TC CR 83 041

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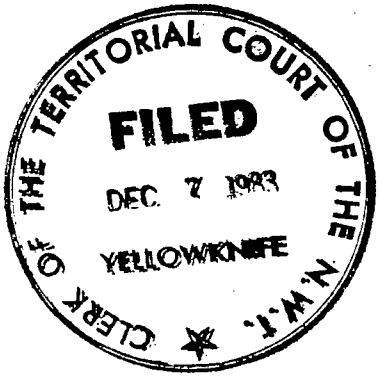
IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

B E T W E E N :

HER MAJESTY THE QUEEN

and

JAMES RALPH HODGE



REASONS FOR JUDGMENT

of

His Honour Judge Thomas B. Davis

Counsel for the Crown: Mr. Bernard Fontaine

Counsel for the Defence: Mrs. Cheryl Walker

Yellowknife, N.W.T. December 7, 1983

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J U D G M E N T

Mr. James Ralph Hodge has entered a plea of guilty to unlawfully having possession of Hashish on September 21, 1983, at Rankin Inlet in the Northwest Territories, in violation of Section 3(1) of the Narcotic Control Act. On that occasion the accused was in possession of a small quantity of Hashish, with an estimated value of approximately $100.00. The accused indicates that he obtained the narcotic in Rankin Inlet and had it for his personal use, but has given up the use of any drugs following the seizure resulting in this Court appearance.

Mr. Hodge is an active 31 year old with no previous criminal record. He has resided in Rankin Inlet for about one and one half years, holding management positions with good references from employers.

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Mrs. Walker, as Defence Counsel, has asked the Court to consider a discharge under Section 662.1 of the Criminal Code. To support this request, substantial information on the background and the activities of the accused was presented to the Court at the sentencing hearing so that the Court would be able to assess any extensive adverse effects a conviction will have on the accused, who regularly travels to the United States for specialized training in competitive parachute jumping. The accused has attained a "C" Class certificate in national and international parachuting standards, which requires minimum numbers of competitive jumps yearly to retain that level. The accused also aspires to membership on the Canadian Parachuting Team for international competitions, but believes this goal would be unobtainable without regular and free access to competitions and training in other countries, because of the extra difficulty encountered in training in this field in Canada's North. The accused suggests that a conviction will place severe and extensive restrictions on this activity which is of great concern to him. The accused has served in the military, has been an active competitive athlete, has a good employment record with no criminal convictions, and is generally of good character.

Crown Counsel has rightfully reminded the Court that discharges should not be granted for all adult first offenders

and is a matter of special consideration for special circumstances when it is in the best interests of the accused and not contrary to the public interest as stated in Section 662.1 of the Criminal Code. Crown Counsel contends that more than mere inconvenience to the accused or to his travelling must be proven before a discharge is appropriate.

I have been referred to a number of cases by Counsel which have proven helpful by outlining the factors for consideration by the Trial Judge or an Appeal Court, and for the review of decisions made by various Courts on this discretionary matter.

The British Columbia Court of Appeal, in the case *Regina vs Fallofield*, 1973, 13 C.C.C., 450, and the Ontario Court of Appeal in the case of *Regina vs Culley*, 1977, 36 C.C.C., 433 both supported the general theory that an absolute or conditional discharge can be considered in respect to any offence if the terms of Section 662.1 are satisfied. The Courts presuppose that an accused will be considered for a discharge only if he is of good character, if he is without previous criminal convictions, if it is not necessary that a conviction be recorded in order to deter him from future misconduct or to rehabilitate him, and further, that the entry of a conviction against him might have significant adverse repercussions.

Although decisions of superior and appelate Courts have both granted and denied discharges, I am strongly influenced by the expressions and general references to the law as it applies in the Northwest Territories, by His Lordship Mr. Justice de Weerdt, in the case *Queen vs Patrick George Hopps*, November 2, 1983, SC # 2782.

In that case His Lordship states, "Possession of a small quantity of Marihuana, purely for personal use, and not for the purposes of trafficking, is usually dealt with in the Northwest Territories by means of a warning with a discharge, or a conviction, and where a conviction is entered, the Court may suspend sentence or impose a fine, even on a first offender."

His Lordship further states, "Respect for the law is more likely if it is administered fairly and in recognition of the realities, dealing severely with the serious cases and more leniently where all the circumstances so warrant." His Lordship also notes that a conviction, being a serious mark against an accused can prevent a person from gaining access to foreign countries and from certain types of employment.

On the facts of the case before me, and on the thoughtful and extensive submissions by both Counsel in references to the current state of the law, I have come to the conclusion that

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the accused should benefit from the discretionary power in the Court which must be exercised judicially and which must be in the best interests of the accused, and not contrary to the public interest.

Considering all the circumstances of the accused, I therefore direct that the accused be discharged absolutely.

Thomas B. Davis
Judge
Territorial Court