

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

CURTIS ROY MARTIN



Transcript of the Reasons for Sentence delivered by The Honourable Justice V.A. Schuler, sitting in Yellowknife, in the Northwest Territories, on the 22nd day of September, A.D. 2003.

APPEARANCES:

Ms. S. Smallwood:

Counsel for the Crown

Mr. J. Terhart:

Counsel for the Defendant

(Charges under s. 334(a) and 356(1)(a) of the Criminal Code of Canada and s. 4 of the Controlled Drugs & Substances Act)

1 THE COURT: Now, with respect to Mr. Martin,
2 he has entered a guilty plea and has now been
3 convicted of theft over \$5,000. I have already
4 referred to the facts in Miss Lepine's case, but I
5 will just summarize them again for purposes of this
6 sentencing.

7 On two occasions, June and November of 2000,
8 while working for Matco moving company, Mr. Martin
9 stole packages of money destined for the Bank of
10 Montreal. Matco had the courier contract from Canada
11 Post to deliver the mail, and the packages were in the
12 mail. The two packages taken contained a total
13 altogether of \$100,000.

14 Various informants or tipsters led the police to
15 Mr. Martin and his common-law spouse, Ms. Lepine, and
16 they were arrested in December 2002 and each gave a
17 warned statement.

18 Only Mr. Martin had actually carried out the
19 thefts, but Ms. Lepine helped him spend the money.
20 None of the money has been recovered. It was spent on
21 friends, trips, recreational items, and drugs. Both
22 Ms. Lepine and Mr. Martin were employed at the time,
23 so this wasn't a situation of financial need. The
24 only conclusion I can come to is that it was simply
25 greed on the part of Mr. Martin in taking the money.

26 Now, there is an indication from the facts in the
27 Agreed Statement of Facts that Mr. Martin may have

1 been trafficking in marijuana, although the Crown has
2 not pursued the possession for the purposes of
3 trafficking charge. So I'm not sentencing him for
4 that. I think at most it can be considered an
5 aggravating factor.

6 Defence counsel characterizes the thefts as
7 opportunistic, and on the Agreed Statement of Facts
8 before me, there is certainly no indication of any
9 great amount of planning. But I do note paragraph 13
10 of the Agreed Statement of Facts does indicate that
11 Mr. Martin had told Ms. Lepine that he knew there was
12 money in the packages because he had previously seen
13 and delivered a similar money package which was
14 damaged and he could see that it contained cash. So
15 this does not seem to be a case of money just falling
16 into the hands of Mr. Curtis (sic). He gave it some
17 amount of thought, or at least that is what I conclude
18 from the circumstances.

19 Mr. Martin was held in custody for six months,
20 having been released in June 2003 on a recognizance
21 with conditions.

22 His counsel has indicated that it was from the
23 beginning Mr. Martin's intention to plead guilty and
24 not require a trial. He waived the preliminary
25 hearing in this matter. And I do take those as
26 substantial mitigating factors, along with the fact,
27 obviously, that he did plead guilty.

1 Mr. Martin is 26 years old. He is originally
2 from Ontario, has a Grade 13 education, and left
3 Ontario to look for work in the west. In the summer
4 of 1999, he arrived in Fort Smith and he has had
5 various jobs since then, including the job that he had
6 with Matco. He had begun training as a teacher's aide
7 shortly before his arrest and then was not able to
8 receive the funding through the Workers' Compensation
9 Board for a work injury which had allowed him to take
10 the teacher's training and so was obliged to obtain
11 other employment. As I understand it, it was because
12 of the charge, in effect, that he was not able to
13 receive the funding; that they didn't think that the
14 teacher training was any longer a viable option for
15 him. However, he has indicated that he does hope to
16 go back to the teacher's aide course.

17 Mr. Martin does have a criminal record. He was
18 convicted in 1995 as a young offender in Ontario of
19 the offence of armed robbery and use of a firearm in
20 the commission of an offence. He received 12 months
21 secure custody for that. I do take note of the fact
22 that that was eight years ago. In 1999, as an adult,
23 he was convicted of possession of stolen property
24 (that involved a licence plate) and he received a \$200
25 fine. So the record is related, and the 1999 offence,
26 although it is not what we would normally consider
27 very serious, wasn't -- or occurred not long before

1 the offence for which he is now being sentenced. In
2 my view, the real concern with the record is the
3 robbery offence, and I do, as I said, keep in mind
4 that he was convinced of that, or found guilty of
5 that, as a youth and that it was eight years ago.
6 Nevertheless, I infer from what is on the record and
7 the sentence that it must have been a serious example
8 of robbery.

9 The Crown in this case seeks a sentence of two
10 years and -- or in the range of two years, and
11 acknowledges that Mr. Martin should be given credit
12 for his remand time. Defence seeks a sentence of less
13 than two years and asks that it be made conditional.
14 In other words, that it be served in the community.

15 This is a case of breach of trust, clearly. It
16 was theft from an employer. Or perhaps in this case
17 it is more correct to say by means of his employment,
18 he was able to commit the theft from the bank.

