

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN,

- and -

ORVILLE ELMER WYNESS

Trial held at Hay River, Northwest Territories
June 22, 1977

Plea: Guilty

Sentence: Eight Months

Judgment delivered orally June 27, 1977

Counsel on the Hearing:

Mr. E. Brogden, for the Crown

Mr. R. Halifax, for the accused
Orville Elmer Wyness

Reasons for Judgment of:

The Honourable Mr. Justice C. F. Tallis

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REASONS FOR JUDGMENT OF THE HONOURABLE
MR. JUSTICE C. F. TALLIS

The accused Orville Elmer Wyness pleaded guilty at the Criminal Jury Sittings at Hay River in the Northwest Territories on the 22nd day of June A.D. 1977 to the following offence:

Orville Elmer Wyness stands charged that he, being entrusted with the receipt of funds payable to the Government of the Northwest Territories, such funds being thereby a part of the public revenues, did, between the 1st day of January, A.D., 1976 and the 30th day of April, A.D. 1976, at or near Enterprise in the Northwest Territories, knowingly furnish false returns of sums of money entrusted to his care, contrary to Section 357(a) of the Criminal Code of Canada.

After hearing extensive submissions with respect to the matter of sentence I adjourned this matter in order to consider those submissions. I am now going to impose sentence.

I have previously stated that the determination of an appropriate and proper sentence for a criminal offence involves a careful and anxious consideration of the various factors to be considered. The position of a trial judge or Appellate Court is succinctly stated by Culliton C.J.S. in *Regina v. Morrissette et al*, 12 C.R.N.S. 392 at p. 393:

" There is no problem which causes both the trial Judge and members of this Court more anxious consideration than the determination of an appropriate and proper sentence for a criminal offence. Both trial and appellate judges must be ever mindful of the fact that the principal purpose of the criminal process, of which sentencing is an important element, is the protection of society.

From time to time, courts have reviewed the principles to be considered in the determination of proper sentences. This Court recently did so in *Regina v. Kissick* (1969), 70 W.W.R. 365. As has been stated many times, the factors to be considered are: (1) punishment; (2) deterrence; (3) protection of the public; and (4) the reformation and rehabilitation of the offender.

The real problem arises in deciding the factor to be emphasized in a particular case. Of necessity, the circumstances surrounding the commission of an offence differ in each case so that even for the same offence sentences may justifiably show a wide variation."

In addition to the principles outlined in the case of *R. v. Morrissette et al*, supra, I have also carefully reviewed the principles of sentencing discussed in the following cases:

R. v. Wilmott (1967) 1 C.C.C. 171 at 177-179; *R. v. Hinch* 62 W.W.R. 205; *R. v. Iwaniw*; *R. v. Overton* (1959), 127 C.C.C. 40.

The Manitoba Court of Appeal in *R. v. Iwaniw*; *R. v. Overton*, supra, specifically referred to the following factors that are to be considered in determining an appropriate sentence:

"First: the degree of premeditation involved;

Second: the circumstances surrounding the actual commission of the offence; i.e. the manner in which it was committed, the amount of violence involved, the employment of an offensive weapon, and, the degree of active participation by each offender;

Third: the gravity of the crime committed, in regard to which the maximum punishment provided by statute is an indication;

Fourth: the attitude of the offender after the commission of the crime, as this serves to indicate the degree of criminality involved and throws some light on the character of the participant;

Fifth: the previous criminal record, if any, of the offender;

Sixth: the age, mode of life, character and personality of the offender;

Seventh: any recommendation of the trial Judge, any pre-sentence or probation official's report, or any mitigating or other circumstances properly brought to the attention of this Court."

In this particular case it is to be observed that the accused is charged under Section 357(a) of the Criminal Code of Canada which provides as follows:

"357. Every one who, being entrusted with the receipt, custody or management of any part of the public revenues, knowingly furnishes a false statement or return of

(a) any sum of money collected by him or entrusted to his care, or

. . . .

is guilty of an indictable offence and is liable to imprisonment for five years."

