

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

JOSEPH KAY,

Appellant

- and -

HER MAJESTY THE QUEEN,

Respondent

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 a term of 45 days
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.

Reasons for Judgment of:

The Honourable Mr. Justice C. F. Tallis

Counsel on the Hearing:

For the Appellant (Joseph Kay)

Mr. C. Dalton

For the Crown (Respondent)

Mr. E. Brogden

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

JOSEPH KAY,

Appellant

- and -

HER MAJESTY THE QUEEN,

Respondent

Counsel on the Hearing:

For the Appellant (Joseph Kay) Mr. C. Dalton

For the Crown (Respondent) Mr. E. Brogden

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

The Appellant, Joseph Kay, 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 30th day of October, A.D. 1976 at Fort McPherson 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 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 six months

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."

I have already delivered a judgment in the case of The Queen v. Greenland in which I have indicated that I appreciate the concern which the community of Ft. McPherson has with respect to the excessive use of liquor.

This accused is 34 years of age and he has a previous criminal record but in so far as this appeal is concerned he has a previous conviction under Section 234 of the Criminal Code which said conviction took place on March 4, 1975.

This particular accused is in somewhat different circumstances than the Appellant Greenland. Having reviewed the principles of sentencing and also the sentences imposed with respect to offences of this nature I am of the opinion that the sentence of six months as imposed is excessive. However, I do not agree that this is a proper case for the minimum sentence of 14 days imprisonment. The evidence adduced before me at Ft. McPherson as to the problem arising from the excessive consumption of liquor certainly indicates that more severe sentences must be imposed.

Having regard to all the circumstances I vary the sentence imposed as follows:

1. The interdiction order is set aside for the same reasons I have outlined in the case of *The Queen v. Greenland*.
2. I sentence the accused to imprisonment for a period of 45 days.
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.

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.

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