

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

HER MAJESTY THE QUEEN

versus

S. DENEYOUA, C. DENEYOUA,  
D. DENEYOUA, M. HORESAY.

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Reasons for Judgment  
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BEFORE:

Mr. Justice C. F. Tallis, held in  
the Main Courtroom, Federal Building,  
Yellowknife, N.W.T., on Monday, July  
11, 1977 at 3:15 p.m.

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APPEARANCES:

B. Fontaine, Esq.	Counsel for the Crown
P. Ayotte, Esq.	Counsel for S. Deneyoua & M. Horesay
T. Richard, Esq.	Counsel for D. D. Eneyoua & C. Deneyoua.

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Per: P. A. O'Neill.



July 11, 1977.

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THE COURT: I propose for first

of all deliver judgment in the case of Christine Deneyoua and I think the reasons for judgment will be applicable to all cases. My reason for giving judgment in a little more detail in at least one of the cases is to lay down some guidelines for future consideration. The appellant Christine Deneyoua was charged with an offence in the following terms, that she did on or about the 28th day of May A.D., 1977 at or near Fort Simpson in the Northwest Territories while bound by a probation order made by the Magistrate's Court on the 24th of May, 1977 wilfully fail to comply with such order, to wit, abstain totally from the consumption or possession of alcohol contrary to Section 666, S.S. (1) of the Criminal Code.

To this charge the appellant appeared without counsel and pleaded guilty and was sentenced by the presiding Justice of the Peace to a term of six months imprisonment. She has appealed the sentence imposed on her. Unfortunately the record in this appeal does not contain any evidence or information concerning the submissions that were placed before the presiding Justice of the Peace. Apparently a pre-sentence report was not obtained.



1 In future I would like to  
2 point out that in cases of this kind it is imperative  
3 that all aspects of the matter of sentencing be fully  
4 canvassed by the Court. As a matter of record the  
5 Court should insist on a comprehensive pre-sentence  
6 report in a case of this nature with full and complete  
7 details of any proposals or programmes available for  
8 a youthful offender such as the appellant. This will  
9 involve a co-ordinated effort on the part of prosecuting  
10 authorities and where the prosecution is represented  
11 by a police officer I include a police officer in that  
12 definition, the Department of Social Development,  
13 Native Court workers and other agencies that are  
14 involved in dealing with matters of this kind.

15 Furthermore, in appropriate  
16 cases, and this is a classic example, evidence should  
17 be <sup>adduced</sup> induced as to the availability of employment in  
18 the community, the possibility of vocational training  
19 and the availability of upgrading courses before  
20 sentence is passed. It is of course desirable for  
21 the Court to know whether or not the individual such  
22 as this appellant is ready to avail herself of  
23 opportunities if such are available. It is often  
24 desirable for the Court to insist that counsel be  
25 made available to the accused. This is particularly



1 so where a substantial prison term is sought.

2 The appellant in this particular  
3 case, as previously mentioned, was convicted of a  
4 criminal offence under Section 666, S.S. (1):

5 "An accused who is bound by  
6 a probation order and who  
7 wilfully fails or refuses to  
8 comply with that order is  
9 guilty of an offense on summary  
10 conviction."

11 The maximum penalty that can be imposed for such an  
12 offence is set forth in Section 722, S.S. (1) of the  
13 Criminal Code which provides as follows:

14 "Except where otherwise  
15 expressly provided by law  
16 everyone who is convicted of  
17 an offence punishable on  
18 summary conviction is liable  
19 to a fine of not more than  
20 \$500.00 and to imprisonment  
21 for six months or to both."

