In the Court of Appeal of the Northwest Territories

Citation: R. v. Omilgoituk, 2007 NWTCA 08

Date: 2007 12 05
Docket: A-0001-AP-2006000015
Registry: Yellowknife, N.W.T.

Between:

Her Majesty the Queen

Respondent

- and -

Lyle Omilgoituk

Appellant

The Court:

The Honourable Mr. Justice Peter Costigan
The Honourable Mr. Justice Frans Slatter
The Honourable Madam Justice Patricia Rowbotham

Memorandum of Judgment
Delivered from the Bench

Appeal from the Sentence by
The Honourable Mr. Justice J.E. Richard
Dated the 1st day of November, 2006

Memorandum of Judgment
Delivered from the Bench

Slatter J.A. (for the Court):

[1] The appellant appeals the sentence he received following his guilty pleas on two counts of assault causing bodily harm, against two different complainants. He was sentenced to four years imprisonment on each count to be served concurrently.

[2] Both counsel for the Crown and counsel for the defence submitted that the starting point for calculating the sentence should be two and one-half years, although this was not a formal joint submission. Counsel differed somewhat on the amount of credit that should be given for pre-trial custody. This was not a "plea bargain" situation where the accused agreed to plead guilty on the understanding that the Crown and the defence would make a unified submission on sentence.

[3] The trial judge took the view that the sentence proposed by counsel was inadequate. The trial judge found that the sentence did not adequately address the principlesof sentencing nor did it reflect the prevalence of violent crime in the jurisdiction.

[4] The trial judge is of course not bound by the submissions of counsel, although often the sentence recommended by the Crown will be seen as a maximum. In this case the trial judge considered all the relevant factors, including the severity of the assaults, the gratuitous nature of the assaults, the personal circumstances of the appellant, the appellant's significant criminal record and the apparent failure of previous sentences to deter the appellant.

[5] The appellant argues that if the trial judge was going to depart from the concurrent recommendations of counsel, it was incumbent on him to draw that to counsel's attention and ask them to make submissions on the point. In this case the trial judge did indicate his discomfort with the recommendations of counsel, although at the end of argument. He then adjourned over the lunch hour before imposing sentence. When court reconvened neither counsel asked to present further argument, which indicates that counsel had said all that could be said.

[6] In this case it would have been helpful if the trial judge had signaled to counsel during argument that he was uncomfortable with their positions. However, the trial judge considered all the relevant factors and imposed a sentence that was within the range for similar sentences. In the end we cannot see any reviewable error.

[7] Both counsel agree that the appellant spent approximately three months in pre-trial custody and would usually receive credit for that. The trial judge only referred in passing to "the short period

of time on remand status". It is not clear if proper credit was given for the remand time, and we would accordingly reduce the sentence to three years and nine months on each count to be served concurrently. Otherwise the appeal is dismissed.

Appeal heard on November 22, 2007

Memorandum filed at Yellowknife, N.W.T.
this ___ day of December, 2007

Slatter J.A.

Appearances:

Hugh Latimer
for the Appellant

Christine Gagnon
for the Respondent

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MEMORANDUM OF JUDGMENT
