

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

LINDSAY JAMES MAIR

Transcript of the Reasons for Sentence delivered by The Honourable Justice C. Kenny, sitting in Yellowknife, in the Northwest Territories, on the 19th day of September, A.D. 2006.

APPEARANCES:

Ms. S. Tkatch:	Counsel for the Crown
Mr. L. Mair:	For himself

(Charges under s. 7(1) and 4(1) of the Controlled
Drugs and Substances Act)

1 THE COURT: Mr. Mair has been found guilty
2 of two charges: One for production of marijuana
3 contrary to Section 7(1) of the Controlled Drugs
4 and Substances Act and, also, the charge of
5 possession of marijuana contrary to Section 4(1)
6 of the Controlled Drugs and Substances Act.

7 Mr. Mair is 47 years old and a mechanic with
8 a local machine shop. While he has a previous
9 criminal record, it is over 20 years old and of
10 no impact in this sentencing.

11 There was not enough marijuana found to
12 indicate a commercial operation, but the Crown
13 argues that there is a large amount for personal
14 use.

15 Mr. Mair says that he has an arthritic
16 condition that he has had since he was 21 years
17 of age and that he is under a doctor's care for
18 this. He has a letter from his doctor confirming
19 this. He indicates that he grows marijuana for
20 his own use and that it assists him with his
21 sleep, with no side affects, unlike conventional
22 medicine which he has used for over 20 years.

23 The police found in the residence five baby
24 plants, four mature plants, and a harvested crop.
25 The system to grow the marijuana was
26 sophisticated and included sophisticated
27 lighting, a watering system, fertilizer, and many

1 books on the subject of growing marijuana.

2 There are no mitigating circumstances in
3 this case.

4 The Crown alleges that a major aggravating
5 factor is the fact that the production room was
6 next to Mr. Mair's son's bedroom, and the smell
7 of marijuana emanated throughout the house as
8 evidenced by the police smelling of the marijuana
9 as soon as they entered the premises. While
10 there is no evidence that Mr. Mair was supplying
11 his under-age son with marijuana, his son did
12 have a small amount on him when he was arrested
13 and there was also marijuana found in his son's
14 bedroom during the search.

15 The Crown submits that the predominant
16 sentencing principles here are specific and
17 general deterrence.

18 There are no helpful decisions in this
19 geographical location to deal with the facts of
20 this type of case. The Crown suggests that in
21 cases of simple possession of a large quantity of
22 marijuana for personal use, that the sentences in
23 the Territorial Court generally range from large
24 fines to short periods of incarceration. The
25 Crown seeks a period of incarceration of two to
26 three months.

27 Mr. Mair says that he has severe financial

1 pressures and owes Revenue Canada money. He
2 suggests a suspended sentence. A suspended
3 sentence clearly is not appropriate in these
4 circumstances.

5 On the production charge, therefore, I
6 impose a term of imprisonment of one day, which
7 has been served by your attendance here today,
8 Mr. Mair. On the possession charge, I am of the
9 view that a large fine can satisfy the principles
10 of specific and general deterrence.

11 Now, Crown, you did not give me any
12 information on that. I am wondering if you have
13 any suggestions on this.

14 MS. TKATCH: Yes, Your Honour. My -- the
15 range I kind of had in mind would be anywhere
16 from a fifteen-hundred to three-thousand-dollar
17 fine.

18 THE COURT: Thank you.

19 I would impose a fine on the possession
20 charge of \$2,000, which can be paid over time.
21 There is, also, I believe, the fine option
22 program that is available as well, Mr. Mair, and
23 you can make inquiries about that if you wish.

24 Can you give me an idea of the length of
25 time you might need to pay the fine so I can
26 impose the appropriate time period.

27 MR. MAIR: Your Honour, I've committed to

1 Revenue Canada to pay them a hundred dollars a
2 week until January. That's about all I've -- my
3 surplus money that I'm able to pay them. I would
4 request that maybe till next June. June of next
5 year. That would allow me six months between
6 January and June.