22 The facts in this particular  
23 case are not in dispute. The appellant was bound by  
24 the terms of a probation order made by Magistrate  
25 Slaven at Fort Simpson in the Northwest Territories on



1 May 24th, 1977. Within a few days after the order a  
2 breach was committed of the one term which required her  
3 to abstain completely from the use and possession of  
4 alcohol. There is no suggestion in the facts set forth  
5 that she was impaired or creating a disturbance at the  
6 time of her apprehension. The Liquor Ordinance of the  
7 Northwest Territories contains several provisions  
8 dealing with the unlawful consumption of liquor and I  
9 refer in this particular case to Section 67 (1) and  
10 Section 88 of that ordinance. In short Section 67 (1)  
11 makes it an offence for a person under age to consume  
12 or have liquor in his or her possession. Section 88  
13 provides a penalty and that penalty is a maximum of  
14 seven days imprisonment and a fine of \$25.00. Those  
15 are the outer limits.

16 In this particular case the  
17 appellant is eighteen years of age. She resides in  
18 the Fort Simpson district in the Northwest Territories.  
19 She comes from a large family and at the present time  
20 it should be noted that she has grade six by way of  
21 education. At the time of this offence she was not  
22 employed. Since her incarceration which was effected  
23 June 1st, 1977 the Court does have the benefit of a  
24 report prepared by Mrs. Anne Enge, Chief Matron at the  
25 correctional centre. Mrs. Enge has done



1 a commendable job in dealing with these young people  
2 and in placing before the Court in a very succinct way  
3 her candid views. I quote from her report:

4 "Christine is a shy and quiet  
5 girl and is eighteen years of  
6 age. She has never held a job  
7 in Simpson and is totally  
8 dependent on her parents for  
9 a living. She has been out of  
10 school for two years. She is  
11 presently employed at the Twin  
12 Pine Motor Inn and seems to be  
13 doing a fairly good job. She  
14 can have this job as long as  
15 she wishes. She is contemplating  
16 attending adult vocational training  
17 school in Fort Smith in  
18 September. This girl needs  
19 guidance, supervision and  
20 counselling for the next few  
21 years because her attitude for  
22 the future appears to be  
23 somewhat negative. Her  
24 behaviour here is excellent."

25 And then at the conclusion of the report with reference



1 to all of the girls she has this to say.

2 "Their future looks quite  
3 bleak but I don't believe that  
4 it is too late to help them  
5 in some form or other. They  
6 really should try to improve  
7 their education and get a trade  
8 of some kind or learn to hold  
9 down a steady job. The four  
10 girls have been very good here  
11 and all work well."

12 I have no doubt, and indeed I  
13 am prepared to take judicial notice of the fact that  
14 there is an extremely high rate of unemployment in the  
15 Fort Simpson district as in other districts. The  
16 prospects of work for an untrained or an unskilled  
17 person of any age are very limited to say the least.  
18 I think that Mrs. Enge has clearly recognized this  
19 when she has emphasized the desirability of these  
20 accused improving their education and getting training  
21 of some type. I have no doubt that liquor has been  
22 a major problem in the appellant's background.

23 Learned counsel for the appellant  
24 frankly acknowledged this and Mr. Sibbeston who appeared  
25 as counsel initially dealt with the matter in very vivid





1 terms. It should be noted that Mr. Sibbeston has  
2 personally lived in that community and spoke with some  
3 personal knowledge. The record of the appellant with  
4 respect to infractions arising under the Liquor  
5 Ordinance or related matters arising from the use of  
6 liquor is not good. While she may not feel that liquor  
7 is a problem there is no doubt in my mind that it has  
8 been a contributing factor to her problems and unless  
9 she is prepared to realize that then of course the  
10 future is quite bleak for her. When this matter first  
11 came on before me I expressed deep concern over the  
12 matter of sentencing in this case. From the record it  
13 appeared to me that the various aspects of the sentencing  
14 process had not been fully canvassed. Furthermore,  
15 the appellant was not represented by counsel. This  
16 is most unfortunate, because I am satisfied that many  
17 relevant factors were not brought to the attention of  
18 the Court below. Under the circumstances I gave detailed  
19 directions to counsel when this matter first came before  
20 me by way of appeal. I indicated that the Court required  
21 a detailed pre-sentence report and also a co-ordinated  
22 effort by various agencies and departments to bring  
23 forward a suitable or alternative plan or programme  
24 for the consideration of the Court. I have already

that I am pleased to see that



1 co-operation has been extended by many people in this  
2 connection. Counsel appearing on the case have gone  
3 out of their way to deal with this matter not only on  
4 a legal basis, but also canvassing all aspects of the  
5 case and this includes some of the social aspects that  
6 were raised before me.

