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IN THE TERRITORIAL COURT  
OF THE NORTHWEST TERRITORIES

IN THE MATTER BETWEEN

HER MAJESTY THE QUEEN, upon the information of  
R.L. Julyan, Peace Officer, sworn the 1st day  
of September, 1970, the Informant,

Respondent

- and -

RONNIE WAYNE KISSER, Defendant,

Appellant

A transcript of the Reasons for  
Judgment of His Lordship The  
Honourable Mr. Justice W.G. Morrow  
given at Yellowknife, N.W.T., on  
the 18th day of January A.D. 1971.

Appearances:

Orval J.T. Troy, Esq., Q.C., appeared on behalf of  
the Respondent.

David H. Searle, Esq., appeared on behalf of the  
Appellant.

1 The Court: I want to first thank both Counsel and the Probation  
2 Department for their assistance in this case. This is a  
3 most unusual case in that it is an appeal from His Worship  
4 Chief Magistrate Peter B. Parker against a sentence imposed  
5 by him for a second offence under the Narcotics Act, for  
6 the possession of marihuana. In a very carefully worded  
7 oral judgement the learned Chief Magistrate reviews the  
8 facts and the principles to be followed in sentencing, and  
9 concluded by sentencing the Appellant accused to two  
10 months jail and a two hundred dollar fine or a further  
11 month, and probation for one year. I want to say at once  
12 that I am in complete agreement with the learned Magistrate  
13 in his remarks and observations, and I particularly endorse  
14 his statements with respect to indigenous people who are  
15 projected into our way of life, sometimes called our culture,  
16 although I have some doubt as to the use of the word, and  
17 also to his remarks relating to school children.

18 If I was sitting as a member of the Court of Appeal  
19 I would feel obligated to say I can see no reason for  
20 upsetting the learned Chief Magistrate, as he has not  
21 followed any improper principle of law, even though  
22 personally I might think a lesser penalty more appropriate.  
23 However, in this case I am sitting in appeal as a de novo  
24 matter which as I understand it means I go on what is  
25 before me, and sentence as if the accused has come before  
26 me in an original sentencing. In other words, what I think  
27 should be done, on my application of the well-known principles

1 to sentencing to the present facts is what I must do.

2 On August the 13th 1970 in the unreported decision  
3 of the Queen vs. Rosenblatt et al. I quote from the  
4 Crown attorney of British Columbia when he was addressing  
5 the Court of Appeal of British Columbia on a narcotics  
6 appeal, and I am going to read his statement.

7 "My Lord, there has been quite a tendency  
8 in the trial courts to treat possession  
9 of marijuana somewhat less seriously than  
10 it was treated perhaps a year or so ago  
11 because of the recent amendments to the  
12 Narcotic Control Act, in which Parliament  
13 saw fit to make possession of marijuana  
14 by first offence punishable on summary  
conviction. For that reason it may well  
be the trial courts have considered the  
punishment for possession of marijuana,  
and in fact heroin, less seriously than  
they have been heretofor, presumably in  
keeping with the decision of the House  
of Commons to treat it in that regard."

15 Then he goes on to say:

16 "There has not however been any easing  
17 with respect to trafficking."

18 I have also drawn to the attention of Counsel the  
19 recent decision of the Alberta Court of Appeal in  
20 Regina v. Doyle et al (1971) 1 W.W.R. page 71, that  
21 is a report that has just come out last week, which  
22 court in its role as the Appeal Court of the Northwest  
23 Territories, must of course, be considered carefully  
24 by me. I want to quote a few portions of their  
25 judgment, which includes quotations from other courts.  
26 I am quoting from Chief Justice Smith, who is the Chief  
27 Justice of the Northwest Territories.

1 "In some of the cases now before us it  
2 was urged that changes in legislation  
3 might occur in the future, and that  
4 these possible changes should be taken  
5 into account in fixing sentences in order  
6 to ameliorate the position of defendants.  
7 We do not accede to this argument. The  
8 law applicable is not "moulded by the  
9 judges".

10 Then in quoting from Chief Justice Gale, in an  
11 Ontario case, the court says:

12 "It was argued, too, that the law with  
13 respect to marijuana may soon be modified.  
14 However, we do not know that and cannot  
15 give effect to such a suggestion. We  
16 have a duty to administer the law as it  
17 exists today and to properly punish those  
18 who violate it."

19 Then in quoting from another case on page 72  
20 of the report the Chief Justice quotes the following  
21 and these by the way, are from a previous Alberta case:

22 "The governing principle of deterrence  
23 is, within reason and common sense, that  
24 the emotion of fear should be brought into  
25 play so that the offender may be made  
26 afraid to offend again and also so that  
27 others who may have contemplated offending  
will be restrained by the same controlling  
emotion. Society must be reasonably  
assured that the punishment meted out to  
one will not encourage others, and when  
some form of crime has become widespread  
the element of deterrence must look more  
to the restraining of others than to the  
actual offender before the Court."

28 And further on he is quoting from Mr. Justice Allen  
29 who says:

30 "Where the offence involves trafficking  
31 in or distribution of narcotics, enabling  
32 or encouraging people to become addicts  
33 of a narcotic drug at personal profit to  
34 the accused, most severe sentences are

1 justified. While the gravity of the  
2 offence is reduced when the charge is  
3 of possession or use by the accused  
4 for his own purposes only, it is  
5 nevertheless a serious offence and  
6 should be dealt with accordingly."

7 In the present case I would have considered that a  
8 jail term of some two months to four months to be about  
9 right on the facts before me. In this I think I  
10 would be coming within the guidelines of the Court of  
11 Appeal in the Doyle case.

12 However, the present case is unique almost in  
13 that even the Crown is saying it would not be adverse to  
14 a fine instead of imprisonment. To imprison a man in  
15 view of this situation and this attitude on behalf of  
16 a prosecuting attorney, and where apparently it would  
17 put a man out of work and would be contrary to all the  
18 recommendations which are expressed, including the  
19 probation report, would in my opinion be too severe.  
20 While I think perhaps, on an ordinary case involving  
21 possession and where it was a second occasion, I would  
22 be inclined to impose a shorter term, in the present  
23 case I should resort to a fine.

24 Will you stand up Mr. Kissner. The appeal is  
25 allowed accordingly. You are sentenced to a seven  
26 hundred dollar fine or three months on default of payment,  
27 and twelve months probation on the same terms as laid down  
by the Chief Magistrate. Now what time do you need to  
pay the fine?

1 Mr. Searle: Could we have thirty days, sir?

2 The Court: I will give you sixty days to make sure.

3 Mr. Searle: Thank you, sir.

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