7 THE COURT: To pay it?

8 MR. MAIR: To pay that amount.

9 THE COURT: Does the Crown have any
10 objection to that?

11 MS. TKATCH: No, Your Honour.

12 THE COURT: So the fine will be paid on or
13 before June 30th, 2007. Okay?

14 MR. MAIR: Yes, Your Honour.

15 THE COURT: Now, the Crown also seeks an
16 order for forfeiture and return. Now, Mr. Mair,
17 in his submissions, Ms. Tkatch, indicated that he
18 was wondering about his pellet guns and the
19 paintball guns.

20 MS. TKATCH: Yes, Your Honour. With regard
21 to the paintball equipment - this is information
22 I got from Constable Vezina yesterday - they did
23 take in the paintball guns. And normally the
24 course is if a parent wants the paintball -- the
25 equipment relinquished to the police, they can
26 sign off on it. He advised me that that night or
27 morning when Dylan Mair's mother arrived to pick

1 him up, she signed the papers and that the
2 paintball equipment was relinquished then on her
3 signature and they've been subsequently
4 destroyed.

5 So with regard to the pellet gun --

6 THE COURT: Does it fit in the definition?

7 MS. TKATCH: Off the top of my head, I
8 don't know if the pellet gun is a firearm,
9 because obviously there would an automatic
10 forfeiture of the firearms seized. I will just
11 need to look into that.

12 THE COURT: I guess my view is, clearly,
13 whatever is covered under Section 109 -- and I
14 will grant a Section 109 order which prohibits
15 possession of firearms and associated equipment
16 that is specified in Section 109 for ten years,
17 Mr. Mair. That is mandatory under the law, so
18 that order is granted.

19 So the issue is whether or not pellet guns
20 falls under that. If pellet guns falls under
21 that, then they are prohibited. If not, then
22 I -- and it is not listed in your -- specifically
23 listed --

24 MS. TKATCH: No.

25 THE COURT: -- in the order of forfeiture
26 and return. So I guess my thought is that unless
27 it falls under Section 109, that they would be

1 returned to Mr. Mair.

2 MS. TKATCH: The information I'm quickly
3 getting from the police here, that pellet guns
4 are not classified as firearms. So I would then
5 add that to the items returned list.

6 THE COURT CLERK: Excuse me. Your Honour.
7 Would a surcharge apply to the fine?

8 THE COURT: The victim fine surcharge,
9 Madam Clerk is asking about.

10 MS. TKATCH: Yes. There's been no evidence
11 of -- Mr. Mair is working. I think he has the
12 ability to pay. It's 15 percent in our
13 jurisdiction.

14 THE COURT: I impose a victim fine
15 surcharge as well.

16 Were there two pellet guns? is my
17 recollection. I might be mistaken.

18 MR. MAIR: If I may, Your Honour. There
19 was three. There was a pellet pistol -- a pellet
20 pistol and two rifles.

21 MS. TKATCH: That's correct.

22 MR. MAIR: And there was a fourth, a
23 plastic-model gun. It's a model; that's all.

24 THE COURT: Again, if it doesn't fall
25 under the definition, it would be returned to
26 you.

27 So I have added to the items to be returned:

1 pellet guns and guns not covered under Section
2 109 of the Criminal Code.

3 Do you want me to sign both of these copies
4 or --

5 MS. TKATCH: Yes, if you may, Your Honour.

6 That way I can get one copy to the police as soon
7 as possible so Mr. Mair can pick up his...

8 THE COURT: Okay. Okay, I think that
9 deals with all matters.

10 MS. TKATCH: Just one question, please,
11 Your Honour, just so I can indicate how much of a
12 panic I have to throw my assistant into. I've
13 got mostly prepared the gun order, other than the
14 sentencing part. Are you planning to fly out
15 today?

16 THE COURT: I am, at three o'clock. So I
17 would be leaving here about two.

18 MS. TKATCH: Okay. I will make sure it's
19 in first thing this afternoon for your signature.

20 THE COURT: Thank you very much.

21

22

23 Certified Pursuant to Rule 723
24 of the Rules of Court

25

26 Jane Romanowich, CSR(A), RPR
27 Court Reporter