

R. v. McMillan, 2002 NWTSC 89

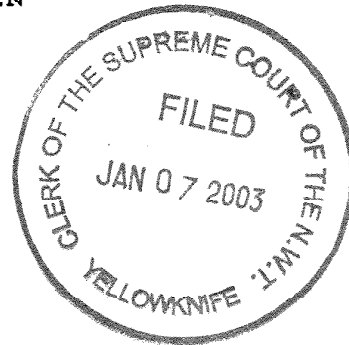
S-1-CR2002000105

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -



DANIEL EDWARD McMILLAN

Transcript of the Oral Reasons for Sentence by The Honourable Justice J.Z. Vertes, at Yellowknife in the Northwest Territories, on December 19th A.D., 2002.

APPEARANCES:

Ms. S. Bond:	Counsel for the Crown
Ms. M. Engley:	Counsel for the Accused

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

1 THE COURT: The accused has pleaded guilty to
2 a charge of possession of cocaine for the purpose of
3 trafficking.

4 The facts indicate that the accused travelled
5 from Edmonton to Yellowknife and when he was
6 arrested in Yellowknife, he was found to be in
7 possession of approximately ten ounces of cocaine.
8 The cocaine was packaged into one-gram packages, and
9 I am told that the total value of the cocaine, if
10 sold at the gram level, would be approximately
11 \$39,000.

12 Mr. McMillan readily admitted his involvement
13 or his role as a courier. He stated that the
14 cocaine had been turned over to him by some people
15 that he had been put in contact with by some
16 acquaintances for the specific purpose of
17 transporting it to Yellowknife. He also indicated
18 that he expected to receive some sort of payment for
19 delivering the cocaine to Yellowknife.

20 There are obviously in this case, as in every
21 other case, a mix of mitigating and aggravating
22 factors.

23 Among the mitigating factors are the accused's
24 guilty plea although, to be frank, some guilty pleas
25 are worth more than others. It seems quite evident
26 to me that the accused was confronted with a pretty
27 cut and dry situation before him and maybe a guilty

1 plea is the best way to try and cut his losses. But,
2 in any event, I do give consideration to the guilty
3 plea. I always think it is a mitigating factor.
4 Whether it shows remorse or not in any particular
5 case, I cannot say but it at least shows that the
6 individual offender is willing to stand up and take
7 responsibility for what he did. So I give the
8 accused credit for that.

9 The other major mitigating factor in this case
10 is the accused's young age. He turned 18 just a few
11 months ago. Ordinarily when the Court is confronted
12 with a relatively young person, the Court places
13 great emphasis on the prospects of reformation and
14 rehabilitation, tries to exercise as much restraint
15 as reasonably possible in the circumstances, in the
16 hope that the young person will realize the error of
17 his ways and take steps to correct them.

18 That is a very general statement. There are
19 some types of cases however, and drug trafficking
20 cases are one of those, where notwithstanding the
21 young age of the offender, nor indeed whether the
22 offender has a good background, certain guidelines
23 have been set for sentencing.

24 Among those guidelines is the overwhelming need
25 to deter this offender and others from the pursuit
26 of what is a crass, commercial enterprise, a
27 commercial enterprise that is done for profit and

1 that is done at the expense of the health and
2 well-being of the wider population. For those
3 reasons, it is extremely rare for trafficking
4 related offences to be punished by anything other
5 than significant periods of incarceration.

6 In this particular case in any event, we do not
7 have a young person with a spotless background.

8 He was convicted in Youth Court in 1999, he was
9 convicted in Youth Court in 2000, and he was
10 convicted in Youth Court in 2001. And now it's 2002,
11 and he has graduated to Adult Court and he is going
12 to face the rigors of an adult sentence. And whether
13 he knows what he is getting into or not, I think it
14 may turn out to be quite a shock to his system and I
15 hope that he will learn from that because he is
16 still at least young enough that he has the better
17 part of his life ahead of him and it is still, in my
18 view, not too late for him to turn himself around
19 once he finishes serving this sentence.

20 So his record is an aggravating factor and so
21 is the fact that this product that he was
22 transporting from Edmonton to Yellowknife was
23 clearly intended to be part of a larger commercial
24 scheme, intended for street-level sales, and
25 certainly was a relatively significant amount of
26 product.

27 Having considered all of the circumstances,

1 including the accused's unusual request that he in
2 fact be sentenced to a term of imprisonment in the
3 federal penitentiary so he could serve it closer to
4 home, I have concluded that indeed a term in excess
5 of two years is required. I must say that
6 notwithstanding his request, I would have imposed
7 somewhat of a similar sentence in any event.

8 Is there anything that you wish to say,
9 Mr. McMillan?

10 THE ACCUSED: No, thank you.

11 THE COURT: Very well. The sentence of this
12 Court is that you serve a term of imprisonment of 30
13 months. I will make no further disposition. There
14 will be no Victims of Crime fine surcharge.

15 Is there anything else that you require,
16 Ms. Bond?

17 MS. BOND: Your Honour, I believe the
18 firearm prohibition is actually mandatory under
19 Section 109 dealing with drug trafficking offences
20 so I would ask that order be imposed.

21 THE COURT: What is the mandatory period, is
22 it ten years as well?

23 MS. BOND: It is ten years, sir, yes.

24 THE COURT: There will be an order
25 prohibiting this accused from having in his
26 possession any firearm or explosives for a period of
27 ten years from the date of his release.

1 MS. BOND: And I would ask as well, sir, for
2 an order for the destruction of exhibits after the
3 appeal period has expired.

4 THE COURT: Very well, you will have that
5 order as well.

6 MS. BOND: Thank you, sir.

7 THE COURT: Ms. Engley, is there anything
8 else?

9 MS. ENGLEBY: No, sir.

10 THE COURT: Very well. Thank you for your
11 submissions, counsel, we will adjourn.

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

13 Certified pursuant to Rule 723
14 of the Supreme Court Rules.

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17 _____
18 Lois Hewitt,
19 Court Reporter

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