

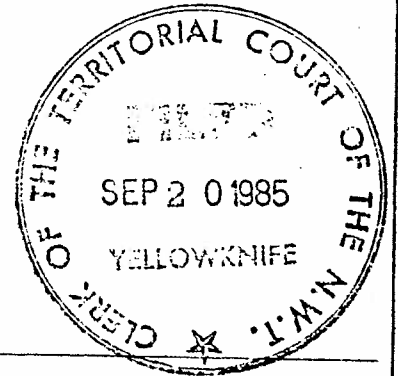
IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

VS

ERNEST DEAN MONKMAN



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

The Reasons for Judgment and Oral Decision of His Honour, Judge T. B. Davis, sitting at Yellowknife in the Northwest Territories, on Wednesday, July 3rd, A.D., 1985.

APPEARANCES:

MS. L. ERICKSON: Counsel for the Defence

MR. M. ZIGAYER: Counsel for the Crown

1 THE COURT: Having heard the evidence given at the hearing and
2 having had a chance to review the submissions by Counsel, I
3 wish to make a finding on the facts relating to the matter.
4 The accused was in a motor vehicle being arrested and searched
5 by the police and being found in possession of two packets in
6 a pocket in his jeans. There was also found a bag in the parka
7 sleeve in the vehicle containing over 15 individual bags or
8 packets of a similar looking plant material. From an analysis
9 of the 11 individual items, nine contained a restricted drug.
10 Two similar looking packets did not contain a restricted drug.
11 The other unanalysed packets that were there and were intro-
12 duced as exhibits and found in the big bag looked similar to
13 the packets, some with and some without the drug, and since proof is
14 required of everything before the Court, I must use the finding
15 of the unanalysed packets to show only the presence of visibly
16 similar packets but not as proof of the presence of the add-
17 itional unanalysed items.

18 However, their presence in the larger bag with the packets
19 of the drug certainly caused me to infer that the accused, who
20 had the actual control over the bag, was of the opinion what
21 was in the bag could have been the same as what was found in
22 the other packets and in this way, the accused upon obtaining
23 or purchasing of the packets with no easy way of doing a chem-
24 ical analysis, would be unable to be assured of the existence
25 of the drug, even if it were his intention to purchase them.

26 I do think, however, that their presence causes me to
27 presume that he would have retained possession of those other

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

items only if the goods were of interest to him. That doesn't mean, of course, that I can make a finding that the unanalysed packets were a restricted drug so I do not make that finding, of course.

It was admitted that the accused's fingerprints were found on three of the exhibits, two of which were small packets which contained the restricted drug and therefore, the Court is finding that there was possession in the nine separate packets or bags which were produced as exhibits and found to have contained the restricted drug.

Is the possession of nine such small packets enough to have the Court find that it is for the purpose of trafficking? That is the point that must be determined today. In order to make that determination, there are a number of factors that I must consider. One of them is that considering that one quarter ounce of the drug, psilocybin, which is also known as magic mushrooms, is about the maximum dosage that a person could use in one day and that daily use in excess of that amount would lead to possible serious illness. Also considering the fact that the goods were in individual packages in the quantities or sizes that usually would be sold on the street and considering that the value of the items shown to have contained the prohibited drug would have been in excess of \$700 with no explanation by the accused on any of these factors, which factors are usually determinant on the purpose of possession of items, I am of the opinion that the Crown has proved beyond a reasonable doubt that the accused had possession of

1 the restricted drug for the purposes of trafficking and although
2 it was a very intriguing argument in submission presented by
3 the Defence Counsel, I'm today satisfied beyond a reasonable
4 doubt and will enter a conviction on that basis. Do you wish
5 to proceed with sentencing this afternoon?

6 MR. ZIGAYER: Certainly, sir. If we might have a short adjourn-
7 ment, perhaps until a quarter after?

8 THE COURT: 15 minutes then.

9 MS. ERICKSON: That's fine, sir.

10 (COURT ADJOURNS)

11 (COURT RESUMES)

12 MR. ZIGAYER: Your Honour, the Crown earlier elected to proceed
13 by way of summary conviction in this matter as such, the max-
14 imum penalty which can be imposed is 18 months imprisonment.
15 My friend and I have discussed this matter together and would
16 submit a common recommendation to you that you impose a term
17 of 60 days imprisonment which might be served intermittently
18 That period of imprisonment to begin the serving of that in-
19 termittent time to begin on the weekend of Friday the 12th of July.
20 That's our submission.

21 THE COURT: Weekends serving from Friday to Monday each
22 week?

23 MR. ZIGAYER: Yes, sir, that would be our joint submission.
24 Of course, you are not bound to follow it. That would be
25 from 7:00 p.m. on Friday until 7:00 a.m. Monday morning.

26 MS. ERICKSON: That would be fine, sir.

27 THE COURT: Not very often is the Court able to have a joint

1 submission that seems reasonable under the circumstances. I
2 presume I'm not being referred to any previous convictions and
3 therefore, that this is the first offence of the accused; although
4 that is not before the court at this time.

5 MR. ZIGAYER: Sir, if I might, the previous record of the
6 accused is not related to this sort of matter. There are two
7 previous convictions both entered into May of 1984 at Fort
8 Simpson; one a mischief Section 387 (4) and the other Section
9 85, possession of weapon for purpose dangerous. On both of
10 those, the accused received a fine but they aren't related to
11 this sort of matter.

12 THE COURT: I really meant that there was no related record
13 and I'm satisfied that in this instance, if both Crown and
14 Defence Counsel feel that 60 days to be served intermittently
15 would satisfy their requirement, it would appear also appropriate
16 to me to satisfy the principles of sentencing and that
17 is to indicate to the accused that he's going to jail for being
18 convicted of the offence today and I presume therefore, that
19 he will be deterred from this type of offence in the future and
20 others will know if they have possession of quantities of any
21 kind of drugs under the restricted list in the Food and Drugs
22 Act, that they also will likely be penalized by jail terms.

23 On that basis, I'm satisfied to require that the accused
24 serve 60 days, to serve it intermittently between 7:00 p.m.
25 on Fridays and 7:00 a.m. on Monday mornings at the Yellowknife
26 Correction Center and that he appear for the first weekend on
27 the 12th day of July, 1985, and therefore, each weekend until

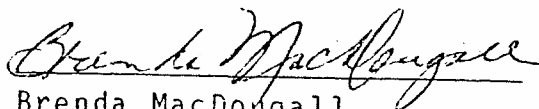
1 the time is served.

2 Madame Clerk, you can put with regard to sentencing in the
3 usual form to mean that it will be itnermittent service and
4 the accused will be required to sign a probation order that will
5 be in effect before he leaves here today covering that period.

6 THE CLERK: Thank you, sir.

7 (AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED)

8 Certified a correct transcript,

9 

10 Brenda MacDougall

11 Court Reporter

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27