7 I do hope that this approach  
8 will serve at least as a model or stepping stone for  
9 future cases of this kind. I have already mentioned  
10 the fact that Mrs. Enge has gone out of her way to  
11 do what she can. Mrs. <sup>Cypr</sup>Sear was good enough to appear  
12 here in Court and personally speak at length on matters  
13 affecting not only this appellant but the other three  
14 appellants who are before me. I think that this is a  
15 good example of the work that often goes unnoticed when  
16 it is performed by the Native Court Workers Association.  
17 It is, however, gratifying to know there are people who  
18 are prepared to assist their own kinfolk in trying to  
19 salvage something out of what could turn out to be  
20 broken lives in the future. I have already remarked  
21 that counsel apparently have received co-operation  
22 from many other social workers and it is my hope that  
23 in due course even greater co-ordination will occur.

24 In recent times an administrator

ad to the Court. Mr. Paul Schaurte and



1 for those of you who do not know him I happen to know  
2 that he has a very distinguished record as an R.C.M.P.  
3 officer when he was stationed very near an Indian  
4 reservation at Rosthern, Saskatchewan. His ability  
5 to work with the people and communicate with them was  
6 such that when he was transferred they held a civic  
7 function for him on the reserve. I mention that because  
8 I know that he will undoubtedly be happy to assist in  
9 any future approaches of this nature.

10 I feel that if this type of  
11 approach is taken in future cases the saving to the  
12 public in both monetary and non-monetary terms will  
13 be substantial.

14 I have taken the trouble to  
15 review in some detail the situation concerning  
16 the sentence imposed in this case because it does  
17 point out a rather anomalous situation. If the  
18 appellant had been charged with a substantive offence  
19 under Section 88 of the Liquor Ordinance the maximum  
20 penalty would have been seven days imprisonment plus  
21 a \$25.00 fine.

22 However, the same unlawful  
23 act when proceeded with in this case results in a  
24 prison term of six months. I have reviewed the  
25 sentencing and I am satisfied from those



1 authorities that the sentence imposed in this case  
2 cannot stand. This is an offence committed by the  
3 appellant under the Criminal Code, but the history of  
4 this accused's own troubles centres around basically  
5 in infractions of the Liquor Ordinance. In the case  
6 of a youthful offender custodial sentences are generally  
7 to be avoided but when they are imposed they should be  
8 as short as possible. This principle of sentencing was  
9 fully discussed by Mr. Justice Sinclair in Regina versus  
10 Beacon and Modley, 31 Canadian Criminal Cases, Second  
11 Series at page 56. Similarly other Courts have dealt  
12 with the situation involving youthful offenders and I  
13 refer particularly to the words of Chief Justice  
14 Culligan in the Queen versus Morrissette et al 12  
15 Criminal Reports, New Series, page 392, at page 395  
16 and I quote:

17 "In my view the public can  
18 best be protected by the  
19 imposition of sentences that  
20 punish the offender for the  
21 offence committed that may  
22 deter him and others from  
23 committing such an offence,  
24 that may assist in his reforma-  
25 tion and rehabilitation. If



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"the offender is one for whom reformation is beyond question then the public can be protected only by depriving him of his freedom. In the case of other offenders, particularly young offenders, the principal element for consideration consonant with the maintenance of public confidence and the effective enforcement of the criminal law should be the offender's reformation and rehabilitation. This view finds support in the report of the Canadian Committee on Corrections which states at page eighteen..."

and there the learned Chief Justice quoted as follows:

"The Committee sees the overall end of the Criminal Process as the protection of society and believes that this is best achieved by an attempt to rehabilitate offenders and that



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"society is given long term protection at least expense in human values and material resources. The Committee believes that traditional punishment has been overstressed as a means of crime prevention, yet it does not deny the necessity for punishment as a sanction and accepts that in some cases the person may be so dangerous as to justify his segregation from the community for the periods up to the whole of his life."

