

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

JOHN-JOE WHALEN

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Transcript of the Reasons for Sentence delivered by The Honourable Justice J.Z. Vertes, sitting in Yellowknife, in the Northwest Territories, on the 16th day of May, A.D. 2006.

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APPEARANCES:

Ms. S. Tkatch: Counsel for the Crown

Mr. J. Brydon: Counsel for the Accused

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

THE COURT:                   The accused was convicted of simple possession of crack-cocaine. Mr. Brydon is correct that since the offence is simple possession, sentencing has to be done within the parameters of that offence. But it is also true that the particular circumstances have to be taken into account. One of those circumstances is the fact that it was, for simple possession, a fairly sizeable amount of crack-cocaine in Mr. Whalen's possession. The other circumstance that has to be taken into account is his personal history.

I may accept what he told me, that he had a very bad crack-cocaine habit. Mr. Brydon characterizes him as an addict. I am prepared to accept that too. But I note that Mr. Whalen is not without a certain degree of self-reflection and self-management. He told me he went through a treatment program before coming to Yellowknife three years ago. He said how he was aware of the problems crack causing him. I find it interesting that he was able to hold down what he said was a pretty lucrative job notwithstanding his bad habit. He is certainly aware enough of his responsibilities because he told me about how he is the father of two children and he sends support payments to them. So he is not some

helpless individual out on the streets, unaware of what he is doing, in the throes of some uncontrollable urge. And I hasten to add, there was no evidence other than what he told me out of his own mouth as to his bad crack habit. Sounded to me like he just liked getting high and getting a rush from it.

What is the appropriate sentence in this case for a 27-year-old man who obviously should know better, who has had numerous previous encounters with the criminal courts, has been convicted numerous times, including for possession of a controlled substance previously? Is Mr. Whalen's personal deterrence to be given emphasis? Is it general deterrence that should be given emphasis? Or am I to be simply concerned about his rehabilitation? I suspect he is astute enough to recognize that as he is getting older, he is the only one that can control what happens in his life. But if someone who has encountered the criminal courts before and has been punished for it and then goes out and engages in criminal activity again, then the level of sympathy for that individual starts decreasing.

Mr. Brydon is quite correct when he says that oftentimes simply throwing someone in jail

serves no good purpose.

We have in the spectrum of criminality, we have individuals who end up in the criminal courts because of social problems, personal problems, mental health issues, and, yes, addiction problems, who are more of a medical and mental health issue than a criminal one. Obviously concerns about rehabilitation should be emphasized at that level. Then we have at the other extreme people who decide to make crime their life and are quite prepared to take the risks for it. There, personal deterrence and control become the most important factors. And then for a vast bulk of people, and I think Mr. Whalen is part of that, they are capable of carrying on a normal, productive life, but at times, for one reason or another, whether it is greed, whether it is emotional distraction, whether it is a momentarily impulse, whether it is just a lack of self-discipline, they encounter problems with the criminal law. But these people ordinarily know better, and, in my opinion, Mr. Whalen knew better. And while certainly simple possession of a drug is not anywhere as serious as trafficking, the point is it is still against the law. And crack-cocaine, as Mr. Whalen himself said, and I am sure as he will

agree with me, is highly addictive, highly corrosive to one's mental health and well being, and hence it is treated more seriously. And I think, for both, aspects of personal deterrence, and in these types of situations where personal deterrence may in fact be effective, and, for aspects of general deterrence for people like Mr. Whalen, not the helpless, mentally ill, street-level, homeless drug addict, but for people like Mr. Whalen who are intelligent enough to order their lives in a way that is productive and healthy, for people like him, I think deterrence has an effect.

Stand up, Mr. Whalen. I sentence you to serve a term of imprisonment of three months. I place you on probation for a period of one year after your release. And if I need to be specific, I will be specific. The probation can be transferred to Ontario or wherever Mr. Whalen is living at the time. The terms of that probation order are simply that you are to keep the peace and be of good behaviour; you are to maintain gainful employment; you are to report to a probation officer as and when required; and you are to undertake any drug rehabilitation program that may be directed by your probation officer. Do you understand?

THE ACCUSED: Yes, sir.

THE COURT: You may have a seat.

The normal victim of crime surcharge will be applied.

Is there anything else I neglected?

Ms. Tkatch?

MS. TKATCH: No, Your Honour. Thank you.

THE COURT: Mr. Brydon?

MR. BRYDON: No thank you.

THE COURT: Thank you for your submissions.

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of the Rules of Court

Jane Romanowich, CSR(A), RPR  
Court Reporter