

R. V. Hendry, Rudolph SC CR 77 009
JUDGE TALLIS

Crim Code s. 303
s. 133(1)

REASONS FOR JUDGMENT

of the Honourable Mr. Justice C. F. Tallis,
delivered at Hay River, N.W.T. on the 10th
day of March, A.D. 1977.

In this particular case the accused was found guilty after trial before a Judge and Jury here in Hay River on a charge of what is commonly called "Armed Robbery", under Section 303 of the Criminal Code.

This charge involved the theft of money from Ursula Phillips while armed with an offensive weapon or imitation thereof.

The accused was also found guilty of Count Number Three which involved the conviction that he was, before the expiration of the term of imprisonment to which he was sentenced, at large within Canada without lawful excuse, contrary to Section 133 (1) of the Criminal Code of Canada.

In this particular case I think it is obvious to all concerned that Count Number One is the most serious Count. It is commonly called "Armed Robbery" and carries with it a maximum of five years imprisonment. As I observed in the other case this morning, the Court has not seen fit to impose a minimum sentence, so that the trial judge in imposing sentence is given a wide discretion in selecting the sentence which is appropriate for the accused that is before him. This, of course, means that there may, if you examine a number of the cases, be a wide variation in sentences for this type of offence.

This occurs because of the fact each case must be judged on its own and the background of the accused is a very material factor. In this particular case, as in other criminal cases, I recognize that the factors to be taken into account in imposing a sentence are punishment, deterrence, protection of the public, and the reformation and rehabilitation of the offender.

The concept of punishment for the sake of punishment has in recent times been given much less emphasis, and I share that view. I made the remark this morning on another case that the doctrine of "an eye for an eye and a tooth for a tooth" has virtually disappeared as being an over-riding or major consideration in any case.

The factor which is called "deterrence" is a very important factor in a case of this kind because it involves the question of not only deterring the accused from doing this type of thing, but equally important, it involves the question of deterring others from committing armed robbery where they might be so inclined.

The protection of the public is, of course, an important factor in imposing sentence. It is particularly important where the crime involved is one such as armed robbery.

In this particular case the evidence certainly indicated, and I'm sure it satisfied the Jury, that the participants in this armed robbery, one of whom was found to be the accused, certainly had with them a weapon of some weight and scope, to say the least. The evidence indicated that it was probably not loaded, but that really does not commend itself to me as being a major factor.

In my experience it is usually the gun that wasn't loaded that caused the death in an accident in incidents which arise during the course of robberies.

I have no doubt that the victim in this case, Mrs. Phillips, was in a state of complete terror, particular with her youngster being with her and the baby sitter. It would be almost impossible to place yourself in her position and appreciate her feelings, but if one can just try to visualize it, it is perhaps not unfair to say that you can well understand her saying, in effect, "Take anything I've got", because her first thought would be for her youngster who was in the room. I do not intend to speculate as to what course of action the accused or his companion might have taken if Mrs. Phillips and the baby sitter had given any indication of resistance. That is a matter of pure speculation which I will not entertain in imposing sentence in this case.

The other factor which I mentioned involves the reformation and rehabilitation of the offender. This is an important factor, and in the Morrisette case it was pointed out by the Appeal Court in that Judgment that this is a particularly important factor where the accused is a youthful offender who has been in little or no trouble with the law before.

However, where an accused and convicted person has been in difficulty before, then, of course, less emphasis should be placed on that factor and more emphasis should be placed on factors such as deterrence and protection of the public.

In this particular case I must say that I am inclined to give greater weight to the factors of deterrence and protection of the public. I do this because, on looking over the accused's past record, there is very little to commend ^{him}him. I am not going to go into it completely because that was canvassed thoroughly by Counsel in their able submissions on sentence. It is, however, significant to observe that on November 28, 1973, the accused was convicted of theft under two hundred dollars. This offence took place in Edmonton, Alberta, and at that time the Court extended mercy to him and gave him twelve months' probation.

