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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

JOHNNY OWINGAYAK

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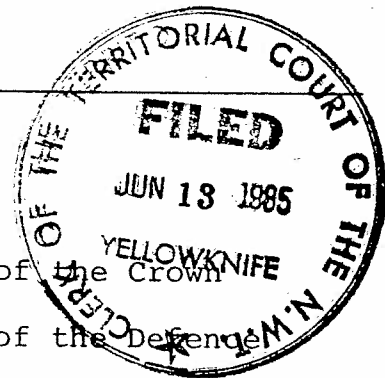
Transcript of the Oral Reasons for Sentence delivered  
by His Honour Judge T. B. Davis, sitting at Yellowknife,  
in the Northwest Territories, on Friday, May 17, A.D.  
1985.

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APPEARANCES:

MR. M. E. N. ZIGAYER      On behalf of the Crown

MR. C. ROGERS              On behalf of the Defence



1 THE COURT: Mr. Johnny Owingayak, who is a resident of Baker  
2 Lake, in the Northwest Territories, has entered a plea of  
3 guilty to a charge that he did on or about the 18th of April,  
4 1985, at Baker Lake, have in his possession some cannabis  
5 marijuana for the purposes of trafficking, and therefore  
6 violated Section 4(2) of the Narcotics Control Act. The  
7 accused had the matter adjourned for sentencing and appears  
8 before the Court today admitting to the facts as presented,  
9 which indicate that while he was a student in Yellowknife,  
10 in February, had purchased one-quarter ounce of marijuana  
11 and had taken it home to Baker Lake where he made a number  
12 of cigarettes, which he sold then for ten dollars each. The  
13 accused had been found with \$730.00 in his possession, which  
14 indicates that he recently had sold approximately 73 cigar-  
15 ettes, and there were 19 more found in the residence of the  
16 accused when a search was done by the police; and the accused  
17 then co-operated to the extent that he produced a further  
18 eight more marijuana cigarettes, which would have totalled  
19 approximately one thousand dollars in sale value, after  
20 having purchased the original quantity for seventy dollars,  
21 indicating therefore a very substantial profit margin.

22 The accused had the knowledge and the ability to  
23 roll the cigarettes himself, and therefore I must recognize  
24 that although the accused himself has no criminal record and  
25 is not a sophisticated drug trafficker, that he acted in a  
26 way that showed his ability to traffic in this drug and acted  
27 with obvious greed and a very strong profit motive.

1           The accused unfortunately as well was on probation  
2 at the time that this offence occurred; and it is often the  
3 opinion of the Court that a person on probation is not en-  
4 titled to be treated as a first offender, because they had  
5 been before the courts previously and were aware of the fact  
6 that they were expected to obey the law.

7           I am prepared today to order that the \$730.00 that  
8 had been found in the possession of the accused and admitted  
9 to have been gained by the sale of the soft drugs will be  
10 forfeited as allowed under the Narcotics Control Act, and  
11 also direct that at the expiration of the appeal period, the  
12 narcotics that have been seized shall be destroyed in the  
13 usual way.

14           Both Crown and defence counsel have referred a  
15 number of cases to me that have been cases presented by both  
16 the Supreme and the Appeal Courts in the Northwest Territories,  
17 as well as some cases of a similar nature that have been  
18 decided by the Territorial Court in the past. It is obvious  
19 that the courts have found that drug trafficking or possession  
20 for the purposes of trafficking is something that should be  
21 discouraged, and discouraged to the extent that usually jail  
22 is required if a person is convicted of the offence, because  
23 it is believed that jail will be the deterrent to protect  
24 small communities from the adverse effects of the importation  
25 of drugs of any type. Various cases have referred to the  
26 delicate social and economic characteristics of the small  
27 communities. Crown counsel has pointed out properly that

1 Baker Lake itself is a small northern community, which is  
2 isolated, and therefore ordinarily not subject to the avail-  
3 ability of drugs that often are found in the southern areas  
4 or in larger communities.

