

IN THE COURT OF APPEAL FOR THE NORTHWEST TERRITORIES

YELLOWKNIFE CRIMINAL SITTINGS

OCTOBER 17, 1996

<u>COURT</u>	<u>COUNSEL</u>	<u>TRIAL JUDGE</u>
HER MAJESTY THE QUEEN	Alan Regel Côté, J.A.	Davis T.J.
Appellant		Maddison, J.A. Richard, J.A.
- and -		
JOHN MAX KUDLAK	Clark Rehn	
Respondent		

APPEAL #CA 00622

MEMORANDUM OF JUDGMENT

The Court:

It is agreed that the crime of which the respondent pled guilty is serious. During a serious public melée involving a number of people, the accused went to his residence, got a rifle, loaded it, and brought it back to the fight. No one else had a weapon. He pointed the rifle in an attempt to frighten others. He pointed it at one woman, then shifted it and fired, the bullet hitting about 15' from her. He fired three other rounds. He then left the rifle under a bed in his residence (shared by others), the rifle still being cocked with the safety off. Luckily no one was injured. His counsel stated on sentencing that the respondent's actions that night were the product of alcohol. His statement said he had drunk 12 glasses of whisky that evening.

The sentencing judge suspended sentence for one year and imposed probation on various conditions, including 125 hours' community service and a recommended lecture.

The sentencing judge said that normally this offence would call for jail, but he would impose no

jail because the respondent had no previous record and appears to be remorseful. There were hints elsewhere about not wishing to interfere with the respondent's ability to earn a livelihood, but the submissions made it clear that a short jail term would not do that. We cannot agree that the reasons given, being the antecedents and attitude of the particular offender, sufficiently dealt with general deterrence or denunciation. In our view, some jail would likely have been necessary in this case. However, a complicating factor is that the sentencing judge ordered 125 hours of community service. The Crown appealed promptly, but by the time the appeal could be brought on (with no delay by anyone), the community service had been performed. Naturally the respondent must get credit for it. It is difficult to say whether in quantity or kind the community service done should yield credit equal to the jail term which would have been a proper sentence. But we cannot make fine calculations, nor should we alter a sentence which is close to the proper one. Had the community service not been performed, we would likely have had to substitute some jail. But we will not impose any jail term.

The sentencing judge paid a good deal of attention to the question of a firearms prohibition and the exceptions to it which the accused may trigger. But in the end the judge put no kind of restriction on possessing firearms. That appears wrong to us. There was no evidence or submission whatever about any need to have a firearm in the hamlet of Paulatuk where the respondent lives. Indeed, on appeal his counsel indicated that a condition of probation allowing him to have a firearm only outside the hamlet for hunting would be satisfactory. Between times, the local police detachment could keep custody of the rifle and ammunition.

The sentencing judge inquired very fully into the particulars of how the respondent earns his income, and the months of the year devoted to various activities. The respondent needs his rifle when accompanying parties of tourists on hunting expeditions, but that only occurs in the months of February to April inclusive. He does not need his rifle when he goes fishing, according to the statements to the court

on sentencing. He needs his rifle for hunting caribou for meat for his immediate family, but he does that in the months of November to January inclusive only. He has access to a big freezer where he often keeps many caribou carcasses frozen for as much as 6 months.

Therefore, the probation should be changed to 3 years' duration. The conditions should be amended to forbid the respondent to possess a firearm for the 3 years, with one exception. He may take a rifle and ammunition out of the hamlet in the months of November, December, January, February, March or April when actually hunting for food or actually accompanying tourist hunters. At all other times his firearms and ammunition will be left in the custody of the police at Paulatuk. Another condition of probation will prohibit the respondent from drinking any alcohol while in possession of a firearm or ammunition, and prohibit him from getting a firearm or ammunition from the police for 12 hours after he has consumed any alcohol. If he has not yet given his lecture on gun safety, he must give it. There will be no other change in the terms of probation.

DATED at YELLOWKNIFE, NWT,
this 17th day of October AD. 1996

- _____
Maddison J.A.

- _____
Côté J.A.

- _____
Richard, J.A.

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