

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

KRISTA HARBIN

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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 23rd 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. 380(1)(a) of the Criminal Code of Canada)

1 THE COURT: Krista Harbin was convicted by  
2 me of one count of fraud, contrary to Section  
3 380(1)(a) of the Criminal Code.

4 The evidence at trial revealed to my  
5 satisfaction that the offender had engaged in a  
6 series of thefts from her employer, facilitated  
7 by the fact that as part of her job she had  
8 access to blank cheques which she was supposed to  
9 use to make purchases for her employer. She  
10 falsified several purchases and then cashed the  
11 cheques for her own benefit. She was employed  
12 from June 2003 to May 2004. The total amount  
13 fraudulently obtained was \$12,836.98, of which a  
14 significant sum was recovered through deductions  
15 from the offender's pay. The amount still owing  
16 to her employer totals \$7,208.27.

17 Ms. Harbin's counsel tells me now that she  
18 acknowledges owing that amount of money, but she  
19 still has the opinion that she obtained the money  
20 legitimately. The word "opinion" was counsel's  
21 word, not mine. Let me be clear. This is more  
22 than a mere difference of opinion. Ms. Harbin  
23 testified at trial and gave various explanations  
24 for the fraudulent cheques. I rejected those  
25 explanations as unbelievable. I concluded that  
26 the facts prove that she was guilty of criminal  
27 conduct. That is why she is here to be

1 sentenced.

2 The offender is 30 years old. She is a  
3 single mother of two young children. Since being  
4 charged with this offence, she has been unable to  
5 obtain work, so she is completing a management  
6 studies program at Aurora College. She has no  
7 prior criminal record. The pre-sentence report  
8 reveals that she has the strong support of  
9 friends and family.

10 The issue on this sentencing is whether to  
11 impose a conditional sentence, thus allowing  
12 Ms. Harbin to serve her sentence in the  
13 community. Both counsel acknowledge that this  
14 offence involves a breach of trust. Thefts from  
15 employers are regarded very seriously, and the  
16 principle to be emphasized is deterrence.

17 Counsel have provided me with cases from  
18 this and other jurisdictions where actual jail  
19 time was imposed for similar crimes, and cases  
20 where conditional sentences were imposed. The  
21 point is that each case must be determined in the  
22 context of its own particular facts.

23 The Criminal Code stipulates that a  
24 conditional sentence may be imposed if the  
25 sentence is less than two years and serving the  
26 sentence in the community would not endanger the  
27 community and would be consistent with the

1           fundamental purposes and principles of  
2           sentencing. Those fundamental purposes include  
3           denunciation of unlawful conduct, the deterrence  
4           of the offender and others, the rehabilitation of  
5           the offender, and to provide reparations for harm  
6           done. The fundamental principle of sentencing is  
7           that the punishment must fit the crime. By that,  
8           I mean that any sentence must be proportionate to  
9           the gravity of the offence and the circumstances  
10          of the offender.

11                 Another fundamental principle is that all  
12           available sanctions, short of imprisonment, that  
13           are reasonable in the circumstances should be  
14           considered. No crimes are precluded from the  
15           conditional sentencing regime, even ones where  
16           deterrence is to be emphasized.

17                 In this case, Crown counsel has submitted  
18           that an appropriate sentence would be one of six  
19           to nine months of actual imprisonment. She  
20           argued that the failure of the accused to take  
21           responsibility should militate against  
22           consideration of a conditional sentence because  
23           it reveals that the community would still be at  
24           risk from her. Also, the consideration of  
25           endangerment to the community carries with it a  
26           risk not just from the offender but from others  
27           due to the dilution of the principle of general

1           deterrence if a conditional sentence is imposed  
2           in an inappropriate case.

3           It seems to me, with respect, that the point  
4           about the offender failing to accept  
5           responsibility is really asking me to penalize  
6           the offender for a lack of remorse. As counsel  
7           acknowledged, a lack of remorse cannot be treated  
8           as an aggravating feature any more than a not  
9           guilty plea can. The absence of remorse simply  
10          means that the offender does not gain the benefit  
11          of having that taken into account as a mitigating  
12          effect.

13          In this case, I am satisfied that there is  
14          no need to separate Ms. Harbin from society. She  
15          poses no danger to the community and the objects  
16          of punishment and general deterrence can be met  
17          by strict conditions. Further, she is a  
18          first-offender, so the need for restraint is  
19          heightened.

20          I recognize that for Ms. Harbin's former  
21          employer, this was a significant loss. It is a  
22          small, family-owned company that relies, I am  
23          sure, on the personal honesty of its employees.  
24          Ms. Harbin has offered to and must make  
25          restitution. But in the greater scheme of  
26          things, this crime is on a lesser scale than most  
27          fraud cases that come before the Court both in

1 terms of amount and the period of time in which  
2 it was carried out.

3 Finally, I see no reason why the principles  
4 of personal and general deterrence cannot be  
5 emphasized by imposing a longer conditional  
6 sentence than would be imposed if it were a  
7 sentence of actual imprisonment. After all,  
8 there is a big difference between actual jail and  
9 house arrest.

