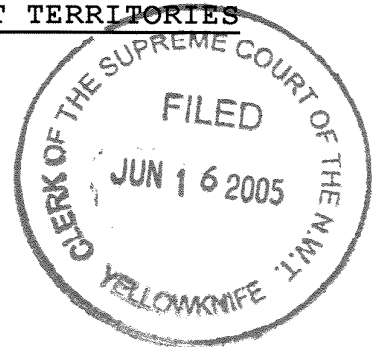


IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:



HER MAJESTY THE QUEEN

- and -

NEIL MICHAEL WOLEDGE

Transcript of the Oral Reasons for Sentence by the Honourable Justice V.A. Schuler, sitting at Yellowknife, in the Northwest Territories, on June 13th, A.D. 2005.

APPEARANCES:

Mr. J. Burke: Counsel for the Crown
Mr. H. Latimer: Counsel for the Accused
(Charges under s. 5(2) CDSA and s. 88 Criminal Code)

1 THE COURT: I must now sentence Mr.
2 Woledge for the offences of which the jury found
3 him guilty on May 20, 2005. Those offences are
4 possession of cocaine for the purpose of
5 trafficking contrary to section 5(2) of the
6 *Controlled Drugs and Substances Act* and
7 possession of a weapon for a purpose dangerous to
8 the public peace contrary to section 88 of the
9 *Criminal Code*.

10 The events the jury heard about took place
11 in the early morning hours of July 8th, 2004.
12 The facts briefly are that some individuals I
13 will refer to as the Sabourins went to Mr.
14 Woledge's home in Hay River to get some cocaine
15 from him on a front, a pay later basis. There
16 was an altercation between Mr. Woledge and one of
17 the Sabourins resulting in Eugene Sabourin being
18 taken to the hospital. Mr. Woledge was acquitted
19 by the jury of the aggravated assault charge
20 arising from that incident.

21 That incident, however, led the police to
22 obtain a search warrant for Mr. Woledge's home.
23 They arrived at the home three or four hours
24 after the incident involving the Sabourins;
25 therefore, just after 5 a.m. They had
26 information that Mr. Woledge had video
27 surveillance outside the house and firearms in

1 the house, so they considered it a high risk
2 search.

3 On arrival, they banged on the outer door
4 and announced that they were the police and that
5 they had a search warrant. They received no
6 answer and began to use an axe on the door,
7 although they were not able to get it to open.

8 Constable Linaker observed through the
9 window in the outer door that Mr. Woledge had
10 come to the inner door of the house. They made
11 eye contact. Constable Linaker drew his pistol,
12 identified himself as a police officer, said he
13 had a warrant and demanded that Mr. Woledge get
14 down. Mr. Woledge simply replied, "Take it easy.
15 Take it easy," and then closed the inner door and
16 went back inside. Although Constable Carter
17 could not see Mr. Woledge, he testified that he
18 observed Constable Linaker draw his side-arm and
19 yell, "Police search warrant. Get down."

20 Mr. Woledge testified that he had been
21 smoking crack and then sleeping and was groggy
22 and did not remember this incident. I am
23 satisfied beyond a reasonable doubt based on the
24 police officers' evidence that it did occur.

25 After Mr. Woledge closed the inner door the
26 police got the door open using a sledge hammer.
27 They were concerned at this point for their own

1 safety and the safety of those in the house, as
2 they had observed people in the upstairs windows.

3 The officers went along the hallway through
4 the inner door and to the end of the hall. They
5 had their guns drawn. At that point they
6 observed Mr. Woledge walking across the
7 living-room towards them carrying a shotgun in
8 what they called the ready carry position with
9 the barrel pointing up and towards the side wall.
10 It was not pointed at them. Constable Carter
11 yelled at Mr. Woledge to stop and get down, which
12 Mr. Woledge did immediately.

13 Constable Carter testified that he observed
14 Mr. Woledge to be intoxicated by something, that
15 he appeared docile, slow moving, glassy-eyed and
16 non-talkative.

17 The shotgun was examined and found to be
18 loaded with one round in the chamber and three in
19 the magazine. Mr. Woledge testified that he got
20 the shotgun from his bedroom where it was stored
21 and that it was already loaded when he picked it
22 up. Those are the circumstances of the section
23 88 offence.

