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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

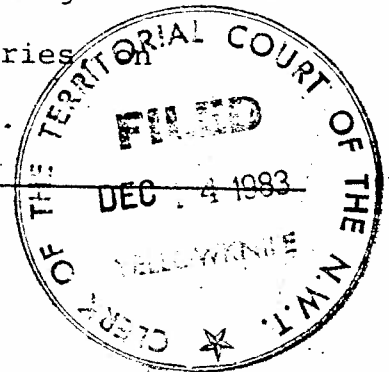
IN THE MATTER OF:

HER MAJESTY THE QUEEN

VS

HENRY LEISHMAN

Transcript of the Reasons for Judgment Delivered by
His Honour Judge R. M. Bourassa, sitting at
Yellowknife in the Northwest Territories
Wednesday, November 16th, A.D., 1983.



APPEARANCES:

MS. N. BOILLAT: Counsel for the Crown

MR. D. COOPER: Counsel for the Defence



1 THE COURT: Henry Leishman, also known as Harry Leishman,
2 is today convicted of an offence under Section 326(1)(b)
3 of the Criminal Code of Canada.

4 Mr. Leishman altered a twenty-one dollar cheque to
5 read twenty-one thousand dollars, and presented it at his
6 bank. After depositing the cheque into his own account,
7 he succeeded in obtaining, at a different counter, certified
8 cheques and cash withdrawals for approximately the same
9 amount.

10 The scheme, and I use that phrase lightly, germinated
11 over a period of approximately ten days. The accused
12 wrestled with the decision as to whether he should commit
13 the crime or not, and finally on the ninth day, I believe,
14 went through with his plan.

15 There have been certain documents filed on sentencing:
16 a copy of the accused's criminal record, which is admitted,
17 as well as a pre-sentence report with a number of attachments
18 to it.

19 With respect to the pre-sentence report, I believe it
20 is of limited use. For the most part it consists by and
21 large of a letter by the accused to the Court in effect, and
22 copies of correspondence between the accused and his family.
23 I believe that is going far afield from the basic concept
24 behind a pre-sentence report, which is an assessment by an
25 independent party with respect to an accused person's
26 background. This is not a format that is to be encouraged.
27 However, I accept the submissions of Defence counsel,



1 that the accused is undergoing some emotional and
2 psychological problems, and this is evident in the P.S.R.
3 After hearing the Crown's position and the facts as admitted
4 by the Defence, my first inclination in dealing with an
5 offence of this nature is to consider a penitentiary term:
6 The accused is convicted of a serious offence, one carrying
7 with it a maximum penalty of fourteen years in jail. He
8 was dealing with a sum of twenty-one thousand dollars,
9 which is no small amount. Although we are dealing with
10 money, and not lives, the potential for harm is substantial.
11 The bank upon which this scheme was perpetrated stood to
12 lose twenty-one thousand dollars. If by chance the drawer
13 of the cheque had had 21,000 dollars in its account (and
14 there is no evidence it did), the bank would be out of it,
15 and it would be a situation where an innocent third party
16 is harmed to a significant degree.

17 Notwithstanding the accused's problems, I don't believe
18 the Court can ignore its obligation to protect society, and
19 that means protect society from the master criminals as
20 well as protecting society from people such as Mr. Leishman,
21 who, for his own reasons, real or imagined, commits crimes.

22 I have to concur with Defence counsel to a degree
23 that there was no hope of avoiding detection. That is obvious
24 on the facts. Further more, it would appear that the
25 accused abandoned his scheme shortly after receiving the
26 certified cheques, and he did not use the airline reservation
27 he had for that day. He went home, and it is given to me



1 that within a very short period of time after obtaining
2 these monies, he presented himself back at the bank and
3 surrendered the documents, the certified cheques and the
4 travellers cheques. As a result of that, there has
5 been no loss suffered.

6 While I believe I can take the potential for loss as
7 an aggravating factor, I can and do take into account that
8 there was in fact no loss.

9 The most troublesome part of this case, in my
10 estimation, is the fact that the accused was convicted only
11 one year ago for a very similar offence involving five
12 charges for theft, forgery and uttering for which he
13 received a total of sixteen months imprisonment. I am
14 certain rehabilitation played a substantial role in the
15 Court's determination as to a fit sentence at that time.
16 I am certain Mr. Leishman used every facility that was
17 available and every program that was available to him in the
18 Yellowknife Correctional Centre for his ultimate rehabilita-
19 tion, that is to say, temporary absent passes, statutory
20 remission, earned remission and parole, and in fact, I
21 understand from the submissions today that as a result of the
22 use of these programs, he was successful in being able to
23 carry on his business as a publisher while he was in jail.

24 Notwithstanding that experience and notwithstanding the
25 convictions today, it is distressing that the accused, in his
26 own writings to the Court can say that he does not consider
27 himself to be a criminal. Let me state clearly that Harry



1 Leishman is in law a criminal as well as in fact.

2 The Court can sympathize with those that feel over-
3 whelmed by troublesome circumstances, and rate their self-
4 worth as low. However, there are a lot of people in this
5 world that have psychological problems, emotional problems,
6 financial problems and family problems. That is what life
7 is all about - problems, yet they do not resort to crimes.
8 This is the second time Mr. Leishman has resorted to crime
9 during a "troubled" period, and I am very concerned that
10 it be clearly understood that emotional problems notwith-
11 standing, nobody has the right to do this kind of thing.
12 It is criminal. It is against the law, and there will be
13 punishment for it.

