

IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN:

HER MAJESTY THE QUEEN

AND:

ELLA JOY HARPER

David McWhinnie

For the Crown

Gordon Coffin

For the Defence

**MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH**

[1] VERTES J. (Oral): In this case, the accused has pleaded guilty to one charge of trafficking in marihuana contrary to s. 5 of the *Controlled Drug and Substances Act*, R.S.C. 1996, c. 19. I am told that the guilty plea was entered shortly before trial.

[2] The circumstances of the offence are relatively straightforward. I was told that the accused sold marihuana on several occasions to three different individuals, all of whom were 14 years of age or younger. She sold things called "pin-joints," small marihuana cigarettes, and they were sold for approximately \$5 each or they were exchanged for items that these children brought to her.

[3] The place where she was doing the selling was close to a youth treatment centre, a residential home for troubled youths, and close to a playground. This is the most serious aspect of the case.

[4] In one of the cases provided to me by Crown counsel, the case of *HMTQ v. Williams*, [1996] B.C.J. No. 701 (C.A.)(Q.L.), a 19-year-old accused was convicted of possession of LSD for the purposes of trafficking and possession of marihuana. That accused had been selling hits of acids, on a school playground, to students. He, himself, had a troubled background. He was sentenced to a term of imprisonment of 15 months.

[5] The Court of Appeal said that while the sentence on its face seemed excessive for a youth of that age, without a lengthy criminal record, and with a deprived background, as it was in that case, the Court of Appeal upheld the sentence nevertheless and said that none of those factors excused or explained what the Court of Appeal termed the accused's "deliberate corruption of children" in that case. There was a need to emphasize not only the personal deterrence aspects of sentencing as well as the rehabilitative aspects, but more importantly the question of public safety and the protection of children in vulnerable circumstances.

[6] I think those comments are apropos to this case. I have read through the pre-sentence report, and while I certainly sympathize with the accused's difficult personal background, the difficulties that she had to face both at a young age and, indeed, throughout her life, there is really no excuse for taking advantage of these young children in such vulnerable circumstances.

[7] The *Controlled Drug and Substances Act* contains a section on sentencing

which lists, as specific aggravating factors, trafficking in or near school grounds, or in or near any other public place usually frequented by persons under the age of 18; and trafficking to persons under the age the age 18.

[8] The fact that the statute makes specific reference to those factors as aggravating circumstances says to me that the Parliament of Canada recognizes the dangers of introducing drug use to young children. Notwithstanding whatever public debates are going on today about decriminalizing marihuana and other soft drugs, the fact is that trafficking is a serious criminal offence, that trafficking to young vulnerable children is a very serious criminal offence, and sympathize as I may with the offender's background and personal circumstances, I have no alternative but to impose a sentence of imprisonment.

[9] Crown counsel has suggested a sentence in the range of 15 to 16 months. I think, certainly, that is a sentence well within the range, especially considering the fact that the offender also has a prior conviction for possession of a controlled substance for the purpose of trafficking, that conviction having been entered in 1998, and especially considering the circumstances of this offence that involved numerous sales on repeated occasions to at least three young individuals.

[10] I also recognize that there is a need to try and assist the accused person in whatever rehabilitative efforts that can be undertaken. So, in my opinion, the sentence I impose should be combined with a period of probation so as to provide an opportunity for this accused to bring her life within some semblance of control.

[11] Stand up, Ms. Harper. Ms. Harper, I have no doubt that you are truly sorry, but I must consider broader public factors and concerns in imposing sentence on

you. The sentence I impose has to send a message not only to you but to others, that this sort of behaviour cannot be tolerated.

[12] Now as I said, I sympathize with your difficult background, but it seems to me, from reading the pre-sentence report, that you are well aware of the circumstances and you should be aware of what you need to do to take control of your life, and I hope you do.

[13] Taking into account the guilty plea and all of the other surrounding circumstances, I impose a sentence of imprisonment of 12 months. That will be followed by a period of probation for one year.

[14] The terms of that probation are: That you are to report to and be under the supervision of your probation officer. You are to abstain, absolutely, from the consumption or possession of alcohol or non-prescription drugs of any kind. You are to submit to a testing upon demand of a peace officer, such testing to be done in reasonable circumstances at reasonable times. You are to attend and participate in any counselling or treatment programs that your probation officer recommends. You are not to have contact with any young person that is under the age of 14 years or younger, in terms as described in the pre-sentence report, at your residence or at any school or at any treatment centre or other youth residential centre without the prior permission of your probation officer.

[15] Now, Ms. Harper, I must explain to you that those terms and conditions will be written out in a probation order. You will be given an opportunity to review it, go over it, and sign the probation order. If you do not abide by any of those terms and conditions, if you commit any further offences, you can be charged for that. I am

sure that your lawyer will explain, as well, the consequences.

[16] In addition, since I have heard no submissions about the accused's use of firearms or a need to use firearms for subsistence purposes, I will impose the mandatory firearm prohibition order for the minimum period of 10 years.

[17] I should say at this point, counsel, that I have considered, as I must under the *Criminal Code*, the circumstances of Ms. Harper as an aboriginal offender. I have heard nothing about any specific systemic factors peculiar to Ms. Harper, as an aboriginal person, that has brought her to court today or with respect to this offence. Unfortunately, this is the type of offence that is all too common in all types of communities throughout Canada.

[18] You may have a seat, Ms. Harper. Is there anything that I have neglected, counsel?

[19] MR. MCWHINNIE: There is a statutory victim fine surcharge, sir. As I read the pre-sentence report and understand that the accused will be in prison for a period of time, you may choose to waive the charge if you are satisfied that she does not have the means to pay.

[20] THE COURT: Under the circumstances, the victim of crime fine surcharge is waived. I will enter a stay of proceedings on the remaining Information with respect to the breach of undertaking charge.

[21] MR. MCWHINNIE: Yes, sir, thank you. I think the additional unspoken to count, Count 2, I think should be stayed as well.

[22] THE COURT:

Thank you, counsel.

VERTES J.