24 In convicting Mr. Woledge, the jury clearly
25 did not believe Mr. Woledge's testimony that he
26 thought the Sabourins were coming back to get him
27 and grabbed the gun only to protect him and his

1 family.

2 After Mr. Woledge was on the floor he was
3 searched. The police found in his pants pocket a
4 baggy containing five individually wrapped pieces
5 of cocaine with a total weight of two grams worth
6 about \$600 on the street in Hay River. They also
7 found \$875 in cash in Mr. Woledge's pants pocket.

8 Drug paraphernalia and a number of weapons,
9 guns and knives, were found in the home when the
10 police searched it. What was described as a
11 machete was taped to the side of a dresser in the
12 master bedroom. Curiously, Mr. Woledge was never
13 asked about that at the trial.

14 The house itself was equipped with three
15 video cameras providing surveillance of the
16 outside main door and driveway area and connected
17 to a live feed monitor in the master bedroom.
18 The police officers during the search observed
19 that the monitor showed their own vehicles parked
20 outside. Apart from the cocaine found on Mr.
21 Woledge, no other drugs were found in or around
22 the house.

23 The jury heard evidence from Sergeant
24 Crowther, who was qualified as an expert in the
25 area of cocaine trafficking and gave the opinion
26 that the evidence of what was found in the home
27 and on Mr. Woledge, the high level of security,

1 the preoccupation with security, the way the
2 crack cocaine was packaged are all indicative of
3 Mr. Woledge being a user of crack cocaine and
4 conducting a storefront selling operation from
5 his residence. Those are essentially the facts
6 relevant to the drug offence.

7 In convicting Mr. Woledge of the section 88
8 offence, the jury was obviously satisfied that he
9 had the weapon for a purpose dangerous to the
10 public peace. Crown counsel, Ms. Tkatch, argued,
11 that after seeing the police and telling them to
12 take it easy, Mr. Woledge must have then
13 retreated back inside the house and got the
14 shotgun, indicating that there was planning and
15 premeditation on his part.

16 Mr. Latimer, on the other hand, argued that
17 the fact that Mr. Woledge would tell the police
18 to take it easy indicates that he was not really
19 focused on what was happening. He points out
20 that he was not verbally threatening the police,
21 that he had just been involved in the violent
22 altercation with the Sabourins and that this was,
23 Mr. Latimer submitted, a spontaneous reaction.

24 In my view, the initial encounter through
25 the door when Constable Linaker saw him, the fact
26 that the video monitor in the bedroom, which is
27 where Mr. Woledge got the shotgun from, which

1 showed the police vehicles out there, all lead to
2 the inescapable conclusion that Mr. Woledge knew
3 that it was the police entering the house. He
4 may have been trying to buy some time when he
5 told them to take it easy. However, once he
6 picked up the shotgun his intention could only
7 have been to confront the police officers or
8 scare them or try to hold them off with it. The
9 consequences could, as Crown counsel points out,
10 have been tragic.

11 I take into account that Mr. Woledge did put
12 the gun down and get down on the ground when told
13 to and that he did not point the gun directly at
14 the officers or make any verbal threats. I also
15 take into account Constable Carter's description
16 of him as docile.

17 The time space between Constable Linaker
18 seeing Mr. Woledge at the inner door and then
19 both officers coming upon him in the living-room
20 appears from the evidence to have been very
21 short. Because of the initial encounter at the
22 doorway, I am satisfied that there must have been
23 some thought given to picking up the shotgun. So
24 in that sense there was premeditation, although
25 for a very short period of time.

26 This is not a case of someone who was armed
27 lying in wait for the police. Still, to take up

1 a firearm in response to police action is a very
2 serious matter, not only because of the risk it
3 puts all involved in, but also because it
4 indicates some intention to, at the very least,
5 impede the officers in the lawful execution of
6 their duty.

