

R. v. Simms, 2003 NWTSC 15

S-0001-CR-2002000119

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN



- vs. -

JUSTIN WALLACE SIMMS

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Transcript of the Oral Reasons for Sentence by The Honourable Justice V.A. Schuler, at Yellowknife, in the Northwest Territories, on March 13th, A.D. 2003.

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APPEARANCES:

Mr. J. Burke: Counsel for the Crown  
Mr. R. Gorin: Counsel for the Accused

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

1 THE COURT: Well, I accept Mr. Simms' words  
2 that he is truly sorry. It is really tragic to me that  
3 someone who apparently is so hard working and was doing  
4 so well could become involved in something like this.  
5 Everyone knows that dealing in cocaine is illegal.  
6 There is no question in my mind that you must have  
7 known that what you were doing was illegal. Whether  
8 someone talked you into thinking that it wasn't a big  
9 deal, I don't know, but anyone who would do something  
10 like that obviously didn't have any regard for your  
11 interests or your life or what might happen to you.

12 I have said this in other cases: It never ceases  
13 to amaze me the way that people get involved in things,  
14 especially drug trafficking, and think they can get  
15 away with it, because they never do get away with it.  
16 They always get caught, and they end up making a mess  
17 of their lives. Because of this, obviously, you are  
18 going to have a criminal record. It may affect your  
19 ability to travel. It may affect your ability to get  
20 employment. It may affect all kinds of things in your  
21 life.

22 As Mr. Gorin has pointed out, it sounds as though  
23 you were trying very hard to help your girlfriend and  
24 now she is not going to have your help and may, in  
25 fact, unfortunately, be in a milieu that isn't going to  
26 be very helpful to her because of the drinking.

27 I suppose it is ironic, having tried so hard to

1 help her with drinking, that you would then turn around  
2 and get involved in cocaine, which, as I'm sure you  
3 know, is highly addictive and is very destructive.  
4 It's destructive anywhere, but in a small community  
5 where people often don't have a whole lot of other  
6 things to do it can become the focus of their lives and  
7 can be extremely destructive to families, to children.  
8 It has all sorts of consequences that I'm sure you  
9 didn't intend and maybe didn't think about, but if you  
10 had taken the time to think, both what you were doing  
11 to yourself and might be doing to other people, I am  
12 sure that you probably wouldn't have gone ahead and  
13 done it, especially because it doesn't sound as though  
14 you were someone who really needed the money and could  
15 have got the money by perfectly legal means.

16 In any event, for the record I do convict Mr.  
17 Simms of the offence, possession of cocaine for the  
18 purposes of trafficking. I take into account that he  
19 has pleaded guilty. I take into account the  
20 circumstances which are that he was in possession of a  
21 total of 150 grams of cocaine at his home in Inuvik;  
22 that the cocaine was packaged in individual grams in  
23 what has been described as a spitball in each case; and  
24 that there was also the sum of \$4,200 which he  
25 acknowledges was the result of trafficking in the  
26 narcotics.

27 I take into account that he did cooperate with the

1 police. I accept that fact; that he did tell them  
2 where they could find the narcotics and the money that  
3 was in the apartment.

4 I take into account that he is 25 years old and  
5 that, as I have said, he appears to have had a good  
6 employment record. He came from Newfoundland to  
7 Inuvik, was able to find employment right away in 1999  
8 when he came here and was doing well enough that he had  
9 recently received a raise and was making fairly good  
10 money.

11 I take into account, of course, that he pleaded  
12 guilty and that he waived the Preliminary Inquiry and  
13 has given up, therefore, some of his legal rights and  
14 has made the case proceed more smoothly through the  
15 system than it would otherwise. I also accept that it  
16 is an acknowledgement that he does feel sorry for what  
17 he has done. I also take into account the fact that he  
18 has no criminal record prior to this.

19 Counsel are agreed that the range should be  
20 between two and two and a half years for the offence.  
21 I think that that is a reasonable range. It is just a  
22 question of where the sentence should fall in that  
23 range.

24 MR. BURKE: Your Honour, just prior to you --  
25 I'm sorry to interrupt. Just for the record, I just  
26 wanted to clarify that the funds admitted to be  
27 involved that were seized were \$4,700, not \$4,200.

1           \$4,200 --

2       THE COURT:                   I thought I had said 4,700.

3       MR. BURKE:                   Oh, I'm sorry. No. I believe you  
4           said 42.

5       THE COURT:                   All right.

6       MR. BURKE:                   Apparently you had the correct  
7           amount in your mind, though; and the actual --

8       THE COURT:                   I meant to say 47.

9       MR. BURKE:                   The actual amount of cocaine seized  
10           was 11 grams of crack form cocaine and 17 grams, that's  
11           17 grams, of powdered cocaine.

12      THE COURT:                   All right. Thank you. Yes, I  
13           think I may have misspoken as to the amount. That's  
14           correct.

15      MR. BURKE:                   Thank you, Your Honour.

16      THE COURT:                   All right. That is fine. As I  
17           say, the question is simply where Mr. Simms' sentence  
18           should fall within that range.

19           Stand up, please, Mr. Simms. Balancing all of the  
20           factors that are involved in this case, the fact that  
21           there is a need in cases like this for sentences that  
22           hopefully will deter other people and indicate that  
23           this behaviour is not acceptable, that it is, in fact,  
24           destructive to society, balancing also your own  
25           personal circumstances, your own situation and trying  
26           to come to what I think is an appropriate sentence in  
27           all of those circumstances, I am going to put quite a

1 bit of weight on the remorse that you have expressed  
2 and, from your attitude, what I think is a good chance  
3 that you won't be involved in this kind of thing  
4 again. So I am going to give you a sentence at the  
5 lower end.

6 The sentence will be two years in jail. There  
7 will be a firearm prohibition order commencing today  
8 and expiring 10 years from your release from  
9 imprisonment. You can have a seat, Mr. Simms. The  
10 \$4,700 and the narcotics will be forfeited, and the  
11 remaining money, then, is to be returned, as I  
12 understand it, on agreement to Mr. Simms.

13 MR. GORIN: Yes.

14 MR. BURKE: Yes.

15 THE COURT: All right. Is there anything  
16 further I need to deal with in this case?

17 MR. BURKE: Nothing from the Crown.

18 MR. GORIN: No, Your Honour.

19 THE COURT: All right. Thank you very much,  
20 counsel. Good luck, Mr. Simms.

21 THE ACCUSED: Thank you.

22 THE COURT: I hope we won't see you back here  
23 again.


24 MR. BURKE: Those are my matters, Your Honour.  
25 Thank you.

26 THE COURT: All right.

27 (AT WHICH TIME THE ORAL REASONS FOR SENTENCE CONCLUDED)

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Certified pursuant to Rule 723  
of the Supreme Court Rules.

  
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Jill MacDonald,  
Court Reporter