he
11 obviously knew who is in the business, and he was
12 offering to sell in what was represented by the
13 officer to be a fairly substantial amount - 10 to 20
14 grams per shipment once or twice a week.

15 The giving of the spitball of cocaine to the
16 undercover officer has to be viewed in this context.
17 In my view, this is not a one-time giving of a small
18 amount of cocaine. The whole point of giving the
19 cocaine to the officer was to conduct the test in
20 the hope that this would lead to a business deal for
21 the provision of cocaine. I do bear in mind that
22 none of this was followed through because of the
23 disagreement or the fact that the officer would not
24 perform the further test that Mr. Huynh wanted and
25 that there is no evidence of the accused actually
26 trafficking to others. Nor is there any evidence
27 that he has been engaged in drug trafficking between

1 1995 and this incident. Although on the evidence, as
2 I say, his connections with the drug trade are
3 apparent from the evidence.

4 I take into account the guilty plea. Although
5 it came at the last minute and it did not entirely
6 resolve the trafficking charge, Mr. Huynh does get
7 credit for it as an admission of guilt. And I also
8 take into account that this is not a case where we
9 were dealing with a witness for whom testifying was
10 going to be traumatic or difficult so that doesn't
11 lessen the significance of the guilty plea.

12 Mr. Huynh has been in remand since October 18,
13 2002 after being charged with breaching his
14 recognizance. His being detained then and back in
15 May for eight days is partly due to other
16 outstanding charges as well. I take all of that into
17 account. In the circumstances, I do not think that
18 double the time as a credit is appropriate. This is
19 not a case where Mr. Huynh was detained on one
20 charge and has been in custody on that one charge.
21 Mr. Huynh is in custody because of a number of
22 charges but also because he breached the
23 recognizance that he was on. So in my view, it is
24 appropriate to simply credit the actual time which I
25 will credit as five months.

26 I agree with the submission of defence counsel
27 that the possibility of rehabilitation is not to be

1 ignored. Mr. Huynh's record is not so serious or
2 lengthy as to mean that he is beyond hope but he
3 should keep in mind that the maximum penalty for
4 trafficking is life imprisonment. It is considered
5 to be a serious crime because of the harm that drugs
6 like cocaine do. Because of the previous record, I
7 have to be concerned that Mr. Huynh be deterred, be
8 discouraged from engaging in this type of activity
9 again, and that others be deterred as well and that
10 the sentence reflect society's condemnation of this
11 crime.

12 As to the threatening charge, in my view that
13 too is very serious. I would distinguish the cases
14 referred to by defence counsel because although it
15 in no way excuses the behaviour in those cases,
16 those were cases where people made threats in
17 emotional circumstances and in two of the cases
18 where they had been drinking. In this case there was
19 no emotion. The accused and the police officer,
20 playing his role as a drug purchaser, had an
21 argument. The officer testified that it was not a
22 particularly heated argument. The accused made, as
23 the jury found, a threat to kill if he were to go to
24 jail because of his dealings with the police
25 officer. In my view, it was done in a cold and
26 calculating manner meant to intimidate. The very
27 fact that he would make such a threat indicates to

1 me that this was far from the accused's trying to
2 help out the police officer, this was serious
3 business and the accused wanted the police officer
4 to know that. I also note that the threat was made
5 at a time when he suspected that he was dealing with
6 a police officer according to his own evidence.
7 Although the threat was made in the course of what
8 could be considered one continuing drug transaction,
9 in my view it is a separate incident within that
10 transaction and for that reason does merit a
11 consecutive sentence taking into account however the
12 totality of the two sentences.

13 Stand please, Mr. Huynh.

14 Mr. Huynh, having given you credit for five
15 months of remand time I sentence you as follows: On
16 Count 1, the trafficking charge, 24 months. On
17 Count 2, the threatening charge, six months
18 consecutive. That's a total of 30 months in jail.

19 There will be a firearm prohibition order
20 commencing today and expiring ten years from your
21 release from imprisonment and the Victims of Crime
22 surcharge will be waived.

23 You may have a seat.

24 Is there anything further, counsel, that I need
25 to deal with?

26 MS. CARRASCO: No, thank you.

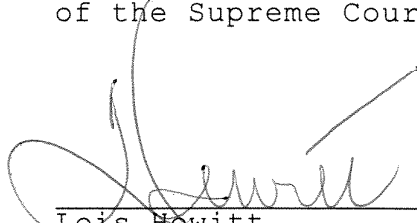
27 THE COURT: Mr. Brydon?

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MR. BRYDON: No.
THE COURT: Thank you very much, counsel, for
your conduct of the case and we will close Court.

(AT WHICH TIME THE ORAL REASONS FOR SENTENCE CONCLUDED)

Certified pursuant to Rule 723
of the Supreme Court Rules.



Lois Hewitt,
Court Reporter