7 I do not see any mitigation, as suggested by
8 defence counsel, in the fact that this was Mr.
9 Woledge's home, that he was defending it, and
10 that is because the home was being used to carry
11 out illegal activity. In my view, it is also
12 aggravating that Mr. Woledge chose to react this
13 way to the police when there were other people in
14 his home whose safety was also at risk because of
15 the situation. The evidence was that his two
16 daughters and a number of other young adults were
17 in the house when this occurred.

18 With respect to the possession of cocaine
19 for the purpose of trafficking charge, while the
20 amount found in Mr. Woledge's possession was not
21 large, the surrounding circumstances indicate
22 that he was carrying on a storefront trafficking
23 operation from his home, and I accept Sergeant
24 Crowther's evidence in that regard.

25 The type of trafficking an offender engages
26 in is a relevant consideration in sentencing, as
27 may be seen in many of the cases; for example,

1 the *Rahime* case from the Alberta Court of Appeal
2 cited in Mr. Latimer's memorandum. In my view,
3 it is extremely aggravating that Mr. Woledge was
4 doing this in the home where his teenage children
5 were living, setting a terrible example for them
6 and exposing them to a lifestyle that can only
7 cause them harm and bring them to grief.

8 Other than the fact that Mr. Woledge
9 complied with the police officers' command when
10 they found him with the shotgun - and I note, of
11 course, at that point he was facing two officers
12 with their own guns drawn - there are really no
13 mitigating factors in relation to the offences
14 themselves.

15 Mr. Woledge is 63 years of age. He
16 testified at trial that he has lived in the
17 southern part of the Northwest Territories for 28
18 years. At the time of the trial, he and his wife
19 were separated, but it appears there has been a
20 reconciliation. They were also separated at the
21 time of the events underlying these offences.
22 They have three children, aged 18, 15 and 14, who
23 were living with Mr. Woledge at the time of the
24 events. Mr. Woledge has training as a heavy
25 equipment operator and his journeyman's ticket as
26 a heavy-duty mechanic. He has been employed with
27 various companies and also operated his own

1 business.

2 From January 7 of 2005 until the trial in
3 May he worked for NWT Rock Services in
4 Yellowknife as a heavy-duty mechanic. The
5 general manager of that company, Mr. Herd,
6 testified that he was a hard worker, did not miss
7 any work, put in extra time and was dependable
8 with excellent workmanship. He said the company
9 would be glad to take him back on.

10 Mr. Woledge has a criminal record, although
11 much of it is dated. He was convicted of simple
12 possession of an unspecified narcotic in 1981 and
13 1989 and uttering a forged document in 1987. In
14 October, 2004 he was convicted of assault for an
15 incident that occurred prior to the events that I
16 am now sentencing him for.

17 I do take into account Mr. Woledge's age,
18 63. In my view, the only real significance of
19 his age is this: At the age of 63, Mr. Woledge
20 should know better than to get involved in the
21 drug trade, and, in particular, he should have
22 had more regard for the harm he was doing his
23 children by using the family home. He was not
24 some young naive kid who falls in with the wrong
25 people.

26 The Crown said at the sentencing hearing
27 that he is an addict. His counsel said he is

1 somewhere between a user and an addict. So the
2 extent of his cocaine use is unclear. At trial,
3 he testified that by the time of these events he
4 had been using crack for a few months. In any
5 event, there is no evidence that Mr. Woledge was
6 trafficking only to support his own habit. In my
7 view, the circumstances, especially the way the
8 house was set up with the video surveillance,
9 suggests that he was also doing it to make money.
10 There was evidence that at the time of the events
11 he was only working now and then as a mechanic.

12 As Justice Vertes said in the *Whitford* case
13 that counsel referred to, crack cocaine is a
14 highly powerful and dangerously addictive drug.
15 We heard evidence about that from Sergeant
16 Crowther. Its proliferation in the northern
17 communities is notorious. It is a terrible
18 problem in Yellowknife. From the evidence I
19 heard in this case, it is clear that it has also
20 become a problem in Hay River. Courts here and
21 elsewhere have taken a hard line on sentencing in
22 cases involving crack cocaine or cocaine. The
23 guiding principles are denunciation, to show how
24 society condemns this conduct, and deterrence,
25 both of the offender and others.

