Citation: *R.* v. *Liang*, 2006 YKTC 102 Date: 20061012
Docket: T.C. 05-00640
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Chief Judge Faulkner

REGINA

v.
ZHU DONG LIANG

Appearances:
Noel Sinclair Counsel for Crown
Edward Horembala, Q.C. Counsel for Defence

REASONS FOR SENTENCING

[1] FAULKNER C.J.T.C (Oral): Mr. Liang has entered pleas of guilty to charges of producing marijuana contrary to *s*. 7 of the *Controlled Drugs and Substances Act,* the theft of electricity contrary to *s*. 326 (1) a of the *Criminal Code*, and finally, with possession of cocaine contrary to *s.* 4 (1) of the *Controlled Drugs and Substances Act.* The circumstances of the offences are compendiously set out in the agreed statement of facts filed by counsel in this case and I do not propose to repeat them. Suffice to say that Mr. Liang was involved in a grow operation which was housed in a bungalow in a residential area of Whitehorse.

[2] The theft charge arises because, as is often the case, steps had been taken to bypass the electrical meter in order to provide power for the grow operation, lights and fans and so forth.

[3] Finally, when Mr. Liang was arrested, he was found in possession of a quantity of cocaine.

[4] With respect to these matters I have been presented with a joint submission by counsel for a custodial sentence on the production charge of one year imprisonment, and concurrent sentences of three months and one year on the theft and possession of cocaine charges.

[5] Mr. Liang is 45 years of age. He has no prior criminal record. He is a married man with two teen-aged children. He came to Canada in 1992 and to the Yukon in 1994, and is a Canadian citizen. Apart from his foray into the criminal activities that bring him before the Court, I am advised that he works steadily as cook.

[6] In considering the joint submission of counsel there are a number of factors to be considered by the Court. Firstly, it must be noted that the maximum sentence that could be imposed for the most serious of the offences, being the production or cultivation charge, is one of seven years.

[7] In terms of aggravating and mitigating factors, the aggravating factors are at once obvious. This was a large and sophisticated grow operation, as is made plain by the statement of agreed facts and the photographs which indicate the rather elaborate setup for this operation. The other factor referred to by the Crown, and with which I

agree, is an aggravating factor, is that this activity was taking place in a small northern community. I was not referred to specifically to the *R.* v. *Curtis* case, [1995] Y.J. No. 125 (QL), but, in my view, it is still good law with respect to the response of the courts in the north to offences of this kind. That is a significant factor to be considered by the Court.

[8] With respect to mitigating factors, it is submitted, and I agree, that there was a relatively early guilty plea in this case. The Crown also indicated that Mr. Liang should be given credit for the fact that he had foregone his challenge to the legalities of the search and so forth in the trial which was scheduled to commence on the day that he entered his guilty pleas and has accepted responsibility for his involvement in this affair.

[9] The Crown also informed the Court that in its view, Mr. Liang's guilty pleas were of assistance to the prosecution of other individuals formerly co-accused with Mr. Liang and whose trials are ongoing.

[10] The dominant sentencing principles with respect to drug production and drug trafficking cases are well known. Such conduct must be denounced and there must be the maintenance of specific and general deterrence.

[11] With respect to the quantum of sentence proposed by counsel, the Court is in a somewhat odd position in the sense that there are, as far as I am aware, no Yukon precedents that are particularly in point of the present circumstances. I should say that given our circumstances in the north, again as enunciated in *Curtis,* a one year sentence in these circumstances strikes me a lenient one. But I was provided with a number sentencing precedents which satisfy me that the proposed sentence is not

outside of the range of sentences that have been customarily imposed in other jurisdictions in Canada. For that reason I will not depart from the joint submission.

[12] The result Mr. Liang is on Count 1 you are sentenced to a period of imprisonment of one year. On Count 3 to a sentence of 3 months, and on Count 20 to a sentence 1 year. The sentences on Count 3 and Count 20 to be served concurrently. In the circumstances the surcharges can be waived.

[13] With respect to Counts 1 and Counts 20, I also hereby order that you be prohibited from having in your possession any firearm, ammunition, or explosive substance for a period of 10 years. The remaining Counts.

[14] MR. SINCLAIR: Your Honour, I don't know that the *s*. 4 (1) offence attracts a mandatory firearms prohibition. I don't think anything turns on it.

[15] THE COURT: Well, in any event it is mandatory with respect to Count 1.

[16] MR. SINCLAIR: Yes Sir. The remaining charges are stayed as against Mr. Liang only.

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FAULKNER C.J.T.C.