10 Stand up, Ms. Harbin.

11 I impose a sentence of incarceration of 18  
12 months but to be served in the community. What  
13 that means is that this is a conditional  
14 sentence. You will be on the following  
15 conditions:

16 First, you must keep the peace and be of  
17 good behaviour.

18 Second, you must appear before the Court  
19 when and if required to do so.

20 Third, you must report to a conditional  
21 sentence supervisor in Yellowknife within 48  
22 hours and, thereafter, when and where required by  
23 the supervisor and as directed by the supervisor.

24 Four, you will remain within the Northwest  
25 Territories unless you receive prior written  
26 permission from your supervisor to go outside the  
27 Northwest Territories.

1           Five, you will notify your supervisor of  
2           your address and/or employment, and/or attendance  
3           at school, the hours of any employment and the  
4           hours of any school courses that you are  
5           attending, and you will notify your supervisor of  
6           any changes to those details.

7           Six, you will perform 100 hours of community  
8           service at the direction of the supervisor within  
9           the first 12 months of your conditional sentence.

10          Seven, for the first 12 months of your  
11          conditional sentence, you will be under house  
12          arrest. That is, you must remain indoors at your  
13          place of residence 24 hours a day, except for the  
14          following exceptions: To complete the 100 hours  
15          of community service as already ordered; to  
16          attend school or for work (and as previously  
17          indicated, you must notify your supervisor of the  
18          hours of such school or work); to obtain  
19          emergency medical attention for yourself or your  
20          children; for one period per week of not more  
21          than three hours to obtain groceries and other  
22          necessaries for yourself and your children; and  
23          for one period per week of not more than three  
24          hours for purposes of recreation with your  
25          children; and to attend the appointments to see  
26          your supervisor.

27          Eight, you are to cooperate fully with your

1 supervisor or the police to verify your  
2 compliance with this conditional sentence order,  
3 whether that is by way of random checks by  
4 telephone or in person at your residence.

5 Nine, you are to repay the amount of  
6 \$7,208.27 as follows: By payment of the sum of  
7 \$2,500 by no later than June 30th of 2006; by a  
8 further payment of \$2,500 by no later than  
9 December 30th, 2006; and the balance by no later  
10 than June 30th, 2007. All payments are to be  
11 made by cash or certified cheque payable to the  
12 Clerk of the Court, who will then disburse the  
13 funds to the victim in this case, Ron's Auto  
14 Service.

15 I have made deadlines for these payments,  
16 but if you wish to pay them off in periodic  
17 payments each month, that is up to you. The  
18 condition requires that those amounts be paid by  
19 no later than those dates. Yes?

20 MR. BRYDON: My difficulty is with the  
21 December date. The court office is not open  
22 between -- I believe, this year, it's the 22nd of  
23 December and the 3rd or 4th -- or maybe it's the  
24 2nd of January. I wonder if it might not be more  
25 appropriate to make the date either a little  
26 earlier or a little later.

27 THE COURT: Well, then I'll say the 20th



1 of December, 2006.

2 I will also make a restitution order in  
3 favour of Ron's Auto Service, and here,  
4 Ms. Tkatch, perhaps you can consult with the  
5 clerk and make sure you have the full and proper  
6 name of the company. The restitution order will  
7 be in the amount of \$7,208.27. That restitution  
8 order will be made pursuant to Section 738 of the  
9 Criminal Code, but the execution and enforcement  
10 of that order is stayed until the expiry of the  
11 repayment conditions contained in this  
12 conditional sentence order. So in other words,  
13 if you do not make those payments, there are two  
14 potential consequences. One, you can be sued by  
15 Ron's Auto Service. But more significantly, that  
16 would be considered a breach of the conditions of  
17 this conditional sentence order. Any breach of  
18 this conditional sentence order of any condition  
19 could result in the conditional sentence order  
20 being cancelled and you having to serve whatever  
21 is left on that term in jail. Do you understand?

22 THE ACCUSED: Yes, I do.

23 THE COURT: You can have a seat.

24 I will direct that the clerk, with the  
25 assistance of defence counsel, explain the terms  
26 and conditions to you, Ms. Harbin. But generally  
27 speaking, as I said before, the main thing you

1           have to remember is this:  If there is  
2           non-compliance with any term of this order, the  
3           result will very likely be that you will be in  
4           jail and not at home, and I hope you understand  
5           that.

6           THE ACCUSED:                    Hmm-hmm.

7           THE COURT:                    Are there any other details I  
8           neglected, Counsel?

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

10          MR. BRYDON:                    No, sir.

11          THE COURT:                    Mr. Brydon?  Very well.  Under  
12          the circumstances, the victim of crime fine  
13          surcharge will be waived.  Good luck, Ms. Harbin.  
14          Thank you, Counsel.

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18    Certified Pursuant to Rule 723  
19    of the Rules of Court

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22    Jane Romanowich, CSR(A), RPR  
23    Court Reporter

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