It will be seen from the foregoing that the accused is not charged with the offence of fraud which carries a greater punishment than the offence under Section 357(a) of the Criminal Code.

I am not going to review the facts and circumstances of this case in detail because they were dealt with quite fully by counsel in their submissions to me. Furthermore there is little or no dispute over the facts as put forward by counsel for the Crown and the accused.

In this particular case the accused has no previous criminal convictions. Apart from this difficulty he has an excellent background. He is a married man of 29 years of age with two children. He now resides in Enterprise in the Northwest Territories. Prior to September of 1973 he was employed with MacDonald Security in Edmonton where he was bonded. During the year 1973 he accepted a position as Deputy Highway Inspector. He was responsible for the handling of and accounting for funds that were taken in at the weigh scale. At this particular scale various types of

permits and licenses were issued and paid for or in certain cases charged when this was permitted. The system that was operated in connection with this weigh scale was such that the accused and the Inspector were responsible for filing the necessary returns and accounting for the cash that was taken in. Full details of the operations were discussed in the submissions on sentence and I am not detailing them at this time.

In May of 1976 the Audit Department of the Territorial Government commenced a routine audit. Initially certain irregularities were discovered but at this time no wrongdoing was suspected. However checks were made by the auditing authorities with the result that there was a discrepancy of \$8317.00. The auditors during the course of their investigation found that the sum of \$8317.00 matched a missing group of motor vehicle permits and licenses that had been charged. The apparent error was solely in credit sales. The permits in question could not be located except in the Motor Vehicle Registry and further checks revealed that some of them had in fact been paid for in cash. In fact they had been recorded by the accused as credit. This led to a full scale investigation with the result that the present charge was laid under Section 357(a) of the Criminal Code of Canada. The accused has admitted furnishing the false returns with respect to sums of money entrusted to his care and it is common ground that he knew that the entries he was making were false. At this time no restitution has been made and after giving careful consideration

to this matter I do not feel that I can make an order for restitution on the basis of the present charge under Section 357(a) of the Criminal Code of Canada. However, the judgment of this Court in a criminal proceeding does not in any way preclude the Territorial Government from taking appropriate civil proceedings to recover monies that the accused has converted to his own use. In my opinion the Territorial Government has a responsibility to take such proceedings if they are so advised. It is my function to impose an appropriate sentence in this particular case having regard to all the circumstances of the case.


I have referred previously to the position of the accused as the Deputy Highway Inspector because in my opinion he was placed in a position of public trust where he was handling public funds. His background as a security officer was no doubt a factor that was taken into account when he was selected for the position. Unfortunately he has violated the trust that was placed in him and in my opinion this is an important factor that must be taken into account in imposing sentence. Under the circumstances I must impose a sentence that will take into account the various factors I have previously referred to and in this particular case I must give some consideration to the position of trust that this accused occupied. I fully realize that in this particular case the accused has an unblemished record and hopefully he will learn his lesson as a result of the difficulty he now finds himself in. I am optimistic that he will recognize his responsibility and redeem

himself in the eyes of the members of the community. His superintendent Mr. Robert McBride of the Department of Highways and a number of his co-workers have given him excellent character references based on how he has conducted himself^{self} as a fellow employee since taking up work with that Department. In all likelihood favourable consideration will be given to an application for an early work release and from the information furnished to me I would think that serious consideration will be given to having him placed in the South Mackenzie Correctional Centre at Hay River. If this offence did not involve a breach of the trust reposed by a public department in him, I would have been inclined to perhaps grant the accused a suspended sentence. However I feel that persons in a responsible position should be put on notice that if they break their trust to the members of their own community they can expect to receive punishment for having done so.

In this particular case the accused has pleaded guilty and through his Counsel has candidly admitted his involvement in this illegal activity.

Having considered the circumstances of this offence and applying the principles of sentencing to the present case I therefore sentence the accused Orville Elmer Wyness to a term of eight months imprisonment.

Dated at Yellowknife, Northwest Territories this 27th
day of June, 1977.


C. F. Tallis, J.S.C.