

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

JAMES ROBERT GREENLAND,

Appellant

- and -

HER MAJESTY THE QUEEN,

Respondent

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Appeal from Sentence Imposed by Justice of the Peace  
Thomas Jackson

Appeal Heard January 11, 1977 at Ft. McPherson, N.W.T.

Appeal Allowed in part: Sentence varied to 8 months  
imprisonment, Interdiction Order set aside and the  
Appellant to enter into a Probation Order for a period  
of two years following his release.

Judgment of the Court filed: January 19, 1977.

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Reasons for Judgment of:

The Honourable Mr. Justice C. F. Tallis

Counsel on the Hearing:

For the Appellant

(James Robert Greenland)

Mr. C. Dalton

For the Crown (Respondent)

Mr. E. Brogden

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

The Appellant, James Robert Greenland, appeared at Fort McPherson in the Northwest Territories on the 4th day of November, A.D. 1976 and pleaded guilty to the offence that he did:

"On or about the 24th day of October, A.D. 1976 at or near Fort MacPherson in the Northwest Territories having consumed alcohol in such a quantity that the proportion thereof in his blood exceeded 80 Milligrams of alcohol in one hundred millilitres of blood did drive a motor vehicle, to wit: a ski-doo snowmobile contrary to Section 236 of the Criminal Code."

From the record placed before this Court on the hearing of this appeal it appears that Justice of the Peace Thomas Jackson

sentenced the appellant to a term of imprisonment for one year and also made an Order of Interdiction for a period of two years.

The Appellant has appealed in respect of the sentence imposed on the following grounds:

- "(a) The sentence was unreasonable and excessive in all of the circumstances.
- (b) The sentence was passed on the basis of a wrong principle."

In this particular case evidence was adduced on the appeal which indicated that the excessive use of liquor is a matter of particular concern in the community of Ft. McPherson and that many people are particularly concerned that persons under the influence of liquor take the liberty of operating snowmobiles while in such condition.

In this particular case the accused has a number of criminal convictions but the most disturbing feature of his previous conduct in relation to this appeal centres around the fact that he has three previous convictions under Section 234 of the Criminal Code (impaired driving) all of which took place during the year 1976. In other words when you take into account the present charge and conviction, he has committed four offences of a similar nature in less than a year.

The previous sentences that have been imposed have been relatively lenient but the accused does not appear to have learned his lesson.

Under the circumstances I share the concern of the lower Court and feel that this accused must be dealt with severely.

Section 236(2) has not yet been proclaimed in this jurisdiction. Once facilities are available for curative treatment it is possible for the Court in an appropriate case to make an order under that section. However, at the present time I must consider the protection of the public and under the circumstances and after reviewing the principles of sentencing I am of the opinion that the sentence should be varied to one of 8 months imprisonment.

In this particular case an interdiction order was made against the accused under Section 84 of the Liquor Ordinance by Justice of the Peace Jackson. Section 84 provides as follows:

"84. (1) Where it appears to the satisfaction of a justice that any person who resides or sojourns in the Territories, by excessive drinking of liquor, misspends, wastes or unduly lessens his estate, injures his health or interrupts the peace and happiness of his family, the justice may make an order of interdiction directing the cancellation of any permit held by that person and prohibiting the sale of any liquor to, and the possession and consumption of liquor by such person for a period not exceeding three years from the date of that order."

In this particular case I am satisfied that the interdiction order cannot stand because it was imposed as part of the punishment on this criminal prosecution. If the prosecuting authorities wish to take steps to obtain an order of interdiction the appropriate procedure is to have an information sworn

out containing the material allegations required by Section 84(1) of the Liquor Ordinance and then a summons in appropriate form should be served on the respondent. From the evidence I am satisfied that such procedure was not followed in this case.

I do however share the concern of the lower Court that the appellant should refrain from the consumption of liquor and I am of the opinion that the same end can be achieved by directing that the accused comply with appropriate conditions prescribed in a probation order that will be in force for a term of two years from the expiration of the sentence imposed. In addition to the general conditions prescribed by Section 663(2) of the Criminal Code there will be an additional condition that the accused abstain absolutely from the consumption of alcohol.

In this particular case I would also have been inclined to make an order under Section 53(3) of the Vehicles Ordinance if such were applicable to the operation of a snowmobile. However, it should be noted that the term "motor vehicle" as defined in Section 2(14) of the Vehicles Ordinance specifically excludes snowmobiles. It is possible that some consideration should be given to an amendment in this connection.

Under the circumstances and for the reasons herein before set out I vary the sentence imposed as follows:

1. The term of imprisonment of one year is reduced to a term of 8 months.

2. The Interdiction Order is set aside.
3. Pursuant to Section 663(1)(b) I direct that the accused comply with the conditions prescribed in a probation order which is to remain in force for a period of two years following his release from imprisonment:
  - (a) That he abstain absolutely from the consumption of alcohol.

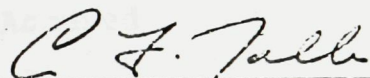
It should be noted that this condition is in addition to the conditions that are deemed to be prescribed in a probation order under Section 663(2) of the Criminal Code of Canada.

It should be noted that the accused is 31 years of age.

There will be no order as to costs in connection with this appeal.

I would direct that the Crown make the necessary arrangements to have the accused appear in Court at Yellowknife to sign the necessary probation order.

Dated at Yellowknife in the Northwest Territories this 19th day of January, A.D. 1977.



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