That judgment has been accepted in many jurisdictions as being a classic treatise on the philosophy of sentencing. I fully recognize that the appellant has been involved in a number of infractions with the Liquor Ordinance and related matters. However, in this particular case I believe that if appropriate steps are taken there is a reasonable hope of reform and rehabilitation. The appellant's conduct and activities in recent weeks when under supervision at the Yellowknife Correctional Centre would indicate



1 that she has already moved along this road. With  
2 continued assistance, direction and support there is a  
3 good possibility that she will continue along this road.  
4 The interests of society and the appellant will be much  
5 better served if this approach is taken.

6 There is in my view no future  
7 for the appellant or society if she persists in leading  
8 a life of crime. Society will end up paying for her  
9 upkeep in a penal institution and she will spend most  
10 of her days there.

11 Under the circumstances I feel  
12 that this Court should also concern itself with the fact  
13 that the appellant will have a further criminal conviction  
14 if the sentence stands in its present form. This is a  
15 vital consideration and one only has to look at the  
16 position that the Court took in a recent case in Montreal  
17 where three senior police officers were charged and  
18 pleaded guilty to an offence much more serious than  
19 this case. In that particular instance an eloquent plea  
20 was obviously made for an absolute discharge and in that  
21 case it is significant that the accused persons saw fit  
22 to retain leading and highly experienced counsel at  
23 the lower Court level. I am not prepared to look as  
24 leniently on the situation here, but I do feel that in  
25 the light of the programmes and positions put forward



1     today the ends of justice can be served if I make the  
 2     following order.

3                                     The appeal from sentence is  
 4     allowed and in view of the time already served in jail  
 5     I am going to grant the appellant a conditional discharge  
 6     on the statutory conditions prescribed in the Criminal  
 7     Code, that is that she is to keep the peace and be of  
 8     good behaviour and will appear before this Court when  
 9     required to do so and in addition to those statutory  
 10    conditions I impose the following additional provisions  
 11    and I wonder if you would have your client stand up  
 12    please.

13                                    The additional conditions that  
 14    I impose are that you shall report to and be under the  
 15    supervision of Ms. Betty Menicoche or any person  
 16    designated by her and in particular you shall obey all  
 17    directions given by her and without restricting the  
 18    generality of the foregoing all directions with respect  
 19    to a curfew, handling of monies earned, place of  
 20    residence and reporting to Ms. Betty Menicoche or her  
 21    designee. You shall make reasonable efforts to seek  
 22    and maintain employment or to continue in an educational  
 23    or training programme. You shall immediately advise  
 24    Ms. Betty Menicoche or her designee of any change of  
 25    address or residence or employment or in your educational



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1 or training programme.

2 You shall remain within the  
3 Northwest Territories unless you are given written  
4 permission by Ms. Menicoche or her designee to leave  
5 the Territories. The order is to be in force for one  
6 year from this date.

7 Are you prepared to abide by  
8 those conditions?

9 THE ACCUSED C. DENEYOUA: Yes.

10 THE COURT: Without any  
11 reservation at all? All right, you may sit down. Now,  
12 I wonder if you would have the other three stand up.  
13 I will now deal with the appeals of Dora Deneyoua,  
14 Shirley Deneyoua and Maraley Horesay and without repeat-  
15 ing what I have said, for the reasons that I have already  
16 delivered in the case of Christine Deneyoua I am allowing  
17 the appeal from sentence in each case and in doing that  
18 I grant each of the appellants a conditional discharge  
19 on the statutory conditions prescribed in the probation  
20 order as set forth in Section 663 (2) of the Criminal  
21 Code and also the following conditions and I am going  
22 to read them even though this is repetitious.