19 Counsel have put many cases before me, some of
20 which are very familiar to me and some which are not.
21 I have reviewed them all, and as always, they have
22 similarities to, and also differences from,
23 Mr. Martin's case.

24 Sentencing always has to be individualized,
25 bearing in mind that fairness requires that there be
26 some parity in the sentencing of those who commit
27 similar crimes in similar circumstances.

1 The sentence to be imposed in this case must
2 serve the principles of denunciation; in other words,
3 show that society condemns this offence, and also
4 general deterrence. In other words, the sentence
5 should try to discourage others from committing
6 similar offences. Also because of his record, the
7 sentence I impose should serve individual deterrence.
8 In other words, it should discourage Mr. Martin from
9 committing similar offences in the future. Now,
10 previous and also some of the guiding cases have
11 indicated that a conditional sentence can serve those
12 purposes. So in that sense, a conditional sentence is
13 available.

14 In light of the six months pre-trial custody,
15 which I would credit as one year according to the
16 principles that are set out in the *Wust* case from the
17 Supreme Court of Canada, I take a view that a sentence
18 of less than two years is available and would be
19 appropriate in this case, and therefore, again, that
20 is the reason mandating a conditional sentence at
21 least be considered.

22 I have to be satisfied under the conditional
23 sentence provision, Section 742.1, that Mr. Martin
24 serving a sentence in the community would not endanger
25 the safety of the community. As has been pointed out,
26 the Supreme Court of Canada, in the *Proulx* case,
27 indicated that consideration of whether an individual

1 serving a sentence in the community would not endanger
2 the safety of the community has to include
3 consideration of the risk of any future criminal
4 activity including property offences. So Mr. Martin's
5 criminal record is relevant in this sense. Also
6 relevant to this consideration is the fact that while
7 on release, which was for a period of some three to
8 four months, he was on fairly strict conditions and
9 apparently was able to comply with them, and he does
10 not have any prior offences on his record of breaching
11 Court orders.

12 In considering this issue, the main factor, I
13 think -- or the factor that is perhaps the most
14 troublesome is the robbery conviction. I suppose the
15 question is whether I should conclude from that and
16 the offence of which he's now convicted that he is
17 therefore a danger to the safety of the community, or
18 should I consider or perhaps put more weight on the
19 fact that the robbery conviction forms part of a youth
20 record and, as I've said, is eight years old?

21 So on balance, in considering all those factors,
22 I have come to the conclusion that Mr. Martin serving
23 his sentence in the community would not endanger the
24 community safety and that any risk that may be present
25 there can be addressed through conditions.

26 I take into account that the offence for which I
27 am sentencing Mr. Martin is not a violent offence. In

1 my view, that is important. It is, however, an
2 offence involving theft of a -- what I would call a
3 very large amount of money. And it's also serious
4 because of the fact that this was theft from the mail,
5 and I think that has to be considered perhaps
6 differently from some other types of theft considering
7 that the community at large puts its trust in the mail
8 and when someone steals from the mail, someone in the
9 position of trust, that can only damage the
10 community's trust in the mail system and cause concern
11 to those who do use the mail system for important
12 transactions.

13 I do take into account that in this case there
14 are two instances of theft rather than an accumulation
15 of many or repeated instances of smaller thefts as
16 occurred in some of the cases that counsel have
17 provided to me. For example, the *Cleary* case. I also
18 take into account that there is no indication in this
19 case of any real scheme or well-devised plan as there
20 was in the *Mulligan* and *Bedard* cases.

21 So considering all the circumstances, and again,
22 as I say, what has perhaps been the most troublesome
23 in this case is the robbery conviction, but seeing it
24 in light of the fact that it did occur when Mr. Martin
25 was a youth and that it was eight years ago, I have
26 come to the conclusion that I can and will impose a
27 conditional sentence, and I also consider very

1 important to this decision the pre-trial custody. In
2 other words, he has already served a year, in effect,
3 and in my view, his efforts should now go into
4 repaying the money.

5 So stand, please, Mr. Martin.

6 I'm going to sentence you to a term of
7 imprisonment of 18 months to be served in the
8 community. The conditions are that you keep the peace
9 and be of good behaviour, that you appear before the
10 Court when required to do so by the Court, that you
11 report to the conditional sentence supervisor within
12 four working days of today here in Yellowknife and
13 thereafter when and where required by the supervisor
14 and in the manner that he or she directs.

15 The fourth condition will be that you remain
16 within the Northwest Territories unless you have
17 written permission to go outside the Northwest
18 Territories from this court or your supervisor.

19 The fifth condition is that you will notify the
20 Court or the supervisor in advance of any change of
21 name or address and promptly notify the Court or the
22 supervisor of any change in employment or occupation.

23 Six, you will advise the supervisor of your
24 employer's name, place of employment, hours of
25 employment, and any change in the place, in other
26 words, location, or hours of employment. And if you
27 have more than one employer, that will include all

1 employers.