5 I also recognize that the accused, although a young  
6 man, is certainly an intelligent enough young twenty-year-  
7 old, that he has completed grade twelve education during the  
8 past few years in Yellowknife, and that he took advantage  
9 of people in his own community when he went home and made  
10 these cigarettes and sold them at such a high profit. I  
11 also feel that the accused, who has had a good education,  
12 is a person that should be setting an example for people in  
13 the community, because with privilege comes responsibility,  
14 and when a young person who has left the community and comes  
15 back with a good education, I expect him to be a person that  
16 sets an example rather than act as an outsider and a person  
17 who is indifferent to the community.

18 All of the judgments in the past have indicated  
19 that courts should, in their sentencing, discourage outsiders  
20 from bringing drugs into small communities, and I feel that  
21 is as important that courts discourage insiders or people  
22 who are from the north also from being in a position where  
23 they benefit by bringing drugs to a small community and having  
24 them available for the purposes of sale. It's necessary for  
25 the Court to follow the directions of the appeal decisions  
26 and the Supreme Court of the Territories in letting the  
27 community and the young people in the various communities

1 know that the courts wish to discourage the importation of  
2 any drugs and the sale of even soft drugs in small communities,  
3 and therefore protect others in the community from this par-  
4 ticular act.

5 The cases that have been referred to have generally  
6 ranged between six months and two years in jail for various  
7 offences; and I have had the opportunity also of reviewing  
8 some relatively recent cases of either trafficking or having  
9 possession for the purposes of trafficking filed by Mr.  
10 Justice Ducros, visiting judge of the Northwest Territories  
11 in Frobisher Bay in April of 1985, when in the case of  
12 R. v. Dubeau, a twenty-eight year old, was given six months  
13 in jail for trafficking in a soft narcotic in Frobisher Bay  
14 Moffat, a twenty-nine year old resident also of Frobisher  
15 Bay got nine months in jail consecutive on two different  
16 offences for trafficking on two different occasions. A  
17 thirty-four year old named Murray was sentenced to three  
18 months in jail consecutive to other charges on which he  
19 received four months in jail for the same offence. The  
20 cases generally indicate that if it's a soft drug and a  
21 person has trafficked in it or has possession for the pur-  
22 poses of trafficking, and the amount is not substantial, then  
23 six to twelve month period is appropriate. If the amount of  
24 money is substantial, of course it can go up to seven years  
25 as was recently decided in the Alberta Court of Appeal when  
26 a person had a substantial amount of hashish for the purposes  
27 of trafficking, and it followed a case in Nova Scotia where

1 a person named Cranston in 1985 had been placed in jail for  
2 seven years for having fifty-two pounds of hashish worth  
3 between \$230,000 and \$350,000 in value. That man, who was  
4 married and had four children, had a good reputation, but  
5 had one previous conviction under the Income Tax Act, the  
6 Appeal Court felt that seven years was not excessive at all  
7 for trafficking in soft drugs.

8 I think today generally that it's necessary for me  
9 to consider jail in the range that has been referred to both  
10 by Crown and defence counsel, and I wish to thank both Crown  
11 and defence counsel for reviewing the cases and analyzing  
12 them in a proper and accurate way, because I felt the anal-  
13 yses were very realistic and fair and that it would be proper  
14 for me therefore to consider between six and twelve months.  
15 On that basis, I feel today that I am going to impose an eight  
16 month total, since the accused was on probation. Otherwise,  
17 it might be that I would consider a few weeks off that term,  
18 but because of the high amount of profit in this instance,  
19 even taking into account the fact that the accused has no  
20 record and that it was a very small amount--only a quarter  
21 ounce--but the value was as substantial as in many other  
22 cases which include more than a quarter ounce; and even also  
23 recognizing that the accused would have been subjected to  
24 the introduction of soft drugs because of being in school  
25 in Yellwokknife, I do feel still that the community must  
26 be advised that the courts will impose penalties that mean  
27 something if people are caught with drugs in small communities

1 that can have such a disasterous effect in a community over  
2 a period of time; and therefore today I'm going to impose  
3 a period of eight months in jail on the accused.

4 MR. ZIGAYER: Thank you, sir.

5 (AT WHICH TIME THIS MATTER WAS CONCLUDED.)  
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7  
8 Certified a correct transcript

9 *Edna Thiessen*  
10 Edna Thiessen, Court Reporter  
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