26 We have cases come into court all the time
27 of people whose lives have been devastated by

1 cocaine, either because they are users themselves
2 or because they have suffered violence or family
3 breakdown because of someone else using it. The
4 only people who want cocaine here in the north
5 are the people who want to make money from it,
6 which really means making money off other
7 people's tragedy and misfortune.

8 I take into account that Mr. Woledge has
9 spent approximately one month in pre-sentence
10 custody when the one week before trial and the
11 three weeks since trial are considered. I will
12 credit that as two months.

13 When Mr. Woledge spoke at the sentencing
14 hearing, he indicated that he is done with that
15 part of his life that has led him to be here in
16 court; that it caused him and his family a lot of
17 suffering. I am satisfied that he is remorseful,
18 although I hope he realizes that the suffering
19 extends beyond him and his family. The community
20 as a whole suffers from this activity.

21 I have to make findings about some of the
22 exhibits because of the orders sought by the
23 Crown. With respect to the forfeiture order, Mr.
24 Latimer objected to anything other than the vial
25 containing cocaine and the drug paraphernalia
26 consisting of pipes, hoses, et cetera as set out
27 in points 2 and 3 of the draft order being

1 characterized as offence related property.

2 Under section 16(1) of the *Controlled Drugs*
3 *and Substances Act*, to make the mandatory
4 forfeiture order I have to be satisfied on a
5 balance of probabilities that the property is
6 offence related property and that the drug
7 offence was committed in relation to that
8 property.

9 "In relation to" is a very wide encompassing
10 term. If I am not satisfied that the drug
11 offence was committed in relation to the
12 property, but I am satisfied beyond a reasonable
13 doubt that the property is offence related
14 property, under section 16(2) I may make an order
15 of forfeiture.

16 For purposes of this case, offence related
17 property under the definition in the *CDSA* means
18 any property by means of or in respect of which
19 the drug offence is committed, any property that
20 is used in any manner in connection with the
21 commission of the drug offence, or it can be any
22 property that is intended for use for the purpose
23 of committing the drug offence.

24 The drugs found are clearly offence related
25 property, and the drug offence of which Mr.
26 Woledge has been convicted was committed in
27 relation to that property, so section 16(1) is

1 satisfied for the drugs.

2 The remaining items are the drug
3 paraphernalia, the video cameras and the video
4 monitor, the latter two being, without any doubt,
5 the security measures taken by Mr. Woledge to
6 assist him in keeping his operation secure from
7 the police and others; also, the six cell phones
8 and satellite phones which were seized from the
9 master bedroom where the other drug paraphernalia
10 was found.

11 I am satisfied that these are all items used
12 in Mr. Woledge's drug trafficking operation and,
13 therefore, also satisfied that the offence of
14 possession of the cocaine for the purpose of
15 trafficking was committed in relation to that
16 property. I order them forfeited on the basis of
17 section 16(1). I am also satisfied beyond a
18 reasonable doubt that it is all offence related
19 property, so would have ordered them forfeited on
20 the basis of 16(2) as an alternative.

21 I also have to deal with the cash, the \$875
22 found in Mr. Woledge's pants pocket by the police
23 when they arrested him. Constable Carter
24 testified it was folded in one stack in
25 denominations of four 100s, one five, one ten and
26 twenty-three \$20 bills.

27 The evidence from Mr. Woledge was that it

1 was his children's money. There was evidence
2 from the administrator of the Fort Resolution
3 Band that the three children were paid a benefits
4 payment of \$450 each by cheque. There was
5 evidence that the cheques were cashed. Mr.
6 Woledge and the children testified that they gave
7 him the money for safekeeping. One of the
8 children had a bank account at the time. The
9 other two did not. They testified that they
10 would draw on it as they needed it for junk food
11 or clothes or lunches.

12 The cheques were cashed on July 2nd. On
13 July 8th Mr. Woledge was still walking around
14 with all that money in his pocket. Instead of
15 the children keeping it somewhere in the house,
16 which, after all, was secured and
17 video-monitored, or in their father's bank
18 account or, in the case of the one daughter in
19 her own bank account, Mr. Woledge kept it in his
20 pants pocket even when he was simply at home
21 visiting with friends, which, according to his
22 testimony, is what he was doing that night.