2 Seven, for the full term of the conditional
3 sentence order, you will remain indoors at your
4 residence, 24 hours a day, except for the following:
5 (a) to report to the sentence supervisor as directed
6 by him or her; (b) to go to and from and be at your
7 employment; (c) to obtain emergency medical attention
8 for yourself or your common-law spouse; (d) for one
9 period per week of not more than three hours to obtain
10 groceries and other necessities.

11 Condition number eight, you will cooperate fully
12 with random checks by telephone and in person by your
13 supervisor or the RCMP to verify your compliance with
14 this conditional sentence order.

15 Condition number nine. And, Counsel, the
16 conditions with respect to restitution, although I am
17 not inviting you to re-argue the case, when I finish
18 this, if you feel that I have done something that is
19 unworkable or may cause some problems, I invite you to
20 comment. You will pay \$7,000 before the end of this
21 month and, thereafter, \$1,200 per month on or before
22 the last day of the each month during the term of this
23 order as restitution payable to the Clerk of the Court
24 for furtherance to the Bank of Montreal.

25 Now, a copy of this order will be given to you by
26 the clerk who will explain it to you and will explain
27 also the substance of Section 742.4 and 742.6, and the

1 procedure for applying to change the optional
2 conditions.

3 I want you to be aware, Mr. Martin, that if you
4 breach any of the conditions, you may be brought back
5 and you may be ordered by the Court to serve any or
6 all of the unexpired portion of the sentence in jail.
7 In other words, it would turn into a jail sentence.
8 It may turn into a jail sentence if you breach the
9 conditions. Do you understand that?

10 THE ACCUSED: Yes, I do.

11 THE COURT: All right. Now, what I'm going
12 to do with respect to restitution apart from what is
13 already in the conditional sentence order, I have
14 decided not to impose a period of probation in this
15 case. I am going to make a restitution order in the
16 amount of \$68,000 in favour of the Bank of Montreal,
17 and all payments made under the conditional sentence
18 order are to be credited to the restitution order, and
19 the proceeds of sale of any of the items seized by the
20 police, which are hereby forfeited, are also to be
21 credited to the restitution order, and execution on
22 the restitution order is stayed until the community
23 service order is completed. So in other words, all
24 the money will come through the community service
25 order while it is in effect. And at the conclusion,
26 then, of the community service order, my intention is
27 that the Bank of Montreal will then have a judgment

1 for the balance, and I will leave it to Mr. Martin and
2 the bank to work out an appropriate repayment scheme.

3 Now, I will in a minute invite counsel if you do
4 have comments on the way that I have structured the
5 restitution.

6 I think, Mr. Martin, I have given you a bit of a
7 break here, and I certainly hope that you will follow
8 through with that and that you won't be back here in
9 court. And if you really are serious about getting
10 involved in teaching as a teacher's aide, you should
11 bear in mind that if you continue in this type of
12 activity, you are not going to be a good example for
13 children. If you make this a turning point and you do
14 turn things around, then at least you will be able to
15 say that you have made mistakes in the past and you
16 have paid your debt and you have turned your life
17 around. So I think it is up to you which course you
18 take. But I think it is good that you have found an
19 interest that you want to pursue. So don't let what
20 you have done in the past make it impossible for you
21 to pursue that. You can have a seat now.

22 Is there anything with respect to the
23 restitution?

24 MR. TERHART: Not from my perspective, Your
25 Honour. Thank you. I think the order as you've
26 couched it covers it as well as it could be done.

27 MS. SMALLWOOD: Yeah, I agree. I don't have any

1 comments with respect to it.

2 MR. TERHART: And I can indicate as an officer
3 of the Court I'll explain very fully the ramifications
4 to both Ms. Lepine and Mr. Martin of any breaches of
5 the respective order that they're now bound by, and
6 I'll direct them to see that those orders are entered
7 into before they leave the building today.

8 THE COURT: I should say that with respect to
9 the 7,000, I am assuming that you -- as you said, you
10 have that and you will see --

11 MR. TERHART: I will give those cheques to the
12 Clerk of the Court today.

13 THE COURT: That's fine then.

14 Thank you very much, Counsel, for your
15 submissions in this matter, and if there is nothing
16 else, then we will close court.

17 MR. TERHART: Thank you very much.

18 THE COURT CLERK: Sorry about this again. These
19 two charges (inaudible).

20 THE COURT: Just so that it is absolutely
21 clear, as I understand it, the Crown then has stayed
22 proceedings on the charge of stealing a parcel sent by
23 post --

24 MR. TERHART: Count 2.

25 THE COURT: -- the second count of the
26 Indictment and the charge of possession for the
27 purpose of trafficking that was on a separate

1 Indictment?

2 MS. SMALLWOOD: Yes, Your Honour.

3 THE COURT: I think that should cover all the
4 Court's files. Thank you, Counsel.

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7 Certified to be a true and
8 accurate transcript, pursuant to
9 Rules 723 and 724 of the Supreme
10 Court Rules of Court

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13 _____
14 Jane Romanowich,
15 Court Reporter

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