14 Defence counsel urges the Court to consider rehabilita-
15 tion. I believe I have to consider that in the context of
16 the offence and the context of the accused's situation, not
17 only his previous convictions and the efforts that I am sure
18 were made in the past as well as what was given here today.
19 I believe that the impact of rehabilitation on this count
20 must begin to face in terms of weight to be attributed to
21 it by the Court when the accused is back before the Court
22 again in circumstances such as this accused.

23 I believe under these circumstances we are fast approach-
24 ing the situation described in R. vs. Levesque, 19 CR, p. 43,
25 where, because of the existance of administrative facilities
26 and tribunals, the question of rehabilitation is properly
27 left to those agencies rather than being a significant



1 consideration by the Court.

2 The Court can take and does take personal circumstances
3 into consideration, but it must be remembered that this is
4 a crime where people and institutions stood to lose
5 significant amounts of money, where a lot of harm and trouble
6 would have been caused had Mr. Leishman continued in his plan.

7 What I do take in substantial mitigation is the
8 fact that the plan was abandoned. I believe that had Mr.
9 Leishman boarded the aircraft to leave Yellowknife, then
10 the situation would be very different and the term I was
11 initially contemplating would be appropriate.

12 In assessing or attempting to reach what the Court
13 believes is an appropriate sentence, the Court can consider
14 a number of factors, and it is never a problem identifying
15 those factors. The problem usually arises in trying to
16 balance them and weigh them appropriately.

17 I take into account the degree of premeditation which
18 I have already indicated I feel is substantial, but I think
19 that that, as an aggravating factor, has to be tempered by
20 the fact that the plan was abandoned.

21 I am considering the circumstances of the offence in
22 that the accused had no hope of avoiding detection, but I
23 am not prepared to find that the accused had no hope of
24 avoiding apprehension had he carried through with whatever
25 plan he had to escape.

26 I have already indicated that I feel the crime is grave.
27 It is a serious one. The maximum penalty of fourteen years



1 imprisonment reflects that.

2 With respect to the attitude of the offender, much is
3 said in the pre-sentence report about remorse, and yet I
4 have difficulty reconciling that with his statement that
5 he doesn't consider himself to be a criminal. It is obvious
6 that the accused does not view the situation perhaps as
7 seriously as the Court or society does.

8 It is submitted that the accused is suffering from some
9 psychological problems, and is now seeking treatment. I can
10 accept that in mitigation to a degree if it means that the
11 accused was acting totally out of character. From the previous
12 conviction it would appear to me to mean that the accused is
13 not so much acting out of character and that whatever problems
14 he believes he has are an ongoing nature. If it is an ongoing
15 situation, then I have to be concerned about what is going to
16 happen years from now, whether the accused will be back before
17 the courts again, and other innocent members of society suffer
18 as a result of his "problems" and resort to quick and easy money.

19 I take into account the accused's previous record, not
20 to punish him more severely, but only as a reflection of
21 his past and for the purposes that I have already mentioned.

22 With respect to his age and mode of life and his
23 character, I can only comment that Mr. Leishman should
24 sit in court here a little more often perhaps as a non-
25 participant, and he would quickly realize that his problems
26 are minor compared to what other people have. That is what
27 life is all about, and it is of not much assistance to the



1 court for someone to come and say, my life is full of
2 problems and this is why I committed the crime. We all have
3 problems, yet most people don't resort to crime.

4 Mr. Leishman is fortunate that he has the support
5 of his wife and family. Hopefully with their support in the
6 future he won't be back before the courts again, but I have
7 to say that that is only a hope and I express that hope
8 with a degree of caution given the history of this man.

9 With respect to the penalty normally imposed for this
10 kind of offence, I think it is fair to say for a first
11 or second offender the penalties range anywhere from a
12 suspended sentence to imprisonment in a penitentiary. As
13 I indicated at the outset, because of the accused's past
14 experience, I think it is important that it be brought
15 home to him that this kind of conduct will never be
16 tolerated notwithstanding the reasons behind it, and as
17 I indicated, from the facts given to me by the Crown, I
18 was seriously and I am seriously considering a term of
19 imprisonment to be served in a penitentiary.

20 Mr. Leishman and others who are similarly inclined
21 must clearly understand that there is no room in this
22 society for crime, and that this kind of crime will not
23 be tolerated any more than any other kind of crime.

24 I am cognizant and acutely aware of the words of
25 Mr. Justice Tallis and certainly Mr. Justice de Weerdts who
26 have repeatedly said that a sentence must not crush an
27 accused. However, I have to balance the personal situation



1 of the accused against the need of the public for protection.

2 Taking into account what your lawyer has said on
3 your behalf, Mr. Leishman, would you stand, please. On
4 this charge I am going to impose a term of imprisonment of
5 one year. I don't think it is appropriate to put any
6 term of probation in there. You are a grown man, Mr.
7 Leishman. If you do have problems and you find some
8 relief by the treatment that Mr. Cooper has described, and
9 I am sure with the help of your family that you will continue
10 on whatever program is appropriate and it will assist you
11 in the future.

12
13 (AT WHICH TIME THESE PROCEEDINGS WERE CONCLUDED.)

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15
16 Certified a correct transcript,

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18 Laurie Ann Young
19 Laurie Ann Young
20 Court Reporter
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