23 I do not believe that the money in the
24 pocket was the money the children got from the
25 Band. The explanation for why their father was
26 carrying the money in his pocket made no sense to
27 me and I found their evidence about that

1 contradictory. I am satisfied beyond a
2 reasonable doubt that it was money related to Mr.
3 Woledge's drug dealings. It will be forfeited,
4 as well, under section 16(1).

5 I should add, I am also satisfied on a
6 balance of probabilities that the requirements of
7 section 16(1) have been otherwise satisfied. So
8 that order has been signed, Madam Clerk.

9 THE COURT CLERK: Yes, ma'am.

10 THE COURT: The next issue is the gun
11 order. The Crown seeks a firearm prohibition
12 order under the discretionary provisions of
13 section 110 of the *Criminal Code*, as well as
14 forfeiture of all the firearms in Mr. Woledge's
15 possession pursuant to section 115 which operates
16 unless the order I make specifies otherwise.

17 In my view, because of the circumstances of
18 the section 88 charge, a firearm prohibition
19 order is necessary and desirable in the interests
20 of public safety. Mr. Woledge was running a drug
21 business keeping two loaded guns and many other
22 guns on the property. Even if some of those guns
23 were used for hunting at times, drugs and guns
24 are a dangerous mix.

25 There will be an order prohibiting him from
26 possession of the items enumerated in section 110
27 for a period commencing today and expiring 10

1 years from his release from imprisonment. I
2 decline to specify otherwise within the language
3 of section 115, so everything prohibited by the
4 order which is in Mr. Woledge's possession as at
5 today will be forfeited. However, none of the
6 items are to be destroyed or otherwise disposed
7 of before the expiry of 60 days from today to
8 allow a section 117 application by Daniel
9 Lafferty with respect to any item or items in
10 which he claims ownership.

11 As far as the actual sentences go, counsel
12 are quite far apart in their submissions. The
13 Crown asked for a sentence of two to two and a
14 half years' imprisonment on each offence
15 consecutive. The defence asks that I consider
16 the entire range from probation to territorial
17 time and probation, including a conditional
18 sentence.

19 Mr. Latimer argued that the sentences should
20 be concurrent. However, I disagree with that.
21 Although the offences occurred during the same
22 time frame, they are very separate and distinct
23 offences, and, in my view, consecutive sentences
24 are required, although totality will be taken
25 into account.

26 The range for possession for the purposes of
27 trafficking in cocaine where the accused is a low

1 or mid-level trafficker is two to three years'
2 jail as per the *Whitford* and *Rahime* cases. There
3 seems to be no particular accepted range for the
4 weapons charge. Each case really depends on its
5 own facts.

6 Because of the length of the sentence I am
7 going to impose on the drug charge, a conditional
8 sentence cannot be imposed. In my view, because
9 of the aggravating circumstances and the
10 seriousness of the charges, a conditional
11 sentence would not be appropriate in any event in
12 this case for either charge. Something more
13 severe, I believe, is needed to deter Mr. Woledge
14 and others who might be tempted to get involved
15 in the cocaine business in Hay River and
16 elsewhere.

17 Stand up, please, Mr. Woledge. Taking into
18 account totality, the sentence on count 2, the
19 charge of possession for the purpose of
20 trafficking, will be two years' imprisonment. On
21 count 3, the weapons charge, I would have imposed
22 a sentence of 12 months, but I will credit the
23 two months' remand time, so the sentence on that
24 will be 10 months' consecutive, which is a total
25 34-month sentence. You may sit down.

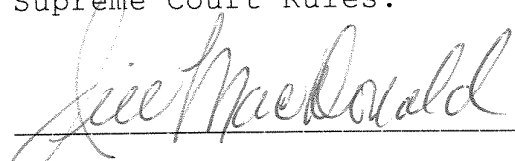
26 The victim surcharge will be waived in the
27 circumstances. Is there anything further?

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MR. BURKE: Not from the Crown, Your Honour.
THE COURT: All right. That's fine, then.
We will close court.

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



Jill MacDonald, CSR(A), RPR
Court Reporter