23 These comments are directed to  
24 each one of you. You shall report to and be under the  
25 supervision of Ms. Betty Menicoche or any person



1 designated by her and in particular you shall obey all  
2 lawful directions given by her and without restricting  
3 the generality of the foregoing all directions with  
4 respect to a curfew, handling of monies earned, place  
5 of residence and reporting to Ms. Betty Menicoche or  
6 her designee. You shall make reasonable efforts to  
7 seek and maintain employment or to continue in an  
8 educational or training programme. You shall immediately  
9 advise Ms. Betty Menicoche or her designee of any  
10 change of address or residence or employment or in your  
11 educational or training programme. You shall remain  
12 within the Northwest Territories unless you are given  
13 written permission by Ms. Menicoche or her designee to  
14 leave the Territories. This order is to remain in force  
15 from a period of one year from this date. Now, are you  
16 prepared to abide by those terms of that probation  
17 order?

18 THE ACCUSED S. DENEYOUA: Yes.

19 THE ACCUSED C. DENEYOUA: Yes.

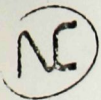
20 THE ACCUSED M. HORESAY: Yes.

21 THE COURT: All right, would  
22 Christine stand up too. Now, in due course a copy of  
23 the probation order will be read to you or you will be  
24 required to read it and a copy of it will be given to  
25 you. You must understand that if you willfully fail



1 or refuse to comply with the probation order and you  
2 ought to know this after the session you have been  
3 through, you will be brought before this Court and  
4 sentenced for a breach of the probation order and you  
5 must also understand that if you commit any offence in  
6 addition to being prosecuted as I mentioned above or  
7 if you break the terms of the order you can be brought  
8 back before this Court and I can make changes or  
9 additions to the conditions prescribed in it and I can  
10 even extend the order for an additional period. Now,  
11 I want the four of you to understand that this has not  
12 been any laughing matter as far as I am concerned.

13                                You have come here today as  
14    for  
15 you did the other day asking/the Court to have mercy on  
16 you. If you choose to defy this Court as you did the  
17 Court below in disobeying the orders then you will have  
18 nobody to blame but yourselves when you are paraded in  
19 front of me in the prisoner's dock and I will not be  
20 thinking in terms of leniency for you and I will not  
21 be thinking about very much whether or not you would  
22 like to go back to Fort Simpson. I have given a lot of  
23 weight to your wishes here today, probably more than I  
24 should have if I had been rigid, but I want you to under-  
25 stand, if you go back to Fort Simpson and you are  
immediately getting into trouble you will not see Fort



1 / Simpson for a long long time after that. Do you  
2 understand that?

3 THE ACCUSED C. DENEYOUA: Yes.

4 THE COURT: Do you?

5 THE ACCUSED. S. DENEYOUA: Yes.

6 THE ACCUSED D. DENEYOUA: Yes.

7 THE ACCUSED M. HORESAY: Yes.

8 THE COURT: All of you under-  
9 stand it. Is there anything further, gentlemen?

10 MR. AYOTTE: My Lord, I just  
11 wondered, as far as the appellant Shirley Deneyoua is  
12 concerned, there were two conditional discharges, there  
13 were two appeals?

14 THE COURT: That judgment will  
15 apply to both of those cases, but I think one, if you  
16 would draw the probation order so it recites them both  
17 it would save you a duplication of draftsmanship. If  
18 I am not here that probation order can be signed in  
19 front of a clerk or deputy clerk of the Court, because  
20 as you know I am committed to going to Hay River.

21 --- Adjourned.

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