On January 29, 1975, he was involved in some difficulty at Yellowknife, but those offences were treated as minor offences, with minimal fines and three months' probation on one charge of trespassing by night.

On May 8, 1975, he was convicted of breaking, entry and theft at Fort Providence. He was fined two hundred and fifty dollars, and once again the Court was very lenient and granted him probation for one year.

On November 9, 1975, he was sentenced to two weeks in gaol for breaking, entry and theft at Fort Providence.

And finally on April 2, 1975, he was sentenced to one year in gaol for breaking, entry, at Fort Providence.

I note that there is an absence of violence, but by the same token, I note that there was a steady pattern which would only

lead to further difficulty with the law. This culminated in the armed robbery on October 4, 1976, and the circumstances are somewhat aggravated by reason of the fact that this offence was committed while the accused was an inmate at the South MacKenzie Correctional Centre.

Society had reposed a fair degree of trust in him when he was selected as a candidate for that Institution. This means, in a sense, that the Community was prepared to give him still another chance, notwithstanding the unfortunate record that he had.

That trust that was reposed in him was violated in two ways: Number One, the Jury found him guilty of being unlawfully at large, and Number Two, they found him guilty of armed robbery while he was out.

This incident, as I remarked during submissions of Counsel, was well executed, well timed, and could not be characterized as an unpremeditated act --at least, I am not prepared to characterize it in that way because ^{from the standpoint} ~~to my~~ sense of common sense it could not be said it was a spur of the moment proposition.

I realize that as a youngster this man had his share of problems, but there are many other young people who have had lives that were at least as difficult or even more difficult, and they did not choose to take this road.

I am prepared to accept that he now realizes that he has nobody to blame but himself for the dilemma he finds himself in. I hope that he is prepared to accept that this kind of conduct is not acceptable in this Community or in any other community, and

and that while serving his sentence of imprisonment the onus is now on him to prepare himself for his release by at least trying to take some upgrading or training which will enable him to earn a living when he gets out.

I have given anxious consideration to this case, and after considering all of the factors I am satisfied in my mind that I must impose a penitentiary sentence.

I therefore sentence the accused to a term of thirty months in a Federal Penitentiary

Pursuant to Section 653 (1) of the Criminal Code, and upon application made by Mrs. Ursula Phillips in person, I order that the accused do pay to the said Ursula Phillips the sum of four hundred and eighty-three dollars by way of compensation for the loss of money in the form of cash taken from the applicant, Ursula Phillips, during the commission of the armed robbery for which the accused has been convicted.

With respect to Count Number Three, I realize that this offence is much less serious than armed robbery, but by the same token I want to make it quite clear that when a person finds himself being trusted by society and placed in this Institution which has received tremendous support from the Community - for which I have already publicly commended them, I do not think that this Court should give any encouragement to a violation of the honour system which operates on these premises. From what I know of the operation of this Institution, it has done a great deal with the help of the

Community, and I am sure it will continue to do a great deal. Unfortunate incidents such as this might have a tendency to undermine the whole operation of the Institution if Courts do not make it abundantly clear that the honour system does not give the person a licence to take advantage of it.

Under the circumstances I recognize, as learned Counsel for the Crown did in his submissions earlier, that there is a sufficient nexus between the offences to warrant a concurrent term, but the concurrent term that I am imposing, when you bear in mind the maximum sentence for this offence, is one which reflects the Court's disapproval of a breach of the honour system at this Institution.

I therefore sentence the accused to a term of imprisonment for one year concurrent with respect to Count Number Three.

Now, I take it that the sentence is clear in this case, or are there some questions?

MR. AYOTTE: Yes, it has been brought to my attention, my Lord, that the accused has spent five months in custody. Is that not to be taken into account in sentence?

THE COURT: Oh, yes. This sentence runs from today. As a matter of fact, if I hadn't taken that into account it would have been three years --

MR. AYOTTE: Thank you.

THE COURT: --but in weighing all the facts I struck this as a fair balance.

CERTIFIED that the foregoing seven pages of Reasons for Judgment are a true transcript of my verbatim shorthand notes.

Roselle Hood