

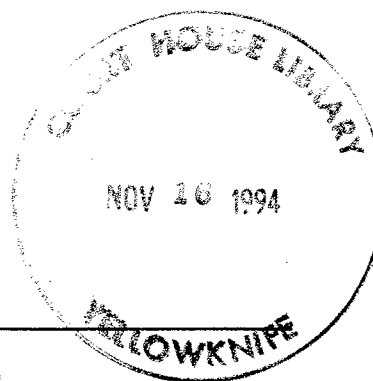
IN THE COURT OF APPEAL FOR THE NORTHWEST TERRITORIES

YELLOWKNIFE CRIMINAL SITTINGS

HEARD APRIL 19, 1994

	<u>COUNSEL</u>	<u>TRIAL JUDGE</u>	<u>COURT</u>
T.J.J. (Y.O.)	S. DUKE	BOURASSA J.	MADDISON J.A. KERANS J.A. IRVING J.A.
Appellant			
- and -			
HER MAJESTY THE QUEEN	A. REGEL		
Respondent			

APPEAL NO. CA 00460



 MEMORANDUM OF JUDGMENT
 DELIVERED ORALLY FROM THE BENCH

Irving J.A. (for the Court):

In this case the sentencing judge felt that the *Young Offenders Act* and the *Code* would not permit him to impose a sentence of closed custody. It seems clear and I think it is conceded by the respondent counsel that the trial judge was in error and that the sentence of closed custody was available.

Thus the issue before us is simply what is a fit and proper sentence for this offence and this offender. This 17 year old has pled guilty to three charges in all, one being the

theft of firearms from his girlfriend's family, the second that he breached the undertakings given by him in obtaining interim release, and thirdly for a serious assault made upon his girlfriend apparently because she cooperated with the investigating police officer who was investigating the stealing of the firearms.

The trial judge was obviously shocked by the assault particularly. It was a prolonged assault on the girlfriend involving substantial violence and death threats. The trial judge said:

"I feel strongly that there should be a jail sentence on the charge of assault. It is one of the worse ones and fits up there at the high end of the scale."

Then when the trial judge was considering the period of pre-trial custody (5 weeks), he noted that:

"The accused has been in custody for approximately five weeks and I am entitled to take that into account. To a certain extent I do. But I also want to point out to T.J.J. that he was in jail because he wouldn't obey his own release documents."

In an exchange with counsel, the trial judge indicated that open custody was in his words "a joke" and so he didn't consider that alternative. While the context in which this comment was made is not clear, we do not agree it is a fair reflection of open custody available as a sentencing tool in the Northwest Territories.

Despite the trial judge's failure to consider open custody, it seems to us that in this case the offence was such that closed custody is the appropriate disposition.

We will allow the Crown's appeal and impose a three month sentence of closed custody.

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